PC
GDY.G.6 5, 1954

In the Privy Council.

No. 34 of 1953.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

BETWEEN

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA ... (*Respondent*) *Appellant*

AND

THE SQUATTING INVESTMENT COMPANY LIMITED (*Appellant*) *Respondent.*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE.

In the Privy Council.

No. 34 of 1953.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

BETWEEN

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA ... (*Respondent*) *Appellant*

AND

THE SQUATTING INVESTMENT COMPANY LIMITED (*Appellant*) *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

Case Stated.

In the High Court of Australia.

No. 1. Case Stated. 3rd July, 1952.

Ct. Bk. No. 20 of 1951.

IN THE HIGH COURT OF AUSTRALIA.
PRINCIPAL REGISTRY.

IN THE MATTER of the Income Tax Assessment Act, 1936–1949

AND

IN THE MATTER of an appeal thereunder by the SQUATTING INVESTMENT COMPANY LIMITED, against Assessment issued on the 13th day of April, 1950, in respect of income derived during the year ended on the 31st day of December, 1949.

Between

THE SQUATTING INVESTMENT COMPANY LIMITED ... ... *Appellant*

and

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA ... ... *Respondent.*

In the High Court of Australia.

No. 1. Case Stated. 3rd July, 1952— *continued.*

CASE STATED.

1.—This matter comes before me as an Appeal from an assessment of income tax in respect of income of the year ending 31st December, 1949, forwarded to the Court by the Commissioner pursuant to the request in writing of the Appellant under Section 187 of the Income Tax Assessment Act, 1936–1949. With the concurrence of the parties and pursuant to Section 198 of the Income Tax Assessment Act, 1936–1949, I state the following case for the opinion of the Full Court of the High Court upon the questions of law arising on the appeal.

2.—The Squatting Investment Company Limited (hereinafter called " the Appellant ") was incorporated under the Companies Acts of the State of Victoria on 14th April, 1882.

3.—The Appellant owns pastoral properties in the States of New South Wales and Queensland and on such properties it carries on *(inter alia)* the business of a wool grower.

4.—This business was carried on by the Appellant during the years 1939 to 1946 inclusive and the wool grown by the Appellant in the seven wool seasons 1939–40 to 1945–46 inclusive was acquired by the Commonwealth pursuant to the National Security (Wool) Regulations.

5.—The National Security (Wool) Regulations being Statutory Rules 1939 No. 108 (hereinafter called " the Regulations ") were made under the National Security Act, 1939. A copy of the regulations is annexed hereto in Appendix A and forms part of this case. The Regulations were amended from time to time but not in any respect relevant to this case, save as indicated herein. The amending Regulations are also annexed hereto in Appendix A.

6.—The Regulations were made for the purpose of carrying out an arrangement (hereinafter referred to as " the Wool Purchase Arrangement ") made between the United Kingdom Government and the Commonwealth Government at the outbreak of war in 1939 by which the United Kingdom Government purchased all wool produced in Australia for the period of the war and one full wool year thereafter, except wool required for the purpose of woollen manufacture in Australia. The price agreed upon for the wool to be purchased by the United Kingdom Government under the Wool Purchase Arrangement was 10.75 pence (Sterling) per pound of greasy wool for the whole clip (13.4375 pence Australian). One of the terms of the Wool Purchase Arrangement was that the United Kingdom Government and the Commonwealth Government would divide equally any profit arising from the resale outside the United Kingdom of wool purchased by the United Kingdom Government under the arrangement.

7.—The price per pound of greasy wool agreed to be paid by the United Kingdom Government for the whole of the Australian wool clip

(except wool required for the purpose of woollen manufacture in Australia) is hereinafter referred to as " the flat rate purchase price." The flat rate purchase price of 10.75 pence (sterling) agreed upon in 1939 was paid for the wool purchased in the three wool seasons 1939/40, 1940/41 and 1941/42. In 1942 it was agreed between the United Kingdom Government and the Commonwealth Government that the flat rate purchase price should for the 1942/43 season and the following seasons be increased by 15 per cent. resulting in a flat rate purchase price of 15.45 pence (Australian) per pound.

8.—Having entered into the Wool Purchase Arrangement with the United Kingdom Government, the Commonwealth, under the Regulations, compulsorily acquired all wool produced in Australia, that is to say, not only the wool covered by the Wool Purchase Arrangement which the United Kingdom Government had arranged to purchase, but also the wool required for the purpose of woollen manufacture in Australia, which was excluded from that Arrangement. The method of acquisition established by the Regulations was to acquire all wool to be submitted for appraisement under the Regulations, which provided that the wool was to vest in the Commonwealth upon appraisement. Thus property in all wool vested in the Commonwealth upon the wool being appraised. The wool excluded from the Wool Purchase Arrangement, i.e. that required for woollen manufacture within Australia, was ascertained after appraisement. Manufacturers who were authorised by the Central Wool Committee to obtain wool were entitled to examine wool after appraisement and to select what wools they required. The wool selected was sold by the Central Wool Committee on behalf of the Commonwealth to the manufacturers and did not form part of the wool purchased by and paid for by the United Kingdom Government. The balance of the wool (being in fact some 85 per cent. of the whole) was transferred to the United Kingdom Government.

9.—Wool was appraised at the premises of approved wool selling brokers. Appraisements were made in series, that is to say that in a wool selling centre appraisements were held in turn at the premises of each approved wool selling broker. Such a series was called an appraisement series. At the close of each appraisement series the Central Wool Committee notified the United Kingdom Government of the appraised price of wool to be acquired by it pursuant to the Wool Purchase Arrangement and appraised in that series. The United Kingdom Government paid the price of which it was thus notified on the 14th day after the close of each appraisement series, and the property in the relevant wool then was considered to have passed to the United Kingdom Government.

10.—The United Kingdom Government made the payments referred to in the last preceding paragraph direct to the Central Wool Committee. At the end of each wool season an adjustment was made as between the Central Wool Committee on behalf of the Commonwealth and the United Kingdom Government in order to bring the total of the appraised prices so

paid into line with the flat rate purchase price and this was done by the flat rate adjustment referred to in paragraphs 20 and 21 below. In addition pursuant to the Wool Purchase Agreement, the United Kingdom Government paid to the Central Wool Committee on behalf of the Commonwealth a " handling charge " of ¾d. per pound of wool to cover the expense of handling the wool from the time of appraisement to the point of loading, i.e. from the brokers stores where appraisement took place to the f.o.b. point and this included storage pending shipment. None of the payments so received by the Central Wool Committee, i.e. neither the appraised price nor flat rate adjustment nor handling charges was treated as part of the Consolidated Revenue of the Commonwealth.

11.—In addition to the flat rate purchase price received from the United Kingdom Government in respect of wool purchased by the United Kingdom Government pursuant to the Wool Purchase Arrangement, the Central Wool Committee also received from woollen manufacturers in Australia payment for the wool purchased by them from the Commonwealth, i.e. selected by them after appraisement, which did not pass to the United Kingdom Government under the Wool Purchase Arrangement. The price received by the Central Wool Committee for the wool selected by the Australian manufacturers was ascertained in the manner provided by the Regulations. The Regulations as originally made provided for such sales to be at " appraised prices." In 1940 the Regulations were amended so as to provide that such sales were to be at prices to be fixed by the Central Wool Committee and they were in fact fixed at appraised prices plus a percentage, in 1940/41, 7½ per cent. and in 1941/42, 15 per cent. In 1942 the Regulations were again amended so as to provide for the price for such wool to be fixed by the Central Wool Committee in accordance with determinations notified to it by the Commonwealth Prices Commissioner, and that system of price fixing continued for the remainder of the duration of the compulsory acquisition by the Commonwealth, i.e. until 30th June, 1946. The prices so fixed were again ascertained by reference to the appraised price plus a percentage —in fact 10 per cent.

12.—The result of the Commonwealth selling wool to Australian woollen manufacturers at prices ascertained in the above manner was a loss to the Commonwealth at the date when the compulsory acquisition of wool by the Commonwealth ceased of approximately £800,000. This loss arose from the fact that the prices at which the Central Wool Committee on behalf of the Commonwealth sold such wool to manufacturers were less than the prices which the Commonwealth paid to growers in respect of its acquisition of that wool under the Regulations, because the percentage addition to the appraised price charged to Australian woollen manufacturers was, save in the 1941/42 season, less than the " flat rate adjustment " paid to wool growers in addition to the appraised price—see paragraph 20 below.

13.—However, from the point of view of the supplier of the wool, i.e. the grower who submitted the wool for appraisement, it made no difference whether the wool was purchased from the Commonwealth by the United Kingdom Government under the Wool Purchase Arrangement or purchased from the Commonwealth by an Australian manufacturer. The amount received by the grower and the method of its calculation were the same whatever the ultimate destination of his wool, although the amount received by the Central Wool Committee on behalf of the Commonwealth Government in respect of that wool differed according to whether the Central Wool Committee on behalf of the Commonwealth sold it to an Australian Woollen manufacturer or sold it to the United Kingdom Government.

14.—The price paid to the grower who submitted wool for appraisement was ascertained by the process of appraisement in accordance with a " Table of Limits " drawn up by the Central Wool Committee pursuant to Regulation 17 of the Regulations. This method takes into account the nature of wool as a commodity and the need for dividing the flat rate purchase price among the various growers according to the type and quality of the wool submitted for appraisement.

15.—The Australian wool clip is of an extremely diversified character and the value of an individual bale of wool cannot be ascertained merely by means of applying the flat rate purchase price to the weight of the wool. The clip contains lots which range from fine merinos to coarse crossbreds and comeback wools, from fleece-wools to such miscellaneous low-grade wools as locks and crutchings, and there are in addition very great variations in the percentage of impurities, i.e. grease, dirt or dust and vegetable matter and in the percentage of moisture. The value of an individual bale of wool depends on a combination of two factors—first the " type " of wool concerned which is determined by degree of fineness, length of staple, degree of fault and other like factors affecting its spinning qualities and ultimate use and, secondly, the " yield ", i.e. the percentage of wool which will be yielded from the bale after removal of impurities, i.e. grease, dirt and vegetable matter. The flat rate purchase price was payable under the Wool Purchase Arrangement for all wool purchased by the United Kingdom Government irrespective of type and yield. Subject to what is stated in paragraph 17 of this case the function of the Table of Limits was to provide a basis for the division amongst the wool growers of the price of the whole clip at the flat rate purchase price, so that the suppliers of the fine quality high yield wools would receive an appropriate amount more per pound of wool than the suppliers of low quality and low yield wools. For each type of wool a limit was fixed in the Table of Limits which was the appropriate price for that grade of wool on the basis of a 100 per cent. yield where the average price for the whole clip on a greasy basis was the flat rate purchase price. The relative values of the different types of wool and the approximate quantity of each type that might be expected

In the High Court of Australia.

No. 1. Case Stated. 3rd July, 1952— *continued.*

to be produced were known both in the wool industry and to the Central Wool Committee and its advisers who compiled the Table of Limits. The Table of Limits as compiled comprised 928 types and 608 sub-types of wool and it ascribed to each a limit i.e. a price per pound for each such type of wool on the basis of 100 per cent. yield. Thus in order to place a price on an individual lot of wool, two processes were required—first it had to be " typed " i.e. classified according to which of the 1,500 odd types it fell into and, secondly, its " yield " (which was expressed as a percentage) had to be estimated and the resulting price was then that percentage of the " limit " for that type of wool. This process thus gave a price per pound greasy for each lot of wool appraised.

16.—It was in this that the process of appraisement consisted—classifying according to type and estimating the yield. Subject to what is stated in paragraph 17 of this case, each lot of wool submitted for appraisement was thus appraised at a price per pound greasy which represented a price appropriate for that particular lot of wool in a wool season in which the average price of the whole clip was the flat rate purchase price. The Table of Limits was so designed and compiled as to produce the result that the total appraised prices of all wool submitted for appraisement approximated to but did not exceed the price of the whole clip at the flat rate purchase price. This involved the estimation in advance of, amongst other things, the proportions of the various types of wool which were to be produced in the wool year and the yields which might be expected from such wools. The preparation of the Table of Limits was, therefore, a task essential to the administration of the Regulations. It is apparent from the nature of the task that it could not be performed with mathematical exactness and that if the total appraised price of the whole clip was exactly the same as the price of the whole clip at the flat rate purchase rate, it would be nothing more than coincidence. Although exactness of that character could not be attained, substantial accuracy was possible and was attained. There was thus a virtual certainty of a difference between the total appraised price of the wool clip and the total purchase price at the flat rate. What this difference would be depended in part upon the accuracy of the Table of Limits and the estimates upon which it was based and in part upon the accuracy of the appraisements, and it could be ascertained only at the conclusion of each year's appraisements when the whole year's clip had been appraised. At that stage the total of the appraised prices could be ascertained by addition (and an average appraised price calculated) and the total amount represented by the flat rate purchase price could be equally ascertained by application of the flat rate purchase price to the total weight of wool appraised.

17.—Pursuant to Regulation 17 of the Regulations, in the preparation of the Table of Limits, regard was had to the price payable by the United Kingdom Government to the Commonwealth Government under the Wool

Purchase Arrangement and the limits were fixed with the object and intention of ensuring that the price per pound payable by the United Kingdom Government for the wool of any wool year, i.e. the flat rate purchase price, would not be exceeded by the average price per pound of the total payments made pursuant to the appraisement of that wool. In fact in all seasons the average appraised price per pound was lower than the flat rate purchase price. Since the compilation of the Table of Limits involved the making of the estimates referred to in paragraph 16, it was possible that it would fail to achieve the desired object. It was further possible that errors might occur in the process of appraisement, either in the classification by type or in estimating the yield, which could result in a failure to achieve the object aimed at by the Table of Limits and produce an average appraised price either above or below the flat rate purchase price. The nature of the process of appraisement made it impossible to predict with certainty the exact difference between the average appraised price and the flat rate purchase price and moreover the possibilities referred to above made it impossible to predict with certainty whether the average appraised price would be above or below the flat rate purchase price.

18.—The Commonwealth, in the administration of the Regulations, paid to the wool growers as a whole an amount equal to the value of the whole wool clip at the flat rate purchase price and did so by paying to each grower the equivalent in respect of his wool of the flat rate purchase price—whether the Central Wool Committee on behalf of the Commonwealth had sold his particular wool to the United Kingdom Government or to an Australian woollen manufacturer. The Commonwealth Government acquired the wool upon appraisement and the Central Wool Committee made payments to the growers in respect of wool so appraised fourteen days after appraisement. Accordingly it was impossible to tell at the time of such payments being made, what the difference between the average appraised price and the flat rate purchase price would be. The Central Wool Committee, therefore, followed the practice of making an initial payment fourteen days after appraisement and then after the conclusion of each wool year when all the figures were available making an adjustment.

19.—The possibility that the total appraised price of the whole wool clip would be greater than the value of the clip at the flat rate purchase price made it undesirable to pay over the whole of the appraised price of each lot of wool within the fourteen days after appraisement. To guard against this possibility, the Central Wool Committee made a deduction from the appraised price paid to each grower upon appraisement. This deduction was called " retention money " and in the first wool year of the operation of the Regulations (i.e. the 1939/40 wool season) was 10 per cent. of the appraised price and in the subsequent years up to, but not including 1945/46, was 5 per cent. This percentage was retained by the Central Wool Committee until the end of the wool season in which the wool was appraised in order that an adjustment might be made if the average appraised price proved to be greater than the flat rate purchase price.

20.—At the end of each wool season the Central Wool Committee was able to ascertain the relationship between the total appraised price of the whole clip and the price of the whole clip at the flat rate purchase price. When the difference between these two amounts was ascertained, it was possible to calculate as a percentage the addition which should be made to, or the subtraction which should be made from, the total appraised price in order to equate it to the price of the whole clip at the flat rate purchase price. The price of each lot of wool could similarly be brought into proper relationship with the flat rate purchase price by adding that percentage to, or subtracting it from the appraised price of such lot. That percentage was known as the " flat rate adjustment." In fact in each wool season in which the Commonwealth compulsorily acquired the whole wool clip the total appraised price of the whole clip proved to be less than the price of the whole clip at the flat rate purchase price and the flat rate adjustment was, therefore, always made by an addition to the appraised price. It was accordingly not necessary to resort to the retention money in order to find the necessary fund for making the adjustment. On the contrary, in order to give to each wool grower the equivalent in respect of his wool of the flat rate purchase price, it was necessary to pay to him the retention money and also a further sum being the flat rate adjustment in respect of the appraised price of his wool. Retention money and flat rate adjustment were paid to all growers whether their wool was sold by the Central Wool Committee on behalf of the Commonwealth to the United Kingdom Government under the Wool Purchase Arrangement or to Australian woollen manufacturers.

21.—One of the terms of the Wool Purchase Arrangement was that at the conclusion of each wool year an adjustment was to be made as between the United Kingdom Government and the Commonwealth by which the United Kingdom Government would pay to the Commonwealth or the Commonwealth refund to the United Kingdom Government as the case might be, the flat rate adjustment in respect of the wool purchased by the United Kingdom Government from the Commonwealth. The amount so calculated was in the events which happened paid by the United Kingdom Government to the Central Wool Committee on behalf of the Commonwealth in the month of July immediately following the conclusion of each wool year and was used by it towards making the flat rate adjustment payment to the wool growers.

22.—Because the amount so received from the United Kingdom was calculated only on the appraised price of the wool purchased by it from the Commonwealth, it was not sufficient to enable the Central Wool Committee to make the flat rate adjustment payment in respect of the whole clip. The amount necessary to make the full payment of the flat rate adjustment to the wool growers in respect of wool purchased from the Commonwealth Government by Australian woollen manufacturers was found by the Central Wool Committee from other funds at its disposal, i.e. funds other than those received from the United Kingdom Government

as indicated above. These other funds were derived from the percentage addition to the appraised price of wool sold to Australian woollen manufacturers referred to in paragraph 11 above, and from the operations of the Central Wool Committee pursuant to the National Security (Wool Tops) Regulations (SR. 1940 No. 80), the National Security (Price of Wool for Manufacture for Export) Regulations (SR. 1941 No. 34) and from the surplus amount not expended out of the ¾d. per pound handling charge (which surplus prior to the agreement as to price made in 1942 was retained by the Commonwealth). The National Security (Wool Tops) Regulations and amending Regulations and the National Security (Price of Wool for Manufacture for Export) Regulations and amending Regulations are annexed hereto as appendices B and C respectively and form part of this case.

23.—Accordingly, at the conclusion of each wool season the Central Wool Committee paid to each wool grower the retention money which had been withheld in respect of his wool and also the flat rate adjustment in respect of his wool. The amounts of the flat rate adjustment in each year of the Wool Purchase Arrangement expressed as a percentage of the appraised price were as follows:

Wool Season	1939/40	8½%
	1940/41	11 %
	1941/42	9½%
	1942/43	11 %
	1943/44	11¼%
	1944/45	12½%
	1945/46	13·888%

24.—In the wool seasons 1939/40—1944/45 inclusive, the exact difference between the average appraised price and the flat rate purchase price was in no case exactly the percentage referred to in paragraph 23 above but the amount paid to the wool growers by the Central Wool Committee was calculated by reference to those percentages, the amount represented by the difference between those percentages (which were taken to the nearest one quarter of one per cent.) and the exact figure being either made up by the Central Wool Committee from other funds at its disposal or carried forward in its books to a subsequent year. The flat rate adjustment was paid to all wool growers irrespective of whether their wool had been purchased from the Central Wool Committee on behalf of the Commonwealth by the United Kingdom Government, so that the Central Wool Committee on behalf of the Commonwealth Government received for it the equivalent of the flat rate purchase price, or had been purchased from the Central Wool Committee on behalf of the Commonwealth by Australian woollen manufacturers, so that the Central Wool Committee on behalf of the Commonwealth Government received for it from the woollen manufacturers the amounts referred to in paragraph 11 above.

25.—In practice, therefore, each wool grower received for his wool its appraised price (which, save in the last year, was paid in two instalments, the second instalment being the retention money) and a further payment expressed as a percentage of the appraised price—the flat rate adjustment.

26.—The system of deducting retention money and making the flat rate adjustment, as described in the preceding paragraphs, was applied to " participating wool." For the purpose of the administration of the Regulations there was a basic distinction which separated all wool into two categories. This is the distinction between wool obtained from shearing of live sheep, i.e. " shorn wool," and wool obtained from the skins of slaughtered sheep, i.e. " skin wool." The Wool Purchase Arrangement provided, as stated in paragraph 6 above, that any profit to arise from the resale of wool outside the United Kingdom was to be shared equally between the United Kingdom Government and the Commonwealth Government. The Regulations provided by Regulation 30 (2) that " any monies which " may be received by the Central Wool Committee from the Government " of Great Britain under and in consequence of such arrangement (i.e. the " Wool Purchase Arrangement) over and above the purchase price payable " by such Government thereunder for the wool, and any surplus which " may arise, shall be dealt with as the Central Wool Committee shall in its " absolute discretion determine." From the inception of the Wool Purchase Arrangement the Central Wool Committee contemplated that the Commonwealth Government's share of any profit to arise should, if there were any profit, be paid to the wool growers, i.e. the suppliers of shorn wool and not to the suppliers of skin wool. Shorn wool was therefore, classified as " participating wool," i.e. wool the suppliers of which were, according to the intention of the Central Wool Committee entitled to participate in the Commonwealth Government's share of any profit to arise under the Wool Purchase Arrangement, and the suppliers of which also participated in the flat rate adjustment which as appears above took the form in each year of a further payment. The suppliers of skin wool received the appraised price without deduction of retention money and did not participate in the flat rate adjustment and were not intended by the Central Wool Committee to participate in any profit. Skin wool was, therefore, listed as " non-participating." Accordingly, all wool submitted for appraisement was, in addition to being appraised according to type and yield under the Table of Limits, listed in the broker's appraisement catalogues as " participating " or " non-participating."

27.—Under the Regulations all wool was required to be submitted for appraisement through wool selling brokers. The brokers received the wool into their stores and there arranged for its appraisement. They prepared " appraisement catalogues " which listed the various lots of wool (being lots of one bale or more) submitted for appraisement. The wool was displayed on the appraisement floors for inspection by the

appraisers who entered the type and yield of each lot in the appropriate column in the appraisement catalogue. The appraisement catalogue recorded the name and usual brand mark of the person on whose behalf the wool was submitted for appraisement and in addition, if such was the case, listed the wool as being participating wool. The wool selling brokers also received on behalf of the persons submitting the wool for appraisement, all payments made by the Central Wool Committee. The Central Wool Committee made the initial payment for participating wool, i.e. appraised price less retention money, to the wool selling broker within fourteen days of the appraisement and paid the retention money and the flat rate adjustment to the wool selling broker before the end of the July immediately following the end of the wool season in respect of which the payments were made.

