Judgment 19 of 1972

(19)

IN THE PRIVY COUNCIL No. 13 of 1972

ON APPEAL

FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN :

ANKER LIVINGSTONE WARTHO HANSEN
VERNER RICKARD WARTHO HANSEN
NORMAN GARFIELD WARTHO HANSEN
ARNOLD TARELTON SMITH
ESTHER NAOMI SMITH Appellants

- and -

THE COMMISSIONER OF INLAND REVENUE Respondent

RECORD OF PROCEEDINGS

MESSRS. MACFARLANES,
Dowgate Hill House,
London, EC4R 2SY.
Solicitors for the
Appellants.

MESSRS. ALLEN & OVERY,
9/12 Cheapside,
London, EC2V 6AD.
Solicitors for the
Respondent.

IN THE PRIVY COUNCIL No. 13 of 1972

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BETWEEN:

ANKER LIVINGSTONE WARTHO HANSEN
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ARNOLD TARELTON SMITH
ESTHER NAOMI SMITH — Appellants

- and -

THE COMMISSIONER OF INLAND REVENUE — Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL No. 13 of 1972

ON APPEAL

FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN :

ANKER LIVINGSTONE WARTHO HANSEN
VERNER RICKARD WARTHO HANSEN
NORMAN GARFIELD WARTHO HANSEN
ARNOLD TARELTON SMITH
ESTHER NAOMI SMITH — Appellants

- and -

THE COMMISSIONER OF INLAND REVENUE — Respondent

RECORD OF PROCEEDINGS

In the Supreme Court of New Zealand

No. 1

CASE STATED

No.1

Case Stated

IN THE SUPREME COURT OF NEW ZEALAND
HAMILTON DISTRICT
HAMILTON REGISTRY G.R. 62/70

BETWEEN ANKER LIVINGSTONE WARTHO HANSEN
of Wallsford, Farmer
FIRST OBJECTOR

VERNER RICKARD WARTHO HANSEN
of Wellsford, Farmer
SECOND OBJECTOR

NORMAN GARFIELD WARTHO HANSEN
of Clevedon, Farmer
THIRD OBJECTOR

ARNOLD TARELTON SMITH
of Takapuna, Retired Farmer
FOURTH OBJECTOR

ESTHER NAOMI SMITH
of Takapuna, Retired Farmer
FIFTH OBJECTOR

A N D THE COMMISSIONER OF INLAND REVENUE
COMMISSIONER

In the Supreme Court of New Zealand

No. 1

Case Stated continued

CASE STATED

pursuant to section 32 of the Land and Income Tax Act 1954.

1. FOR a number of years prior to the year ended 31 March 1966 the Objectors carried on in partnership on two properties situated at Glen Murray and Clevedon the business of farmers. Profits or losses derived by the said partnership were allocated among the Objectors as follows:-

First Objector	¼ share
Second Objector	¼ share
Third Objector	¼ share
Fourth Objector	¼ share

The Fourth and Fifth Objectors entered into a further agreement in 1952 to share equally the Fourth Objector's share of the above profits.

2. ON 1 December 1964 an agreement was concluded between the First, Second, Third and Fourth Objectors and Lochiel Cameron Limited of Dunedin whereby the said property at Glen Murray was sold to Lochiel Cameron Limited as a going concern for £200,000 ($400,000). The said purchase price being apportioned as follows:

Land and buildings	£168,450	$336,900
Livestock	27,750	55,500
Dead Stock - Chattels	3,800	7,600
	£200,000	$400,000

The livestock comprised -

1265 head of cattle at £10 ($20) per head	12,650	25,300
10,000 head of sheep at 30/- ($3) per head	15,000	30,000
6 horses	100	200
	£27,750	$55,500

A copy of such agreement is annexed hereto and marked "A".

3. IN furnishing a return of income to the Commissioner for income tax purposes it was declared on behalf of the aforementioned partnership that the assessable income derived during the year ended 31st March 1966 was £13,760.6.11. ($27,520.69) allocated as follows -

First Objector	£3,440. 1. 8.	$6,880.17
Second Objector	£3,440. 1. 9.	$6,880.18
Third Objector	£3,440. 1. 9.	$6,880.18
Fourth Objector	£3,440. 1. 9.	$6,880.18
	£13,760. 6.11.	$27,520.69

Copies of the financial statements furnished in support of the said return are annexed hereto and marked "B".

4. SUBSEQUENTLY the Commissioner considered that the agreed sale price of livestock (£27,750/ $55,500) to Lochiel Cameron Limited was inadequate and accordingly from time to time acting under Section 101 of the said Act made adjustments to the income returned by the said partnership. The latest such adjustment being as follows -

Market value of sheep and cattle sold to Lochiel Cameron Limited

575	Breeding cows at £38	£21,850	
50	breeding cows at £34	1,700	
25	cows at £25	625	
100	Heifers at £28.10.0.	2,850	
50	Steers at £36	1,800	
15	Bulls at £75	1,125	
450	Weaner Calves at £25.10.	11,475	
1900	6 tooth Romney Wethers at £3.18.0.	7,410	
3700	4 tooth Romney Wethers at £4.2.0	15,170	
4200	2 tooth Romney Wethers at £4.5.0.	17,850	
200	4 and 6 tooth Romney Wethers at £3.10.0	700	
	Carried forward	£82,555	$165,110

In the Supreme Court of New Zealand

No.1

Case Stated 16th April 1970

continued

Brought forward	£82,555	$165,110
Less values returned	27,650	55,300
	54,905	109,810
Add income returned	13,760.6.11.	27,520.69
	£68,665.6.11.	$137,330.69

Allocated to -

First Objector	17,166.6.8.	34,332.67
Second Objector	17,166.6.9.	34,332.68
Third Objector	17,166.6.9.	34,332.68
Fourth Objector) Fifth Objector)	17,166.6.9.	34,332.68

5. SUBSEQUENTLY the Commissioner from time to time made amended assessments or assessments of the amount on which in his judgment income tax ought to be levied on the First, Second and Third Objectors in respect of the years ended 31 March 1963, 1964, 1965 and 1966 and the amount of such tax for those years. Such assessments were made pursuant to Section 101 and 103 of the Land and Income Tax Act 1954 and included the re-allocations of partnership income referred to in the previous paragraph hereof.

6. THE Commissioner from time to time also made assessments of the amount on which in his judgment income tax ought to be levied on the Fourth and Fifth Objectors in respect of the year ended 31 March 1966 and the amount of such tax for that year. Such assessments included the re-allocation of income referred to in paragraph 4 hereof under section 101 of the said Act after adjustments made pursuant to section 103 (2A) of the said Act.

7. THE Objectors objected to the said assessments referred to in paragraph 5 and 6 hereof on the grounds set forth in their accountants letter dated 22 May 1968. A copy of such letter is annexed hereto and marked "C".

8. UPON such objection being disallowed the Commissioner was required to state this case.

9. THE Objectors contend -

(1) Section 101 of the Land and Income Tax Act 1954 is not applicable in the circumstances of this case, being only applicable in the case of a sale of business assets and livestock at a global price.

(2) The Commissioner has no statutory power to disregard the contract price of the livestock separately identified in a contract made at arms-length.

(3) In any event, the values attributed by the Commissioner to the livestock in this transaction are incorrect.

10. THE Commissioner contends -

(a) That the Commissioner is correct in invoking the provisions of Section 101 Land and Income Tax Act 1954 to determine the consideration attributable to the livestock.

(b) That the value of the livestock as set out in paragraph 4 hereof is correct.

11. THE qestions for the determination of this Honourable Court are whether the Commissioner acted incorrectly in adjusting the partnership income as referred to in paragraph 4 hereof for the purposes of making the assessments referred to in paragraph 5 and 6 hereof, and if so, then in what respects should such assessments and which of them be amended.

DATED at Wellington this 16th day of April, 1970

"T.M. Hunt"

Chief Deputy Commissioner
of Inland Revenue

In the Supreme Court of New Zealand

No.1

Case Stated

Annexure "A" Agreement for Sale and Purchase 1st December 1964

continued

Annexure "A"

Agreement for Sale and Purchase

made through the Agency of

WRIGHT STEPHENSON & CO. LIMITED

(Licensed Land Agents)

MEMORANDUM OF AN AGREEMENT made this First day of December One thousand nine hundred and SIXTY FOUR

Vendor's full name, occupation and address.

