Privy Council Appeal No. 34 *of* 1953

The Commissioner of Taxation of the Commonwealth of Australia - - - - - - - - - - *Appellant*

v.

The Squatting Investment Company Limited - - - *Respondents*

FROM

THE HIGH COURT OF AUSTRALIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST JANUARY, 1954

Present at the Hearing:

LORD PORTER
LORD MORTON OF HENRYTON
LORD REID
LORD ASQUITH OF BISHOPSTONE
LORD COHEN

[*Delivered by* LORD MORTON OF HENRYTON]

On the 30th November, 1949, the respondents received the sum of £22,851 as their share of an interim distribution made by the Australian Wool Realisation Commission pursuant to the Wool Realisation (Distribution of Profits) Act, 1948. The respondents were assessed to income tax on this sum as being part of their assessable income derived during the year ending the 31st December, 1949. The respondents objected to the inclusion of the said sum in the assessment, and the objection was treated as an appeal and forwarded to the High Court under section 187 of the Income Tax Assessment Act, 1936-1949. Sir Owen Dixon, C.J., stated a Case for the opinion of the Full Court of the High Court, under section 198 of the same Act.

The questions for the opinion of the Full Court were as follows:—

"(i) Is the said sum of £22,851 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?"

The Full Court by a majority (McTiernan, Williams and Webb JJ.; Fullagar and Kitto JJ. dissenting) answered question (i) in the negative. The case was then remitted to the High Court and Kitto J., in accordance with the answer given by the Full Court, ordered that the sum in question be excluded from the assessable income of the respondents.

The Commissioner appeals by special leave from the decision of the Full Court and the consequent Order of Kitto J, and contends that the sum in question is taxable under section 25 of the Income Tax Assessment Act, which is in the following terms so far as material:—

"(1) The assessable income of a taxpayer shall include—

(*a*) where the taxpayer is a resident—

the gross income derived directly or indirectly from all sources whether in or out of Australia . . . which is not exempt income."

The Commissioner also relied in the alternative upon the following clause of section 26:—

"The assessable income of a taxpayer shall include—

(*a*) profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit-making undertaking or scheme.

(*g*) 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 relevant facts are fully stated in the Case Stated, and may be summarised for the purpose of the present appeal as follows:—

The respondents own pastoral properties in the States of New South Wales and Queensland and on such properties they carry on (*inter alia*) the business of wool growers. This business was carried on by the respondents during the years 1939 to 1946 inclusive and the wool grown by the respondents in the seven wool seasons 1939-40 to 1945-46 inclusive was acquired by the Commonwealth pursuant to the National Security (Wool) Regulations (Statutory Rules 1939 No. 108). These Regulations were made for the purpose of carrying out an arrangement (hereafter 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. 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.

A Central Wool Committee and also a State Wool Committee for each State was set up by the Wool Regulations. The following Regulations should be set out in full:—

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.

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.

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.

In pursuance of the Regulations the Commonwealth acquired the whole of the Australian wool clip in each year during the war and the suppliers of the wool duly received the whole of the compensation moneys to which they were legally entitled under the Regulations. It is unnecessary for the present purpose, to refer to the "flat rate adjustment" and the "retention moneys" which are mentioned in the Stated Case.

The United Kingdom Government resold part of the wool purchased by it to other countries and established in its books an account entitled "Divisible Profits Account" from which could be ascertained the profit divisible equally between the United Kingdom Government and the Commonwealth Government under the Wool Purchase Arrangement.

Paragraph 26 of the Stated Case states as follows, so far as material for the present purpose:—

> "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.' 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, . . . The suppliers of skin wool . . . . 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.'"

The wool submitted by the respondents was listed as "participating" wool and their Lordships think it can fairly be inferred that this fact

coupled with the terms of Regulation 30 (2) must have led the respondents to hope, if not to expect, that the Central Wool Committee might make further payments to them in exercise of the discretion vested in that Committee by Regulation 30 (2).

For a summary of the subsequent events leading up to the passing of the Wool Regulation (Distribution of Profits) Act 1948, it is convenient to quote three paragraphs of the Case Stated:—

> 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.
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> 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.
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> 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.

Section 9 (3) of the Act of 1945 provided that 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; . . . .