28.—The wool purchased by the United Kingdom Government under the Wool Purchase Arrangement was handled on its behalf by the Central Wool Committee and was dealt with in one of three ways—it was either shipped to the United Kingdom or shipped to other countries after having been sold by or on behalf of the United Kingdom Government to purchasers there, held in Australia for storage or treatment (i.e. scouring, carbonising or reclassing) on behalf of the United Kingdom Government or shipped to the United States of America for storage there pursuant to arrangements made between the United Kingdom and United States Governments. The wool sent to countries other than the United Kingdom was sold either by the United Kingdom Government or by the Central Wool Committee on its behalf at prices (known as " export issue prices ") determined by the United Kingdom Government. The accounts in respect of such sales were kept in England by the United Kingdom Government and it was from these accounts that it was ascertained whether any profit was being made on sales of wool outside the United Kingdom. The account in which these amounts were recorded was known as the " Divisible Profits Account." However, while large quantities of the wool purchased by the United Kingdom Government remained in store in Australia and elsewhere, it was impossible to determine whether there would ultimately be any such profit or not, and no distribution of profits from this account was in fact made.

29.—During the wool year 1945/46 the method of acquisition of Australian wool by the Central Wool Committee up to 15th November, 1945, and after that date, by the Australian Wool Realization Commission (to which reference is made hereafter), was the same as that previously used by the Central Wool Committee and the method of payment was also the same save that during that wool season no deduction was made from the appraised price in respect of retention money. The sale of wool by appraisement in accordance with the Regulations came to an end on 30th June, 1946, by virtue of the Wool Realization Regulations (Statutory Rules 1946, No. 129) made under the Wool Realization Act, 1945. A copy of the Wool Realization Regulations and amending Regulations is annexed hereto as Appendix D and forms part of this case.

In the High Court of Australia.

No. 1. Case Stated. 3rd July, 1952— *continued.*

30.—As a result of negotiations conducted in the year 1945, an agreement was reached between the United Kingdom Government, the Commonwealth Government and the Governments of South Africa and New Zealand upon a plan for the winding up of the wartime wool purchase arrangements and the disposal of the large stocks of wool held by the United Kingdom Government without unduly disturbing the marketing or depressing the price of future wool clips. The agreement so reached was called the " Disposals Plan " and is set out in the Schedule to the Wool Realization Act, 1945 (Act No. 49 of 1945). Pursuant to that agreement, the United Kingdom Government arranged for the formation of United Kingdom—Dominion Wool Disposals, Limited, a company incorporated in the United Kingdom (commonly called the " Joint Organization ") and each of the other governments, set up by a subsidiary of the Joint Organization. The Australian subsidiary is the Australian Wool Realization Commission set up by the Wool Realization Act, 1945.

31.—The Joint Organization was established in 1945 and commenced operations as from 1st August, 1945. The task of the Joint Organization was the disposal of the accumulated surplus of Dominion wool purchased during the war by the United Kingdom Government. The stocks held by the United Kingdom Government on 1st August, 1945, and taken over by the Joint Organization on that date amounted to 10,407,000 bales of which 6,796,000 bales were Australian wool purchased from the Commonwealth by the United Kingdom Government under the Wool Purchase Arrangement. It was agreed that the three Dominion Governments concerned should each acquire a half interest in the stocks of wool from their respective Dominions held by the United Kingdom Government and that the value of such stocks for the purposes of the Disposals Plan, be taken as the original cost of the wool as appearing in the United Kingdom Government books, less the accumulated profits from sales of wool outside the United Kingdom, i.e. the cost of the wool held in store less the balances standing in the Divisible Profits Accounts. Each Dominion Government was to acquire on this basis, a half interest in the stocks of the wool purchased from it and held by the United Kingdom Government on 1st August, 1945, and was to receive, after due allowance for operating expenses, half the net proceeds of sale of that wool upon its being sold by the Joint Organization. Payment for this half interest was to be made by each Dominion Government to the United Kingdom Government within four years and each Dominion Government's half share in the proceeds of sale by the Joint Organization was to be applied in payment of the amount so payable.

32.—The Disposals Plan provided that the Wool Purchase Arrangement should terminate on 31st July, 1945, but further provided (in Part I paragraph 9 thereof) that for the wool year 1945/46, the first year of the Disposals Plan (known as the interim period and terminating on 31st July, 1946), the method of purchase of wool—viz. appraisement and acquisition—which had operated during the preceding six years, should be continued and

(in Part III paragraph 6) that the United Kingdom Government would be responsible for financing the purchase of all the wool so acquired but that the management and sale of the 1945/46 wool clip should be entrusted to the Joint Organization and that such wool should be dealt with by the Joint Organization in the same manner as the stocks taken over by it as at 1st August, 1945. In Australia the acquisition of the 1945/46 wool clip was administered by the Central Wool Committee until 15th November, 1945, upon which date the Australian Wool Realization Commission took over. The system of acquisition upon appraisement continued until 30th June, 1946, and in the following wool season the sale of wool by auction was resumed—the first of such auctions being held in September, 1946. Thereafter all wool, both from new clips and stocks held by the Joint Organization, was disposed of by auction or private sale. Certain small quantities were bought in by the Joint Organization at reserve prices when other bids at auction did not reach the reserves established pursuant to the Disposals Plan.

33.—The stocks of Australian wool taken over by the Joint Organization on 1st August, 1945, consisted of 6,796,000 bales, the original cost of which was £stg. 106,796,829, and at that date the amount standing to the credit of the Divisible Profits Account was £stg. 24,019,740, so that the net cost to the Joint Organization of the opening stock of Australian wool was £stg. 82,777,089, and this figure was used in the first accounts prepared by the Joint Organization as at 30th June, 1947. The figure to the credit of the Divisible Profits Account was subsequently found to have been overstated because certain adjustments (the nature of which is not now material) had not been made—the correct figure for the amount to the credit of the Divisible Profits Account as at 31st July, 1945, was subsequently ascertained at £stg. 19,489,233, and the later years' accounts are based on that figure.

34.—During the interim period (in which the whole of the 1945/46 clip was purchased) the Joint Organization acquired 2,866,000 bales of Australian wool at a cost of £stg. 46,547,554. In addition to the purchase of the 1945/46 clip, the Joint Organization also bought in during the eleven months ending 30th June, 1947 (i.e. the first year of auction) 64,000 bales of Australian wool at a cost of £stg. 763,248. In the period from the take over on 1st August, 1945, to the end of its first accounting period, 30th June, 1947, the Joint Organization sold 6,529,000 bales of Australian wool for the sum of £stg. 138,273,685. At the end of that accounting period (30th June, 1947), the Joint Organization held a stock of 3,076,000 bales of Australian wool, the original cost of which was £stg. 38,942,444, but which stood in the balance sheet of the Joint Organization at 30th June, 1947, at £stg. 19,660,527. At 30th June, 1947, the net profit of the Joint Organization for the period 1st August, 1945—30th June, 1947, in respect of Australian wool was £stg. 21,349,884.

35.—The operation of the Joint Organization in respect of Australian wool in subsequent years may be summarized as follows :—

In the High Court of Australia.

No. 1. Case Stated. 3rd July, 1952— *continued.*

Year ended 30th June, 1948 :

				£
Stock at 30th June 47.	3,076,000 bales,	book value	...	38,942,444
Purchase during year	22,298 ,,	cost ...	...	231,347
Sales during year	825,559 ,,	price ...	...	31,092,880

Profit realized during year, £17,272,237.

Year ended 30th June, 1949 :

				£
Stock at 30th June, 48.	2,271,000 bales,	book value	...	26,846,728
Purchase during year	3,335 ,,	cost ...	...	50,567
Sales during year	1,008,000 ,,	price ...	...	36,481,185

Profit realized during year, £22,377,505.

Year ended 30th June, 1950 :

				£
Stock at 30th June, 49.	1,254,000 bales,	book value	...	14,430,678
Purchase during year	146 ,,	cost ...	...	2,595
Sales during year	857,000 ,,	price ...	...	40,360,645

Profit realized during year, £29,702,248.

Stock at 30th June, 1950 379,100 bales, book value ... £4,452,783

36.—The position with respect to profits realized by the Joint Organization in respect of Australian wool up to 30th June, 1950, may be summarized as follows :—

Profit Realized :

1 August, 1945 — 30th June, 1947	£stg.	21,349,884
1 July, 1947 — 30th June, 1948		17,272,237
1 July, 1948 — 30th June, 1949		22,377,505
1 July, 1949 — 30th June, 1950		29,702,248
	£stg.	90,701,874

In effect the total profit £stg. 90,701,874 includes an appropriate proportion of the adjusted sum of £stg. 19,489,233 which was on 31st July, 1945, standing to the credit of the Divisible Profits Account. In the year ended 30th June, 1950, payments on account of profit were made to each of the Governments interested in the Joint Organization and the amount paid to the Commonwealth Government was £stg. 20,000,000. At 30th June, 1950, the amount standing to the credit of the Commonwealth Government in the books of the Joint Organization as its share of the surplus was £stg. 32,869,163. These profits reflected the very substantial increases in world prices for wool (as well as other commodities) after the resumption of the sale of wool by auction in September, 1946. The extent of these increases in world wool prices is indicated by the following table of prices based upon the base figure of 100 being the average over the period 1934/38 :

	Merino Wool (*Average* 64*s*)	*Crossbred Wool* (*Average* 46*s*)
Base figure (average 1934/38) ...	100 ...	100
June 1946	144 ...	175
June 1947	213 ...	190
June 1948	413 ...	225
June 1949	359 ...	240
June 1950	546 ...	503

37.—The trading operations of the Joint Organization thus consisted of the disposal or realization by sale of the stocks of wool taken over by it on 1st August, 1945, and additional wool purchased by it. The capital with which it acquired those stocks was provided or deemed to have been provided, so far as Australian wool was concerned, equally by the United Kingdom Government and the Commonwealth Government. This amount was provided first by applying to the original cost of the wool the balance standing to the credit of the Divisible Profits Account as at 31st July, 1945, (which balance was under the Wool Purchase Arrangement to be shared equally between the United Kingdom Government and the Commonwealth Government) and the remainder of the cost was to be provided equally by the two governments. The United Kingdom Government's share was provided by the transfer of the wool itself and the Commonwealth Government's share was to be paid by the Commonwealth Government to the United Kingdom Government over four years but was to be provided in the first place out of the Commonwealth Government's share of the proceeds of the sale of the wool as it was disposed of by the Joint Organization. In fact the Joint Organization's trading operations were so successful that the Commonwealth Government's share of the remainder of the capital was fully paid out of such proceeds by 30th June, 1947, and the sale over the period 1st August, 1945—30th June, 1950, of the Joint Organization's stock of wool, resulted after the re-payment of the capital cost of its stocks of wool, in the profit of £stg. 90,701,874 referred to in paragraph 35 above, with a prospect of further profits when the remainder of the stock is sold.

38.—The Wool Realization (Distribution of Profits) Act 1948 (No. 87 of 1948) made provision for the distribution among the persons who supplied participating wool for appraisement, of a fund called the "Wool Disposals Profit" which includes the Commonwealth Government's share in the ultimate balance of profit arising from the transactions of the Joint Organization. By Section 6 (1) of the Act it is provided that the Minister may, if he is satisfied that the financial position under the Disposals Plan justifies his so doing, by notice published in the Gazette, declare an amount to be available for distribution under the Act out of the expected net profit. By a notice published in the Commonwealth Gazette (Gazette No. 86 of 24th November, 1949) and bearing date the 24th day of November, 1949, the Minister of State for Commerce and Agriculture declared the amount of £25,000,000 (Australian) to be available for distribution under the Wool Realization (Distribution of Profits) Act, 1948. Annexed hereto as Appendix E is a copy of the said declaration.

In the High Court of Australia.

No. 1. Case Stated. 3rd July, 1952— *continued.*

39.—Pursuant to the Regulations, the Appellant submitted for appraisement all wool grown on its properties in the wool seasons 1939/40 to 1945/46 inclusive and all such wool was duly delivered to the Commonwealth by Goldsbrough Mort & Co., Ltd., the wool selling broker through whom the same was submitted for appraisement. All such wool was duly appraised and was listed as " participating wool " in the appraisement catalogue used by the appraisers for the purpose of such appraisement.

40.—The appraised price of the wool submitted for appraisement by the Appellant in each of the wool seasons 1939/40 to 1945/46 was as set out below :

" Thurulgoona Station," Cummanulla, Queensland.

	£	s.	d.
1939/40	29,536	3	4
1940/41	28,606	9	2
1941/42	18,022	3	1
1942/43	26,166	14	5
1943/44	29,960	18	8
1944/45	21,148	6	1
1945/46	18,749	9	9
	£172,190	4	6

" Tondeburine Station," Gulargambone, N.S.W.

	£	s.	d.
1939/40	Nil		
1940/41	397	2	3
1941/42	10,068	14	0
1942/43	11,783	2	7
1943/44	14,523	7	6
1944/45	9,722	0	10
1945/46	12,479	1	7
	£58,973	8	3

" Quantabone Station," Brewarrina, N.S.W.

	£	s.	d.
1939/40	21,768	8	7
1940/41	24,180	18	6
1941/42	17,225	6	8
1942/43	47,896	9	5
1943/44	4,350	12	5
1944/45	11,989	15	11
1945/46	8,880	5	1
	£136,291	16	7
Total	£367,455	9	4

The appraised prices as set out above were duly received by the Appellant and in each wool season, save the 1945/46 season, were received in two instalments, viz. appraised price less retention money within fourteen days of appraisement, and retention money in the month of July immediately following the conclusion of the wool season. The figures set out above include the amount of retention money.

41.—In addition to the appraised price as set out in paragraph 40, the Appellant received from the Central Wool Committee and the Wool Realization Commission a further amount in respect of each wool season, being the amount of flat rate adjustment. The amounts received in respect of the flat rate adjustment were received in the month of July immediately following the conclusion of each wool season and were as follows :

" Thurulgoona Station," aforesaid.	£	s.	d.
1939/40	2,510	11	6
1940/41	3,146	14	2
1941/42	1,712	2	1
1942/43	2,878	6	10
1943/44	3,370	12	1
1944/45	2,643	10	9
1945/46	2,606	3	7
	£18,868	1	0

" Tondeburine Station," aforesaid.	£	s.	d.
1939/40	Nil		
1940/41	43	13	8
1941/42	956	10	7
1942/43	1,296	2	11
1943/44	1,633	17	6
1944/45	1,215	5	1
1945/46	1,734	11	10
	£6,880	1	7

" Quantambone Station," aforesaid.	£	s.	d.
1939/40	1,850	3	2
1940/41	2,659	18	0
1941/42	1,636	8	2
1942/43	5,268	12	4
1943/44	489	8	11
1944/45	1,498	14	6
1945/46	1,234	7	1
	£7,787	9	0

Total	£33,535	11	7

In the High Court of Australia.

No. 1. Case Stated. 3rd July, 1952— *continued.*

42.—On the 30th November, 1949, the Appellant received from the Australian Wool Realization Commission through Goldsbrough Mort & Co., Ltd., the wool selling broker through whom its wool had been submitted for appraisement, two cheques in respect of the distribution of the declared amount of profit referred to in paragraph 38 above in the amounts of:

	£	s.	d.
	12,364	17	0
	10,486	6	8
Total	£22,851	2	8

being an amount calculated at 6¼ per cent. of the appraised values referred to in paragraph 40 above, less broker's commission at the rate of ½ of 1 per cent. (£114/16/7). The said cheques were accompanied by four credit notes indicating how the same were made up. Copies of the said credit notes are annexed hereto as Appendix F.

43.—For the purposes of the Income Tax Assessment Act, 1936–1949, the Appellant adopted as its accounting year, the period of the twelve months commencing on 1st January each year and ending on 31st December in that year. On the 28th February, 1950, the Appellant made a return of its income for the twelve months ending 31st December, 1949. That return was based on the Appellant's Profit and Loss Account for that period as adjusted by a Reconciliation Statement lodged with the return. Copies of the said Profit and Loss Account and Reconciliation Statement are annexed hereto as Appendix G. In the Reconciliation Statement the amount of £22,851, referred to in paragraph 42 hereof and received by the Appellant pursuant to the distribution of the declared amount of profit under the Wool Realization (Distribution of Profits) Act, 1948, is deducted before the net income is arrived at.

44.—By Notice of Assessment dated 13th April, 1950, the Commissioner assessed the Appellant for income tax at the sum of £95,998 in respect of its income for the year ending 31st December, 1949. In making such assessment the Commissioner included in the assessable income of the Appellant for the year ending 31st December, 1949, the sum of £22,851 referred to in paragraph 42 above.

45.—By Notice of Objection dated 31st May, 1950, the Appellant objected to the said assessment upon the grounds set out therein. A copy of the said Notice of Objection is annexed hereto as Appendix H.

46.—By a letter dated 8th September, 1950, the Commissioner disallowed the said objection to the assessment and by a letter dated 31st October, 1950, the Appellant requested the Commissioner to treat the objection as an appeal and to forward it to the High Court of Australia.

47.—The parties desire that the questions raised by the said appeal should be determined by the Full Court of the High Court and I accordingly state the following questions for the opinion of the Full Court:

In the High Court of Australia.

No. 1. Case Stated. 3rd July, 1952—*continued.*

(i) Is the sum of £22,851 referred to in paragraph 42 above assessable income of the Appellant within the meaning of the Income Tax Assessment Act, 1936–1949 ?

(ii) If so, was the said amount part of its assessable income in the year ended 31st December, 1949, or in some other and what year or years ?

OWEN DIXON, C.J.

The third day of July, 1952.

No. 2.

No. 2. Appendix "A" to Case Stated.

Appendix "A"—National Security (Wool) Regulations.

National Security (Wool) Regulations.

STATUTORY RULES, 1939, No. 108.

SHORT TITLE.

1.—These Regulations may be cited as the National Security (Wool) Regulations.

OBJECTS.

2.—The purpose of these Regulations is to provide for the carrying out of an arrangement made between the Government of Great Britain and the Government of the Commonwealth for acquiring, in connexion with the present war between His Majesty the King and Germany, all wool produced in Australia, with certain exemptions, and to provide for matters arising thereout and incidental thereto and these Regulations shall be administered accordingly.

DEFINITIONS.

3.—(1) In these Regulations, unless the contrary intention appears—

"the Central Wool Committee" means the Central Wool Committee constituted under these Regulations.

"State Wool Committee" means a State Wool Committee constituted under these Regulations;

"the Minister" means the Minister of State for Commerce.

(2) In these Regulations, any reference to a Form shall be read as a reference to a Form in the Schedule to these Regulations.

CONSTITUTION OF WOOL COMMITTEES.

4.—There shall be a Central Wool Committee and there shall in each State be a State Wool Committee.

CENTRAL WOOL COMMITTEE.

5.—(1) The Central Wool Committee shall consist of a Chairman, an Executive Member and eight other members of whom—

(a) three shall be wool-growers or be actively engaged or concerned in that pursuit;

(b) three shall be wool-selling brokers or be actively engaged or concerned in that business;

(c) one shall be a wool-buyer or be actively engaged or concerned in that business; and

(d) one shall be a woollen manufacturer or be actively engaged or concerned in that business.

(2) The Members of the Central Wool Committee shall be appointed by the Minister.

STATE WOOL COMMITTEES.

6.—(1) Each State Wool Committee shall consist of eight members of whom—

(a) two shall be wool-growers or be actively engaged or concerned in that pursuit;

(b) three shall be wool-selling brokers or be actively engaged or concerned in that business;

(c) one shall be a wool-buyer or be actively engaged or concerned in that business;

(d) one shall be a woollen manufacturer or be actively engaged or concerned in that business; and

(e) one shall be a scourer or fellmonger or be actively engaged or concerned in one of those businesses.

(2) The members of a State Wool Committee shall be appointed by the Minister after recommendation from the Central Wool Committee.

(3) The Chairman of each State Wool Committee shall be appointed by the Central Wool Committee after recommendation from the State Wool Committee.

REMUNERATION.

7.—(1) The Chairman and the members of the Central Wool Committee, except the Executive Member, shall be remunerated by fees fixed by the Committee. The Executive Member shall be remunerated by a salary fixed by the Committee.

(2) The Chairman and the members of State Wool Committees shall be remunerated by fees approved by the Central Wool Committee.

DUTIES OF COMMITTEES.

8.—(1) The Central Wool Committee shall be charged with the administration of these Regulations and of all matters arising out of the arrangement with the Government of Great Britain for the acquisition of wool.

(2) Each State Wool Committee shall comply strictly with the general instructions and the particular directions of the Central Wool Committee.

MEETINGS OF COMMITTEES.

9.—(1) At a meeting of the Central Wool Committee seven shall form a quorum and any resolution may be made by a simple majority of the members present.

(2) The Central Wool Committee may make rules regulating the proceedings of the Central Wool Committee and rules regulating the proceedings of the State Wool Committees including in the latter case the quorum and majorities necessary for decisions.

REPORT OF MEETINGS.

10.—Every State Wool Committee shall cause a report of the proceedings at each of its meetings to be transmitted to the Central Wool Committee immediately after the meeting.

MEMBER OF CENTRAL WOOL COMMITTEE MAY ATTEND MEETINGS OF STATE WOOL COMMITTEES.

11.—The Central Wool Committee may authorize any of its members to be present at any meeting of a State Wool Committee and such member shall be entitled to be present at and take part in such meeting in the same manner as members of the State Wool Committee, except that he shall have no vote and shall not be counted in any quorum.

POWERS OF CENTRAL WOOL COMMITTEE.

12.—The Central Wool Committee shall have all powers and authorities conducive or incidental to the purpose of these Regulations and in particular the power of employing such persons and upon such terms as it thinks fit and the power in the name of the Central Wool Committee of contracting, or entering into any lease or acquiring any land or interest therein and of taking any legal proceedings.

VOIDANCE OF CONTRACTS.

13.—Every contract or agreement for the sale of wool or wool tops in force at the commencement of the Regulations shall be void, except in

In the High Court of Australia.

No. 2. Appendix "A" to Case Stated.

National Security (Wool) Regulations—*continued.*

relation to wool or wool tops which have then been already delivered to the buyer.

SELLING OR BUYING WOOL TOPS.

14.—No person shall sell or buy or contract to sell or buy any wool or wool tops, except in accordance with these Regulations.

WOOL ACQUIRED BY COMMONWEALTH WHEN SUBMITTED FOR APPRAISEMENT.

15.—The sale of wool shall be by appraisement under these Regulations and the property in every parcel of wool submitted for appraisement shall pass to the Commonwealth when the final appraisement thereof is completed in the manner prescribed by the instructions of the Central Wool Committee governing appraisement.

TABLE OF LIMITS OF APPRAISEMENT TYPES.

16.—For the purpose of appraising wool according to description the Central Wool Committee shall cause to be prepared a table of limits or lists of appraisement types of wool.

REGARD TO BE HAD TO PRICE IN PREPARATION OF TABLE OF LIMITS.

17.—In the preparation of such a table of limits regard shall be had to the price payable by the Government of Great Britain to the Government of the Commonwealth under the arrangement between those Governments and the limits shall be so fixed as to ensure that the price per pound payable by the Government of Great Britain for the wool of any wool year will not be exceeded by the average price per pound of the total payments made pursuant to the appraisement of that wool.

STATE WOOL COMMITTEES TO CARRY OUT APPRAISEMENT.