BETWEEN VERNER RICKARD, WARTHO HANSEN, ANKER LIVINGSTONE WARTHO HANSEN & ARNOLD TARLETON SMITH ALL OF GLEN MURRAY FARMERS

(hereinafter referred to as "the Vendor") of the one part and LOCHIEL CAMERON LIMITED

Purchaser's full name occupation and address.

(hereinafter referred to as "the Purchaser") of the other part AND LIVE AND DEAD STOCK

WHEREBY the Vendor agree to sell and the Purchaser to purchase ALL THAT piece or parcel of land more particularly described in the Schedule hereto on the terms and conditions following that is to say:—

Purchase price.

1. The price is TWO HUNDRED THOUSAND POUNDS (£200,000)

Terms.

2. (a) The sum of TWO THOUSAND POUNDS (£2000)

has been paid as a deposit and as part payment of the purchase money as is hereby acknowledged:

(b) The balance of the said purchase money shall be paid as follows:—

AS TO THE SUM OF £8000. 0. 0 WITHIN SEVEN DAYS OF THE CONDITIONS CONTAINED IN CLAUSES 21, 22 and 23 HEREOF BEING SATISFIED.

AS TO THE SUM OF £190,000 IN CASH ON THE 2nd DAY JUNE 1965 (HEREINAFTER CALLED "THE DAY OF SETTLEMENT")

And if from any cause whatever (save the default of the Vendor) any portion of the purchase money shall not be paid upon the date hereby fixed for payment of the same the Purchaser shall pay to the Vendor interest at the rate of £6. 10. 0 per centum per annum on the remainder of the purchase money from that date until completion of the purchase but nevertheless this stipulation is without prejudice to any of the Vendor's rights under this Agreement.

Transfer.

3. Upon payment of the said purchase money and all interest thereon and other moneys (if any) then due hereunder the Vendor and all other necessary parties (if any) will execute a proper assurance of the said land such assurance to be prepared by and at the expense of the Purchaser and to be tendered to the Vendor for execution.

Possession.

4. Possession shall be given and taken upon the day of SEPTEMBER up to which date all outgoings and incomings shall be apportioned. From the time of signature of this Agreement by the parties hereto (or if this contract is a conditional contract then from the time when this contract becomes effective) the property hereby agreed to be sold is at the risk of the Purchaser with regard to fire tempest earthquake or deterioration of any kind except and to such extent as any loss or damage may be due to the negligence or default of the Vendor . Pending possession being given to the Purchaser and subject to the Purchaser obtaining the sanction of the Insurance Company concerned and subject to the rights of any mortgagee of the said land the Vendor will hold the existing policy or policies of insurance in trust for the Vendor and the Purchaser according to their respective rights and interests therein.

Objections to Title.

5. Any objection or requisitions on the title to which the Purchaser shall be entitled to make must be stated in writing to the Vendor's solicitor within seven days from the Vendor's furnishing the Purchaser with a reference to the title (time being essential) and in default thereof the same shall be held to be waived and the title to have been absolutely accepted by the Purchaser . In the event of the Vendor being unable or unwilling to remove or comply with any objections or requisitions which the Purchaser may be entitled to make the Vendor shall be at liberty notwithstanding any intermediate negotiations by notice in writing to the Purchaser to rescind the sale in which case the Purchaser shall receive back the deposit without interest but shall have no claim whatever on the Vendor for the expense of investigating the title or any other expenses or for compensation of any kind or any otherwise howsoever.

Vendor not bound to point out boundaries.

6. The Vendor shall not be bound to point out the boundaries of the land hereby agreed to be sold and no further or other evidence of the identity of the said land with the property described in the deeds relating thereto beyond such (if any) as may be gathered from the descriptions in such deeds shall be required and the Purchaser shall admit such identity.

Powers on default.

7. If the Purchaser shall make default in payment of any instalment of the purchase moneys hereby agreed to be paid or of interest thereon or in the performance or observance of any other stipulation or agreement on the part of the Purchaser herein contained (the times for such payment or performance fixed by these presents being both at law and in equity strictly of the essence of the contract) and such default shall be continued for the space of fourteen days then and in such case the Vendor without prejudice to his other remedies may at his option exercise all or any of the following remedies, namely:—

(a) May rescind this contract of sale and thereupon all moneys theretofore paid shall be forfeited to the Vendor as liquidated damages:

(b) May re-enter upon and take possession of the said lands and property without the necessity of giving any notice or making any formal demand:

(c) May re-sell the said lands and property either by public auction or private contract, subject to such stipulations as he may think fit and any deficiency in price which may result on and all expenses attending a re-sale or attempted re-sale shall be made good by the Purchaser and shall be recoverable by the Vendor as liquidated damages the Purchaser receiving credit for any payments made in reduction of the purchase money. Any increase in price on re-sale shall belong to the Vendor:

No error to annul sale.

8. If any misdescription errors or omissions shall be discovered in this Agreement it shall not annul the sale but shall be the subject of arbitration under "The Arbitration Act 1908" or any amendments thereto.

Pending.

9. ~~The Vendor will bear all rates taxes and outgoings and the Purchaser will pay all rates taxes and outgoings and the Vendor will bear the expenses of maintaining the buildings~~

FREE

Tenancies.

10. The property is bought and sold ~~subject~~ to existing tenancies (if any).

Stamping.

11. The Purchaser shall before the expiration of three months from the date hereof duly stamp either the counterpart of this Agreement or an assurance in pursuance thereof and in default thereof the Vendor may stamp this Agreement and recover the cost from the Purchaser .

Land Settlement Promotion Act

12. If the land affected by this Agreement exceeds five acres in area this contract is subject to any necessary consent of the Land Valuation Court and the Purchaser will within fourteen days from the date of signature of this Agreement either:

(a) Complete and deposit with the District Land Registrar a Declaration in conformity with Section 24 of the Land Settlement Promotion Act 1952 and its amendments and deliver a copy thereof to the Vendor , or

(b) Deliver to the Vendor any statement declaration or other document required by regulation or otherwise to be completed by the Purchaser for filing with an application to the Land Valuation Court

and each party hereto shall do all such acts and things as may be necessary or expedient for the purposes of endeavouring to obtain such consent or ensuring compliance with the provisions of the Land Settlement Promotion Act 1952 and its amendments and any regulations for the time being thereunder; and each party shall bear his own legal and other costs whatsoever of and incidental to any such declaration application or other process.

Refusal of consent by Land Valuation Court.

13. If such consent where necessary shall not be granted by the 2nd day of JUNE 19 65 or such later date as the parties agree on or shall be refused or shall be granted subject to conditions then this Agreement subject as hereinafter mentioned shall be void PROVIDED HOWEVER that if such consent shall be granted within such time subject to conditions to which the parties shall agree or subject to conditions not prejudicial to the Purchaser if the Vendor shall within seven (7) days after the grant thereof notify the Purchaser or his Solicitor of the Vendor's willingness to comply with such conditions then this Agreement shall be binding upon the parties as modified by such conditions.

Repayment of deposit.

14. If this Agreement shall become void as provided herein or by virtue of the provisions of the Land Settlement Promotion Act 1952 and its amendments then if the Purchaser has duly complied with all his obligations hereunder he shall be entitled to a refund of his deposit and any other moneys paid on account of the purchase money but shall have no other claim against the Vendor .

Agency.

15. The conditional sale evidenced by this Agreement has been made through the agency of WRIGHT STEPHENSON & CO. LIMITED which the Vendor has/have appointed and doth/do appoint as his/their agent to effectuate such sale and if any necessary consent of the Land Valuation Court to the transaction shall not be duly obtained no commission or other remuneration shall be payable by the Vendor PROVIDED that if the Crown pursuant to its rights under the Land Settlement Promotion Act 1952 takes or acquires the property then commission will be payable as on a sale on the amount payable by the Crown by way of purchase price or compensation.

8A

In the Supreme Court of New Zealand

No.1

Case Stated 6th April 1970

continued

SCHEDULE OF STOCK AND CHATTELS

650	Breeding Cows			
450	Weaner Calves			
100	Heifers	1265 @ £10	=	£12650
50	Steers			
15	Bulls			
6	Hacks			
				£100
2000	6 tooth Romney Wether Sheep			
3800	4 tooth Romney Wether Sheep	@ 30/-	=	£15000
4200	2 tooth Romney Wether Sheep			
	D4 Crawler Tractor and Blade			
	Fordson Major Diesel Tractor			
	1956 Land Rover			
	I.H.C. 3 ton truck			
	24" Giant discs			
	off set discs			
	Harrows			
	Cambridge roller			
	2 trailers			
	Rotary hoe			£2250
	Rotary Mower			
	Munro Topdresser			
	Spinner Topdresser			
	5 stand shearing plant			
	Wool press			
	Double end grinder			
	Harness			
	600 Shares Glen Murray Topdressing Co. Ltd.			£1000
	Floor Covering			
	Refrigerator			320
	Washing machine			150
	Blinds in dwelling			50
				30
				£31550

Interpretation.