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;

(ii) the assets of the Central Wool Committee shall, by force of this Act, be vested in the Commission;

(iii) all rights, obligations and liabilities which, immediately prior to the commencement of this Act, were vested in or imposed on the Central Wool Committee shall, by force of this Act, be vested in or imposed on the Commission;"

Thus the Australian Wool Realisation Commission was the true successor of the Central Wool Committee set up under the 1939 Regulations, and section 10 provided that any reference in the 1939 Regulations to the Wool Purchase Arrangement "shall include or shall be deemed at all times, on or after the 1st day of August, 1945, to have included a reference to the Disposals Plan".

The operations of the joint organisation in respect of Australian wool resulted in large profits, and it became necessary for the Commonwealth to decide what ought to be done with these profits. The Wool Realization (Distribution of Profits) Act, 1948 is entitled "An Act to provide for the distribution of any ultimate profit accruing to the Commonwealth under the Wool Disposals Plan, and for other purposes." Section 18 of the Act directed the preparation of a list showing (*a*) the persons who, in the opinion of the Commission (i.e. the Australian Wool Realization Commission) were entitled to share in distributions under this Act; and (*b*) the appraised values of the wool in relation to which each such person was, in the opinion of the Commission, so entitled. Section 4 contained a number of definitions, of which the following should be quoted:—

"'appraised value', in relation to wool, means the value at which the wool was appraised under the National Security (Wool) Regulations;

. . . . .

'declared amount of profit' means an amount which has been specified in a notice published in the "Gazette" in pursuance of section six of this Act;

'participating wool' means wool appraised under the National Security (Wool) Regulations (whether under those Regulations when in force under the *National Security Act* 1939, or that Act as amended, or under those Regulations when in force under the *Wool Realization Act* 1945, or that Act as amended), being wool which was listed as participating wool in the appraisement catalogue used by the appraisers for the purpose of that appraisement;

. . . . .

'the net profit' means the amount remaining after deducting from the wool disposals profit the expenses and charges of the Commission in administering this Act, other than commission payable to brokers;"

Section 6 (1) provides:

"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 profit."

Part III of the Act is headed "Persons Entitled", and section 7 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."

Section 8 contains a provision with regard to wool which was submitted by a dealer for appraisement, and is not material for the present purpose.

Sections 9 to 14 inclusive deal with the situation which may have arisen by reason of various events, such as the death or bankruptcy of the person who supplied the wool for appraisement, and section 10 should be quoted in full, as it was the section which came under consideration in *Maslen's* case, hereafter mentioned.

"10.—(1) Where participating wool was supplied for appraisement by a company which is defunct, an amount which would otherwise be payable under this Act to the company may be paid by the Commission to such person as appears to the Commission to be justly entitled to receive it.

(2) Where participating wool was supplied for appraisement by a partnership which has been dissolved, an amount which would otherwise be payable under this Act to the partnership may be paid by the Commission to any former partner or partners (including the personal representatives of a deceased former partner).

(3) Where an amount has been paid in pursuance of this section, 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 by the company or partnership, made at the time of the supply of the wool for appraisement."

The sum of £22,851 now in question was paid to the respondents under section 7 of the Act of 1948. They are still carrying on business as suppliers of wool.

Counsel for the appellant submitted that the sum in question was in the hands of the respondents, a trade receipt of an income nature, and relied strongly upon the case of *Ritchie* v. *Trustees Executors and Agency Company Limited and others* (84 C.L.R. 553). In that case the High Court had to consider a case in which the trustees of a will had carried on business on a pastoral station, under a power in the will, and had

from time to time submitted " participating " wool for appraisement under the Regulations of 1939. They received a sum of £4,770 under the provisions of the Act of 1948 and the question before the High Court was whether this sum should be treated as capital or income in the hands of the trustees

The Full Court of the Supreme Court of Victoria had held that the trustees " should hold and deal with the moneys as a receipt of an income nature in relation to the Murray Downs station-property business, to be brought into account accordingly and dealt with in accordance with the trusts of the will of Charles Campbell deceased relating to the station properties " and the High Court unanimously affirmed this decision. It is true that the minds of the learned Judges of the High Court were not specifically directed to the question of income tax, but there are passages in the judgment of the Court which are so important for the present purpose that they must be quoted in full. At pp. 576 and 577 the Court said:—