18.—Each State Wool Committee shall under the directions of the Central Wool Committee carry out all arrangements for the appraisement of wool.

ALL WOOL TO BE SUBMITTED FOR APPRAISEMENT.

19.—(1) All wool shall be submitted for appraisement.

(2) If any person owning or controlling or having possession of any wool fails to submit it for appraisement he shall be guilty of an offence.

(3) Any wool which is not submitted for appraisement within the wool year may be seized under the authority of the Central Wool Committee and appraised.

(4) Nothing in the preceding sub-regulations of this Regulation shall apply to any wool held by a woollen manufacturer for the purpose of manufacturing at the commencement of these Regulations.

APPRAISERS.

20.—(1) The Minister shall, upon the recommendation of the Central Wool Committee, appoint appraisers in each State and may terminate the appointment of any appraiser without prior notice.

(2) No person shall act as an appraiser unless he has been so appointed.

(3) No person shall act as an appraiser after his appointment as an appraiser has been terminated.

(4) No appraiser shall act under these Regulations unless he has made a declaration in accordance with Form A.

MANNER OF APPRAISEMENT.

21.—(1) The appraisement of each parcel of wool shall be made by three appraisers, of whom one shall represent the selling broker, on behalf of the wool grower, and two shall represent the Commonwealth.

(2) The appraisers shall appraise each lot of wool submitted and determine its value and the determination shall be final and without appeal.

CONDITIONS UNDER WHICH WOOL TO BE EXAMINED.

22.—The conditions under which wool shall be examined shall subject to these Regulations and to any directions of the Central Wool Committee, be the same as prevailed in each selling centre before the First day of September, One thousand nine hundred and thirty-nine.

PURCHASE OF WOOL FOR WOOLLEN MANUFACTURE.

23.—(1) Any person desirous of obtaining wool for the purpose of woollen manufacture in the Commonwealth may apply to the Central Wool Committee for authority to purchase wool and the Central Wool Committee may authorize the purchase of the wool subject to such conditions as it may think fit to impose.

(2) A person so authorised may within a reasonable time after the appraisement of parcels of wool has been made examine the lots, and upon application to the wool-selling broker concerned shall be supplied with copies of the appraisements made of any lot or lots he may be desirous of purchasing.

(3) The wool-selling broker shall give facilities to authorized persons to examine wool after it has been displayed for appraisement and subject to any conditions imposed upon his authorization any such authorized person may purchase wool at appraised prices which he shall pay to the wool-selling broker, who shall be accountable to the Central Wool Committee.

(4) The purchase in other respects shall be governed by the conditions usual for such transactions immediately prior to the First day of September, One thousand nine hundred and thirty-nine, except in so far as the Central Wool Committee may give particular directions.

AVOIDANCE OF CONTRACTS ON ACCOUNT OF INCREASED COSTS.

24.—(1) Every contract in force at the commencement of these Regulations for the sale or supply by a woollen manufacturer of any products of his manufacture shall be liable to avoidance, variation or review upon the ground that in consequence of the making of these Regulations the costs of manufacturing the goods to fulfil the contract have been reasonably increased and subsidiary contracts made by sellers or suppliers who depend whether mediately or immediately for the fulfilment of such contracts upon any such contract shall in turn be liable to avoidance variation or review.

(2) If it is claimed that any contract falls under the provisions of sub-regulation (1) of this Regulation and the parties are unable to agree upon its avoidance or review or upon any variation or that it does fall under this provision, the matter shall be determined in the manner prescribed by the Woollen Contracts Avoidance Regulations.

WOOL NOT TO BE APPRAISED BY WOOL-SELLING BROKER UNLESS APPROVED.

25.—Wool shall not be appraised in the store or stores of any wool-selling broker unless—

(a) such wool-selling broker has been approved in writing by the Central Wool Committee; and

(b) such approval has not been withdrawn; and

(c) the wool selling broker has entered into a bond as prescribed by the Central Wool Committee.

INFORMATION NOT TO BE SUPPLIED.

26.—Without the consent in writing of the Chairman of the Central Wool Committee no member, officer or employee of the Central Wool Committee or of any State Wool Committee or any person employed in any way in the handling, appraisement or shipment of wool, and no appraiser or member of an appraising staff shall supply information in reference to wool or any matter affecting the administration of these Regulations, for publication in the press or by broadcast or otherwise.

DECLARATION OF SECRECY.

27.—A person employed by the Central Wool Committee, shall, before entering upon his duties as an employee, make a statutory declaration in accordance with Form B.

ARBITRATION.

28.—In case of a dispute as to any matter arising under these Regulations, the Minister may, if he thinks fit, upon the recommendation of the Central Wool Committee, appoint an arbitrator to determine the dispute and his determination shall be final.

APPROVAL OF EXPENDITURE BY CHAIRMAN.

29.—All expenditure approved by the Chairman of the Central Wool Committee, or the Executive Member acting for and on behalf of the Committee, shall be deemed to have been duly authorized by the Committee.

FINANCE.

30.—(1) All moneys payable by the Government of Great Britain under the arrangement made by that Government with the Commonwealth for acquiring Australian wool shall be received by the Central Wool Committee and out of such moneys the Central Wool Committee shall defray all costs, charges and expenses of administering these Regulations, and make the payments for wool to the suppliers.

(2) Any moneys which may be received by the Central Wool Committee from the Government of Great Britain under or in consequence of such arrangement over and above the purchase price payable by such Government thereunder for the wool and any surplus which may arise shall be dealt with as the Central Wool Committee shall in its absolute discretion determine.

SCHEDULE.

Regulation 20. Form A.

COMMONWEALTH OF AUSTRALIA.

National Security (Wool) Regulations.

DECLARATION BY APPRAISER.

I, of

being an Appraiser appointed under the National Security (Wool) Regulations, do solemnly and sincerely declare as follows :—

(a) Here insert country of birth.
(b) Here insert date of birth.
(c) Here insert nationality at date of birth.
(d) Here insert present nationality.

1. I was born at (a) on (b)
2. At the date of my birth I was (c)
3. I am now (d)

and I do solemnly and sincerely promise and declare that I will faithfully, and to the best of my ability, perform the duties imposed on me as Appraiser under those Regulations and that I will not, except in the course of my duty, disclose any information which comes into my possession in the course of the performance of my duties as Appraiser, and that I will not without the consent of the Chairman of the Central Wool Committee, act as a correspondent for any newspaper, magazine, review or journal.

In the High Court of Australia.

No. 2. Appendix "A" to Case Stated.

National Security (Wool) Regulations—*continued.*

AND I make this solemn declaration by virtue of the Statutory Declaration Act 1911–1922 conscientiously believing the statements contained therein to be true in every particular.

Declared at
this day of }*
19

Before me †

‡

* Signature of Appraiser.
† Signature of person before whom declaration made.
‡ Title of person before whom declaration made.

Regulation 27. Form B.

COMMONWEALTH OF AUSTRALIA.

National Security (Wool) Regulations.

DECLARATION BY EMPLOYEE.

I, of
in the State of in the Commonwealth of Australia do solemnly and sincerely declare that I will not divulge or communicate any matter or thing coming under my notice in the performance of my duties under the above Regulations to any person except as may be authorised by law for the purpose of carrying into effect the provisions of the National Security (Wool) Regulations.

AND I make this solemn declaration by virtue of the Statutory Declaration Act 1911–1922 conscientiously believing the statements contained therein to be true in every particular.

Declared at in the State of
this day of }*
19

Before me †

‡

* Signature of employee.
† Signature of person before whom declaration made.
‡ Title of person before whom declaration made.

STATUTORY RULES, 1940, No. 77.

PURCHASE OF WOOL FOR WOOLLEN MANUFACTURE.

Regulation 23 of the National Security (Wool) Regulations is amended by omitting from sub-regulation (3) the words "appraised prices" and inserting in their stead the words "such prices as are from time to time "determined by the Central Wool Committee."

STATUTORY RULES, 1940, No. 227.

CENTRAL WOOL COMMITTEE.

1.—Regulation 5 of the National Security (Wool) Regulations is amended—

(a) By inserting in sub-regulation (1) after the words "Executive Member," the words "who shall act as Chairman in the absence "of the Chairman";

(b) By inserting after sub-regulation (1) the following sub-regulation:

"(1a.) The Governor-General may appoint a Justice "of the High Court of Australia to serve as Chairman";

and

(c) By omitting from sub-regulation (2) the word "The" (first occurring) and inserting in its stead the words "Subject to "sub-regulation (1a), the".

REMUNERATION.

2.—Regulation 7 of the National Security (Wool) Regulations is amended by omitting from sub-regulation (1) the words "and the" and inserting in their stead the words "appointed by the Governor-General "shall serve in an honorary capacity but the other."

STATUTORY RULES, 1942, No. 244.

Regulation 5 of the National Security (Wool) Regulations is amended by inserting in sub-regulation (1A), after the words "High Court of "Australia" the words "or a Judge of the Supreme Court of a "State."

STATUTORY RULES, 1942, No. 496.

PURCHASE OF WOOL FOR WOOLLEN MANUFACTURE.

Regulation 23 of the National Security (Wool) Regulations is amended—

(a) by omitting the words "determined by the Central Wool "Committee" and inserting in their stead the words "fixed by

In the High Court of Australia.

No. 2. Appendix "A" to Case Stated.

National Security (Wool) Regulations—*continued.*

"the Central Wool Committee in accordance with any "determination notified to it by the Commonwealth Prices "Commissioner"; and

(b) by adding at the end thereof the following sub-regulation :—

"(5) The prices fixed by the Central Wool Committee "in accordance with the first determination notified to it "by the Commonwealth Prices Commissioner under this "regulation shall be deemed to have been fixed on the first "day of July, 1942;

"Provided that in respect of wool purchased on or after "the First day of July, 1942, and before the commencement "of this sub-regulation, no person shall be required to pay "any price in excess of the price fixed in respect of that "wool at the date of purchase."

STATUTORY RULES, 1942, No. 514.

CENTRAL WOOL COMMITTEE.

Regulation 5 of the National Security (Wool) Regulations is amended—

(a) by omitting from sub-regulation (i) the word "eight" and by inserting in its stead the word "eleven";

(b) by omitting from paragraph (a) of that sub-regulation the word "three" and inserting in its stead the word "four";

(c) by omitting from paragraph (c) of that sub-regulation the word "and"; and

(d) by adding at the end of that sub-regulation the following paragraphs :

"(e) one shall be a member of the Australian Workers' Union; and

"(f) one shall be a member of the Federated Storeman and "Packers' Union of Australia."

STATUTORY RULES, 1943, No. 88.

(Extract only)

AMENDMENT OF THE WOOL REGULATIONS.

39.—Regulation 24 of the National Security (Wool) Regulations is repealed.

No. 3.

Appendix " B "—National Security (Wool Tops) Regulations.

STATUTORY RULES, 1940, No. 80.

CITATION.

1.—These Regulations may be cited as the National Security (Wool Tops) Regulations.

INCORPORATION.

2.—These Regulations shall be incorporated and read as one with the National Security (Wool) Regulations.

PURCHASE AND USE OF WOOL FOR PRODUCTION OF WOOL TOPS.

3.—(1) Notwithstanding anything contained in the National Security (Wool) Regulations, the Central Wool Committee may, subject to such conditions (if any) as it thinks fit to impose, authorize any person who carries on the operations of combing wool into Wool Tops—

(a) to purchase wool under Regulation 23 of those Regulations as if he were a woollen manufacturer and those operations were woollen manufacture, and

(b) without submitting it for appraisement, to comb into tops any wool which by or in the course of any process of fellmongering, he obtains from sheepskins which are his own property.

(2) The Central Wool Committee may at any time withdraw any such authority.

(3) In these Regulations, the expression " the topmaker " means a person authorized under this Regulation whose authority has not been withdrawn.

DISPOSAL OF WOOL TOPS FOR WOOLLEN MANUFACTURE.

4.—Unless the conditions imposed by the Central Wool Committee in authorizing the topmaker to purchase or comb wool under the last preceding regulation otherwise provide he may dispose of wool tops produced therefrom for the purpose of woollen manufacture in Australia but otherwise, subject to Regulation 5 of these Regulations, all wool tops shall be subject to appraisement in accordance with directions given by the Central Wool Committee.

SALE OF WOOL TOPS FOR EXPORT.

5.—(1) The Central Wool Committee may, if it thinks fit, allow the topmaker to sell wool tops produced by him from wool referred to in Regulation 3 of these Regulations to persons in countries other than Australia and for that purpose to make and ship wool tops.

In the High Court of Australia.

No. 3. Appendix "B" to Case Stated.

National Security (Wool Tops) Regulations— *continued.*

(2) In every such case the following provisions shall apply :—

(a) The purchase price shall be received by the Central Wool Committee and payment thereof shall be made and secured in accordance with such directions as the Central Wool Committee gives, whether in respect of time, manner, place or otherwise.

(b) The topmaker shall be entitled to receive from the Commonwealth a price for the wool tops which, in default of agreement between him and the Central Wool Committee, shall be determined by one or more appraisers appointed by the Central Wool Committee. The appraisers shall determine the price upon a consideration of the relevant price of wool under the table of limits referred to in Regulation 16 of the National Security (Wool) Regulations, the cost of combing, and a fair return to the topmaker, allowing for noils and other by-products, and may take into account any other matter which appears to be material.

(c) The Central Wool Committee shall pay to the topmaker the price so agreed or determined and shall hold or apply the excess over that price received by it from the buyer of the wool tops on account of and in accordance with any arrangements made, or to be made between the Government of Great Britain and the Government of the Commonwealth for the acquisition, in connexion with the present war, of wool produced in Australia.

(d) A particular sale shall not be made unless the terms and conditions thereof have been approved in writing by the Central Wool Committee, by the Executive Member, or by some other person authorized in that behalf by a resolution of the Central Wool Committee.

(e) The topmaker shall make the sale in his own name as principal and the Central Wool Committee or the Commonwealth shall not be liable upon or in connexion with the sale as undisclosed principal or otherwise.

(f) The Central Wool Committee may give such directions and impose such conditions as it thinks fit in relation to the sale of wool tops under this Regulation, and in particular in relation to the negotiation, making the fulfilment of such sales generally or of any specific sale and in relation to all matters incidental thereto or arising thereout and the topmaker shall comply with and observe all such directions and conditions.

(g) Wool tops appropriated to the purpose of any such sale shall not be subject to appraisement otherwise than under this Regulation, and shall be excepted from the operation of Regulation 4 of these Regulations unless the sale is cancelled or rescinded or for some other reason the wool tops are not exported.

DISPOSAL OF NOILS, ETC., FROM WOOL TOPS SOLD UNDER REGULATION 5.

6.—(1) The noils, by-products and wastes produced in the course of combing wool into wool tops which are sold or shipped under Regulation 5 of these Regulations, or noils, by-products and wastes equivalent thereto in description, quality and quantity, shall be held and disposed of by the topmaker in accordance with the directions of the Central Wool Committee.

(2) Noils, by-products and wastes so held shall not be sold, whether for the purposes of woollen or other manufacture in Australia or for export, or be exported, except with the consent of the Central Wool Committee. The consent may be given upon such terms and conditions (if any) as the Central Wool Committee thinks fit, and, in particular, upon terms and conditions of a like kind to any of those prescribed or authorized by Regulation 5 of these Regulations in relation to the sale of wool tops.

DISPOSAL OF OTHER NOILS, ETC.

7.—(1) No other noils, by-products or wastes produced in the course of combing wool into tops shall be exported or sold for export except with the consent of the Central Wool Committee. The Central Wool Committee may give its consent subject to any conditions that it thinks fit to impose and any conditions so imposed shall be observed and fulfilled.

(2) Noils, by-products or wastes so produced and available for export, other than those falling within Regulation 5 of these Regulations, may be acquired by the Central Wool Committee. The prices at which they may be so acquired shall, in default of agreement, be determined by appraisement. The appraisement shall be made by an appraiser or appraisers appointed under, or in the manner prescribed by, paragraph (b) of sub-regulation (2) of Regulation 5 of these Regulations.

SALE, ETC., OF NOILS.

8.—The Central Wool Committee may sell or otherwise dispose of any noils, by-products or wastes acquired under the last preceding regulation.

PROCEEDS OF SALE.

9.—Moneys arising from the sale of noils, by-products of wastes under these Regulations shall be held and applied by the Central Wool Committee on account of and in accordance with any arrangements made, or to be made, between the Government of Great Britain and the Government of the Commonwealth for the acquisition, in connexion with the present war, of wool produced in Australia.

COMMISSION.

10.—The Central Wool Committee may, for the purposes of these Regulations, pay or allow such commission (if any) as it thinks proper in connexion with the sale of wool tops, noils, by-products or waste.

In the High Court of Australia.

No. 3. Appendix "B" to Case Stated.

National Security (Wool Tops) Regulations—*continued.*

STATUTORY RULES, 1943, No. 148.

The National Security (Wool Tops) Regulations are amended by adding at the end thereof the following Regulation :—

"11. 1. The Central Wool Committee shall have power to "supervise and control the operations of any person carrying on the "operations of combing wool into wool tops and for that purpose "may make orders, and give directions to any such person, in relation "to the carrying on of those operations, and in relation to the sale, "distribution or disposal of wool tops by any such person.

"2. A person shall comply with any direction given to him in "pursuance of the last preceding sub-regulation.

"3. Any order made or direction given by the Central Wool "Committee under this regulation shall be sufficiently authenticated "if it is in writing signed by the Chairman or Executive Member of "the Central Wool Committee."

No. 4. Appendix "C" to Case Stated.

National Security (Price of Wool for Manufacture for Export) Regulations—

No. 4.

Appendix "C"—National Security (Price of Wool for Manufacture for Export) Regulations.

STATUTORY RULES, 1941, No. 34.

CITATION. These Regulations may be cited as the National Security (Price of Wool for Manufacture for Export) Regulations.

INCORPORATION.

2.—These Regulations shall be incorporated and read as one with the National Security (Wool) Regulations and the National Security (Wool Tops) Regulations.

DEFINITION.

3.—In these Regulations, unless the contrary intention appears—

"the National Security (Wool) Regulations" means Statutory Rules, 1939, No. 108, as amended by Statutory Rules 1940, No. 77, and 1940, No. 227.

PURPOSE.

4.—The purpose of these Regulations is to provide means for ensuring that a proper price shall be obtained by the Central Wool Committee for wool used in the manufacture of goods for export though it may exceed the amount exacted for like wool used in the manufacture of goods for domestic consumption.

PARTICULARS OF ORDERS FOR MANUFACTURE FOR EXPORT TO BE FURNISHED.

5.—(1) When an order for manufacture for export from Australia is received or obtained, the person receiving or obtaining the order, and any person through whom the order is received or obtained, shall forthwith give notice thereof to the Central Wool Committee, and shall furnish, or cause to be furnished, to the Central Wool Committee such particulars of the order and of the manufacturer or manufacturers concerned and of the wool, wool tops or yarn to be used in the fulfilment of the order and otherwise, as the Central Wool Committee, by special or general directions, requires.

(2) A person shall not accept or act upon any such order, or permit any such order to be accepted or acted upon through him, or undertake or commence any process of manufacture, with a view to supplying the whole or any part of any such order, unless the consent of the Central Wool Committee is first obtained. The Central Wool Committee may give its consent subject to any conditions it thinks fit to impose.

(3) For the purpose of these Regulations any order direction or request, or contract agreement or arrangement, to manufacture or supply or procure for the purpose of shipment or export from Australia or delivery out of Australian worsted, woollen or knitted goods or yarn or any other goods made wholly or partly from wool shall be deemed to be an order for manufacture for export from Australia.

AUTHORITY TO PURCHASE WOOL FOR MANUFACTURE FOR EXPORT.

6.—(1) A general authorization of the Central Wool Committee under sub-regulation (1) of Regulation 23 of the National Security (Wool) Regulations to purchase wool shall not operate to authorize a person to purchase wool for the purpose of manufacture for export or for the purpose of combing wool into tops to be used for the purpose of manufacture for export.

(2) Any person desirous of purchasing wool for the purpose of manufacture for export or for the purpose of combing into tops to be used for the purpose of manufacture for export may apply under that sub-regulation to the Central Wool Committee for special authority to purchase wool for that purpose.

(3) The Central Wool Committee may, under that sub-regulation, authorize the purchase of wool for the purpose of manufacture in or towards the execution or fulfilment of a particular order or orders, or subject to any other limitation, or without limitation and the conditions which the Central Wool Committee may impose shall include any condition, restriction or obligation, whether as to price, time or occasion of payment or otherwise, which appears to the Committee to be conducive or incidental to the purpose of these Regulations.

PAYMENT OF PART OF PRICE MAY BE DEFERRED.

7.—The Central Wool Committee may, either as a condition of authorizing the purchase of wool under sub-regulation (1) of Regulation 23 of the National Security (Wool) Regulations, or by resolution or direction or in any other manner which it may think expedient, provide for postponing the payment of any part of the price payable for the purchase of wool under that sub-regulation, and for treating it as a deferred or contingent liability which the Central Wool Committee may remit upon proof to its satisfaction that the wool has been used in the manufacture of goods distributed for consumption within Australia and which otherwise it may call up and enforce.

PURCHASER OF WOOL TO BE LIABLE TO PAY DEFERRED PART OF PRICE.

8.—(1) If any part of the price of wool purchased under sub-regulation (1) of Regulation 23 of the National Security (Wool) Regulations is postponed or treated as a deferred or contingent payment, or for any reason remains unpaid, every person buying, obtaining or using in manufacture any wool tops or yarn produced from or containing such wool shall, subject to the power of remission conferred upon the Central Wool Committee by Regulation 7 of these Regulations, be liable to the Central Wool Committee for payment of such proportion as appears to the Central Wool Committee fairly to represent the wool contained in the wool tops or yarn so bought obtained or used.

(2) The person purchasing the wool and every person so buying, obtaining or using the wool, wool tops or yarn shall be liable severally to the Central Wool Committee but as between themselves their liability shall depend upon the terms as to the incidence of such payment, whether express or implied, upon which the wool, wool tops or yarn passed from one to another of them.

GOODS NOT TO BE EXPORTED UNLESS FULL PRICE PAID.

9.—(1) A person shall not export, or cause to be exported, from Australia any worsted woollen or knitted goods, or any other goods made wholly or partly from wool, unless and until the Central Wool Committee certifies in writing that it is satisfied that the full price payable to the Central Wool Committee for the wool contained therein has been wholly paid to it and discharged.

(2) A document under the hand of the Executive Member or of the Secretary of the Central Wool Committee, certifying that the Committee is so satisfied in respect of goods named therein, shall suffice as a certificate of the Central Wool Committee for the purpose of sub-regulation (1) of this Regulation.

(3) Upon production of such certificate to the proper officer of Customs he may permit the export of the goods named therein.

FAILURE TO COMPLY WITH CONDITIONS.

10.—(1) A person on whom any condition is imposed by the Central Wool Committee in pursuance of these Regulations, or who falls within the intended application or operation of any such condition, shall observe and comply with that condition.

(2) The liability to prosecution and punishment of any person who contravenes or fails to comply with any provisions of these Regulations or with any such condition shall be independent of his civil liability to the Central Wool Committee or to any other body or person.