16. Any reference in this Agreement to the Land Settlement Promotion Act 1952 or to any section of that Act shall be deemed a reference also to any amendment for the time being of that Act and of that section and in particular to the Land Settlement Promotion Amendment Act 1959.

Other conditions or clauses (if any).

17. THE SAID PURCHASE PRICE IS APPORTIONED AS TO THE SUM OF £168,450 FOR THE LAND AND BUILDINGS SPECIFIED IN THE FIRST SCHEDULE HERETO AND TO THE SUM OF £31,550 for the live and dead stock chattels and shares Specified in the Second Schedule hereto.

FIRST
The/Schedule

Description of property.

4926 acres 2 roods more or less being Allotments 190 191 Parish of Whangape and Lots 1,3 and 4 on deposit of plan No. 12343 situated in Blocks III and IV Awaroa Survey District and Blocks XV AND XVI Onewhe Survey District and being all the land comprised and described in Certificate of Title Volume 959 Folio 128 South Auckland Registry. (The Vendors holding such land under Crown Renewable Lease No.

IN WITNESS whereof the said parties have executed these presents.

SIGNED by the said

as Vendor in the presence of:—

Vendor

SIGNED by the said

LOCHIEL CAMERON LIMITED

as Purchaser in the presence of:—

Purchaser

18. The Vendors will prior to the 31st day of March 1965, subject to seasonal conditions, sow the area now in crop with approved English grasses and adequate **phosphatic** fertiliser.

19. The Vendors will prior to the day of settlement repair approximately one mile of existing fence being an internal fence situated in the centre of the farm and a culvert also in the centre of the farm.

20. Prior to the day of settlement the Vendors will spread sufficient fertiliser to the intent that a total of 300 tons of fertiliser will have been spread during the period of 12 months prior to the day of settlement.

21. The Vendors will obtain the freehold of the said land at their expense in all things provided that in the event of the purchase moneys payable to the Crown exceeding £22,500. 0. 0. the sale evidenced by this Agreement will be subject to renegotiation at the request of the Vendors.

22. The Sale evidenced by this Agreement is subject to the consent of the Vendor VERNER RICKARD WARTHO HANSEN and of NORMAN GARFIELD WARTHO HANSEN (in respect of live and dead stock only). Such consents to be obtained and notified to the Purchaser on or before the 15th day of December 1964.

23. This Agreement is subject to the Purchaser being able to arrange sufficient finance prior to the 31st day of January 1965 and the Purchaser will forthwith do and execute all necessary acts and documents in an endeavour to obtain such finance. The Purchaser will forthwith notify the Vendors or their Solicitor as soon as such finance has been arranged, but in the event of such finance not being arranged by the said 31st day of January 1965 or such later date as the parties may agree upon this Agreement shall be void and the Purchaser entitled to a refund of all monies paid.

24. The Purchaser acknowledges that the interest of the said NORMAN GARFIELD WARTHO HANSEN in the

In the Supreme Court of New Zealand

No.1

Case Stated

Annexure "A" Agreement for Sale and Purchase 1st December 1964

continued

within written agreement is limited to the live and dead stock and shares passing and his execution hereof relates to such interest only.

25. The Vendors will not share the sheep described in the Second Schedule hereto between the date hereof and the day of Settlement.

In the Supreme Court of New Zealand

Annexure "B" to Case Stated

Financial Statements to 2nd June 1965

HANSEN BROTHERS AND SMITH, FARMERS, GLEN MURRAY

1. PROFIT AND LOSS ACCOUNT for the 1st and 2nd June 1965

Cost of Dogs left on Farm	141.11. 4.	Sales of Cattle	1577	15820. 0. 0.		
Accounting fees	92.12. 0.	less on hand at 31st May 1965	1577	7885. 0. 0.	7935. 0. 0.	
Light and Power	8. 6.	Sales of sheep	10850	16275. 0. 0.		
Loss on sale of tractor	40. 0. 0.	less on hand at 31st May 1965	10850	11392.10. 0.	4882.10. 0.	
Farm Sundry	12. 4.	Wool Proceeds		5709.11. 4.		
Vehicle running expenses	38.10. 3.	less on hand at 31st May 1965		4730. 0. 0.	979.11. 4.	
Balance being net profit	13760. 6.11.	Adjustment on Manure			100. 0. 0.	
		Depreciation on Tractor Written back			177. 0. 0.	
	£14074. 1. 4.				£14074. 1. 4.	

2. REALISATION ACCOUNT - No. 1

Cattle - 1265	12650. 0. 0.	Lochiel Cameron Ltd.		200000. 0. 0.
Sheep - 10000	15000. 0. 0.			
Horses - 6	100. 0. 0.			
Plant and Equipment	1260. 0. 0.			
Tractors, Rotary Hoe and Mower	726. 0. 0.			
Landrover and Truck	200. 0. 0.			
Trailers and Distributor	64. 0. 0.			
	2250. 0. 0.			
Land and Buildings	37697.11. 7.			
Shares - Glen Murray Top-dressing Co.	588.16. 0.			
Legal costs of sale	244.12. 4.			
Commission on sale	2500. 0. 0.			
Balance - Profit on Realisation	128969. 0. 1.			
	£200000. 0. 0.			£200000. 0. 0.

3. REALISATION ACCOUNT - No. 2

Cattle - 309	3090. 0. 0.	N.G.W. Hansen		42000. 0. 0.
Sheep - 850	1275. 0. 0.			
Bulls - 3	80. 0. 0.			
Horses - 2	20. 0. 0.			
Tractor	135. 0. 0.			
Land and Buildings	21725. 2. 2.			
Balance - Profit on Realisation	15674.17.10.			
	£42000. 0. 0.			£42000. 0. 0.

4. ANKER L.W. HANSEN - CURRENT ACCOUNT

Equalisation of partners accounts	221.17. 3.	Balance at 1st June, 1965		10136.15.10.
Cash per Short Term Deposit	40000. 0. 0.	Share Revenue Profit		3440. 1. 8.
Hutchesson & Longbottom	7096. 2. 4.	" Profit on Realisation No. 1		32242. 5. 0.
Cheques 1683.10.10.		" Profit on Realisation No. 2		3918.14. 7.
500. 0. 0.		Interest from Short Term Deposits		11. 6.11.
158.17. 1.	2342. 7.11.	Balance		5. 6.
Sale Producers' Meats Shares	72.15. 0.			
	49511. 5. 3.			
Share of Personal Drawings	16. 7. 0.			
	£49749. 9. 6.			£49749. 9. 6.

SHEET 2

HANSEN BROTHERS AND SMITH, FARMERS, GLEN MURRAY

STATEMENT OF ACCOUNTS for the 1st and 2nd June 1965

5. VERNER R.W. HANSEN - CURRENT ACCOUNT

Equalisation of Partners' Accounts		264.16. 3.	Balance at 1st June, 1965	10179.14.10.
Cash per Short Term Deposits Ltd.	40000. 0. 0.		Share of Revenue Profit	3440. 1. 9.
Hutchesson & Longbottom	7096. 2. 4.		" of Profit on Realisation No. 1	32242. 5. 1.
Cheques 901.13. 3.			" of Profit on Realisation No. 2	3918.14. 5.
781.17. 8.			Interest on Short Term Deposit	11. 6.11.
658.17. 1.	2342. 8. 0.		Balance	5. 6.
Sale Producers' Meats Shares	72.15. 0.	49511. 5. 4.		
Share of Personal Drawings		16. 6.11.		
		£49792. 8. 6.		£49792. 8. 6.