> " For the purpose of determining whether the payment received by the trustees of the will from the Wool Realization Commission should be regarded as capital or income, and if income to what period of enjoyment it is attributable, it has been thought important to trace from the beginning the relevant steps in the extensive and complex governmental transaction which the distribution of profit in question brings almost to an end. If this were not done it would be easy to misconceive the relation of the supply of wool for appraisement to the wool disposals profit and to the right conferred by the Act to share in its distribution in accordance with the appraisement value of the wool submitted. 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. But it was equally clear that no legal right to participate in a distribution of profits was conferred upon suppliers of participating wool, that is, until the enactment of the Wool Realization (Distribution of Profits) Act 1948. In the beginning it was made to depend wholly on the discretion of the Central Wool Committee. It is conceivable that a court interpreting the regulations might have implied limitations upon the manner in which the discretion was exercisable, but even so no right to participate could possibly have been imputed, particularly having regard to the reasons upon which were based the decisions in *John Cooke & Co. Pty. Ltd.* v. *Commonwealth* ((1922) 31 C.L.R. 394 (1924) 34 C.L.R. 269). No payment to the supplier of wool, beyond, at all events, appraised value (whether appraised value *simpliciter* or adjusted to flat rate is not material) was required by the regulations; all else remained a matter of administration. 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. Section 9 (3) of the Wool Realization Act 1945-1950 transferred the powers of the Central Wool Committee to the Wool Realization Commission and the Wool Realization (Distribution of Profits) Act 1948 removed the whole matter of the disposal of profits from the province of administrative discretion and placed the distribution upon a defined statutory basis. Not only did it convert the expectations which existed into claims which though not actionable (see section 28) became claims with a legal foundation; it also provided an appropriate and definitive rule for a number of situations of difficulty arising from death, bankruptcy, change of persons acting in a representative capacity and dissolution of partnerships and of companies, it invalidated assignments and it prescribed the machinery of distribution.

The rule which the legislature adopted for cases in which one of the events mentioned occurred between the supply of participating wool for appraisement and the distribution varied in expression, but in effect it was to require the moneys to be dealt with as if the supply of wool for appraisement had been a sale made at the time of such supply and the amount payable out of the distributable profits were part of the proceeds of sale. This of course does not mean that there should be any notional change in the date of receipt, only that, treating the payment as received on the actual date of receipt it should for the specified purposes be regarded as though it were a payment, that is, a delayed or deferred payment of part of the proceeds of a sale of the wool made at the time of appraisement. None of these provisions applies to the facts of the present case. The trustees themselves submitted the wool for appraisement acting under trusts established long before the Wool Purchase Arrangement, the settlement preceded it and there is no question of an assignment within section 29."

After setting out certain contentions advanced on behalf of the parties interested in capital, the Court proceeded:—

"The course pursued to give effect to the Wool Purchase Arrangement by the acquisition of wool from the grower must be considered as an entirety. The receipt of the payments is an actual consequence of the submission of wool for appraisement. It is a consequence which from the beginning was contemplated as a contingent result of submitting the wool for appraisement. Legally it was left for the time being to the discretion of the Central Wool Committee. But administrative arrangements were made from the beginning by that body in readiness for the contingency becoming actual, by determining what wool should share and what should be excluded and by expressly appraising on that footing the wool submitted.

The two statutes, the Wool Industry Fund Act 1946 and the Wool Realization (Distribution of Profits) Act 1948, are not disconnected. Together they take up the discretion which reg. 30 (2) vested in the Central Wool Committee, a body superseded under the Wool Realization Act 1945-1950, and proceed to deal with the subject legislatively instead of administratively. The one statute says what part of the funds governed by that sub-regulation should be applied in the language of the Act for purposes associated with the wool industry. The other statute gives legislative effect to the expectation that the amounts arising upon divisible profits account under the Wool Purchase Arrangement with the United Kingdom should be distributed among growers as a percentage of the appraised value of the participating wool submitted and it provides the machinery for the purpose.