STATUTORY RULES, 1941, No. 229.

CONDITION TO BE INSERTED ON INVOICES.

1.—After Regulation 7 of the National Security (Price of Wool for Manufacture for Export) Regulations the following Regulation is inserted :

"7A. If any wool tops or yarn, or worsted, woollen, or "knitted goods, or any other goods, made wholly or partly from "wool purchased under sub-regulation (1) of Regulation 23 of the "National Security (Wool) Regulations are sold, and any part "of the price payable for such wool so purchased under that "sub-regulation by the manufacturer has been postponed or "treated as a deferred or contingent liability under Regulation 7 "of these Regulations and has not been paid, the seller of the "wool tops or yarn, or worsted, woollen or knitted goods or other "goods shall place upon the invoice the following statement, "which shall be a term or condition of the sale, viz. :—

"'That part of the price payable to the Central Wool "'Committee for the wool contained in the goods which is "'deferred and may be remitted by the Central Wool Committee "'if the goods are distributed for home consumption has not "'been paid by or on behalf of the manufacturer who obtained "'the wool from the Central Wool Committee and it is a term "'of this sale that if the buyer or any person subsequently "'acquiring the goods exports the goods from Australia, "'whether in their present or any other state, he must make the "'deferred payment to the Central Wool Committee in discharge "'of the manufacturer's liability.'"

PURCHASER OF WOOL ETC. TO BE LIABLE TO PAY DEFERRED PART OF PRICE.

2.—Regulation 8 of the National Security (Price of Wool for Manufacture for Export) Regulations is amended—

(a) by inserting in sub-regulation (1), after the words "wool tops "or yarn" (first occurring) the words "or worsted, woollen, "knitted or other goods";

In the High Court of Australia.

No. 4. Appendix "C" to Case Stated.

(b) by omitting from that sub-regulation the words "or yarn" (second occurring) and inserting in their stead the words ", yarn "or goods"; and

(c) by omitting from sub-regulation (2) the words "or yarn" (wherever occurring) and inserting in their stead the words ", yarn "or goods."

National Security (Price of Wool for Manufacture for Export) Regulations—*continued.*

GOODS NOT TO BE EXPORTED UNLESS FULL PRICES PAID.

3.—Regulation 9 of the National Security (Price of Wool for Manufacture for Export) Regulations is amended by inserting in sub-regulation (1), after the word "wool" (first occurring), the words "or any wastes or other product containing wool."

STATUTORY RULES, 1942, No. 321.

GOODS NOT TO BE EXPORTED UNLESS FULL PRICE PAID.

1.—Regulation 9 of the National Security (Price of Wool for Manufacture for Export) Regulations is amended—

(a) by inserting at the beginning of sub-regulation (1) the words "Subject to sub-regulation (1a) of this regulation,";

(b) by inserting after sub-regulation (1) the following sub-regulation:—

"(1A) The Central Wool Committee may exempt from "the provisions of the last preceding sub-regulation such "worsted woollen or knitted goods, or such other goods made "wholly or partly from wool, or such wastes or other product "containing wool as, in the opinion of the Central Wool "Committee, ought to be so exempted."; and

(c) by inserting in sub-regulation (2), after the word "Committee" (first occurring), the words, ", or of any officer of the Central Wool "Committee or of a State Wool Committee authorized by the "Central Wool Committee to issue certificates for the purposes of "this sub-regulation."

VALIDATION OF ACT.

2.—Any exercise by or under the authority of the Central Wool Committee, prior to the commencement of the amendments effected by the last preceding regulation, of any power conferred by those amendments, shall be, and shall be deemed at all times to have been, as valid and effectual as if those amendments had been in force when the power was exercised.

No. 5.

Appendix " D "—Wool Realization Regulations.

STATUTORY RULES, 1946, No. 129.

CITATION.

1.—These Regulations may be cited as the Wool Realization Regulations.

REPEAL OF REGULATIONS 14, 15 AND 19 OF THE NATIONAL SECURITY (WOOL) REGULATIONS.

2.—Regulations 14, 15 and 19 of the National Security (Wool) Regulations are repealed.

STATUTORY RULES, 1946, No. 155.

AMENDMENT OF REGULATION 8 OF THE NATIONAL SECURITY (PRICE OF WOOL FOR MANUFACTURE FOR EXPORT) REGULATIONS.

The Wool Realization Regulations are amended by adding at the end thereof the following regulation :—

" 3. Regulation 8 of the National Security (Price of Wool " for Manufacture for Export) Regulations is amended by inserting " in sub-regulation (1) after the word ' unpaid,' the words ' the " ' person who purchased the wool shall not sell any of the wool " ' unless and until he has paid that part of the price, and '."

No. 6.

Appendix " E "—Declaration under Wool Realization (Distribution of Profits) Act, 1948.

WOOL REALIZATION (DISTRIBUTION OF PROFITS) ACT 1948.

DECLARATION OF AN AMOUNT AVAILABLE FOR DISTRIBUTION OUT OF THE EXPECTED NET PROFIT.

WHEREAS by sub-section (1) of section six of the Wool Realization (Distribution of Profits) Act 1948 it is provided that at any time before the wool disposals profit has been ascertained, the Minister may, with the approval of the Treasurer and after consultation with the Australian Wool Realization Commission, and if he is satisfied that the financial position under the Disposals Plan justifies his so doing, by notice published in the Gazette, declare an amount to be available for distribution under that Act out of the expected net profit :

In the High Court of Australia.

No. 6. Appendix "E" to Case Stated.

Declaration under Wool Realization (Distribution of Profits) Act 1948. 24th November, 1949—*continued.*

NOW THEREFORE I, REGINALD THOMAS POLLARD the Minister of State for Commerce and Agriculture, with the approval of the Treasurer and after consultation with the Australian Wool Realization Commission, and being satisfied that the financial position under the Disposals Plan justifies my so doing, HEREBY DECLARE the amount of Twenty-five million pounds to be available for distribution under the Wool Realization (Distribution of Profits) Act 1948.

Dated this 24th day of November, 1949.

R. T. POLLARD,
Minister of State for Commerce and Agriculture.

No. 7. Appendix "F" to Case Stated.

Credit Notes. 30th November, 1949.

No. 7.

Appendix "F"—Credit Notes.

COMMONWEALTH OF AUSTRALIA.

WOOL REALIZATION (DISTRIBUTION OF PROFITS) ACT, 1948.

CREDIT NOTE.

INTERIM DISTRIBUTION TO AUSTRALIAN WOOL-GROWERS OF PROFITS ARISING FROM THE WAR-TIME PURCHASE OF THE AUSTRALIAN WOOL CLIPS BY THE GOVERNMENT OF THE UNITED KINGDOM AND FROM THE OPERATIONS OF U.K.—DOMINION WOOL DISPOSALS, LIMITED.

Amount available for distribution as declared by the Minister for Commerce and Agriculture £25,000,000
from which a payment will be made equivalent to 6¼%
of the appraised value of participating wool catalogued between 28th September, 1939, and 30th June, 1946.

Appraised value of participating wool submitted by you through Goldsbrough Mort & Co., Ltd., Brisbane, as shown in the official list prepared and held by the Australian Wool Realization Commission £168,623 13 10
6¼% of which is equivalent to £10,538 19 7
Less approved commission ½% £52 13 11

Cheque herewith £10,486 5 8

30/11/49.

Sent by
GOLDSBROUGH MORT & CO., LTD.,
Wool Selling Broker
by agreement with the Australian
Wool Realization Commission.

Name: The Squatting Investment Co., Ltd.
Address: "Thurulgoona," Cunnamulla, Q.

COMMONWEALTH OF AUSTRALIA.

Wool Realization (Distribution of Profits) Act, 1948.

Credit Note.

Interim Distribution to Australian Wool-Growers of Profits arising from the War-time Purchase of the Australian Wool Clips by the Government of the United Kingdom and from the Operations of U.K.—Dominion Wool Disposals, Limited.

Amount available for distribution as declared by the Minister for Commerce and Agriculture £25,000,000

from which a payment will be made equivalent to ... ... 6¼% of the appraised value of participating wool catalogued between 28th September, 1939, and 30th June, 1946.

Appraised value of participating wool submitted by you through Goldsbrough Mort & Co., Ltd., Sydney, as shown in the official list prepared and held by the Australian Wool Realization Commission	£136,291 16 7
6¼% of which is equivalent to	... £8,518 4 9
Less approved commission ½%	... £42 11 10
Cheque herewith	... £8,475 12 11

Sent by

GOLDSBROUGH MORT & CO., LTD.,
Box 484 G.P.O.,
Wool Selling Broker

by agreement with the Australian
Wool Realization Commission.

Name : The Manager,
Squatting Investment Co., Ltd.

Address : Quantambone, Brewarrina.

30th November, 1949.

In the High Court of Australia.

No. 7. Appendix "F" to Case Stated.

Credit Notes 30th November, 1949—*continued.*

COMMONWEALTH OF AUSTRALIA.

Wool Realization (Distribution of Profits) Act, 1948.

Interim Distribution to Australian Wool-Growers of Profits arising from the War-time Purchase of the Australian Wool Clips by the Government of the United Kingdom and from the Operations of U.K.—Dominion Wool Disposals, Limited.

Amount available for distribution as declared by the Minister for Commerce and Agriculture £25,000,000
from which a payment will be made equivalent to 6¼%
of the appraised value of participating wool catalogued between 28th September, 1939, and 30th June, 1946.

Appraised value of participating wool submitted by you through Goldsbrough Mort & Co., Ltd., Sydney, as shown in the official list prepared and held by the Australian Wool Realization Commission £58,973 8 3
6¼% of which is equivalent to £3,685 16 9
Less approved commission ½% £18 8 7

Cheque herewith £3,667 8 2

Sent by
GOLDSBROUGH MORT & CO., LTD.,
Box 484 G.P.O., Sydney.
Wool Selling Broker
by agreement with the Australian
Wool Realization Commission.

Name: The Manager,
Squatting Investment Co., Ltd.

Address: Tondeburine, Gulargambone.

30th November, 1949.

COMMONWEALTH OF AUSTRALIA.

Wool Realization (Distribution of Profits) Act, 1948.

Credit Note.

Interim Distribution to Australian Wool-Growers of Profits arising from the War-time Purchase of the Australian Wool Clips by the Government of the United Kingdom and from the Operations of U.K.—Dominion Wool Disposals, Limited.

Amount available for distribution as declared by the Minister for Commerce and Agriculture £25,000,000
from which a payment will be made equivalent to 6¼%
of the appraised value of participating wool catalogued between 28th September, 1939, and 30th June, 1946.

Appraised value of participating wool submitted by you through Goldsbrough Mort & Co., Ltd., Sydney, as shown in the official list prepared and held by the Australian Wool Realization Commission	£3,566	10	8
$6\frac{1}{4}\%$ of which is equivalent to	£222	18	2
Less approved commission $\frac{1}{2}\%$	£1	2	3
Cheque herewith	£221	13	11

Sent by

GOLDSBROUGH MORT & CO., LTD.,

Box 484 G.P.O., Sydney.

Wool Selling Broker

by agreement with the Australian Wool Realization Commission.

Name : The Manager,
Squatting Investment Co., Ltd.

Address : Thurulgoone Station, Cunnamulla, Queensland.

30th November, 1949.

No. 8.

Appendix " G "—Balance Sheet.

THE SQUATTING INVESTMENT COMPANY LIMITED.

BALANCE SHEET AS AT 31ST DECEMBER, 1949.

1948 £		1949 £
	Share Capital:	
	Authorised—200,000 shares at 30/- each	300,000
	Issued—162,225 shares at 30/- each fully	
243,338	paid in money	243,338
	-Special Reserve :	27,162
	-General Reserve :	50,000
125,116	Profit and Loss Account	181,245
368,454	SHAREHOLDERS' FUNDS	501,745
	CURRENT LIABILITIES AND PROVISIONS :	
60,000	Provision for taxation ...	109,713
633	Overdrafts with Bankers ...	1,213
1,698	Trade Creditors	1,028
2,394	Other Creditors	512
64,725		112,466
	(Reserves and accumulated profits used in Company's business.)	
	CONTINGENT LIABILITIES :	
	Uncalled Liability on 25 shares in a Shearing Company—£13.	
£433,179		£614,211

1948 £		£	1949 £
	Fixed Assets:		
100,346	Station Leaseholds and Improvements at cost, less Depreciation	96,101	
97,852	Station Freeholds and Improvements at cost, less Depreciation	6,353	
10,478	Plant at cost, less Depreciation...	9,233	
	Shares in another Company, at cost, £12 less written off £5 (not listed on any Stock Exchange)	7	
208,678			111,694
	CURRENT ASSETS :		
40,065	Sheep, Cattle and Horses at or under Market Value	34,209	
154	Wool on hand at or under Market value	2,415	
1,630	Stores on hand at cost	2,087	
7,457	Trade Debtors	68	
7,404	Other Debtors	5,013	
70,000	Commonwealth Government Stock at cost	70,000	
60,000	Fixed Deposit at Bankers ...	300,000	
35,189	Cash at Bankers	86,123	
2,602	Rents paid in advance	2,602	
224,501			502,517
£433,179			£614,211

Profit and Loss Account.

PROFIT AND LOSS ACCOUNT FOR YEAR ENDED 31ST DECEMBER, 1949.

Dr. 1948 £			1949 £	1948 £			*Cr.* 1949 £
	Working Expenses :				*Wool :*		
24,038	Wages, Rations, etc. ...	30,453		183,600	1949 Clip	202,141	
11,059	Shearing and Scouring ...	13,601		24	1948 Clip (Surplus)	11	
35,097			44,054				202,152
3,694	Carriage, Freight and Insurance on Wool...		3,694		*Livestock :*		
946	Wool Contributory Charge		1,014	26,852	Sheep	99,919	
6,367	Rents, Rates, Taxes and Assessments ...		6,030	2,248	Cattle and Horses	5,839	
1,788	Insurances		758				105,758
1,228	Audit Fee, Secretary's Salary and Charges		1,017	2,427	Interest Received		2,723
1,100	Director's Fees		1,100	—	Wool 1939–1945 Clips (Wartime Wool Disposals)		22,851
884	Stamp Duty and Legal Expenses		319	215,151			£333,484
	Depreciation :						
5,431	Leaseholds and Improvements ...	4,813		97,672	Profit brought down		162,908
1,228	Plant	1,777		—	Surplus from " Tendeburine " Freeholds...		27,162
			6,590	68,000	Balance, 31st December, 1948		125,116
59,716	Income Tax Provision		106,000				
97,672	Balance, Net Profit for year		162,908				
215,151			£333,484				
32,445	Dividend paid February		48,668				
—	Transfer to General Reserve		50,000				
8,111	Interim Dividend paid August		8,111				
	Transfer " Tondeburine " surplus to Special Reserve		27,162				
125,116	Balance, 31st December		181,245				
£165,672			£315,186	£165,672			£315,186

In the High Court of Australia.

No. 8.

Appendix "G" to Case Stated.

Profit and Loss Account for Year ended 31st December, 1949.

In the High Court of Australia.

No. 8. – Appendix "G" to Case Stated.

Certificates relating to Balance Sheet.

Certificates relating to Balance Sheet.

CERTIFICATE BY SECRETARY
Companies Act 1938.

I, ALBERT ERNEST GIBSON of 129 William Street Melbourne, Secretary of The Squatting Investment Company Limited, do solemnly and sincerely declare that the accompanying Balance Sheet and Profit and Loss Account of the Company are, to the best of my knowledge and belief, correct. AND I MAKE this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

A. E. GIBSON.

DECLARED at Melbourne, in the State of Victoria, this 31st day of January, 1950, before me,

W. V. AMESS,
A Commissioner for taking Declarations and Affidavits under the Evidence Act 1928.

CERTIFICATE BY THE DIRECTORS.

WE, ROBERT MATHIESON and COLIN FORSYTH MEARES both of Melbourne, being two of the Directors of the Company, do hereby certify on behalf of the Board, that, in our opinion, the above Balance Sheet is drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and that, in our opinion, the Profit and Loss Account of the Company is drawn up so as to exhibit a true and correct view of the results of the business of the Company for the year.

Melbourne, 27th January, 1950.

ROBT. MATHIESON.
COLIN F. MEARES.

Auditors Report. 27th January, 1950.

Auditors Report.

I have audited the above Balance Sheet and Profit and Loss Account for the year ended 31st December, 1949, and I have obtained all the information and explanations I have required. In my opinion, the above Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and the Profit and Loss Account is properly drawn up so as to exhibit a true and correct view of the results of the business of the Company for the year, according to the best of my information and the explanations given to me, and as shown by the books of the Company.

WM. A. MEWTON,
Chartered Accountant (Aust.).

Melbourne, 27th January, 1950.

In the High Court of Australia.

No. 8. Appendix "G" to Case Stated.

Reconciliation Statement.

Reconciliation Statement.

THE SQUATTING INVESTMENT COMPANY LIMITED.

FEDERAL INCOME TAX RETURN
FOR TWELVE MONTHS ENDED 31ST DECEMBER 1949.

Profit per Profit and Loss Account			£162,908
Plus :			
Livestock per Return	£108,635		
Livestock per Books	105,758		
		£2,877	
Depreciation per Books	£6,590		
Depreciation per Return	2,362		
		4,228	
Provision for Taxation		160,000	
			113,105
			£276,013
Less :			
Wool 1939–1945 Clips (Wartime Wool Disposals) (Contended to be non-taxable)			22,851
			£253,162

Copy of Reconciliation Statement included in Return for year ended 31st December 1949 lodged 28th February, 1950.

No. 9. Appendix "H" to Case Stated.

No. 9.

Notice of Objection.

Notice of Objection. 31st May, 1950.

COMMONWEALTH OF AUSTRALIA.

INCOME TAX ASSESSMENT ACT 1936–1949.

NOTICE OF OBJECTION AGAINST ASSESSMENTS.

We hereby object against the assessments of Income Tax based on income derived during the year ended 31st December, 1949 and issued to us by notices of assessment both dated 13th April, 1950, and claim that the assessments should be reduced by :

In the High Court of Australia.

No. 9. Appendix "H" to Case Stated.

Notice of objection. 31st May, 1950— *continued.*

(a) The excision of the following amounts included in the assessable income :

Wool 1939–1945 Clips (Wartime Wool Disposals) £22,851 being the amount received by the Company during the said year under and pursuant to the Wool Realization (Distribution of Profits) Act 1948.

The grounds on which we rely are :

(1) That the said assessment was wrong in law and not in accordance with the provisions of the said Act, and was excessive.

(2) That the said sum of £22,851 should not have been included as part of the assessable income.

(3) That the said sum was not income derived by the Company during the said year nor at all nor was it assessable income nor deemed to be income of the Company for the purposes of the said Act.

(4) Without limiting the generalityof ground 2, the said sum was not—

(a) the proceeds of any business carried on by the company

(b) a bounty or subsidy received in or in relation to the carrying on of any business of the Company

(c) a profit arising from the sale by the Company of any property acquired by it for the purposes of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme.

(5) Under the said Wool Realization (Distribution of Profits) Act 1948 the said amount was paid to the Company by reason merely of the fact that it had supplied certain wool for appraisement under the National Security (Wool) Regulations, and regardless of whether or not the said wool had been grown by the Company for profit or was at the time it was so supplied for the appraisement held by the Company in the course of the carrying on of any business or profit-making undertaking or scheme.

(6) If the said amount was assessable income derived by the Company it was not derived in the said income year.

THE SQUATTING INVESTMENT CO. LTD.

(Sgd.) A. E. GIBSON,
Public Officer.

129 William Street,
Melbourne, C.1.
31st May, 1950.

No. 10.

In the High Court of Australia.

No. 10. Reasons for Judgment.

McTiernan and Williams, JJ. 13th April, 1953.

Reasons for Judgment of their Honours Mr. Justice McTiernan and Mr. Justice Williams.

The questions in the case stated ask (1) whether the sum of £22,851 paid by the Australian Wool Realization Commission to the Appellant Company on 30th November, 1949, formed part of the assessable income of that Company within the meaning of the Income Tax Assessment Act, 1936–1949 and, if so, (2) was the amount part of its assessable income in the year ended 31st December, 1949, or in some other and what year or years. The Appellant is a company which has adopted as its accounting year the period of twelve months commencing on 1st January and ending on the 31st December in each year instead of the usual accounting period from 1st July in one year to 30th June in the following year. The Australian Wool Realization Commission is a body set up and incorporated by the Wool Realization Act, 1945, as the subsidiary in Australia of the Joint Organisation set up and incorporated under the Disposals Plan set out in the schedule to that Act. The sum of £22,851 is the Appellant's share of a distribution of profits authorized by the Wool Realization (Distribution of Profits) Act, 1948.

The case stated gives a detailed account of the manner in which the Australian wool clip was acquired and is being disposed of during and after the recent world war. It is unnecessary to set out these facts in any detail again. They have been discussed in three decisions of this Court, namely, *Ritchie* v. *Trustees Executors & Agency Company Limited* (84 C.L.R. 553), *Maslen and Others* v. *The Perpetual Executors Trustees and Agency Co. (W.A.) Limited* (82 C.L.R. 101) and *Poulton* v. *The Commonwealth*, a recent decision of Fullagar J. (unreported). *Maslen's* case went on appeal to the Privy Council and is reported, 1952, A.C. 215. The statement of facts in *Ritchie's* case was objected to in certain respects by Counsel for the Appellant. At the time of the present argument the Judgment in *Poulton's* case had not been delivered. The issues in all three cases were different from the present issue. It is sufficient to say that for the purposes of this Appeal the facts, if they differ from the facts stated in the Judgments in the other cases, must be taken to be the facts set out in the case stated. These facts need not be repeated in great detail. Some only are of particular importance on the present issue.

On the outbreak of war an arrangement was made between the Governments of the United Kingdom and the Commonwealth by which the former Government agreed to purchase all wool produced in Australia for the period of the war and one wool year thereafter, except wool required for the purpose of woollen manufacture in Australia. The price to be paid for the wool was at a flat rate of 10.75 stg. (13.4375A) pence per lb. of greasy wool for the whole clip. (Subsequently increased by 15 per cent. for the 1942/1943 and following seasons.) The important term in that arrangement for present purposes is the term that the Governments would

In the High Court of Australia.

No. 10. Reasons for Judgment.

McTiernan and Williams, JJ. 13th April, 1953— *continued.*

divide equally any profit arising from the resale outside the United Kingdom of wool purchased by the Government of the United Kingdom under the arrangement. To carry the arrangement into effect the National Security (Wool) Regulations were enacted which set up a Central Wool Committee charged with the administration of the regulations and all matters arising out of the arrangement.

The Regulations provided that no person should sell or buy any wool or wool tops, except in accordance with the Regulations. They also provided that the sale of wool should be by appraisement and the property in every parcel of wool submitted for appraisement should pass to the Commonwealth when the final appraisement was completed in the manner prescribed by the instructions of the Central Wool Committee governing appraisement. It was necessary to appraise the wool because the Australian wool clip is of a diversified character and the value of a particular bale of wool could not be ascertained by applying the flat rate purchase price to the weight of the wool. By the method of appraisement adopted the total price received from the United Kingdom calculated at the flat rate was divided among the suppliers of the wool according to the value of the wool supplied.