6. NORMAN G.W. HANSEN - CURRENT ACCOUNT

Cost of Purchase Clevedon farm		42000. 0. 0.	Balance as at 1st June 1965	9537. 6. 9.
Cash from Hutchesson & Longbottom		5093.14. 3.	Equalisation of Partners' Account	377.11.11.
Cheques	1683.10.10.		Share of Revenue Profit	3440. 1. 9.
	658.17. 2.	2342. 8. 0.	" of Profit on Realisation No. 1	32242. 5. 0.
Meat Producers Shares transferred	50. 0. 0.		" of Profit on Realisation No. 2	3918.14. 5.
Sale Producers Meats shares	22.15. 0.	72.15. 0.	Interest on Short Term Deposits	8. 2. 6.
Share of Personal Drawings		16. 6.11.	Balance	1. 1.10.
		£49525. 4. 2.		£49525. 4. 2.

7. ARNOLD T. SMITH - CURRENT ACCOUNT

Equalisation of Partners' Accounts		390.18. 5.	Balance as at 1st June 1965	10305.17. 1.
Payment for House Purchase		9502.10. 0.	Share of Revenue Profit	3440. 1. 9.
Cash for Short Term Deposits		20000. 0. 0.	" of Profit on Realisation No. 1	32242. 5. 0.
Cash from Hutchesson & Longbottom -			" of Profit on Realisation No. 2	3918.14. 5.
Takapuna	7000. 0. 0.		Interest from Short Term Deposits	11. 6.11.
"	9000. 0. 0.		Balance	5. 6.
"	393.12. 4.			
Pukekohe	1200. 0. 0.	17593.12. 4.		
	1683.10.10.			
Cheques	658.17. 2.	2342. 8. 0.		
Sale Producers' Meats Shares		72.15. 0.		
Share of Personal Drawings		16. 6.11.		
		£49918.10. 8.		£49918.10. 8.

8. BALANCE SHEET as at the 2nd June 1965

LIABILITIES		ASSETS		
JREDITOR for Accounting Fees	1.18. 4.	DEPOSIT of Wool Retention Funds		6000. 0. 0.
PARTNERS FUNDS		PARTNERS' CURRENT ACCOUNTS		
WOOL RETENTION DEPOSIT	6000. 0. 0.	ANKER L.W. HANSEN	5. 6.	
		VERNER R.W. HANSEN	5. 6.	
		NORMAN G.W. HANSEN	1. 1.10.	
		ARNOLD T. SMITH	5. 6.	1.18. 4.
	£6001.18. 4.			£6001.18. 4.

NOTE: The foregoing accounts and Balance Sheet have not been audited.

In the Supreme Court of New Zealand

Annexure "C" to Case Stated

Letter of Objection by Accountants 22nd May 1968

ANNEXURE "C"

LETTER OF OBJECTION BY ACCOUNTANTS

HUTCHESSON, LONGBOTTOM & CO.
Public Accountants
P.O. Box 556
Telephone 80-105
First Floor,
Wesley Chambers,
HAMILTON N.Z.

22 May 1968

The District Commissioner,
Taxes Division,
Inland Revenue Department,
Private Bag,
HAMILTON.

Dear Sir,

A.L.W., V.R.W. and N.G.W. HANSEN
A.T. and MRS. E.N. SMITH

We acknowledge your letter dated 20th May, 1968.

On behalf of and with authority from Mr. and Mrs. Smith, we hereby lodge objection to the assessments for 1966 dated 15th March, 1968.

On behalf of and with authority from each of the Hansen Brothers we hereby lodge objection to the assessments for 1963, 1964 and 1965 (of 11th October, 1967) and 1966 (as amended and dated 15th March, 1968.)

The grounds of objection in all cases are as follows :-

1. Section 101 of the Land and Income Tax Act 1954 is not applicable in the circumstances of this case, being only applicable in the case of a sale of business assets and live-stock at a global price.

2. The Commissioner has no statutory power to disregard the contract price of the live-stock separately identified in a contract made at arms length.

In the Supreme Court of New Zealand

Annexure "C" To Case Stated

Letter of Objection by Accountants

continued

3. In any event, the values attributed by the Commissioner to the livestock in this transaction are incorrect.

4. In your amended assessments you have not correctly applied the learned Judge's ruling in Neil v. Inland Revenue Commissioner (which you purport to be applying), under which it would appear NONE of the profit (whether actual or estimated) on disposal of a fractional share in livestock is caught for tax.

In addition on behalf of and with authority from Norman G.W. Hansen we stipulate the following ground of objection, viz: that the Commissioner has acted inconsistently in adopting a different basis of valuation of livestock on the agreement to dissolve the partnership from that claimed for the sale to Lochiel Cameron Limited and that to be consistent the Commissioner should either:-

(a) Acknowledge the figures specified in the contract of Sale from Hansen Brothers and Smith to Lochiel Cameron Limited, or

(b) Value the livestock taken over by the said Norman G.W. Hansen on a basis consistent with that of the sale to Lochiel Cameron Ltd. and thereafter apply the rule in Neil's case so as to reduce his taxable income accordingly.

We confirm that our clients still wish a case to be stated for determination by the Supreme Court, such case to include all the grounds of objection set out above, and we stress their desire to have such a determination made as soon as possible.

Yours faithfully,

HUTCHESSON, LONGBOTTOM & CO.

"T. Hutchesson"

TH:LD

NO.2

EVIDENCE OF ANKER LIVINGSTONE WARTHO HANSEN

IN THE SUPREME COURT OF NEW ZEALAND AT HAMILTON

G.R. 62.70

ANKER LIVINGSTONE WARTHO HANSEN	1st Objector
VERNER RICKARD WARTHO HANSEN	2nd Objector
NORMAN GARFIELD WARTHO HANSEN	3rd Objector
ARNOLD TARELTON SMITH	4th Objector
ESTHER NAOMI SMITH	5th Objector

THE COMMISSIONER OF INLAND REVENUE — COMMISSIONER

Counsel: Mr. Mahon and Mr. Feenstra for Objectors
Mr. Almao for Commissioner

Hearing: 14th September, 1970.

NOTES OF EVIDENCE TAKEN BEFORE THE HON. MR. JUSTICE WOODHOUSE

Mr. Mahon opens and called:

ANKER LIVINGSTONE WARTHO HANSEN: (Sworn) One of the objectors in this case, Kawaka, Northland, farmer by occupation.

In 1947 two brothers and Arnold Smith and I bought the Glen Murray property near Tuakau.

This was situated just south of Tuakau? Yes about 20 miles South.

Was there 4,926 acres? Yes we have always called it 5000. There was yourself, brother Verner, brother Norman and Arnold Smith was married to your sister? Four of you had all been in the Middle East and got re-habilitation loan on the farm? Yes, Arnold was in the Pacific but the rest of us were in the Middle East. You farmed it in partnership and the Arnold Smith and his wife had their own partnership? Thats right. You farmed the property right to 1964? Yes. In 1956

In the Supreme Court of New Zealand

No.2

Objectors' Evidence

Anker Livingstone Hansen

Examination continued

your brother Norman got married and the partnership brought a property at Clevedon? Yes. Norman was registered as the owner of that property and was taken off the title of the Glen Murray property? Yes. The partnership still ran both farms, owned the livestock of both farms? Yes we farmed both farms as a partnership. Over the years I think you put a fair amount of time and money into Glen Murray between 1947 and 1964? Yes we put a great deal of money back in and put in two new houses and increased the capacity about threefold. Brought scrubland into production? and improving the farm. There had been no major improvements done by the previous owner who had it from 1927. By 1964 you say you had increased the carrying capacity three times? Yes. I think before this sale to Cameron did you have another approach by Stock Co? For several years we have had people approach and we resisted that we did not want to sell but in 1964 sometime Dalgetys agent came out to the farm and wanted to know if we would sell. They had a man for eighty thousand pounds. We were not very interested in selling but said we would want the price to yield us one hundred and fifty thousand pounds and Dalgetys did not think we would get that unless made some adjustment in stock prices, selling it as a going concern. That is putting stock in at book values but nothing came of that. One day I was in the Tuakau Pub after the sale in 1964 and Keith Brown who is Wright Stephenson's agent came up to me and said "I believe Mangatis is for sale", that is the name of the farm. I said "no its not" and he said "oh yes I know it is". I said "I should know best its not for sale". He persisted and I said if anyone came along with sufficient money we would consider it. I said our price would be two hundred thousand pounds as a going concern hoping that this would discourage him. A short time after Mr. Thomas and Mr. Tabor of Wright Stephensons of Auckland brought out Mr. Cameron. They brought Mr. Cameron to inspect the property: He is from the South Island. Mr. Thomas was Auckland Manager of Wright Stephensons and Mr. Tabor was Manager of the Land Department of Wright Stephensons.