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. The source of the distribution is in effect the fund arising under the divisible profits clause in the Arrangement. When the Wool Realization (Distribution of Profits) Act 1948 speaks of the rights, duties and liabilities of a person made a payee in respect of wool submitted by a defunct company, a dissolved partnership or a deceased person being the same as if the amount were part of the proceeds of a sale of the wool by the Company, partnership or deceased person at the

time of the supply of the wool for appraisement, the purpose is not to require an assumption entirely departing from the truth but simply to bring the situation within an express definition which would remove all doubt of its character. It may possibly be true that the compulsory submission of wool for appraisement did not amount to a 'sale' and that whatever the transaction be called the word 'proceeds' could properly be used only of the appraised value or the appraised value adjusted to flat-rate parity, because all else depended entirely on administrative or legislative discretion. But, apart from questions of legal right and legal definition, there is no closer practical analogy than that which sections 10 (3) and 11 (*b*) adopt, viz., the proceeds of a sale of the wool. They are receipts resulting from the operations of growing wool."

It is obvious that these views, expressed with so much force and clarity, have a strong bearing upon the present appeal. There are no circumstances which differentiate the payment made to the trustees in *Ritchie's* case from the payment made to the respondents in the present case. When the trustees and the respondents respectively received these payments they were still carrying on the business in the course of which they had submitted wool for appraisement in the years 1939 to 1946. Thus *Ritchie's* case, like the present case, was one to which the special provisions in sections 8 to 14 inclusive of the Act of 1948 did not apply. Moreover, their Lordships do not think that the decision in *Ritchie's* case rested upon any equitable principles applicable as between life tenant and remainderman ; it rested simply upon the character of the payment—was it capital or income?

Before commenting further on the judgment in *Ritchie's* case, their Lordships will turn to the case of *Perpetual Executors Trustees & Agency Co. (W.A.) Ld.* v. *Maslen* (1952 A.C. 215) as the three Judges forming the majority in the High Court in the present case undoubtedly attached great importance to *Maslen's* case and to certain observations made by their Lordships' Board in the course of its judgment.

The facts in *Maslen's* case were as follows:—

One Connolly, who died on December 28, 1946, had until June 30 of that year been in equal partnership with one Laffer in a pastoral business in Western Australia known as the Mardathuna Pastoral Co. By a deed dated June 17, 1946, and operating from July 1 of that year, Connolly assigned the beneficial interest of his half share in the company to the Maslens in equal shares as tenants in common. Since the question as to what the property assigned included was in dispute between the partles, the exact terms in which the assignment was made should be quoted in so far as they are material.

By clause 1 of the assignment it was provided that Connolly assigned to the Maslens "all his right title and interest in . . . (*d*) . . . the benefit of all contracts and engagements and book debts to which Patrick Andrew Connolly and Claude Ashley Laffer may be entitled in connexion with the said business together with all other assets of the said business." The said business referred to was that of the company. By another deed dated October 2, 1946, Laffer assigned his half share to one of the Maslens. Laffer's assignment was in no wider terms than that of Connolly's and need not be further referred to.

As a result of the Act of 1948, two sums became payable in respect of "participating" wool supplied for appraisement, prior to the 30th June, 1946, by Messrs. Connolly and Laffer.

The Maslens on the one hand, and Connolly's and Laffer's representatives on the other, claimed to be entitled to the two sums, and in those circumstances the latter took out originating summonses in the Supreme Court of Western Australia for the purpose of ascertaining to whom the

sums were properly payable. In the Supreme Court of Western Australia Walker J. decided in favour of the plaintiffs' claim, but the High Court (Latham C.J. and Kitto J. ; Fullagar J. dissenting) reversed that decision, and held that the assignees were entitled. On appeal their Lordships' Board, in agreement with Walker J. and Fullagar J. took the view that the sums in question did not pass under the assignment.

The issue before the Board (omitting one question not material for the present purpose) was thus stated in the Judgment: " What is the true destination of these two sums and any other sums which may be paid by the Commission in respect of participating wool furnished by the partnership of Messrs. Connolly and Laffer? " It is important to see exactly what were the contentions put before the Board and how the Board chose between these contentions. The contentions and the choice are set out as follows, on pp. 228-9 :—