Regulation 30 provided that (1) all moneys payable by the Government of Great Britain under the arrangement made by that Government with the Commonwealth for acquiring Australian wool should be received by the Central Wool Committee and out of such moneys the Central Wool Committee should defray all costs, charges and expenses of administering these regulations, and make the payments for wool to the suppliers. (2) Any moneys which might be received by the Central Wool Committee from the Government of Great Britain under or in consequence of such arrangement over and above the purchase price payable by such Government thereunder for the wool and any surplus which might arise should be dealt with as the Central Wool Committee should in its absolute discretion determine.

Pursuant to the Regulations the whole of the Australian wool clip in each year during hostilities was acquired by the Commonwealth and the suppliers of the wool, in the manner set out in the case stated, received the whole of the compensation moneys to which they were legally entitled resulting from the compulsory acquisition of their wool. But the Central Wool Committee, from the inception of the wool purchase arrangement, had contemplated that any profit which the Commonwealth Government received from the Government of Great Britain in respect of wool sold outside the United Kingdom would be divided between the persons who supplied wool shorn from the living sheep, who would ordinarily be wool growers, and that the suppliers of skin wool would not participate. Mainly for this reason shorn wool was classified in the brokers' catalogues as " participating wool " and skin wool as " non-participating wool." To give effect to this term of the arrangement the Government of Great Britain opened a divisible profits account in which a record was kept in the United Kingdom of the sales of wool in other countries so that it could be ascertained whether any profit was being made on the sale of wool outside the United

Kingdom. However, while large quantities of the wool purchased by the United Kingdom remained in store in Australia and elsewhere, it was impossible to determine whether there would eventually be any such profit or not and no distribution of profits from this account was ever made.

The end of hostilities found the United Kingdom the owner of large stocks of wool, much of it held in Australia for storage or treatment or stored in the United States of America, purchased from the Commonwealth under the arrangement and wool purchased from New Zealand and South Africa under similar arrangements. A similar problem to that which arose at the end of the first world war again arose, namely, how to dispose of the stocks of carry-over wool in such a way as not to spoil the market and prejudice not only their disposal value but also the sale value of the current clips. As a result of negotiations conducted in the year 1945, an agreement intended to overcome this problem was reached between the Governments of the United Kingdom, Australia, New Zealand and South Africa and was called the Disposals Plan. To give effect to this agreement the Commonwealth Parliament passed the Wool Realization Act, 1945, which came into force on the 15th November, 1945. The plan is printed in the schedule to that Act. Pursuant to the agreement the United Kingdom arranged for the formation of United Kingdom–Dominion Wool Disposals Limited, a company incorporated in the United Kingdom (commonly called the Joint Organisation) and each of the other Governments set up a local subsidiary of the Joint Organisation. The Australian subsidiary is the Australian Wool Realisation Commission set up by the Wool Realization Act, 1945.

The Disposals Plan provided that the stock of grown wool in the ownership of the United Kingdom at the 31st July, 1945, would be transferred to the joint ownership of the United Kingdom Government and Dominion Government concerned and all wool subsequently acquired under the scheme would be held in joint ownership. It provided that the functions of the principal company would be primarily to buy, hold and sell wool as agent of the four Governments and generally to administer the scheme agreed upon between them. It provided for the purchase by the United Kingdom, by the existing method of appraisement and bulk purchase, of the whole clip for the wool year 1945–46 (called the interim period) which was to become the joint property of the United Kingdom and Dominions concerned. After that year the usual practise of selling wool by auction was to be resumed but the Joint Organisation, through its subsidiaries, was to lift wool offered at auction (from stocks or current clips) for which the reserve price fixed by the Joint Organisation or better was not offered by a commercial buyer.

The plan provided for the necessary capital contributions to be provided by the United Kingdom and Dominions, and for the operating expenses of the Joint Organisation in carrying out the plan. It provided that the United Kingdom and the Dominion concerned would each take up 50 per cent. of the original capital represented by the opening stock of wool grown in that Dominion to be handed over to the Joint Organisation. The opening stock was to be taken in by the Joint Organisation at its original cost

(including f.o.b. payments) less the amount accumulated in the divisible profits accounts. In the case of Australia the opening stock was 6,796,000 bales the original cost of which was £stg. 106,796,829, the amount to the credit of divisible profits account was £stg. 19,489,223, so that the Commonwealth Government assumed a liability of over £stg. 40,000,000.

The fund which until then, subject to a profit being finally realized, was in the discretion of the Central Wool Committee, disappeared as a separate fund. Section 9 of the Wool Realization Act, 1945, provided that the Wool Realization Commission should be substituted for the Central Wool Committee and should have and perform all the duties, and should have and might exercise all the powers, authorities and functions of the Central Wool Committee under, *inter alia*, the National Security (Wool) Regulations. Section 10 provided that any reference in the National Security (Wool) Regulations to the arrangement made between the Government of Great Britain and the Government of the Commonwealth should include and be deemed at all times, on and after 1st August, 1945, to have included a reference to the Disposals Plan. It may be that, if there had been no further legislation, any ultimate profit the Commonwealth received from the operation of the Disposals Plan could have been disposed of in the discretion of the Commission and it may be assumed that this disposal would have been in accordance with the intention already mentioned. But the matter was not left there for, as will be seen, the Commonwealth Parliament stepped in and itself provided for the distribution of this profit.

Payment of the Dominions' shares of the original capital was to be made in four annual instalments to which the Dominions' shares of the proceeds of sale by the Joint Organisation and of the net profit during the interim period was to be applied. The United Kingdom was to be reimbursed by each Dominion for half of the cost of the new clip of that Dominion purchased by the United Kingdom in that interim year and unsold at the end of the wool year. Each Dominion and the United Kingdom were to share equally in the provision of any further capital required by the Joint Organisation during the operation of the scheme for " bought-in " new wool of that Dominion.

The Plan provided that the operating expenses of the Joint Organisation should be borne equally between the industry and the Joint Organisation itself; that the share of the industry would be paid by the Dominion Governments primarily from the proceeds of a contributory charge on all sales of new clip wool and the share of the Joint Organisation would be made by deduction from the proceeds of sales by the Joint Organisation before application to capital repayment. The plan provided that, after deduction of one-half of the operating costs, the proceeds of all sales by the Joint Organisation together with certain other sums would be used for repayment of capital equally between the United Kingdom and the Dominion Government concerned. The ultimate balance of profit or loss arising from the transactions of the Joint Organisation in the wool of any Dominion would thus be shared equally between the United Kingdom and the

Government of that Dominion. The plan provided that payments would be so adjusted that each Government would receive the sum to which it was entitled under the scheme, irrespective of any tax chargeable by the United Kingdom Government or a Dominion Government on profits arising from the operations of the Joint Organisation or its subsidiaries.

It will be seen that the Disposals Plan introduced a complete departure from the agreement in the wool purchase arrangement that the Commonwealth should receive half of the profits (if any) arising from the sale by the Government of Great Britain outside the United Kingdom of wool purchased under that arrangement. That agreement imposed no financial obligations on the Commonwealth whatever. The whole task of disposing of the wool was left to the United Kingdom. If that disposal resulted in a profit half of that profit was to become the property of the Commonwealth. If it resulted in a loss the United Kingdom had to bear the whole of the loss. Under the National Security (Wool) Regulations the Central Wool Committee had complete discretion as to the manner in which that profit was to be distributed. The profit was not to be paid into Consolidated Revenue. It was to be paid to the Central Wool Committee, and that fact, together with the classification of shorn wool as " participating wool," raised an expectation that, in accordance with the intention of the Central Wool Committee already mentioned, the Commonwealth's share of any profit to arise under the wool purchase arrangement would be distributed amongst the suppliers of shorn wool. Under the Disposals Plan the Commonwealth agreed to contribute large sums of capital and to become the joint owner with the United Kingdom of the stocks of Australian wool then undisposed of, the 1945–46 new clip to be acquired by appraisement, and any other Australian wool purchased by the Joint Organisation when the normal system of auction sales was resumed.

As a result of the plan the Joint Organisation on behalf of the United Kingdom and the Commonwealth Governments, became engaged in a huge business of reselling the carry-over wool, acquiring and realizing the 1945–46 clip and purchasing new wool at auction and realizing this wool. Out of these proceeds of sale, half the operating expenses were first to be paid and the United Kingdom and the Commonwealth Governments were then to be repaid their capital contributions in full if the proceeds of sale were sufficient for that purpose and, if they were not, *pari passu*.

The business might have made a profit or a loss. In fact, it will make a large profit. It will be a profit made out of the process of realising the whole of the wool in question. If the wool had been owned jointly by private individuals, these profits might have been liable to be assessed for income tax under relevant laws. But naturally the Governments did not want to tax themselves and the Disposals Plan contains the provision with respect to taxation already mentioned.

The Commonwealth Government decided to distribute its share of the profit amongst the persons who supplied " participating wool " for

In the High Court of Australia.

No. 10. Reasons for Judgment.

McTiernan and Williams, JJ. 13th April, 1953— *continued.*

appraisement and for that purpose passed the Wool Realization (Distribution of Profits) Act, 1948. It is intituled " An Act to provide for the distribution of any ultimate profit accruing to the Commonwealth under the Wool Disposals Plan, and for other purposes." The Act provides machinery for the distribution of this profit by authorizing interim distributions out of the expected net profit and a final distribution when that profit has been finally ascertained. Part III of the Act which is headed " Persons Entitled," containing Sections 7–14, defines the persons who are to share in these distributions. Section 7 is the leading section. Its text is as follows :—

" 7.—(1) Subject to this Act, an amount equal to each " declared amount of profit shall be distributed by the Commission " in accordance with this Act.

" (2) There shall be payable by the Commission, out of each ' amount to be distributed under this Act, in relation to any " participating wool, an amount which bears to the amount to be " distributed the same proportion as the appraised value of that " wool bears to the total of the appraised values of all " participating wool.

" (3) Subject to this Act, an amount payable under this Act " in relation to any participating wool shall be payable to the " person who supplied the wool for appraisement.

" (4) Where two or more persons jointly supplied participating " wool for appraisement, those persons shall, for the purpose of " determining their claims in relation to that wool in any " distribution under this Act, be treated as one person."

Sections 28 and 29, which are not contained in Part III, should also be noticed. Section 28 provides that :

" No action or proceedings shall lie against the Commission " or the Commonwealth for the recovery of any moneys claimed " to be payable to any person under this Act, or of damages arising " out of anything done or omitted to be done by the Commission " in good faith in the performance of its functions under this " Act."

Section 29 provides that :

" Subject to this Act and the Regulations, a share in a " distribution under this Act, or the possibility of such a share, " shall be, and be deemed at all times to have been, absolutely " inalienable prior to actual receipt of the share, whether by means " of, or in consequence of, sale, assignment, charge, execution or " otherwise."

The meaning and effect of Part III of the Act and Section 29 received the close attention of the Privy Council in *Maslen's* case. It is clear from the judgment of Lord Porter that the Board were of opinion that the amount distributed to each supplier under Section 7 was a voluntary personal gift

to that supplier and that, apart from any special provisions in the Act, it became his property to do with as he pleased. The Act contains certain special provisions where the supplier has become bankrupt, or has died, or the supplier was a trustee, or a company which has become defunct or a partnership which has been dissolved. It also contains a special provision where a mortgagee supplied the wool pursuant to the terms of his security. For instance Section 10 provides that where participating wool was supplied for appraisement by a company which is defunct or by a partnership which has been dissolved the rights, duties and liabilities of a person to whom an amount is paid in respect thereof shall be the same as if it were part of the proceeds of a sale of the wool by the company or partnership made at the time of the supply of the wool for appraisement. Section 13 provides that where participating wool was supplied for appraisement by a mortgagee the mortgagee shall have and be subject to the same rights, duties and liabilities in respect of the amounts paid to him under the Act in relation to that wool as if that amount were part of the amount which was paid on the appraisement of the wool. This provision was obviously inserted so that the mortgagee would have to hand over to the owner of the equity of redemption in the wool the whole or such part of the amount he received as was not required to satisfy the mortgage debt. None of these special provisions are directly relevant in the present case for the wool was supplied by the appellant company and this company is still a going concern actively engaged in the business of growing wool. In the absence of authority it might, however, be contended that these special provisions throw a light on the general intention of Part III of the Act and indicate that the Commonwealth Parliament intended that all distributions under the Act should be regarded as extra payments of price for participating wool. But this contention would not be consistent with the construction the Board placed on Part III in *Maslen's* case. The Privy Council has held, it seems to us, that these special provisions are not sufficient, even in the particular cases to which they refer, to place the payments in the same category as those received as of legal right for the wool supplied. That was the argument for the Respondents which their Lordships rejected. They decided that even in these special cases the provisions in question are directed only to identifying the persons who are to be the ultimate recipients of the personal gift. They did not go further and stipulate that they are to be regarded for all purposes as if they were the result of a contract or debt which came into existence when the wool was supplied for appraisement. " So to construe the wording would be to do violence to the admitted " fact that it is a gift."

In *Maslen's* case, Connolly and Laffer were carrying on in partnership a pastoral business in Western Australia under the name of The Mardathuna Pastoral Company and supplied participating wool to the Commonwealth under the National Security (Wool) Regulations. By a deed of assignment dated 17th June, 1946, Connolly assigned to the Respondents all his right title and interest in . . . the benefit of all contracts and engagements and book debts to which Connolly and Laffer

In the High Court of Australia.

No. 10. Reasons for Judgment.

McTiernan and Williams, JJ. 13th April, 1953— *continued.*

might be entitled in connection with the said business together with all other assets of the business. By another deed dated October 2nd, 1946, Laffer assigned his half share to the first of the Respondents. Connolly died on 28th December, 1946, and a sum of money was paid in 1949 by the Australian Wool Realization Commission to the Appellants as the personal representatives of the assignor in his capacity as a former partner in a dissolved partnership as the share of that partnership in a distribution of sums under the Wool Realisation (Distribution of Profits) Act in respect of participating wool supplied by it. The Privy Council held that the sum paid by the Commission under the Act was neither a debt nor an asset of the business, nor was it ever partnership property, but was a personal gift to the individual parties concerned and that accordingly it did not pass under the assignment to the Respondents . . . . " as their Lordships have said, " the sum paid is neither a debt nor an asset of the business nor was it ever " partnership property. In their view it is a personal gift to the parties " concerned."

To our mind the construction which their Lordships have placed on Part III of the Act greatly assists the Appellant here. The only provisions in the Income Tax Assessment Act which can be relied upon in support of the claim that the sum in issue is part of its assessable income are : (1) that portion of the definition of " income from personal exertion " which provides that such income includes the proceeds of any business carried on by the taxpayer ; and (2) that portion which provides that such income includes any amount received as a bounty or subsidy in carrying on a business. (This portion refers to Section 26 (g) of the Act which provides that the assessable income of a taxpayer shall include any bounty or subsidy received in or in relation to the carrying on of a business, and such bounty or subsidy shall be deemed to be part of the proceeds of that business.) The first provision does not mean that all the proceeds of a business are assessable income. All that it means is that the proceeds of a business which are assessable income by reason of some statutory provision or because they are income according to ordinary usages and concepts of mankind are to be classified as income from personal exertion and not as income from property. *Colonial Mutual Life Assurance Society Limited* v. *Federal Commissioner of Taxation* (73 C.L.R. 604 at p. 615.) The contention of the Respondent is that the amount in dispute is assessable income because it is income according to ordinary usages and concepts ; that it is, though voluntary, a payment for the wool supplied ; that it is an addition to the compensation paid for the wool on appraisement and bears the same character as the payments made to discharge the appraised value ; that it is, therefore, a further payment of income that it is stamped with that character upon the proper interpretation of the Act pursuant to which it is paid ; that it was received by the suppliers as further proceeds for their wool, and was a statutory payment made for the purpose of supplementing the price already paid so that the suppliers would receive full compensation for what turned out to be the value of their wool in the long run. We cannot accept this contention. The amount in dispute is not, in our

opinion, of the same character as the payments made to discharge the appraised value. It is a gift and nothing more than a gift to the Appellant. We refer to the illustration suggested by Williams, J. to Mr. Adam during the argument of a wool grower who sold wool to a dealer who made a larger profit than he expected to make on the resale and sent the wool grower a cheque equal to portion of this profit accompanied by a letter explaining that he had done better than he expected out of the deal and would like to send the grower a further cheque as a gift in addition to the amount he had paid for the wool. In such a case the whole of the profit the dealer had made would clearly be part of his assessable income, part of the proceeds of the business he was carrying on, and the payment to the grower would be a voluntary personal gift proceeding from the bounty of the dealer and no more part of his assessable income than a personal gift actuated by any other motive. In *Ryall* v. *Hoare* (1923 2 K.B. 447), Rowlatt, J. discussed the kind of casual profits that were taxable under Case 6 of Schedule D of the English Income Tax Act 1918. At p. 454 his Lordship said : " The " second class of cases to be excluded consists of gifts and receipts, whether " the emolument is from a gift *inter vivos*, or by will, or from finding an " article of value, or from winning a bet. All these cases must be ruled " out because they are not profits or gains at all." See also *Ayrshire Pullman Services* v. *I.R.C.* (14 T.C. 754), *Waddington* v. *O'Callaghan* (16 T.C. 187), *Commissioner of Taxation* v. *Happ* (1952 A.L.R. 382). The position of the Commonwealth in the present case approximates to that of the dealer and the persons who supplied the wool to that of the grower in the illustration. So far as any ultimate profit received by the Commonwealth Government under the Disposals Plan can be regarded as income, it is the income of the Commonwealth. The decision of the Commonwealth Parliament to distribute this profit among the suppliers of participating wool as a voluntary gift cannot make the distribution part of their assessable income just because it is a distribution of a profit on which the Commonwealth might have had to pay income tax if it had been a private individual. The suppliers were not engaged in the business that made the profit. The Governments of Great Britain and the Commonwealth were engaged in that business. The profit the Commonwealth made out of that business belonged to the Commonwealth to dispose of as it chose. The mere fact that it chose to distribute this profit amongst the suppliers of participating wool is not sufficient to make the payment part of their assessable income. There is nothing in the Wool Realization (Distribution of Profits) Act to make each payment more than " a true gift to the supplier of the wool." The only connection between the submission of the wool for appraisement and the payments is that the Act uses that criterion for ascertaining who are the donees of the Commonwealth gift and the extent to which they are to benefit. It does not make the payments part of the proceeds of the submission of the wool for appraisement. The only true proceeds of this submission are the compensation moneys. They are the only moneys the Commonwealth was legally liable to pay. Distributions under the Wool Realization (Distribution of Profits) Act are payments which the Commonwealth was at complete liberty to make to anyone, and

In the High Court of Australia.

No. 10. Reasons for Judgment.

McTiernan and Williams, JJ. 13th April, 1953— *continued.*

they would be gifts to whomsoever they were made. The choice of a class of deserving donees, whose efforts in the past had made it possible for the profit to be realised, does not alter the character of the payments or make the distributions part of their assessable income. The Commonwealth Parliament could, if it had wished, have said that these distributions should be regarded as assessable income. But it has not said so, and the provisions of Sections 28 and 29 of the Wool Realization (Distribution of Profits) Act appear to us to indicate the contrary. If the distributions are intended to be extra payments of price for the wool supplied for appraisement, it is strange that the persons entitled to the payments have no right of action to recover them from the Commonwealth and such payments are absolutely inalienable prior to their actual receipt.

In the course of the argument we were referred to the long line of English cases which we had occasion to consider in the recent case of *Commissioner of Taxation* v. *Dixon* (1953 A.L.R. 17) relating to the provisions of the English Income Tax Acts providing that all salaries, fees and other emoluments which come to a person by virtue of his office or employment are taxable even though they be paid voluntarily. This provision finds an echo in Section 26 (e) of the Commonwealth Income Tax Assessment Act. The reasoning in these cases must, we think, be applied with caution when the question is whether a voluntary payment which has some connection with a business operation is part of the proceeds of the business. In *Chibbett's* case (9 T.C. 48) the Respondents, a firm of ship managers, were employed in that capacity by a steamship company, their remuneration consisting in part of a percentage of the company's annual net profits including interest on its investments which were considerable. The company went into liquidation and, *inter alia*, authorized the liquidator to transfer £50,000 of 5 per cent. national war bonds to the Respondents as compensation for loss of office. In computing the liability of the Respondents for income tax and excess profits duty, the sum of £50,000 was included as part of the profits of their business as ship managers. On appeal the General Commissioners decided that it was not a profit and Rowlatt, J. upheld this finding. In the course of his judgment his Lordship said : " Of course, it is true that it is a trade receipt in this sense, that if " these people had not been managers they never would have got it. It " was not a gift to them as individuals or anything of that sort, it was " because they were people of this kind." His Lordship said that the payment was in the nature of a testimonial for what the firm had done in the past. Three other cases to the same effect to which reference may be made are *Beynon* v. *Thorpe* (14 T.C. 1), *Cowan* v. *Seymour* (1920 1 K.B. 500) and *Stedeford* v. *Beloe* (1932 A.C. 388) where it was held that voluntary gifts given to a person in appreciation of past services were not taxable. In the last-mentioned case at p. 390 Lord Dunedin said " Now . . . . " it has been held again and again that a mere voluntary gift is not . . . . " in the true sense of the word income. It is merely a casual payment " which depends upon somebody else's good will." Nothing more appears than that the distributions under the Wool Realization (Distribution of

Profits) Act are being made to the suppliers of participating wool because they supplied that wool in the past. In the words of Rowlatt J. the distributions are gifts to them because they are people of that class.

In the first world war, as in the recent war, the whole of the Australian wool clip was delivered to the Government of Great Britain under the arrangement made with the Commonwealth Government. It was a term of that arrangement that any profit made by the former Government from the sale of surplus wool should be equally divided between the two Governments. The British-Australian Wool Realization Association, usually known as B.A.W.R.A., was formed to take over the Commonwealth's share of the profits, which were by direction of the Commonwealth divided amongst the wool suppliers in the shape of cash, priority certificates and shares in the company. It is unnecessary to set out the scheme in any detail. It is described in the judgment of Ferguson J., in *Watt's* case (25 S.R. (N.S.W.) 467) and in the cases that went to the Privy Council, *Commissioner of Taxes* v. *British-Australian Wool Realization Association* (1931 A.C. 224) and *Commissioner of Taxes* v. *Union Trustee Company of Australia Limited* (1931 A.C. 258). Apparently Queensland income tax was paid on the shares received by the supplier in the latter case. But at p. 263 the Privy Council are careful to say " whether rightly or not, however, " these shares were for Queensland Income Tax purposes treated as part " of the testator's income for the year 1921 in which they were received." In *Watt's* case the wool profits were still in the absolute disposal of the Commonwealth, although it had decided what it proposed to do with them, when the testator died and it was held that the shares, etc. received by the firm of which he was a member and by his executor after his death pursuant to wool supplied by the firm and the testator in his lifetime were not part of his estate for the purposes of death duty. At p. 487 Ferguson J. said : " As the Government had an absolute discretion in the matter, and might " either have kept the money or have distributed it amongst whom they " chose, the fact that they chose one set of people rather than another " cannot change the essential nature of the transaction. When a man of " his own free will hands his money over to another person to whom he is " under no obligation, that is a gift." The decision of the Supreme Court was affirmed on appeal to this Court 38 C.L.R. 12. This passage supports the view that the distributions under the Wool Realization (Distribution of Profits) Act are simply gifts to the designated persons and nothing more and should not be equated to the payments the suppliers were legally entitled to receive as compensation for the acquisition of their wool.