Did they inspect the property? Yes they had a good look at it. It was obvious Mr. Cameron was interested in buying? Yes I think as soon as he stepped on the property he was interested in buying.

Then eventually you had a meeting with your accountant? Yes. This was in 16th November 1964? Yes. And I think were present Mr. Thomas, Mr. Tabor, Mr. and Mrs. Cameron, yourself, Arnold Smith and Mr. Huchesson? Yes. Now was the price of two hundred thousand pounds mentioned at that discussion as the price for the whole concern? Yes. And was any discussion about the price at which the various items would be sold? Yes there was a great deal of discussion on that point. First of all what your proposal about the live-stock? The proposal was that Mr. Cameron should take the stock at our book price twentyone shillings for the sheep, five pounds for the cattle.

What was their attitude to that? Mr. Cameron was not prepared to do that. He clearly understood the implications of taking the stock at that figure and he just would not agree. Mr. Thomas and Mr. Tabor were backing him up and we finally said we would put the price for the cattle from five pounds to ten pounds and twentyone shillings to thirty shillings for the sheep. What was the attitude of the purchaser and his advisers at that point? They were still talking about it and I said if the stock price had to go any higher we would shear the sheep before delivery. That would have had the effect of reducing the value of the sheep by at least twentyfive shillings. Mr. Cameron did not want to lose the wool and they agreed more or less straightaway. They agreed to ten pounds per head cattle and thirty shillings per head for sheep? Yes.

Then I think the discussion moved to other matters such as freeholding the land? Yes. And you wanted to bring Mr. Chapman your Solicitor? Yes Mr. Chapman came at once. What was your own view at that time as to the value of the land on this property and what basis assess value of property? Carrying capacity of farm was 12,000 ewes or stock units and at fifteen pounds per ewe that would have been a reasonable price for the land. Was fifteen pounds per ewe a reasonable price? That was a very reasonable price. They went to £20 and £25 a head? The property would take the equivalent of 12,000 ewes? Your farm would? Yes. What was your main idea in getting

In the Supreme Court of New Zealand

No.2

Objectors' Evidence

Anker Livingstone Hansen

Examination continued

them to pay the book prices? Because Dalgetys had said we would find it very hard to get anybody to pay for the total in cash and so we would have to make the adjustment by selling the stock at our book values to get the price we thought the land was worth. Otherwise we would have had to put the price to something nearer two hundred and fifty thousand pounds. In our view it simply meant the purchaser was taking the stock at our book value and accepting responsibility for tax. He would have to enter the tax in his book.

To sell the livestock at higher figures might have meant an overall price of two hundred and fifty thousand pounds which you say would be the only way to recover a proper price for the land? Yes. The agents said they would have trouble to find anyone who could pay that sort of money for the farm? Yes. Anyhow in due course your Solicitors sent an agreement to Mr. Cameron's Solicitors in Timaru for their consideration? Yes. They sent the agreement back and it was duly signed by Mr. Cameron and yourselves? Yes. There wasn't any approach by Mr. Cameron's Solicitors to alter the stock price? No. Did Mr. Cameron at any time question it? No, at no time. And you are aware Mr. Cameron put his wool clip to Wright Stephenson after he took possession? Yes I am well aware of that. I think you are also aware what his wool cheque would be for the 10,000 wethers? Yes they would have clipped at least 9 lbs of wool and that would have been 90,000 lbs of wool for the flock and prices were about 40 pence, fifteen thousand pounds. This had been wool grown between the contract in November and June 1965? Yes, the sheep had been shorn just prior to Mr. Cameron inspecting them. You are aware of course that the Commissioner in this case puts the value of eightytwo thousand five hundred and fifty pounds on the total livestock? Yes. I think if you deduct that sum together with the values of the farm from two hundred thousand pounds you get a figure of approximately one hundred and thirteen thousand pounds for the land? Yes that is right. And that figure is even below Government valuation at that time? Yes. Would you have ever sold your land for the value of one hundred and thirteen thousand pounds? No. As to the eighty two thousand five hundred and fifty five would you have ever have agreed to a sale of stock on that basis out of your total figure of two hundred thousand

pounds? If Mr. Cameron had said I want to apportion this price of eighty two thousand pounds for the livestock three thousand for the plant and one hundred and thirteen thousand pounds for the land would you and your brothers have sold on that basis? No there would have been no sale.

In the Supreme Court of New Zealand

No.2

Objectors' Evidence

Anker Livingstone Hansen

Examination continued

After your sale of the property the partnership was dissolved and the livestock Mr. Cameron took over did not represent all of the partnership livestock? No, there was a surplus. And I think that Norman took over the three quarter share of the livestock from the other partners for the same price for the sheep and cattle as were paid by Mr. Cameron? Yes. And Norman became the sole owner and is still farming. Yes.

Cross-examined Mr. Almao.

Cross-Examination

The acreage of your farm is 4946? Yes.

I see in the agreement it is stated as being 4926 any significance in that? No one whatever. There wasnt anything retained? No. When Dalgetys first approached you in 1964 you said you wanted to have a yield of one hundred and fifty thousand pounds what did you mean by that? We meant we wanted one hundred and fifty thousand pounds for the property. The purchaser would have to take the stock at our value. You were going to adjust the stock come what may? Yes. Did you get your figure in the end. Yes the Purchaser agreed to take the stock at the value we would sell.

When Mr. Brown saw you you originally said you wanted two hundred thousand pounds as a going concern how did you get that figure? We knew what the place was worth and what we wanted, two hundred thousand pounds was the figure we put on it. That figure of two hundred thousand pounds given Mr. Brown was before any negotiations and discussions took place between you and your partners and the purchaser? There was no purchaser at that stage but my partners agreed.

When a purchaser did appear you put forward that figure? Yes. So you were going to adjust the value? Yes. And Mr. Cameron had to accept

In the Supreme Court of New Zealand

No.2

Objectors' Evidence

Anker Livingstone Hansen

Cross-Examination

continued

your figure or there would be no sale? Yes. Did Mr. Cameron say he thought it would be fair to get a valuation done of both land and the stock? No. Had you arrived at your figures for livestock as a result of discussions with anyone else about the price you would fix? I am not sure what you mean. How did you arrive at the figure of twenty seven thousand seven hundred and fifty pounds for livestock those are the price we put them up to, the purchaser would not accept the book values. How did you get up to that figure? It was a result of bargaining I suppose. Our stock figures were lower than that and in order to meet the purchaser we raised them but that was as high as we were prepared to go. Otherwise you would shear the sheep? We would not have sold them. If they would not agree to the prices we would have to shear the sheep. Am I correct in saying if you have taken the wool off the sheep they would have dropped in value? Yes. And the value at the raised figure is thirty shillings? Yes. If you take the wool off you have the sheep valued at five shillings per head? No. The real value of the sheep would drop at twentyfive shillings per head.

And in fact you have put in the agreement that the sheep were not to be shorn? Yes. Can you tell me when did your brother Norman contract with the partnership to take his proportion of the sheep running on the property? We first consulted Norman and he agreed to the sale and after the sale we decided how we would go about it and Norman took over his share of the stock plus any surplus which was transferred to him in order to give him his share of the proceeds. That is how you worked out how much he would pay for? Yes. We had more stock than Cameron took including stock running on Norman's farm but Norman owned only a quarter share in the stock which was on his farm. That and also some left over on the Glen Murray was what we called the surplus.

Mr. Mahon:

All stock over and above that sold to Mr. Cameron was called partnership stock? Yes. So you transferred over to Norman all surplus stock? Yes. The price was at the same price that Mr. Cameron was paying all partners for what he took over? Yes.

The Ct: In the course of negotiations with Mr. Cameron he wanted to push up the agreed prices for stock? Yes. Which did not suit you? No. You said earlier you then told Mr. Cameron if the stock prices had to go any higher we would shear the sheep before delivery? Yes. And you added that would reduce the values of the stock by twentyfive shillings per head for sheep? Yes. Did you mean that the sale would proceed at a two hundred thousand pound figure but you would take the wool out of it first if the stock prices went up as Mr. Cameron wanted? Yes. I meant also from the Inland Revenue's point of view the stock would actually be worth twentyfive shillings less per head and they could not put the values on them that Cameron eventually did put.