> " The determination of the matters in issue in Australia, therefore, which are submitted to their Lordship's Board, falls to be decided on the true construction of the provisions of Part III of the Act. The appellants rest their argument on the terms of section 7 (3) and say that the share of the sums in dispute which they claim are payable in relation to participating wool, and accordingly payable to the persons who supplied it for appraisement. Messrs. Connolly and Laffer are the persons who supplied the wool jointly and are to be treated as one person (section 7 (3) and (4)). And accordingly the wool was supplied by a partnership which has been dissolved and the amount is properly payable to any former partner or partners, including the personal representatives of a deceased partner. The sums in dispute were, they say, properly payable to either of the claimants as representatives of Mr. Connolly or as representatives of Mr. Laffer, but not to the respondents.
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> The respondents, on the other hand, draw attention to the fact that the provisions of section 7 (3) " (in 1952 A.C. p. 228 section 10 (3) is referred to, but this is an obvious misprint) " are stipulated to be subject to the Act, and rely on the terms of sections 10 and 11 as distinguishing this from a case where a living partner claims the benefit of the payment. Section 10 (3), they say, no doubt authorizes payment, where a partnership is dissolved, to a former partner or his representatives. But when the money has been paid to him, his duties in dealing with it are prescribed by sections 10 and 11. Those duties, they contend, are to treat the payment as part of the proceeds of the sale of the wool made at the time of its supply for appraisement, i.e., as if the supplier was entitled to the payment at that time. An identical obligation is, they maintain, imposed on a personal representative under section 11, since he is enjoined not to treat the sum paid as part of the personal estate but as having the quality of the proceeds of a sale made by the deceased supplier at the time when he furnished the wool for appraisement.
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> Their Lordships have to choose between these two constructions. Obviously the recipient, whether he be a former partner or a personal representative, cannot keep the money for himself. If he be a member of a dissolved partnership, he must account to his former partner, and if he be a personal representative, he must treat the money as part of the estate which he is administering. But do the provisions go further and stipulate that it is to 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? So to construe the wording would be to do violence to the admitted fact that it is a gift. No doubt the wording might be clearer, but prima facie the sums received are payable to the supplier and it is for the claimants to establish the contrary.
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> The correct view, in their Lordships' opinion, 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."

In that passage the Board rejects the suggestion that section 10 (3) of the Act of 1948 has the result that a debt, equal to the amount of the subsequent payment, must be regarded as having been owed to the suppliers of the wool as from the date on which they supplied it. The suggestion thus rejected was the basis of the claim put forward by the assignees. They had contended that a debt of this amount must be deemed to exist at the date of supply, and as that date was prior to the assignment of 1946 the debt must be deemed to have been included in the assets assigned to them. The rejection of that suggestion, and the consequent refusal of that claim, was the only decision given by the Board in *Maslen's* case.

It will at once be seen that on this footing the decision in *Maslen's* case has no bearing upon the problem arising in the present case. There are, however, certain passages in the judgment upon which Mr. Menzies for the respondents strongly relied as indicating that sums paid to suppliers under the provisions of the Act of 1948 are not assessable income in the hands of the recipients. In the passage already quoted, the Board described the payment then in question as a " true gift " to the suppliers and later it was described as " a personal gift to the parties concerned ". In their Lordships' view the word " gift " does not assist the respondents. It was used in order to negative the idea that a *debt* was deemed to arise at the time when the wool was submitted for appraisement. Undoubtedly the Commonwealth was not bound to pay this sum to the suppliers. The payment was a voluntary one, though it fulfilled a well-founded hope or expectation on the part of the suppliers ; but it is well settled that a voluntary payment may be subject to income tax in the hands of the recipient. See for instance *Blakiston* v. *Cooper* (1909 A.C. 104). Nor does the use of the adjective " personal " assist the respondents, having regard to the circumstances in which it was used. The mind of the Board in *Maslen's* case was in no way directed to income tax questions, and it is inconceivable that by using this adjective their Lordships meant to suggest that the payment in question was awarded to the suppliers because of their exceptional personal merits or sterling characters. It was awarded to them simply because they had supplied wool for appraisement and section 7 of the Act of 1948 makes this abundantly clear. Their Lordships were of course quite aware of the distinction, for income tax purposes, between a gift " peculiarly due to the personal qualities " of the recipient (see *Blakiston* v. *Cooper* at p. 107) and a payment for goods or services, and they cannot have meant to suggest that the payment in question was of the former kind, as such a suggestion would be inconsistent with the plain words of section 7 (3).

Mr. Menzies relied also upon the sentence " It (the payment) is not, and never was, part of the assets of the partnership " as indicating that the payment to the present respondents could not be said to be a trade receipt. Their Lordships cannot accept this suggestion. In their view the sentence means no more than this, that the partnership between Connolly and Laffer had been dissolved before the payment was made, and the Board was again rejecting the argument that a book debt must be deemed to have come into existence during the continuance of that partnership.