It is contended that this view is inconsistent with the reasoning in *Ritchie's* case. In that case the trustees of a settled estate had from time to time submitted for appraisement under the National Security (Wool) Regulations wool produced on a pastoral property carried on by them under a power given by the trust instrument. It was held that moneys received, pursuant to the Wool Realization (Distribution of Profits) Act, by the trustees as the suppliers of the wool were income of the settled estate and should be treated as a receipt of the pastoral business belonging to the profit and loss account of the year in which they were received. The

In the High Court of Australia.

No. 10. Reasons for Judgment.

McTiernan and Williams, JJ. 13th April, 1953— *continued.*

case does not appear to have been cited to the Privy Council in *Maslen's* case. There are passages in the reasons for judgment which at first sight appear to assist the Respondent. In particular it was said that the payments constituted receipts resulting from the operations of wool growing and it was contended that this meant they bore the same character as the appraisement moneys. This and other statements, like those in any other case, must be read " secundum subjectam materiam." The issue in *Ritchie's* case was different from the issue in the present case. Admittedly the trustees were not beneficially entitled to the payments and the question was whether they should be treated as income or capital in the trust accounts. The fact that the Court decided that, in order to determine the respective rights of the life tenant and remainderman, the payments should be treated as income does not mean that the payments were necessarily assessable income of the trust estate. On any view the payments were windfalls—mere casual payments such as a wool grower would seldom receive in addition to the ordinary proceeds of the sale of his wool—and the question has often arisen whether such payments belong to the life tenant or remainderman of a settled estate. In Halsbury 2nd Edition Vol. 29 p. 644 it is said : " A tenant for life of settled property " is entitled both to the ordinary income of the property, including the " income of a fund set aside to provide for portions payable on his death, " and to all casual profits which accrue during the subsistence of his tenancy " for life, unless the settlement provides otherwise." Many instances are noted in the footnote to which may be added *In re Lindsay's Settlement* (No. 1) 1941 Ch. 170. *In re Pomfret's Settlement* (1952 1 Ch. 48). The mere fact that the life tenant is entitled to a casual payment does not make it part of his assessable income.

There remains the question whether the £22,851 was a bounty or subsidy received in or in relation to the carrying on of a business within the meaning of Section 26 (g) of the Income Tax Assessment Act. That paragraph provides that such bounty of subsidy shall be deemed to be part of the proceeds of that business. In our opinion, this provision has no application to the present facts. The payments to which it refers are payments made for the purpose of assisting persons to carry on a business at the time the payments are made or, perhaps, to commence a business in the future. The Appellant was, in fact, still carrying on a business of growing and selling wool in November, 1949. But it might not have been doing so. It might then have finally ceased to carry on business. Many suppliers who qualify for payments under Part III of the Wool Realization (Distribution of Profits) Act may have ceased to carry on business and the Act, as we have said, contains special provisions relating to suppliers who have died, etc. Distributions under the Act cannot be bounties or subsidies within the meaning of paragraph (b) in some cases and not in others. The distributions relate to business operations past and closed, not to current operations. They are not bounties or subsidies within the meaning of the paragraph.

For these reasons we would answer the first question in the negative and the second question does not arise.

No. 11.

Reasons for Judgment of His Honour Mr. Justice Webb.

In *Ritchie* v. *Trustees Executors & Agency Co. Ltd.* (1951) 84 C.L.R. 553, this Court held (at p. 580) that payments made under the *Wool Realization (Distribution of Profits) Act*, 1948, were " receipts resulting from the " operations of wool growing." This suggests that those receipts are assessable income as defined by the Income Tax Assessment Act; at all events as regards those suppliers of wool for appraisement who were also the growers of the wool, as most suppliers were. But it is submitted for the Appellant taxpayer that, although *Ritchie's* case has not been overruled by *Perpetual Executors Trustees and Agency Co. Ltd.* v. *Maslen* (1952 A.C. 215), still certain observations in *Ritchie's* case are inconsistent with the basis of the decision of the Privy Council in *Maslen's* case. In the latter case their Lordships observed (at p. 230) that payments under the 1948 Act were " a true gift " to the suppliers of the wool for appraisement and that they were not the result of a contract or debt which came into existence when the wool was supplied for appraisement. That would not have been inconsistent with the payments being assessable income. But their Lordships also referred to the payments as " a personal gift."

Although in the reasons for Judgment in *Ritchie's* case the payments are not expressly referred to as a gift of any kind it is pointed out (at p. 591) that no legal right to these payments had been conferred upon the wool suppliers until the 1948 Act was enacted, and that all that the suppliers had prior to such enactment was an assured expectation. If then the wool suppliers received something to which they had no legal right but only an expectation, it is difficult to see how there could have been anything but a gift. But gifts may be income and liable to tax. It was so held by the House of Lords in *Blakiston* v. *Cooper* (1909 A.C. 104) where Easter offerings to the clergy were held to be taxable income.

However, as already stated, in *Maslen's* case their Lordships characterised a payment under the 1948 Act as " a personal gift." In *Seymour* v. *Reed* (1927 A.C. 554 at 559) Viscount Cave L.C. had already held that the net proceeds of a benefit cricket match should be regarded as " a personal gift and not as income from the Appellants' " employment." What his Lordship would have held if the gift had been of a proportion of the gate receipts at earlier matches in which the taxpayer had played to the financial benefit of his club we can only speculate. Here the amount of the gift is determined wholly by the value of the wool supplied for appraisement, and yet it is a personal gift. But if it is a personal gift for one purpose, I think it must be held to be a personal gift for all purposes. As I understand the term " personal gift " it is absolute and not relative; so that if the claim of an assignee of a partnership is defeated by the personal nature of a gift, so too is that of the Income Tax Commissioner. The

In the High Court of Australia.

No. 11. Reasons for Judgment.

Webb, J. 13th April, 1953— *continued.*

description by their Lordships in *Maslen's* case of the payment as " extra " proceeds " and " additional payment " may, I think, be disregarded like the expressions " extra profit " and " extra sum " as not intended to indicate the precise quality of the payment. But to the Commissioner's claim that it is assessable income the answer is, I think, that the term " personal gift " was used to denote that precise quality, that its meaning is certain and not indefinite, is constant and not variable ; and that it excludes income in the ordinary acceptation of the term, i.e. as the term is used in Section 25 of the Income Tax Assessment Act. The quality of personal gift was not attributed to the Easter offerings to the clergy in *Blakiston* v. *Cooper* supra and those offerings were held to be income ; it was attributed to the gift to the cricketer in *Seymour* v. *Reed* supra, and it was held that the gift was not income. In this regard I can see no difference between income from employment or from an office and income from a business. I realize that income may be assessable under Section 25, although it is not from any of those sources. In *Commissioner of Taxation* v. *Dixon* (1952 A.L.R. 17) this Court held that gifts that were not derived from such sources were nevertheless income under Section 25. That was because they were periodical and were for the maintenance of the donee and his dependants. That case indicates that even such undoubted personal gifts as charitable payments made e.g. to a pauper in a hospital or other institution for his maintenance therein are income within Section 25. They are not income from personal exertion or from property, apart from the statutory definitions, but they are still to be regarded as income within the ordinary meaning of the term. However, that is because the payments are recurrent, a consideration which had weight with Lord Phillimore in *Seymour* v. *Reed* supra (at p. 570). Here, however, we are dealing not with recurrent payments but with a single payment which moreover was not made for the maintenance of a donee and his dependants, as the payments in *Dixon's* case were assumed to be.

For a time I took the view that the quality of the payment in question here as a personal gift merely gave rise to a doubt as to whether the payment was income within Section 25 ; but eventually I reached the conclusion that it was decisive in favour of the taxpayer.

The Commissioner also relies on Section 26 (g) which makes assessable as income " a bounty or subsidy received in or in relation to the carrying " on of a business." However, I think, as Counsel for the taxpayer submit, that this provision is a compound expression designed to deal with payments received to assist in carrying on a business. This is not such a payment.

I would answer the questions in the case—(1) No. (2) Does not arise.

No. 12.

Reasons for Judgment of His Honour Mr. Justice Fullagar.

In the High Court of Australia.

No. 12. Reasons for Judgment.

Fullagar, J. 13th April, 1953.

This matter comes before the Full Court on a case stated by the Chief Justice in an appeal by the Squatting Investment Coy., Ltd., against its assessment to income tax on income derived by it in the year ended 31st December, 1949. The calendar year is the company's accounting period for the purposes of the Income Tax Assessment Act. The appeal is concerned with certain sums received by the company during the accounting period in pursuance of the Wool Realization (Distribution of Profits) Act, 1948.

The company is incorporated in Victoria, and carries on (*inter alia*) the business of a wool grower in New South Wales and Queensland. This business was carried on by it during the years 1939 to 1946 inclusive, and the wool grown by it in the seven " wool years " 1939–40 to 1945–46 inclusive was supplied for appraisement and acquired by the Commonwealth under the National Security (Wool) Regulations. These Regulations were made by the Governor-General under the National Security Act, 1939, in order to give effect to the " Wool Purchase Arrangement," which was made between the Government of the Commonwealth and the Government of the United Kingdom very shortly after the outbreak of war in September, 1939. The effect of the Wool Purchase Arrangement, the main provisions of the Regulations, the system of appraisement and the general course of dealing established under the Regulations, the position which existed at the termination of hostilities in 1945 and the events which led up to the passing of the Wool Realization (Distribution of Profits) Act, 1948, are examined and explained in the judgment of the Court in *Ritchie* v. *Trustees Executors & Agency Coy., Ltd.* (1951) 84 C.L.R. 553. I also had occasion recently to examine these matters at length for a different purpose in *Poulton* v. *Commonwealth* (unreported). For a general history of the vast undertaking involved I think it sufficient to refer, without repeating it, to what was said in *Ritchie's* case, and to the very clear exposition of details which is contained in the present case stated. It is necessary, however, in order that the questions now arising may be understood, to refer briefly to certain points in that history.

For the wool supplied by it for appraisement during the seven wool years the company received the appraised price (in all except the last year in two instalments) and also a further sum by way of adjustment to what was called " flat rate parity." All amounts so received were assessed as income of the company, and were taken into account as part of its assessable income of the accounting periods in which they were respectively received. This appeal is not concerned with any such amounts, but with certain payments made to it by the Wool Realization Commission out of profits mainly derived from wool acquired by the Commonwealth during the seven wool years.

The Wool Purchase Arrangement provided for the purchase by the United Kingdom from the Commonwealth of all wool produced in Australia (except wool required for purposes of local manufacture) at a specified average price per pound greasy. It also provided that the United Kingdom Government and the Commonwealth Government should divide equally any profit which might arise from the resale by the United Kingdom Government outside the United Kingdom of wool purchased by it under the Arrangement. It was in view of this term of the Arrangement that Regulation 30 (2) of the Wool Regulations provided :—" (2) Any moneys " which may be received by the Central Wool Committee from the " Government of Great Britain under or in consequence of such arrangement " over and above the purchase price payable by such Government thereunder " for the wool and any surplus which may arise shall be dealt with as the " Central Wool Committee shall in its absolute discretion determine." This sub-regulation " conferred upon the Central Wool Committee a " discretion to determine how the half share of profit payable by the United " Kingdom under the Wool Purchase Arrangement should be dealt with and " profits or moneys arising otherwise, as, for instance, from wool tops or " wool for manufacture for export. The phrase ' any surplus which may " ' arise ' covered profits or moneys of the second kind " (*Ritchie's* case (1951) 84 C.L.R. at p. 572). It may be mentioned here that the Central Wool Committee, which was constituted under the Regulations, was composed of members representative of the various sections of the Australian wool industry. The Central Wool Committee decided at a very early stage that the same course should be adopted as had been adopted in connexion with the similar wool scheme of the war of 1914–18, and that any profit which might ultimately become available under the Arrangement should be distributed among suppliers of shorn wool (i.e. wool shorn from the living sheep) to the exclusion of skin wool (i.e. wool fellmongered from the skins of dead sheep). In pursuance of this decision wool supplied for appraisement was listed in the brokers' catalogues prepared for appraisement purposes as either " participating " or " non-participating." " Participating " meant " participating in any distribution of profit that may be made."

The wool purchased from the Commonwealth by the United Kingdom under the Arrangement was dealt with in a variety of ways. Some of it was resold by the United Kingdom Government outside the United Kingdom. The accounts in respect of such sales were kept in England by the United Kingdom Government, and these included a " distributable profits account." In 1945, however, when the war with Germany came to an end, very large quantities of the wool purchased by the United Kingdom Government remained in store in Australia and elsewhere, and it was quite impossible to determine at that stage whether there would ultimately be any profits to be dealt with in accordance with the Wool Purchase Arrangement. One very serious problem which presented itself was the problem of disposing of the very large stocks of wool held by the United Kingdom Government without unduly disturbing the market or depressing the prices of future wool clips. As a result of negotiations conducted about

the middle of 1945, a plan was agreed upon between the Governments of the United Kingdom and the Commonwealth for the winding up of the wool scheme. To this agreement, the Governments of New Zealand and South Africa (which had also sold their entire wool clips during the war years to the United Kingdom) were also parties, but the wool of each Dominion was kept separate and distinct. The plan was called the " Disposals Plan," and it is set out in the Schedule to the Wool Realization Act, 1945, of the Commonwealth. That Act received the royal assent on the 11th October, 1945, and came into force by proclamation on the 16th November, 1945, but the Plan took effect as from the 1st August, 1945.

It will, I think, suffice if I summarise the effect of the Disposals Plan, so far as it related to Australian-grown wool, very much as I summarised it in *Poulton's* case. The stock of Australian-grown wool in the ownership of the United Kingdom at 31st July, 1945, was transferred to the joint ownership of the United Kingdom Government and the Commonwealth Government, and was to be held and disposed of by a " Joint Organisation," which was to be incorporated as a private company in England and was to have an Australian subsidiary. The Australian subsidiary was the Australian Wool Realization Commission, which was constituted and incorporated by the Wool Realization Act, 1945 (see Section 9 (1)). The United Kingdom and the Commonwealth were each to take up fifty per cent. of the original capital, which was represented by the opening stock of Australian-grown wool. The opening stock was to be taken into account at its original cost less the amount standing to the credit of the divisible profits account. (As to the effect of this, see *Ritchie's* case (1951) 84 C.L.R., at p. 574.) Payment of the Commonwealth's share of the original capital was to be made in four annual instalments, but there was provision for each payment to be made out of current profits, if any. The ultimate balance of profit or loss was to be shared or borne equally by the United Kingdom and the Commonwealth. With regard to the wool year 1945–1946 (described as the " interim period ") it was agreed that the United Kingdom should purchase the whole clip in the same way as in the six preceding years, but it was to be handled by the Joint Organisation, and the Commonwealth was to reimburse to the United Kingdom one half of the cost of so much of the clip as remained unsold at the end of the wool year. In the following year (1946–47) the normal system of selling wool by auction in Australia was resumed. Actually in that year the Joint Organisation purchased a substantial quantity of Australian wool at auction sales. The plan provided that the operating expenses of the Joint Organisation should be borne equally by " the industry " and the Joint Organisation itself. The contribution to be made by the industry was provided for by Commonwealth legislation—the Wool (Contributory Charge) Assessment Act, 1945, and the Wool (Contributory Charge) Act, 1945.

Section 9 (3) of the Wool Realization Act, 1945, provided :—

In the High Court of Australia.

No. 12. Reasons for Judgment.

Fullagar, J. 13th April, 1953— *continued.*

" 9 (3) The Commission shall have and perform all the duties, and " shall have and may exercise all the powers, authorities and functions, " of the Central Wool Committee under—

" (a) the National Security (Wool) Regulations ;

" (b) the National Security (Wool Tops) Regulations ;

" (c) the National Security (Price of Wool for Manufacture for Export) " Regulations ; and

" (d) the National Security (Sheepskins) Regulations, and for that " purpose (i) the Commission shall, by force of this Act, be " substituted for, and be deemed to be, the Central Wool " Committee."

Section 10 provided :—

" 10. Any reference in the National Security (Wool) Regulations " to the arrangement made between the Government of Great Britain and " the Government of the Commonwealth shall include and shall be deemed " at all times, on and after the first day of August, One thousand nine " hundred and forty-five, to have included a reference to the Disposals " Plan."

In the years following the year 1945–46, the Joint Organisation made large profits from Australian-grown wool. These profits might perhaps have been dealt with by the Wool Realization Commission by virtue of Sections 9 (3) and 10 of the Wool Realization Act, 1945, read with Regulation 30 (2) of the Wool Regulations. But in fact the Commonwealth Parliament enacted legislation with regard to their distribution. That legislation is contained in the Wool Realization (Distribution of Profits) Act, 1948, which came into force on the 21st December, 1948. This Act dealt with " the wool disposals profit," which it defined by Section 4 as including the Commonwealth's share of any profit ultimately arising from the operations of the Joint Organisation and also any moneys received by the Commonwealth from the United Kingdom Government in pursuance of an arrangement which had been made for the sharing of profits arising from the disposal of sheepskins acquired under the National Security (Sheepskins) Regulations. " The profits in connection with sheepskins, " a comparatively minor matter, are thus treated, as might be expected, " as an accession to the wool profits " (*Ritchie's* case (1951) 84 C.L.R., at p. 575).

Section 4 of the Act defines " the net profit " as meaning the amount remaining after deducting from the " wool disposals profit " the expenses and charges of the Commission in administering the Act other than commission payable to brokers. It defines " appraised value " as meaning, in relation to wool, the value at which the wool was appraised under the Wool Regulations. It defines " participating wool " as meaning wool appraised under the Wool Regulations, being wool which was listed as participating wool in the appraisement catalogue used by the appraisers

for the purpose of that appraisement. The practice and purpose of cataloguing wool supplied for appraisement as " participating " or " non-participating " have already been explained. Section 4 also defines the expression " declared amount of profit " as meaning an amount which has been specified in a notice published in the Commonwealth Gazette in pursuance of Section 6 of the Act.

Section 5 of the Act provides that " as soon as practicable after the " wool disposals profit has been ascertained, the Treasurer shall notify " the amount thereof in the Gazette, and the amount so notified shall, " for all purposes of this Act, be the amount of the wool disposals profit." Section 6 (1) provides that " at any time before the wool disposals profit " has been ascertained, the Minister may, with the approval of the Treasurer " and after consultation with the Commission, and if he is satisfied that the " financial position under the Disposals Plan justifies his so doing, by " notice published in the Gazette, declare an amount to be available for " distribution under this Act, out of the expected net profits." Sub-section (1) of Section 7 provides that, subject to the Act, an amount equal to each declared amount of profit shall be distributed by the Commission in accordance with the Act. Sub-section (2) of Section 7 provides that " there shall be payable by the Commission, out of each " amount to be distributed under the Act, in relation to any participating " wool, an amount which bears to the amount to be distributed the same " proportion as the appraised value of that wool bears to the total of the " appraised values of all participating wool." Sub-section (3) of Section 7 provides that, subject to the Act, an amount payable under the Act in relation to any participating wool shall be payable to the person who supplied the wool for appraisement. The words " subject to this Act," which occur in sub-sections (1) and (3) of Section 7 refer to provisions of the Act which have no relevance in the present case.

By notice published in the Commonwealth Gazette on the 24th November, 1949, in pursuance of Section 6 (1) of the Act, the Minister declared the amount of £A25,000,000 to be available for distribution out of the expected " net profit." In pursuance of this declaration and of Section 7 of the Act, the Wool Realization Commission on the 30th November, 1949, paid to the Appellant Company a sum of £22,581, being an amount calculated in accordance with Section 7 (2) of the Act as a percentage of the appraised values of wool supplied by the Company for appraisement in the seven wool years and listed in the relevant catalogues as participating wool. The amount paid was arrived at after deducting a " broker's commission " of one half of one per cent. in accordance with the Act. It is this sum of £22,581 that is in dispute in the present case. The Commissioner contends that this sum is assessable income of the Company. The Company contends that it is a receipt of a capital nature. If it be determined that the sum in question is income, the further question will arise whether it is to be treated as income of the year in which it was received or whether it should be distributed proportionally among the years in which the relevant participating wool was supplied for appraisement.

In the High Court of Australia.

No. 12. Reasons for Judgment.

Fullagar, J. 13th April, 1953— *continued.*

The starting-point of the taxpayer company's argument is that the moneys in question were not paid in pursuance of any legal right vested in it or of any legal duty resting on the Commonwealth or the Central Wool Committee or the Wool Realization Commission. It was a mere voluntary payment—in substance a " gift." The Parliament of the Commonwealth chose, in the exercise of its constitutional powers, to direct the Wool Realization Commission to make the payment out of a particular fund in its hands. It, the Company, is the mere recipient of a bounty, and such a bounty is not income any more than is a birthday present.

That the payment was not made in pursuance of any legal obligation must be immediately conceded. During the war of 1914–1918 the entire Australian wool clip of several years was purchased by the United Kingdom under an " Arrangement " very similar to that which was made on the outbreak of war in 1939, and a scheme was instituted in Australia for the appraisement and acquisition of wool very similar to that which was instituted in 1939. The Arrangement provided for the sharing of certain profits between the two Governments. Certain suppliers of wool claimed a right to share in profits ultimately realised, and in the litigation which ensued two things were decided by this Court and affirmed on appeal to the Privy Council. One was that the " Arrangement " conferred no legal right cognisable in any Court but was a mere political arrangement between Governments. The other was that no supplier of wool for appraisement acquired any right to share in any " profit " which might come to the hands of the Central Wool Committee. No such statute as the Act of 1948 having been passed, it was held that the distribution of profits was a matter for the " wisdom, fairness and discretion of the Central Wool Committee." See *John Cooke & Co. Pty., Ltd.* v. *Commonwealth* (1922) 31 C.L.R. 394 (1924) 34 C.L.R. 269. That the position was the same under the scheme adopted in the war of 1939–1945 is not open to question, and it is expressly so stated in *Ritchie's* case (1951) 84 C.L.R. 553, at p. 577. It has been generally considered, I think, that suppliers of wool for appraisement acquired on appraisement a legal right to the appraised price. The moneys paid later for adjustment to flat rate parity have never been the subject of any decision, but one would think that the Regulations gave no legal right to receive these. And it is entirely clear that there was no legal right to receive any share of any profit.