EVIDENCE OF THOMAS LE MARCHANT HUTCHESSON

THOMAS le MARCHANT HUTCHESSON: (SWORN) I am a Chartered Accountant in practice in Hamilton. You have acted for these objectors for 23 years? Since 1946. You have been familiar with the type of property they have farmed and the farming procedure? Yes. I have heard Mr. Anker Hansen's description of the discussion that took place in my office in November 1964 and I confirm the description of the discussions. Have you anything to say on the point of proposed shearing if Mr. Cameron wanted a higher price put on them? Yes. The understanding between Hansen and myself they consulted me, was that if they were to accept two hundred thousand pounds as an all in price the value of the sheep would have to go into transaction as their book figures or very little more because if they did not the amount they would get out of the sale would be eroded by the tax that they would have to pay. They valued the land at approximately one hundred and eighty thousand pounds. They realised that they would not find anyone with a larger sum than two hundred thousand pounds to pay for the farm and consequently to realise their valuation of the land and to sell at two hundred thousand they would not have to be involved in a large tax payment. At the meeting the discussion on the values took approximately one and a half hours and

In the Supreme Court of New Zealand

No.2

Objectors' Evidence

Thomas le Marchant Hutchesson

Examination continued

all sorts of arguments were put up on both sides. I am talking about livestock. The purchasers would not agree to a value of £10 per head for the cattle and thirty shillings per head for the sheep and wanted to have those values increased and as just as one of many arguments Mr. Hansen said as I remember if they put up the livestock values any higher in order to get the money to pay the tax they would have to shear the sheep. It was the thought of losing the wool on the sheep that in my opinion negotiated or induced the purchasers to go no higher for the livestock. Was anything said by Cameron or his advisers present as to the ability of the vendors to spread forward the tax involved on the increase above standard value? Yes. That was one of many arguments put forward mainly by representatives of Wright Stephenson & Co. that since the vendors were going out of farming they would be able to take advantage of what were at that stage only budget proposals to spread any increase on the value of their livestock forward for tax purposes over the year in question and the subsequent years. I would not concede that point firstly because Norman in any event was not going to give up farming, secondly because it was probable that Verner and Anker might eventually go on with farming as indeed they did but mainly on the grounds that at that stage they would not get the full effect of those Budget proposals and that was only one of many arguments. Also did not the objectors have to freehold the land? Yes. And was part of the eventual agreement that if the cost of the property should exceed twentytwo thousand five hundred pounds that the vendor had the right to renegotiate the agreement. Yes. The purchaser would not purchase except on the basis that the vendors paid the cost of freeholding. And nineteen thousand five hundred pounds was paid to comply with the contractual obligation to freehold the property? Yes. And when the terms were all eventually agreed was an agreement drawn up by the objectors' solicitors. Yes. I telephoned Mr. Chapman and asked him to come to my office. He wrote terms of the agreement. I think he sent an agreement down to the Mr. Cameron's South Island solicitors for them to consider? Yes. Did that come back approved? It came back signed. It went down unsigned of course. The date was 1st December? Yes. Following the sale and after giving possession you wound up the partnership affairs on behalf of the four partners? Yes. And you

distributed the assets among them all and do you confirm Mr. Anker Hansen's description of Norman acquiring three quarters of the surplus livestock at the price paid for the other livestock by Mr. Cameron? Yes. There was never a written partnership agreement between the four. Never a disagreement. They were left with certain surplus stock and by mutual arrangement and I think on my advice Norman took over the surplus stock at the same values as they had sold the balance to Cameron Limited. Did the Commissioner assess Norman on the basis as on the values he now states? Yes.

Produced as Ex. A I produce a photocopy of the registered transfer dated 1st June 1965 of the farm property sold by the objectors. The stamp duty imposed by the Commissioner on the consideration of one hundred and sixtyeight thousand four hundred and fifty pounds is shown on the bottom corner.

Cross-Examined Mr. Almao

Cross-Examination

You acted on behalf of the partnership throughout the sale and negotiations of this livestock? Yes. Is it true to say you yourself handled most of the details as people not well acquainted with valuations and points which arose? Yes. And at the date of the negotiations in November and the date of signing of the agreement right through until well after transfer of the property no independent valuations of the property were sought? I would agree. Would you agree the livestock values which were fixed were in effect an adjustment of the standard values? I dont think I understand. It was an increase on the standard values. Any figure that had been agreed upon at that stage would have been an adjustment of the standard value. It was not a true value, market value? I dont think it was intended to be a true value. Or a market value? It was a market value to this extent in that it was negotiated by a vendor and a purchaser and agreed upon. I understand that to be a market value. The market had not been tested in any way, the property had not been offered for sale? No it had not been offered for sale by an agent. It was not being offered for sale at that stage. Was there any particular reason why the stock was not divided in their classes and given separate value? For the very good reason it was very much simpler to agree on

In the Supreme Court of New Zealand

No.2

Objectors' Evidence

James le Marchant Hutchesson

Cross-Examination

continued

one overall figure. But not necessarily a more accurate way of arriving at a figure? It was an accurate way. Has a valuation been done since? No. I think Cameron has had a valuation done in the last two or three weeks but the Hansen Bros. have not. You know the basis of valuation? Yes. A valuation carried out by stock agents? No I don't think sheep can be valued out in that way. I think Wright Stephenson put a value on them, very different from a proper valuation. Did you have recourse to the livestock values in respect of purchase and sales made by the partnership in the preceding year? I would have seen the sale notes. Would you agree the average prices for partnership sales in respect of both sheep and cattle that year was substantially above those set out in the agreement? I can neither agree nor disagree because I have notlooked at them for a very long time. I would agree with your suggestion. You would have files setting out that? Yes. The Department investigated all partnership matters for 10 years and as a matter of interest did not find a single error.

Have you the returns for 31st May 1965? Yes. I think there were sheep concerned 4,834 purchases for seventeen thousand three hundred and thirty one pounds? Correct. Averaging three pounds seven shillings and eightpence per head? Yes. Eighteen thousand eight hundred and twentythree pounds for stock averaging three pounds nine shillings and elevenpence per head. Yes.

The value stated in the agreement was one pound ten shillings? Yes. In respect of cattle purchases for six for twelve pounds six shillings and ninepence an average of
and sales four hundred and twentytwo pounds averaging twentynine pounds sixteen shillings and tenpence per head.

The value stated in the agreement for sale was ten pounds? Yes. These people would not be buying cattle in the normal sense they would be breeding their own. Those sales and those purchases would have been made in yard lots and I would be surprised if any one lot of any lot exceeded 200 sheep. You dont know the numbers? I dont know off hand. The sales would also be what I would describe as the top liner, particularly with cattle. I have been to sales

and seen Hansen Brothers stock sold. You would agree the value of livestock at the end of any partnership year would be at the option of the taxpayer either cost price replacement price or market value? Yes.

Did you also act for Norman Hansen's partnership transaction? Yes.

Ct: How many stock are surplus? 850 sheep and 309 cattle.

Re-examined Mr. Mahon

Is this document a copy of Wright Stephenson's valuation? Yes. That is a copy of a so called valuation. I got that from the Department Inspector and I took a copy.

Ct.: Do I understand from the evidence of Mr. Anker Hansen and your evidence that the partners and their advisers were of the opinion that in a broad sense they could expect no more than two hundred thousand pounds plus stock and number of sheep sold? Yes they anticipated they would never be able to find a purchaser with more money to pay for it. Now they hoped to receive one hundred and eighty thousand pounds for their land, that sort of money? Yes. Would it have been possible in their view and yours to have got one hundred and eighty thousand pounds for the land bare from a farmer who would then stock it? Only if they could find a person who had sufficient money available to pay that price and purchase the stock as well. A thing they did not expect to happen? No. They realised they had to make a concession on one thing or the other.

I take from the evidence the inference their stock could be sold separately at better price than they agreed upon is that right? Could they have sold stock through yards better than thirty shillings per head? Could they have disposed of 10,000 over appropriate periods? Yes and the same with the cattle.

Re-examined Mr. Mahon

If any farmer in this position sells all his live-

In the Supreme Court of New Zealand

stock and has the land left then in your experience what chance has he of selling the land? He could not do it.

No.2

Objectors' Evidence

EVIDENCE OF PETER DAVID SPORLE

Mr. Feenstra calls:

Thomas le Marchant Hutchesson

PETER DAVID SPORLE: (SWORN) You are a Registered Valuer in private practise at Hamilton? Yes. You have been in practise for many years? Approximately 14. And you were asked on behalf of the objectors to carry out a valuation of land as at 1965? That is correct. And you have prepared a report and the valuation at which you arrive is the capital value of the land owned as at March 1965? That is correct. Of two hundred and ninety five thousand dollars? Yes. You produce your report? Yes Ex. C.