Finally, their Lordships can find nothing in the judgment in *Maslen's* case to indicate that the Board disapproved of the reasoning or of the decision in *Ritchie's* case. The problem in *Maslen's* case was to identify the recipient of the sum then in question, not to decide whether that sum bore the character of capital or income in the hands of the recipient. It appears from the transcript of the proceedings in *Maslen*, though not from the report in 1952 A.C., that *Ritchie's* case was cited in the course of the argument ; and their Lordships entertain no doubt that if the Board in *Maslen's* case had thought that *Ritchie's* case bore upon the question in issue, and was wrongly decided, the latter case would have been mentioned in the judgment.

It was pointed out by Sir Hartley Shawcross that there are phrases in the judgment in *Maslen's* case which support the argument for the appellant. The payment is described as " the extra proceeds " (p. 229 *fin*) " the extra profit " and " the extra sum paid " (p. 230). Their Lordships recognise that these phrases might be read as indicating that in the view of the Board the payment then in question should be regarded as an additional sum added to the compensation already paid for the wool compulsorily acquired, but it would not be right to attach too much weight to the wording of phrases used *alio intuitu*. In their opinion neither the decision in *Maslen's* case, nor the reasoning on which that decision was based, afford any assistance in the problem now arising for decision. They have dealt with the case very fully because of the importance attached to it by the majority of the High Court in the present case, and because they realise that some passages in the judgment, divorced from their context, are open to misconception.

What then is the nature of the payment now in question, and in what capacity did the respondents receive it? Having regard to the whole history of the matter, beginning with the Wool Purchase Arrangement and the Regulations of 1939, continuing with the submission of wool for appraisement by the respondents and the classification of that wool as participating wool, and ending with the payment of the sum in question pursuant to section 7 of the Act of 1948, their Lordships come to the conclusion that the payment must be regarded as an additional payment voluntarily made to the respondents for wool supplied for appraisement or, if the compulsory acquisition can properly be described as a sale, a voluntary addition made by the Commonwealth to the purchase price of the wool. Their Lordships are in agreement with the reasoning and the decision in *Ritchie's* case and the following passages are particularly germane to the present problem:—" They (the payments) 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 . . . They are receipts resulting from the operations of growing wool."

The respondents were in business as wool suppliers at all material times, and the payment was made to them, not because of any personal qualities, but because they, among others, supplied participating wool. They supplied the wool in the course of their trade and this further payment was made to them because they supplied it. In the present case the respondents were still trading when the payment was made. It was in their hands a trade receipt of an income nature. Their Lordships express no opinion as to the proper description of the payment in the hands of a payee who was not trading at the date of the payment, as this case is not before the Board.

Mr. Menzies contended that even if this would have been the result, had the distribution been made by the Central Wool Committee in the exercise of its discretion under Regulation 30 (2) of 1939, a different situation had arisen, by reason of intervening events, before the distribution was in fact made. This contention, and the answer to it, are fully set out in the judgments of the minority of the High Court, and their Lordships agree with that answer. There is, in their view a chain of events which sufficiently connects the payment of the £22,851 in November, 1949, with the supply of wool for appraisement in 1939-1946. It is true that one of these events was a discretionary act on the part of Parliament, but that act was in effect the final link in the chain, since it directly associated the payment with the participating wool supplied for appraisement, first by directing payment to the suppliers, and secondly by making the amount of the payment depend upon the proportion which the appraised value of the participating wool supplied by each supplier bore to the total of the appraised value of all participating wool.

For these reasons, which are in substance the same as the reasons given by Fullagar and Kitto, JJ. in the High Court, their Lordships are of opinion that the sum in question forms part of the assessable income of the respondents under section 25 of the *Income Tax Assessment Act*. It is thus unnecessary to consider the alternative argument of the Crown which was based on section 26 of the same Act.

Mr. Menzies did not seek to contend that, if the payment was assessable, it could be attributed to any year other than the year ending the 31st December, 1949.

Their Lordships will humbly advise Her Majesty that this appeal should be allowed and each of the questions raised by the Stated Case should be answered in the affirmative. The respondents must pay the costs of the appellant here and in the High Court.

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In the Privy Council

THE COMMISSIONER OF TAXATION
OF THE COMMONWEALTH OF AUSTRALIA

v.

THE SQUATTING INVESTMENT COMPANY
LIMITED

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