It by no means follows, however, from the fact that payments under the Act of 1948 must be regarded as " voluntary " that they do not possess the character of income. That payments, which there is no obligation to make to the recipient, may be income, is well illustrated by a long line of English cases of which *Corbett* v. *Duff* (1941) 1 K.B. 730 is a recent example. Here " the proceeds of any business carried on by the taxpayer " is, by Section 6 of the Income Tax Assessment Act, expressly included in the definition of " income from personal exertion." If the receipt in question here is to be regarded as the proceeds of a business carried on by the taxpayer it will be income in his hands and assessable accordingly.

In the English cases, of which *Corbett* v. *Duff* (1941) 1 K.B. 730 is an example, the question has been whether a voluntary payment is so connected with an office or employment as to be properly regarded as part of the remuneration of that office or employment. If so, it is a profit or gain of that office or employment, and therefore taxable as income. The test generally applied is that stated by Lord Loreburn in *Blakiston* v. *Cooper* (1909) A.C. 104, at p. 107. In *Corbett* v. *Duff* (1941) 1 K.B. 730, at p. 740, Lawrence, J., said :—" If the payment, though voluntary, is remuneration " for the office or employment it is taxable, but, if it is personal in the sense " that it is given to the person not as the holder of the office or employment " but as a personal testimonial, it is not." A similar test should, in my opinion, be applied here. If a wholesale merchant gave a substantial Christmas present to his best customer, the value of the present would not be income. But, if A bought goods from B for £1,000, expecting to resell them for £1,500, and in fact resold them for £2,500, and, if A's heart were so softened by this happy event that he sent to B a cheque for £1,500 instead of £1,000, B would properly take the extra £500 into his profit and loss account as part of the proceeds of the goods and that sum would be liable to assessment as income. It would be part of the proceeds of his business.

The present case appears to me to be very much stronger than the example which I have taken, because, although the payment of a share of wool profit to the taxpayer was voluntary and not obligatory in a legal sense, there had throughout been an expectation and an understanding that the Central Wool Committee would make a distribution of any profit, which might ultimately be realised from the Wool Purchase Arrangement, among the suppliers of shorn wool for appraisement. It was in the light of this expectation and understanding that Regulation 30 (2) was enacted. It was at least partly because of it that no wool moneys were ever paid into consolidated revenue but the vast sums received and paid were received and paid by the Central Wool Committee and its successor, the Wool Realization Commission, each of which bodies was representative of wool interests. It was because of the same expectation and understanding that shorn wool supplied for appraisement was catalogued as " participating " and skin wool as " non-participating." " Participating " *meant* participating in profit. The fact that the understanding might have been dishonoured, and the expectation disappointed, and the suppliers of shorn wool left without legal redress, cannot alter the nature of the share of profit when the understanding is honoured and the expectation realised. When once the nature of the whole scheme is understood, it seems impossible to avoid the conclusion that the moneys paid under the Wool Realization (Distribution of Profits) Act, 1948, were in the most real sense part of the proceeds of the wool supplied for appraisement, and therefore part of the proceeds of the business carried on by the taxpayer.

In *Ritchie's* case (1951) 84 C.L.R. 553 the question before the Court was not a question of liability to taxation, but I would regard the reasoning of the judgment in that case as decisive of the present case. In that case the trustees of the will of a testator, who died in 1905, were carrying on during

In the High Court of Australia.

No. 12. Reasons for Judgment.

Fullagar, J. 13th April, 1953— *continued.*

the war a pastoral business, in the course of which they supplied wool for appraisement in each of the years 1939–1940 to 1945–6 inclusive. The estate was settled by the will, which gave power to carry on the business. The trustees having received their due proportion in a distribution under the Wool Realization (Distribution of Profits) Act 1948, the questions arose whether the moneys so coming to their hands were income or corpus of the estate, and, if income, whether they were income of the year of receipt or ought to be distributed among the years in which the wool was supplied in proportion to the appraised value of wool supplied in each year. This Court, affirming the decision of the Full Court of the Supreme Court of Victoria unanimously held that the moneys were income of the estate, and income of the year in which they were received by the trustees. In the course of considering the first question, the Court (84 C.L.R. at p. 577) said :— " It is clear that from the beginning the distribution, in whole or in part, " of the Australian share of any surplus arising on divisible profits account " was contemplated. The decision was taken administratively that skin " wool should be excluded and wool was accordingly submitted for " appraisement and appraised as participating and non-participating. " That of course implied that the basis of distribution would be appraised " value of the wool submitted." After pointing out that there was no legal right to participate in profits the Court (84 C.L.R. at p. 577) said :—" But " courts should not be unmindful of the fact that administrative measures " and understandings may, according to circumstances, raise an expectation " almost as assured of realization as if it rested upon a foundation of legal " right." After referring to the contention of the Appellants that the moneys belonged to corpus because they " formed an unsought and " fortuitous accretion to the estate, the source of which lay in the bounty of " the Commonwealth," the Court (84 C.L.R. at p. 579) said :—" These " contentions cannot be sustained. They are based upon isolated points " in the transaction ending with the distribution of the wool disposals " profit. The course pursued to give effect to the Wool Purchase " Arrangement by the acquisition of wool from the grower must be con- " sidered as an entirety. The receipt of the payments is an actual " consequence of the submission of wool for appraisement." The Court (84 C.L.R. at p. 580) added :—" It is, of course, true that the Parliament, " in the exercise of its legislative power, could have dealt in any manner " it chose with the fund. But that legal fact does not determine the " character or the consequences of the course which the Parliament actually " took or the nature, as between capital and income, in trusts for successive " interests, of the amounts distributed. They constitute receipts resulting " from the operations of wool-growing. As possible or contingent receipts " they were in contemplation when the appraisements were made. The " title to receive them when in the end it is placed on a legal basis consists " in the submission of shorn wool for appraisement for the purposes of the " Wool Purchase Arrangement. The amount is a percentage of the " appraised value of the wool so submitted."

It is, of course, not impossible that moneys, which trustees must treat as income in their estate accounts, may constitute a capital receipt for taxation purposes. But the whole of the reasoning in *Ritchie's* case (1951) 84 C.L.R. 553 is quite inconsistent with the view that the moneys now in question constitute a capital receipt for taxation purposes. The judgment is based from beginning to end on the view that those moneys were paid in respect of wool supplied for appraisement in the course of a business carried on by the taxpayer. They are attributable to that wool. They are paid because that wool has been supplied, and their amount is calculated by reference to the appraised value of that wool. They are proceeds of the taxpayer's business.

It was argued that, even if it might have been right to treat as assessable income a share of profit derived by the United Kingdom from sales outside the United Kingdom and distributed by the Central Wool Committee under Regulation 30 (2), yet the profit, a share in which was actually distributed under the Act of 1948, was a different profit altogether and was outside the contemplation of the Wool Purchase Arrangement and the Wool Regulations. It is true that the Disposals Plan of 1945 did differ from the profit-sharing provision of the Wool Purchase Arrangement in a number of respects. But this cannot be regarded as affecting the conclusion that in substance and reality any amount distributable under the Act of 1948 in respect of wool supplied by the taxpayer company is part of the proceeds of that wool—part of what resulted to the taxpayer from the supplying of that wool for appraisement. Indeed, although the Disposal Plan involved a different method of pursuing a profit and a different source of profit, it was no more than a variation of the original profit-sharing arrangement, and Section 10 of the Wool Realization Act, 1945, read with Regulation 30 (2) of the Wool Regulations, really placed any profit arising from the Disposals Plan in the same position as any profit which might have arisen from the original arrangement. If the point now taken by the taxpayer against the Commissioner had been taken by the Commonwealth against the suppliers of shorn wool, it is safe to say that it would have been regarded as a gross breach of faith. There was a variation of the divisible profits clause of the Arrangement between the two Governments, but, as was said in *Ritchie's* case (1951) 84 C.L.R. at p. 580, " the source of the " distribution is, in effect, the fund arising under the divisible profits clause " in the Arrangement."

It was suggested by Counsel for the Company that the view taken in *Ritchie's* case did not altogether square with, or must be regarded as modified in some way by, the Judgment delivered by Lord Porter for the Privy Council in *Perpetual Executors Trustees & Agency Coy. (W.A.) Ltd.* v. *Maslen* (1952) A.L.R. 273. The suggestion is, in my opinion, entirely without foundation. The question in *Maslen's* case turned largely on Section 10 (3) of the Wool Realization (Distribution of Profits) Act, 1948, which makes provision for a case where wool has been supplied for appraisement by a partnership and the partnership has been dissolved before payment of the amount attributable to that wool. There had in the

particular case been, some years before 1948, an assignment by one partner to another of his interest in all the partnership assets, including book debts. Their Lordships stressed the fact that moneys paid under the Act were paid by way of bounty, that they were, in effect, a " gift." The absence of any obligation of any kind to pay anything to growers out of profits has, of course, never been doubted since the decision in *John Cooke & Co. Pty. Ltd.* v. *Commonwealth* (1924) 34 C.L.R. 269. In the view of their Lordships it assumed great importance in *Maslen's* case, because it meant that it was impossible that the assignment could carry the share of wool profit which might ultimately be " given " in respect of wool supplied by the partnership. The share payable under the Act of 1948 went, therefore, to the individual partners (or their personal representatives) as the persons designated by the Act to receive it, and its destination was not affected by Section 10 or Section 11 of the Act. Thus their Lordships (1952) A.L.R., at p. 280, said : " The correct view is that it is a true gift to the supplier " of the wool. It is not, and never was part of the assets of the partnership." And again (ibid). " It is a personal gift to the parties concerned, not " passing under either assignment, nor is its destination affected by " Sections 10 or 11 of the Act of 1948." The " voluntary " character of the payments was clearly and fully recognised and explicitly stated in *Ritchie's* case, in which an entirely different question arose. Neither case has, in my opinion, any bearing on the other, and there is nothing in *Maslen's* case to derogate in any way from *Ritchie's* case.

A word should be said in conclusion with regard to the " wool scheme " of the war of 1914–18. In a matter of such great importance one would naturally look to see if any guidance could be there found, and although no binding authority is disclosed, the position is of interest. The Wool Purchase Arrangement of 1916, like that of 1939, contained a provision that the Commonwealth should be entitled to share in profits which might accrue to the United Kingdom Government on certain resales of wool by that Government. At the end of the war of 1918 a very similar position arose to that which arose in 1945, and a variation of the original agreement between the two Governments was agreed to. The scheme adopted was analogous to, but different in detail from, the Disposals Plan. In *Commissioner of Taxes (Vic.)* v. *British Australian Wool Realization Association Ltd.* (1931) A.C. 224, Lord Blanesburgh, to use his own words in another Judgment delivered on the same day, " traced in outline the " history of that great scheme." Its central feature was the formation of a company, which was incorporated in Victoria on the 27th January, 1921, under the name of British Australian Wool Realization Association Ltd., and which came to be generally known as " B.A.W.R.A." or " Bawra." The nominal capital of the Company was £25,000,000, divided into shares of £1. The Company took over for realization the whole of the surplus wool on hand, and, by direction of the Central Wool Committee, issued 12,000,000 shares and £10,000,000 of what were called " priority wool " certificates " to the Australian growers who had supplied shorn wool for appraisement. These shares and certificates represented, of course, the

Commonwealth's half share in any profit that might accrue from the realization of the wool taken over by Bawra. For the sake of simplicity, I will refer only to the shares. The proportion of shares issued to each recipient was determined on precisely the same basis as was adopted by Section 7 of the Wool Realization (Distribution of Profits) Act, 1948. The shares were listed on the Stock Exchanges and were readily transferable.

After the war of 1914–18, as after the war of 1939–45, there was no legal or equitable right in any supplier to share in any profits. As Lord Blanesburgh said ((1931) A.C., at p. 236), " no individual supplier, however " important, ever had in the eye of the law prior to the formation of the " Association a right to any part of the Commonwealth Government's share " of profits." There was, however, the same expectation and understanding, and the shares were issued and received in full discharge of any obligation which might be held to subsist. The recipients were assessed to income tax in respect thereof by the Federal Commissioner and the State Commissioners, the shares being taken for the purpose of assessment at their market value, which was at the relevant times about 12s. 6d. They were assessed, of course, on the basis that the interest which they received in Bawra represented part of the proceeds of the wool supplied for appraisement —the proceeds of a business carried on. No objection was ever taken to any of these assessments, or, if any were taken, it was not carried to any Court, and the taxes assessed were paid. Very large sums were involved, and it may be safely assumed that this course was not adopted without taking the opinions of eminent counsel. Bawra ultimately sold the wool, which it had taken over, at prices totalling a sum very much larger than the value at which it had been taken into the opening accounts. No dividend was ever declared, but a series of reductions of capital were made, and confirmed by the Supreme Court of Victoria. Ultimately the Company went into liquidation and a final distribution was made in the winding up. The Commissioners sought to tax the amounts received by shareholders in pursuance of these reductions, but the shareholders objected and appealed, and they were ultimately successful in the Supreme Court of Queensland and in the Privy Council: see *Commissioner of Taxes (Qld.) v. Union Trustee Coy. Ltd.* (1931) A.C. 258. The shares, when received, had been treated as income, but the moneys received were received by way of realization of those shares and were capital. The analogy in the present case is, of course, with the original receipt of the shares, and not with the amounts received on the reductions of capital.

The only remaining matter is the question whether the sum in question ought to be treated, as the Commissioner has treated it, as income of the year in which it was received, or ought to be distributed among the years in which the relevant wool was supplied for appraisement. I think this question also is covered by *Ritchie's* case (1951) 84 C.L.R. 553, at pp. 583–4. The " criterion by which the question of beneficial right must be tested is " to be found in the conceptions governing the ascertainment of the income " of a pastoral business for a given year." There was no right to receive this sum or any sum. It could not properly be brought into the profit and

In the High Court of Australia.

No. 12. Reasons for Judgment.

Fullagar, J. 13th April, 1953— *continued.*

loss account until it was received. There is no justification for any re-opening of past profit and loss accounts. For all purposes, including taxation purposes, it seems to me that it is " derived " in the year in which it is received.

The questions asked by the case stated should be answered as follows :—

1. Yes.
2. The year ended 31st December, 1949.

No. 13. Reasons for Judgment.

No. 13.

Reasons for Judgment of His Honour Mr. Justice Kitto.

Kitto, J. 13th April, 1953.

The question to be decided in this appeal is whether an amount paid to the Appellant by the Australian Wool Realization Commission in pursuance of the Wool Realization (Distribution of Profits) Act, 1948 (C'wth) formed part of the income derived by the Appellant either in the year of receipt or in an earlier year.

The amount in question was paid to the Appellant " in relation to " its " participating wool " ; (Section 7 (2)), that is to say in relation to its wool which had been appraised under the National Security (Wool) Regulations and listed as participating wool in the appraisement catalogue used by the appraisers for the purpose of that appraisement : (Section 4 (1), definition of " participating wool "). Moreover the amount was paid to the Appellant as " the person who supplied the wool for appraisement " ; (Section 7 (3)). But it was not money which, before the Act was passed, the Appellant had any legally enforceable right to demand, and the Act itself gave the Appellant no right enforceable by action or other proceedings (Section 28).

Although the Commonwealth was not under any unsatisfied legal liability to the Appellant, and the amount became payable simply because the Parliament chose to provide for its payment, it is not entirely accurate to call the payment a gift. Nevertheless the word has frequently been used in order to emphasise that there was no antecedent liability which the payment discharged. It must be observed at once, however, that even if it were correct to describe the payment as a gift in the strict sense of the word, the question we have to consider would still await an answer ; for it is a commonplace that a gift may or not possess an income character in the hands of the recipient. The question whether a receipt comes in as income must always depend for its answer upon a consideration of the whole of the circumstances ; and even in respect of a true gift it is necessary to inquire how and why it came about that the gift was made. When, as in the present case, the word " gift," if it is to be used at all, must be used by way of

imperfect analogy, it is specially important to recognise how inconclusive is that word for the purpose of deciding whether the receipt is of an income nature.

I shall not describe in any detail the Wool Purchase Arrangement made between the United Kingdom Government and the Australian Government at the beginning of the war, the provisions and the working of the National Security (Wool) Regulations, or the Agreement, embodying the Disposals Plan, which was approved by the Wool Realization Act, 1945 (Commonweath). They are fully discussed in the judgments which have already been delivered, and I need not go over the ground again. The features that stand out as significant for the present problem when the whole history of the matter is surveyed seem to me to be few and clear-cut.

In the first place, the National Security (Wool) Regulations took from a wool-grower in the position of the Appellant wool which in other circumstances he would have disposed of by the normal method of sale by auction, and they gave him in its place two things. One was a right to receive what Regulation 30 (1) described as " the payments for wool." In the administration of the Regulations these payments comprised the appraised value of the Appellant's wool (divided into an initial payment and the " retention money " paid at the end of the wool season), and the flat rate adjustment which was the Appellant's proportionate share of the excess, ascertained at the end of the season, of the price received by the Commonwealth for the whole clip at the flat rate purchase price over the total appraised value of the whole clip. For the purpose of determining the income or non-income quality of these payments, no real distinction can be drawn between them and a price realised by sale. Indeed the Regulations (Regulation 15) actually described the compulsory disposition of wool in pursuance of their provisions as a " sale of wool . . . . by appraisement." But that was not all. The grower also got, no less certainly than these payments, a chance of receiving something more, in effect an addition to the price, by an exercise of the discretion which Regulation 30 (2) entrusted to the Central Wool Committee. The discretion was conferred as an absolute discretion, but on well-known principles it could not have been validly exercised otherwise than upon grounds within the scope of the Regulations. The moneys to which the discretion extended (if any should come into existence) were thus significantly differentiated from moneys intended for the public purse, and solid ground was provided for an expectation that, as the history of wool in the previous war and considerations both ethical and political would all combine to suggest, any distribution that might be made under Regulation 30 (2) would be a distribution to the wool-growers who had supplied wool for appraisement. That is to say that any such distribution would be made (not precisely, but as nearly as common knowledge suggests that it was either practicable or necessary to go), to the persons who had supplied shorn wool for appraisement. This expectation was, of course, confirmed by the action of the Central Wool Committee in causing all shorn wool to be designated " participating wool " in the appraisement catalogues, in contemplation, as the case stated sets out, that the Commonwealth

In the High Court of Australia.

No. 13. Reasons for Judgment.

Kitto, J. 13th April, 1953— *continued.*

Government's share of any profit to arise would be paid to the suppliers of shorn wool. The point which it is important to observe here is that the expectation thus created, resting as it did upon most substantial considerations, arose, together with and no less surely than the moneys which were paid in respect of the appraised value and the flat rate adjustment, in favour of the persons who supplied the shorn wool for appraisement; and together they formed the totality of that which the Regulations gave those persons in place of their wool. It must have followed, if there had ever been a distribution under Regulation 30 (2), that the question whether moneys distributed to a particular supplier of wool were of an income nature would be answered yea or nay, according as the proceeds of his wool if sold at auction would or would not have constituted an income receipt in his hands. In the vast majority of cases, and certainly in the case of the Appellant, whose wool had been produced for sale in the course of a business of growing and selling wool, the moneys received would certainly have had to be brought into the trading accounts, and would accordingly have gone to swell assessable income.

The next point which emerges from a consideration of the history of the matter is that the fund out of which came the moneys now in question, though it was not the identical fund which Regulation 30 (2) contemplated, had such a relation to the wool supplied for appraisement that considerations were applicable to it which were not substantially different from those which have just been mentioned. This view was stoutly contested by counsel for the Appellant, who contended that it had been too readily accepted by the Court in *Ritchie's* case (1951), 84 C.L.R. 553. Counsel pointed out that immediately before the Agreement containing the Disposals Plan took effect (as it did in Australia by virtue of the Wool Realization Act, 1945), the potential sources of distributions to wool-growers by the Central Wool Committee in exercise of its discretion under Regulation 30 (2) were of three descriptions: Australia's one-half share of amounts which had been accumulated in an account known as the Divisible Profits Account, other moneys which had already arisen to the Committee, and such further moneys as might be derived from the continued operation of the Wool Purchase Arrangement. Clause 2 (b) of the Financial Plan, which formed Part III of the Agreement, disposed of the amounts accumulated in the Divisible Profits Account by authorising the United Kingdom Government to retain them. The Wool Industry Act, 1946 (Commonwealth) disposed of all other moneys vested in the Central Wool Committee by diverting them to a Wool Industry Fund which it made applicable for certain purposes not material to be considered. And of course there could not be any further share of profits accruing under the Wool Purchase Arrangement, for that Arrangement was brought to an end. The result, it was said, was to destroy the possibility of any distribution being made to wool-growers under Regulation 30 (2); and the new scheme which came into being was so essentially different from the Wool Purchase Arrangement of 1939 that any moneys that might accrue to the Commonwealth in consequence of its operation must be regarded as completely unaffected by the expectation of further payment which the wool-growers had formerly possessed.

The points of difference were certainly not unsubstantial. First, it was pointed out, the Disposals Plan dealt with different wool from that covered by the Wool Purchase Arrangement, for it included the 1945-46 clip and any wool of later clips that might be purchased for the Joint Organization at auction. Moreover, whereas under the Wool Purchase Arrangement the wool to be sold was the property of the United Kingdom Government, under the Disposals Plan the wool dealt with by the Joint Organization was wool held in joint ownership by the United Kingdom and Australian Governments. Further, the profit in which Australia was entitled to share had been limited, under the Wool Purchase Arrangement, to profit on the sale of Australian wool outside the United Kingdom, whereas under the Disposals Plan it extended to profit on the sale of Australian wool wherever it might be sold. Again, instead of the Central Wool Committee being entitled to only one-half of certain defined profits but standing to lose nothing in the event of a loss being incurred on the resale of Australian wool by the United Kingdom Government, the Commonwealth became a shareholder in the Joint Organization, in effect paying for its share over £E40,000,000 (i.e. one-half of the £E82,777,089 mentioned in paragraph 33 of the case stated). By the same token, under the new plan the Commonwealth was entitled to have some say in the disposal of the wool, whereas under the old plan disposal was a matter for the United Kingdom Government alone. Because of these and other differences, the argument proceeded, the view should be accepted that any profit coming to the Commonwealth under the Disposals Plan not only belonged to it in point of law, but was unaffected by any such considerations favouring the persons who had supplied participating wool for appraisement as those which formerly applied to moneys falling within Regulation 30 (2); and for that reason the moneys which the Act of 1948 directed the Commission to distribute were moneys which the Commonwealth was in the fullest sense free to dispose of as it saw fit. Add to that the fact that the Act chose as the recipients, not wool-growers as such, but the persons who supplied wool for appraisement whether they had grown it or acquired it from the growers, and the right conclusion, it was said, is that the distributions were truly in the nature of gifts which cannot be classified as income, for they arose from the bounty of the Commonwealth to persons chosen by the Commonwealth in exercise of a complete freedom to apply its own moneys as it saw fit, persons chosen for reasons which were personal to them and which had no reference to any carrying on by them of income-producing operations.

To take this view, however, is to get the whole matter out of focus. When the Commonwealth by Clause 2 (b) of the Financial Plan gave up to the United Kingdom Government its half share of the amount standing to the credit of the Divisible Profits Account, it acquired by virtue of Clause 1 of the Disposals Plan an interest as joint owner with that Government in the latter's accumulated stocks of Australian wool. Such possibility as there was that further profits might have arisen to the Central Wool Committee from the continued operation of the Wool Purchase

In the High Court of Australia.