Re-Examination continued

Peter David Sporle

Examination

LUNCHEON ADJOURNMENT 12.45 p.m.

Resumed 2.20 p.m.

Cross-Examination

Cross-examined Mr. Almao

No questions.

Edwin Robert Hope

EVIDENCE OF EDWIN ROBERT HOPE

Examination

Mr. Mahon calls:

EDWIN ROBERT HOPE: (SWORN) Stock Manager, National Mortgage & Agency Co. Hamilton.

You have been in the stock business for many years? Yes. My job over the last 10 years is Stock Manager prior to that I was Head Auctioneer for 20 years.

You were asked to look out the schedule values which the Commissioner placed as at June 1965 on the live-stock sold to Cameron? Yes. And you yourself prepared a schedule of what you think the market values for the stock were in June 1965 on the basis sold at yards in ordinary lots? Yes. You produce a copy of that schedule Ex.D. Your valuationsat the date of June 1965 are on the form you now produce?

Ex.D.

Yes that is correct. I now look at the Commissioner's valuations and comparing the items in turn, the Department have a total of 575 breeding cows and 50 breeding cows another figure I have 650 breeding cows split into three different compartments. I differ then in their division because it is normal procedure in doing valuations once stock mustered to draft them into lots of different type bearing in mind breeding cows at that time of year carrying condition and showing well forward with calf are much better than cows in less condition, not well forward with calf. The three divisions I have been slightly generous in my split up giving larger numbers in the top than normally but that is the method I used.

You allotted thirty five pounds to the top group? What is your basis for cutting approximately three pounds in each category? To strike an average on a price factor if you have 400 in lots the top 100 would have to sell one hundred pounds or better to maintain seventyfive pounds average.

At that time according to your researches what would be the top price for best priced cow? The top price at that time would be in the vicinity of thirtyeight pounds and forty pounds. A seller would have to get fortyfive pounds you would say in order to get average of thirty eight pounds? That is so. And that is why have made that division? Yes. The same apply to 700 breeding cows? The same exactly and the same applies to third category, the tail enders? Yes. With regard to the heifers, the Department has taken one line of 100. Have you split those to two drafts. Yes I have. What was the best price at that period for a yarding of top heifers? At this time we could only look at them as store cattle and not fat cattle and the top price would be thirty pounds for the very top. So is the twentyseven pounds the figure you struck averages you would get? Yes. Your second draft of 20 what is the top price? Dealing with breeding cattle the second category would only interest a man fattening and not breeding. I would suggest the twenty pounds would be the price. Is the price you have there twenty two pounds accord with the prices at that time? Yes. You have got 50 steers a difference of thirtysix pounds than the Department has put on

In the Supreme Court of New Zealand

No.2

Objectors' Evidence

Edwin Robert Hope

Examination continued

In the Supreme Court of New Zealand

No.2

Objectors' Evidence

Edwin Robert Hope

Examination continued

it and twentyseven pounds yourself? I would like to point out here, being familiar with these cattle and the way these people farmed them those 50 would be a tail end line. They would be the reject calves from the year before which would not be good enough to offer at the normal selling line. I have been familiar with the stock off the property. I have allotted the price there of an average hill country 18 months steer. You check that price from records at that time? Yes. Now the bulls you agree with that price? Yes I agree with that price. The final item of capital, weaner calves now have you done there the same process as breeding cows, you have separated those to two classes? Mixed sets of cattle and not normal to value them as mixed sets of cattle so I have taken them as 50/50 in each set and taken the heifer price from steer price and struck an average. Did you adopt the same principle as the breeding cows, taken what you get for the best pen of 150 and what would that figure have been? That figure would have been the tops and only approximately 30 would have been twentyeight pounds. So you calculate an average of twentytwo pounds for the top class which you put in? Yes. The second draft of 120 what is the best price that you found for that class of calf? That could vary, best price twentyone pounds dropping down to sixteen pounds. Again you have struck an average? Yes. The last lot of 80? Possibly only vary between 30s top and bottom. Coming now to the sheep you have followed the same practise with the sheep, separated the six tooth, fourtooth and two tooth into three drafts each? Yes. And again you have taken proportions of the drafts which you can accord with the type of stock on the property? I wish to be slightly generous in the top stock in each case, in normal conditions you would not get 30 in the top class but under practise it would nearer 30 50 20. With your top draft of 950 six tooth wethers what was the best price going at that time? In the vicinity of three pounds twelve shillings and sixpence to three pounds fifteen shillings. And over the whole range you calculated an average of three pounds correct. The best price of the next ones the 570 draft? You would possibly get three pounds for the better sheep and that is what I have calculated. And two pounds fifteen shillings is the average? Yes. And the bottom draft? Not very much difference here possibly ten shillings or up or down owing to the fact you are working on a

lower figure. With the four tooth wether top draft of 1415? I have taken in my valuation here approximately 15% of top draft could be fat and forward sheep and placed value of top close to three pounds fifteen shillings. Your average over draft is three pounds seven shillings and sixpence with next draft over 100? I have done exactly the same about three pounds seven shillings and sixpence, closely allied to that figure. And the bottom draft of 750 the best price there? Possibly three pounds three shillings, three pounds four shillings. Finally the two tooth ewes the final draft of 2200? I have taken fact some sheep could be fat and at that age you get a much better butchers weight you could get a higher price than any sheep we have discussed so far and I have taken highest price at four pounds fifteen shillings. Was the 1260? The top ruling price would be in the vicinity of three pounds twelve shillings and sixpence. And the 840? About three poinds five shillings or three pounds six shillings. And you adopt the same process as prior? Yes. Final item is 240 six tooth wethers? I would like to point out as the last item of 200 they would really be the dregs of 7000 head of flock? They would not be normally bought for a farm.

And you have put on them the right value as at June 1965? Yes that would be in relationship to freezing Works prices.

Ct.: You will provide figures overnight which reduce value of sheep before me and the value of the sheep with the wool? Yes sir. Are the bulls affected? No sir. The only things that could be affected are the weaner calves which had just been born or will be born.

COUNSEL:

I take it you have been associated with a great many sales of farm property and going concerns? Yes. And to take the case of this particular property if the owners had sold the livestock separately on the market over a period of time and just had the land left how would in your experience would they get on with selling the land without the stock? I think I would say land of

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Objectors' Evidence

Edwin Robert Hope

Examination continued

Cross-Examination

that size and nature that the price paid for the land without stock would be very much a buyers price.

And in a property of this size if it was sold that way would the livestock be sold in a separate way? Perhaps when it was being bought by neighbouring farmers to increase their holding but not normally when a man is buying it as a unit farm.

Cross-examined Mr. Almao

Do you know that the Commissioner's assessment of the value of the livestock is based on a valuation carried out by Wright Stephenson? Yes. And you know that valuation is based on an inspection of livestock at the beginning of June 1965? No. Have you not seen Ex.B the letter at any time prior to this hearing? No. You would not understand the basis of their valuations? No. Your valuation as set out in the schedule are estimates from your companies records is that correct? Mainly. And they are so far as they are such estimates based on the best prices obtainable from your records of June 1965? I would say they are obtained from sales made at auctions.

From your records and best prices on records? Yes. Now the prices would depend would they not upon the yards where stock are sold? They could be sold at different yards and get different prices? Within what given area.

Do your records refer to a particular area or Waikato or New Zealand in general. My records deal with the Waikato area, Auckland Waikato area. And within that area of course prices for stock such as this could vary from place to place? Not an appreciable matter. And the price stock would fetch would depend on their condition on the day of the sale? Yes and the manner in which they are presented. And you would not be aware would you of the condition of this stock in June of 1965? Well I think it would be fair to say I would. You can not say of your own knowledge you were aware of the condition of this stock in June 1965? Not at that particular date.

Which is the date of the valuation. Would you agree that Wright Stephenson's valuation is one based upon an inspection and knowledge of the condition of the

stock? If you do a valuation for that number of sheep first and to give a true valuation youmust personally inspect the draft. Which you did not do? You must first draft each grade to certain standards. Then place your value in each lot. On that basis your divisions are no more right or wrong than those adopted by Wright Stephensons? I would point out this I have only taken my tallies and the tallies differ. The man drafting sheep could not end up with even totals. Completely impossible. Wright Stephensons at the bottom of the list say .....