No 13. Reasons for Judgment.

Kitto, J. 13th April, 1953— *continued.*

Arrangement was, of course, wrapped up in the same stocks of wool. So that Australia's share of realized profit and the Commonwealth's rights under the old Arrangement with respect to future profit both went into the acquisition by the Commonwealth of an interest as joint owner of the accumulated wool; and that meant that the wool-growers' prospect of having distributions of those profits made to them by the Committee under Regulation 30 (2) was in effect invested in the Australian wool which the Joint Organisation was to turn into money. It is true that the Commonwealth Government also undertook by the Financial Plan to contribute to the Joint Organization fifty per cent. of the original capital represented by the opening stock of wool; but as it turned out it was able to do this out of its share of the proceeds of sales of wool effected by the Joint Organization; so that the proceeds actually coming to the hands of the Commonwealth must be considered as really standing in the place of the Australian share under the Wool Purchase Arrangement of the profits, realised and prospective, which the Commonwealth gave up by entering into the 1945 Agreement. It is also true that the Joint Organization would be selling, not only the accumulated stocks, but also such wool of later clips as it might buy with a view to supporting the market; but this was only a means; the main purpose of the Disposals Plan was to ensure the realization of the accumulated stocks in a manner as advantageous as possible to those who were interested in their profitable sale, while at the same time preventing prejudice to the sale of future clips; see the third paragraph of the preamble to the Wool Realization Act, 1945 (Commonwealth). It is also clear that the Commonwealth's share of the profits of the Joint Organization would be received by the Commonwealth itself and not by the Central Wool Committee, and that the manner of their ultimate disposal would be determined by the Commonwealth and not by the Committee. But it is evident that in a practical sense, as in a constitutional sense, the power of the Commonwealth to dispose of those profits was not unlimited; and it would be only a partial view of the situation which would lead one to describe the profits as the Commonwealth's own moneys which it might apply as it thought fit. The considerations which had operated to give substantial assurance that the Committee would distribute amongst the wool-growers any surplus that might have arisen in its hands operated now to give no less assurance that the Commonwealth would distribute amongst the same persons such profits as should become available for distribution by it in consequence of the working of the Disposals Plan.

The Commonwealth having substantially fulfilled, by means of the Act of 1948, the expectations thus existing, what ground can there be for denying to the payments made under the provisions of that Act the same quality as would have belonged to distributions, if there had been any, under Regulation 30 (2)? It is nothing to the point that the Act of 1948 selected as the criterion for participation the fact of having supplied the wool for appraisement, as distinguished from the fact of having grown the wool for profit. What is to the point is that in truth and in fact the moneys

distributed under the Act to the persons who supplied wool for appraisement cannot be regarded otherwise than as part of the total sum which has taken the place of the wool in the hands of those persons; and accordingly the principle (of which *Commissioners of Inland Revenue* v. *Newcastle Breweries Ltd.* (1927) 12 T.C. 927, is perhaps the best-known example), is applicable here, that moneys received from any source, if in truth they represent items of a revenue account, must be regarded as received by way of revenue: *Federal Commissioner of Taxation* v. *Wade* (1951) 84 C.L.R. 105, at pp. 112–3.

The Act of 1948 itself could hardly have made the position clearer. It harks back to the appraisement which took place under the Regulations, and observes that some of the wool appraised was marked for future participation in distributions, being listed as participating wool. Specifically in relation to each lot of participating wool, it provides for a payment to the persons who supplied that wool for appraisement. The amount to be paid to each such person is regulated by means of a proportion sum, so that the whole of the wool disposals profit shall in the long run be divided amongst those who supplied participating wool, proportionately to the appraised values of their respective contributions to the mass. Subsidiary provisions are added: but there, in Section 7, at the heart of the statutory scheme, is the clearest recognition that both the individual's qualification to participate and the extent of his participation are referable to his having supplied particular wool for appraisement, and are referable to no other consideration.

This being so, it may seem somewhat odd that support for the contention that the amount received is not income is claimed from the well-known line of decisions upon the question whether gratuitous payments are assessable as profits arising out of the recipients' employment or by reason of his office, within the meaning of English taxing statutes. The distinction those decisions have drawn between taxable and non-taxable gifts is the distinction between, on the one hand, gifts made in relation to some activity or occupation of the donee of an income-producing character, such gifts being variously described as accruing to the donee in virtue of his office (*Herbert* v. *McQuade* (1902) 2 K.B. 631, at 649), or as remuneration (*Beynon* v. *Thorpe* (1928) 14 T.C. 1 at 11, *Seymour* v. *Reed* (1927) A.C. 554 at 559), or in respect of his past services (*Beynon* v. *Thorpe*, supra, at 14), or substantially in respect of his services (*Blakiston* v. *Cooper* (1909) A.C. 104 at 107); and, on the other hand, gifts referable to the attitude of the donor personally to the donee personally, such as those which have been called mere gifts or presents made to the donee on personal grounds (*Seymour* v. *Reed*, supra, at 559), mere donations (*Stedeford* v. *Beloe*, 1932, A.C. 338 at 391), gifts moved by the remembrance of past services already sufficiently remunerated as services in themselves (*Beynon* v. *Thorpe*, supra, at 14), payments peculiarly due to the personal qualities of the particular recipient, or personal gifts as marks of esteem and respect (*Blakiston* v. *Cooper*, supra, at 107, 108). The application of the distinction thus drawn ought surely to be that amounts such as that now in question are to be regarded as income if they were received in relation to wool supplied for appraisement

In the High Court of Australia.

No. 13. Reasons for Judgment.

Kitto, J. 13th April, 1953— *continued.*

in the course of a business carried on for profit. The Act makes it plain that these amounts are made payable in respect of the wool which was supplied and because it was supplied; not because of any admiration for the personal qualities of the suppliers or because of gratitude for their having supplied wool for which adequate payment was considered to have been made already.

The explanation of the Appellant's reliance upon the line of cases just referred to is that in *Maslen's* case (*Perpetual Executors Trustees & Agency Co. (W.A.) Ltd.* v. *Maslen & Ors.* (1952) A.C. 215), Lord Porter, in the course of stating the reasons of the Judicial Committee, described as " personal gifts " certain payments of the very kind with which the present case is concerned. If I understood his Lordship to have used that expression in the sense which it has in the tax cases, I should of course put aside at once any inconsistent view of my own. But when account is taken of the actual problem to which the judgment was addressed, when one considers the precise question raised by the case and the competing views which had been reflected in the judgments delivered in this Court, it becomes, I venture to think, quite clear that in the context of their Lordships' judgment the expression " personal gift " has a meaning which not only affords no support for the argument of the Appellant here but tends strongly in the opposite direction.

The amount in question in *Maslen's* case had been distributed in relation to wool which had been supplied for appraisement by a firm consisting of two partners. After the wool had been so supplied, one of the partners assigned to a third party all his right title and interest as a partner in the assets of the partnership. Thereafter the partnership was dissolved. Upon a distribution being made under the Wool Realization (Distribution of Profits) Act, 1948, the question arose whether the destination of the assignor's share in that distribution was affected by the assignment. In this Court (82 C.L.R. 101), Latham C.J. and I considered that the question should be answered in the affirmative because of the provisions of sub-sections (2) and (3) of Section 10 of the Act. Sub-section (2) provides that where participating wool was supplied for appraisement by a partnership which has been dissolved, an amount which would otherwise be payable to the partnership may be paid by the Commission to any partner; and sub-section (3) provides that where an amount has been paid in pursuance of the section (and the amount in question in *Maslen's* case had been so paid), the rights, duties and liabilities of the person to whom it is paid in respect of the amount shall be the same as if it were part of the proceeds of a sale of the wool of the partnership, made at the time of the supply of the wool for appraisement. If the wool supplied for appraisement by the partnership in *Maslen's* case had been sold by auction instead of being supplied for appraisement, and part of the proceeds of sale had remained outstanding and had come in at the time when the distribution was made under the Act, the assignee would clearly have been entitled to that part of the proceeds of sale; and for that reason

the majority of the Court considered that the assignee was entitled to the distribution moneys, not by force of the assignment itself, but by force of the parallelism which Section 10 (3) required to be observed.

Fullagar J. dissented. He considered that the main general provision of the Act was the provision in Section 7 (3) that an amount payable under the Act in relation to any participating wool shall be payable to the person who supplied the wool for appraisement. He pointed out (at p. 121) that the general principle of the Act was that the wool produced the profit, and the man who produced the wool should receive the profit. Sub-section (3) of Section 10 his Honour regarded as simply giving a particular legal character to a sum of money, and as doing so without creating the inferential consequences, first that a debt must be regarded as having been owed to the suppliers of the wool as from the date on which they supplied it, and secondly, that any past transaction affecting debts owing to the suppliers at the time of the transaction must be deemed to have affected a notional debt created by the sub-section.

Now, their Lordships of the Privy Council had to choose, as they said (1952 A.C. at p. 229), between the two constructions, and they upheld the view of Fullagar J. They said (at p. 227) that the sums paid by the Commission were admittedly nothing but a gift, and (at p. 229) that it would do violence to that admitted fact to construe the provisions (of Section 10) as going further than to require a member of a dissolved partnership to account to his former partner, that is to say as going so far as to stipulate that the money should be dealt with as if it were the result of a contract or debt which came into existence when the wool was supplied for appraisement. Thus their Lordships decided the case by giving effect to what they considered to be the intention permeating the Act, that is to say the intention that the man who supplied participating wool for appraisement, and (broadly) no one else, should participate in distributions. If I understand the judgment correctly, it was for the purpose of emphasising that intention that the expression " personal gift " was used to describe an amount paid to a participant in a distribution. The moneys payable under the Act, being bestowed as the Parliament had seen fit to bestow it, were described by their Lordships as " payable to the supplier " (p. 229). " It is a true gift," they said, " to the supplier of the wool " (p. 229); " a personal gift to the parties concerned " (p. 230). It seems clear that what their Lordships were insisting upon by their use of the term " personal gift " was that Section 10 must be construed in the light of the essential point in the scheme of the Act, which was that the wool disposals profits were to be put into the very hands from which participating wool had been compulsorily taken. So construed, Section 10 had the effect of attaching to those profits, when they reached the hands of a member of a partnership which had supplied participating wool for appraisement, the incidents which would have attached *at the time when the wool was supplied* to the proceeds of a sale of the wool made by the partnership at that time. That meant that it was incorrect to give the

In the High Court of Australia.

No. 13. Reasons for Judgment.

Kitto, J. 13th April, 1953— *continued.*

section such a retrospective operation as it would have if treated as allowing events occurring between the supply of the wool for appraisement and the distribution under the Act to alter the destination of the moneys distributed. The destination remained what it would have been if those events had not happened; the recipients were selected by reference to the fact that it was they who had supplied wool for appraisement; the Act operated in favour of them personally.

The point which was decided in the particular case was that the assignment made by one partner after the partnership had supplied wool for appraisement, even though it was an assignment of his partnership interest as an entirety, could not operate under Section 10 to deprive the assignor of the right to receive for his own benefit his share of moneys distributed under the Act in relation to the partnership wool; for it was to him and his co-partners, and to them alone, that the Act intended the proper proportion of the wool disposals profit to go. It was to go to them as individuals personally selected as having themselves supplied for appraisement the wool to which the proportion related; it was bestowed upon them—given to them if you will—as individuals, personally; it was a personal gift to them.

But this did not mean that moneys received in a distribution under the Act did not possess in the hands of the recipients the same character as would have attached to payments received in satisfaction of a legal right to be paid for the wool supplied. The argument their Lordships were concerned to deny was that the beneficial title to the moneys received was to be determined as if those moneys were paid in satisfaction of a debt which had arisen at the time of the supply and had remained unpaid until the date of distribution. Their Lordships decided, in effect, that Section 10 (3) should be construed as operating only as between the former partners themselves (and of course their estates if they had died), and not so as to give rights to outsiders. And why? Because it was the partners who had supplied the wool; it was they who were the chosen beneficiaries of the Act. And bearing that fact in mind, all that Section 10 (3) should be understood as doing was to require, for the purpose of adjusting the rights of the partners *inter se*, the hypothesis of a sale at the date of supply, that is to say a sale on the terms of immediate payment in cash, and not a sale on the terms that a debt for a portion of the price should remain outstanding so as to be exposed to divesting as a result of subsequent events. But all this being granted, the question remains, what was the character in which the subject matter of the " personal gift " came to the hands of the recipients? Their Lordships gave the answer and underlined it, I should have thought, when they described the payment (at pp. 229 and 230) as " the extra proceeds," " the extra profit," " the additional " payment," and " the extra sum paid." There could hardly be a clearer recognition of the similarity in character of the moneys distributed under the Act and the moneys which at an earlier date had been paid for the wool under the Regulations.

It is pertinent to recall some remarks made by Atkinson J. in *Calvert* v. *Wainwright* (1947) K.B. 526, which was a case concerning tips received by taxi drivers from their passengers. His Lordship said (at p. 527): "I shall deal with the authorities in a moment, but the principle which "they establish, if I understand them correctly, is that tips received by "a man as a reward for services rendered, voluntary gifts made by people "other than the employers, are assessable to tax as part of the profits "arising out of the employment if given in the ordinary way; but, on the "other hand, that personal gifts, which means gifts to a man on personal "grounds, irrespectively of and without regard to the question of whether "services have been rendered or not, are not assessable." The Commissioners have obviously misunderstood what is meant by a personal gift. They have not found that the tips were personal gifts: they have found that they were gifts given to the Respondent personally, which is a totally different thing. Every tip is given to a man personally, but that merely means that it is given to him for his own benefit, and not for that of the employers. Having listened to the cases, the Commissioners thought the words "personal gift" meant given to him personally, whereas it is quite clear from the cases that what is meant by "personal gifts" is a condensation of the full sentence "personal gifts given on personal grounds "other than for services rendered." To describe the moneys in question in the present case as personal gifts in the sense of the tax cases would be to fall into the very error which the Commissioners had made in *Calvert* v. *Wainwright.*

For these reasons I am of opinion that the receipt here in question was a receipt on income account. The question whether it should be included in the assessable income of the year of receipt or of an earlier year presents no difficulty. Under statutes such as that which the House of Lords had to consider in *Gardner, Mountain and D'Ambrumenil Ltd.* v. *Inland Revenue Commissioners* (1947) 1 All E.R. 650, it is often proper to re-open the accounts of a past year and to attribute a subsequent receipt to that year as being the year in respect of which it arose. No such process is possible here, for under the provisions of the Income Tax Assessment Act which govern this case the inclusion of an amount in the assessable income of a year depends upon its having been derived in that year. There is no ground upon which the moneys in question here can be considered to have been derived in any year earlier than that in which the Appellant received them.

In my opinion the questions asked in the stated case should be answered:

1. Yes.
2. In the year ended 31st December, 1949.

In the High Court of Australia.

No. 14. Order of the Full Court of the High Court of Australia. 13th April, 1953.

No. 14.

Order of the Full Court of the High Court of Australia.

Ct. Bk. No. 20 of 1951.

IN THE HIGH COURT OF AUSTRALIA.
PRINCIPAL REGISTRY.

IN THE MATTER of the Income Tax Assessment Act, 1936–1949

AND

IN THE MATTER of an appeal thereunder by the SQUATTING INVESTMENT COMPANY LIMITED, against Assessment issued on the 13th day of April, 1950, in respect of income derived during the year ended on the 31st day of December, 1949.

Between

THE SQUATTING INVESTMENT COMPANY LIMITED ... ... *Appellant*

and

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA ... ... *Respondent.*

Before Their Honours Mr. Justice McTIERNAN, Mr. Justice WILLIAMS, Mr. Justice WEBB, Mr. Justice FULLAGAR and Mr. Justice KITTO.

Monday, the 13th day of April, 1953.

THE CASE stated pursuant to Section 198 of the Income Tax Assessment Act, 1936–1949, by His Honour the Chief Justice on the 3rd day of July, 1952, for the opinion of the Full Court upon questions of law arising on the abovementioned appeal coming on for hearing before this Court at Melbourne on the 21st, 22nd, 23rd and 24th days of October, 1952 UPON READING the said Case Stated AND UPON HEARING Mr. D. I. Menzies of Queen's Counsel and Mr. Aickin of Counsel for the abovenamed Appellant and Mr. Adam of Queen's Counsel and Mr. Lush of Counsel for the abovenamed Respondent THIS COURT DID ORDER on the said last-mentioned day that the Case Stated should stand for judgment and the same standing for judgment this day accordingly at Sydney THIS COURT DOTH DETERMINE AND ANSWER the questions in the Case Stated as follows :—

Question (i) Is the sum of £22,851 referred to in paragraph 42 above assessable income of the Appellant within the meaning of the Income Tax Assessment Act, 1936–1949 ?

Answer No.

Question (ii) IF SO, was the said amount part of its assessable income in the year ended 31st December, 1949, or in some other and what year or years ?

Answer Does not arise.

In the High Court of Australia.

No. 16. Order of the Full Court of the High Court of Australia. 13th April, 1953— *continued.*

AND THIS COURT DOTH ORDER that the costs of the Case Stated be reserved for the consideration of the Justice of this Court disposing of the appeal.

By the Court,

M. DOHERTY,
Deputy Registrar.

No. 15.

No. 15. Order of Kitto, J. 15th May, 1953.

Order of His Honour Mr. Justice Kitto.

Ct. Bk. No. 20 of 1951.

IN THE HIGH COURT OF AUSTRALIA.
PRINCIPAL REGISTRY.

IN THE MATTER of the Income Tax Assessment Act, 1936–1949

AND

IN THE MATTER of an appeal thereunder by the SQUATTING INVESTMENT COMPANY LIMITED, against Assessment issued on the 13th day of April, 1950, in respect of income derived during the year ended on the 31st day of December, 1949.

Between

THE SQUATTING INVESTMENT COMPANY LIMITED ... ... *Appellant*

and

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA ... ... *Respondent.*

Before His Honour Mr. Justice KITTO.

Friday, the 15th day of May, 1953.

THIS APPEAL against an assessment of income tax in respect of income derived by the abovenamed Appellant during the year ended on the 31st day of December, 1949, coming on for further hearing before this Court at Adelaide this day UPON READING the Case Stated by his Honour the

In the High Court of Australia.

No. 15. Order of Kitto, J. 15th May, 1953— *continued.*

Chief Justice on the 3rd day of July, 1952, and the order of the Full Court of this Court made on the 13th day of April, 1953 AND UPON HEARING Mr. Millhouse of Counsel for the said Appellant and Mr. Astley of Counsel for the abovenamed Respondent THIS COURT DOTH ORDER in accordance with the answers made to the questions set forth in the said Order of the Full Court that this appeal be and the same is hereby allowed AND THIS COURT DOTH FURTHER ORDER that the said assessment be amended so that the sum of £22,851 referred to in the notice of objection being the amount received by the Appellant during the year ended on the 31st day of December, 1949, under and pursuant to the Wool Realization (Distribution of Profits) Act, 1948, is excluded from the Appellant's assessable income derived in that year AND THIS COURT DOTH ALSO ORDER that the costs of the Appellant of this appeal including the costs of the Case Stated be taxed by the proper officer of this Court and when so taxed and allowed be paid by the Respondent to the Appellant.

By the Court,

J. G. HARDMAN,
Principal Registrar.

In the Privy Council.

No. 16. Order in Council granting Special Leave to Appeal. 1st August, 1953.

No. 16.

Order in Council granting Special Leave to Appeal.

AT THE COURT AT BUCKINGHAM PALACE.

The 1st day of August, 1953.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD CHANCELLOR.
LORD PRESIDENT.
CHANCELLOR OF THE DUCHY OF LANCASTER.
MR. SECRETARY LYTTELTON.
SIR THOMAS DUGDALE.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 6th day of July, 1953 in the words following, viz. :—

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was

No. 16.
Order in Council granting Special Leave to Appeal. 1st August, 1953—*continued.*

referred unto this Committee a humble Petition of The Commissioner of Taxation of the Commonwealth of Australia in the matter of an Appeal from the High Court of Australia between the Petitioner (Respondent) and Squatting Investment Company Limited Respondent (Appellant) setting forth (amongst other matters): that the Petitioner desires special leave to appeal from two Orders of the High Court of Australia one made by the Full Court on the 13th April 1953 answering certain questions upon a case stated by the Chief Justice and the other made by Mr. Justice Kitto on the 15th May 1953 allowing pursuant to such answers the Appeal of the present Respondent from its assessment for income tax for the year ended 31st December 1949 under the Income Tax Assessment Act 1936–49 and the Income Tax Act 1949 of the Commonwealth of Australia: that the case is in the nature of a test case to determine the liability of the woolgrowers of Australia for income tax upon distributions made to them under the Wool Realization (Distribution of Profits) Act 1948 which provides for distribution among woolgrowers of profits accruing to the Commonwealth Government as a result of arrangements regarding wool made between the United Kingdom and Commonwealth Governments from the year 1939 onwards: that the Respondent taxpayer having been assessed to income tax by the Petitioner in respect of income of the year ended 31st December 1949 objected to the inclusion as part of its assessable income of a sum of £22,851 being a distribution to it in the year 1949 under the Wool Realization (Distribution of Profits) Act 1948 and the Petitioner disallowed the objection and at the request of the Respondent treated the objection as an Appeal and forwarded it to the High Court: that the Chief Justice of the High Court stated a case for the opinion of the Full Court of the High Court on the following questions of law arising on the Appeal—(1) Is the sum of £22,851 referred to in paragraph 42 of the case assessable income of the Appellant within the meaning of the Income Tax Assessment Act, 1936–1949? (2) If so was the said amount part of its assessable income in the year ended 31st December 1949 or in some other and what year or years?: that the Full Court of the High Court by a majority answered the questions as follows:—(1) No; (2) Does not arise: that the case with the opinions of the High Court was remitted to Mr. Justice Kitto who made an order allowing the Appeal of the Respondent: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Orders of the High Court dated the 13th April 1953 and the 15th May 1953 respectively and for further or other relief:

" THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to

In the Privy Council.

No. 16. Order in Council granting Special Leave to Appeal. 1st August, 1953— *continued.*

enter and prosecute his Appeal against the Orders of the High Court of Australia dated respectively the 13th day of April 1953 and the 15th day of May 1953:

"AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 10

WHEREOF the Governor-General or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

In the Privy Council.

No. 34 of 1953.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

BETWEEN

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA (*Respondent*) *Appellant*

AND

THE SQUATTING INVESTMENT COMPANY LIMITED (*Appellant*) *Respondent.*

RECORD OF PROCEEDINGS

COWARD, CHANCE & CO.,
St. Swithin's House,
Walbrook, London, E.C.4,
Solicitors for the Appellant.

WOODROFFES,
Stangate House,
235 Westminster Bridge Road,
London, S.E.1,
Solicitors for the Respondent.

GEO. BARBER & SON LTD., Printers, Furnival Street, Holborn, E.C.4, and Cursitor Street, Chancery Lane.
(A61998)