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Objectors' Evidence

Edwin Robert Hope

Cross-Examination

continued

They have even numbers you say that cannot possibly happen? No. You would agree your valuations are thereotical, to the extent that you are basing your prices on your records and making your divisions artificial without having seen the stock mustered? Yes. And you are taking over a very large geographical average as opposed to stock sold in the particular area? Now you are saying you took them over the localised area? Where this stock would be sold. Fat go to fat market and stores to stores market and make it an even balance.

Re-examined Mr. Mahon

Re-examination

It was suggested to you you would not be familiar with these stock what was the extent of your knowledge of the stock of Glen Murray? I was agent in the district for my company at the time that the Hansen Brothers and Smith had this property and I would be familiar with the stock and everything sold on this property.

When you are told 10,000 Romney wethers, sixtooth four tooth and two tooth do you know from your past experience what they are going to be like or are you not? Yes.

When it comes to drafting them to their different grades are you also able to say from your experience with Glen Murray sheep? Yes. And the same with cattle? Yes.

I take it you have seen cattle and sheep from Glen Murray yarded for yards have you not? Correct.

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Objectors' Evidence

Edwin Robert Hope

Re-examination continued

To Bench

Ct.: Take the 950 top grade six tooth wethers? Yes. Is the figure of three pounds you give in your schedule an average right across? The 950, yes sir. Would you expect them to be the 950 to be spread evenly between top and bottom of that grade? Not very.

You have sheep of six tooth getting on rather big in variation in weight would be considerable in its fat and forward condition sheep of this age are too heavy for local consumption for butchers even when they are fat.

You have given a price of three pounds and you say that this represents the average price. My question is, would you expect the 950 to be spread equally or evenly between the best and the worst price in that grade? I would think the top would be about 30% the middle about 50 and the back 20. Slightly better at the top than the bottom? Yes. I have arrived at the three pounds on that basis? Yes.

I have taken that as this particular period they all could not be top fat and forward condition. You must have a lower end of two pounds six shillings or less than that? Yes. The 380 at two pounds ten shillings when you say there is a very modest spread in price in that lowest category? Yes those sheep would be store sheep. Much in the same condition.

EVIDENCE FOR THE OBJECTORS

NO EVIDENCE CALLED FOR COMMISSIONER.

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No.3

Reasons for Judgment of Woodhouse J. 2nd November 1970

NO.3

REASONS FOR JUDGMENT OF WOODHOUSE J.

IN THE SUPREME COURT OF NEW ZEALAND
HAMILTON DISTRICT
HAMILTON REGISTRY

GR 62/70

BETWEEN A.L.W. HANSEN and Others
OBJECTORS

A N D THE COMMISSIONER OF INLAND REVENUE
COMMISSIONER

Hearing: 14, 15 September, 1970

Counsel: Mahon and Feenstra for Objectors
Almao for Commissioner

Judgment: 2nd November, 1970.

JUDGMENT OF WOODHOUSE, J.

This is a case stated pursuant to S.32 of the land and Income Tax Act 1954. It concerns the sale of a farming business as a going concern. The parties to the contract had apportioned the overall consideration between land and chattels on the one hand, and livestock on the other. The question is whether in terms of S. 101 of the Land and Income Tax Act 1954 the Commissioner could revise the livestock figure.

The Objectors carried on a farming partnership on two properties situated at Glen Murray and Clevedon. On December 1st, 1964 they agreed to sell the Glen Murray property together with live-stock and chattels for a purchase price of £200,000. Clause 17 of the agreement provided that "the said purchase price is apportioned as to the sum of £168,450 for the land and buildings..... and as to the sum of £31,550 for the live and dead stock chattels and shares specified in the second schedule." After excluding chattels the second schedule attributed the sum of £27,750 to the livestock as follows:-

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Reasons for Judgment of Woodhouse J. 2nd November 1970

continued

1265 cattle at £10	£12,650
10,000 sheep at 30/-	£15,000
6 horses	£ 100
	£27,750

The apportioned figure of £27,750 was used by the objectors as a basis for arriving at the assessable income for the partnership for the year ended 31st March, 1966, but the Commissioner considered it to be inadequate. Accordingly he purported to act in terms of S. 101, and determined that of the total consideration of £200,000 the part attributable to the livestock was £82,555. That figure was arrived at by the Commissioner on the basis of a valuation of the livestock made for the purchaser by Wright Stephenson & Co. Limited, on 14th June, 1965, being twelve days after settlement of the transaction in terms of the agreement for sale and purchase.

Section 101 (1) of the Land and Income Tax Act 1954 reads as follows -

> "(1) Where any trading stock is sold together with other assets of a business, the part of the consideration attributable to the trading stock shall, for the purposes of this Act, be determined by the Commissioner, and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser."

The objectors contend that because the agreement for sale and purchase expressly apportioned the consideration the Commissioner could not act under the foregoing provision. On their behalf it was submitted that the section is applicable only where the price paid for trading stock sold with other assets cannot be ascertained from the terms of the transaction. The argument is that the provision is designed to enable the Commissioner merely to determine what part of a global, unapportioned consideration should be attributed to the trading stock; and conversely, that it does not contemplate or permit the substitution of market values for a price agreed upon by the parties themselves.

The method of valuing trading stock and any consequential effect of the valuation upon assessments

of income for tax purposes is outlined in a series of Sections of the Act which begin with S.98. The basic principle is that the value of trading stock (an expression which includes farming livestock) is to be taken into account at the beginning and end of every year. (See S.98 (2)). And there is provision for the mode of valuation of stock in the case both of ordinary and also of more specialised types of business, such as farming. This part of the Act also prescribes the way in which trading stock is to be brought to account when disposed of in the course of transactions which fall outside normal trading activity, as for example, upon the sale of the business undertaking as a whole, or on a disposition of it by way of gift. But, of course, to the extent that various sections are interrelated they must be read together. Such a requirement arises, in my opinion, when the construction and purpose of S. 101 is considered.

Clearly enough S. 101 is a special provision which enables the ascertainment of the consideration paid for trading stock in the case of certain transactions outside the range of ordinary trading activity. It is referable to a particular situation arising upon the disposition of trading stock when sold together with other assets of the business concerned. The general rules which are applicable to the valuation of trading stock are set out in the earlier provisions of S. 98; and so far as the present case is concerned Subsecs. (7) and (8) of S. 98 have particular relevance.

Section 98 as a whole is concerned with the value of trading stock. Accordingly Subsec. (7) provides that where assets of a business are sold which consist of or include trading stock, then the consideration received or receivable for the trading stock, or the price which it is deemed to have realised under the Act, shall be taken into account as its value in calculating the assessible income for the period concerned. Subsection (8) follows and deals with cases where the consideration on a sale of trading stock has actually been specified in the contract of sale. In the ordinary way such specified price is to be taken as the consideration received or receivable for the trading stock. But the opening words of the subsection contain an important qualification upon

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continued

its ordinary effect which in my judgment has a direct bearing upon the argument raised in the present case.

Section 98 (8) reads

> "Subject to the provisions of Section 101 and 102 of this Act, the price specified in any contract of sale or Arrangement as the price at which any trading stock is sold or otherwise disposed of as aforesaid shall be deemed for the purposes of this section to be the consideration received or receivable for the trading stock."

That provision obviously can operate only upon transactions where the price for trading stock has been specified by the parties - yet it is made subject to Section 101. If, as Mr. Mahon contends, Section 101 is inapplicable where there is an ascertained price for stock, then the qualification is meaningless. But I am satisfied that it cannot be so regarded. Indeed I think it clearly envisages that in Section 101 type cases the price specified by the parties for the trading stock may need to be replaced by a deemed consideration fixed by the Commissioner and it supports the action taken by the Commission in the present case. In support of this general submission Mr. Mahon pointed out that Section 101 speaks of the Commissioner determining "the part of the consideration attributable to the trading stock"; and he contended that the words necessarily imply that in any contract affected by the section only one consideration will have been mentioned for all the assets sold. In the present case, he contended, several considerations are specified, each referable to an individual type of asset. I agree that the reference in Section 101 to "consideration" is to a total price; but in my judgment it is a reference which comprehends such a total price paid by the purchaser for his bargain as a whole. And in the present case it is misleading to speak of a number of considerations. The price of £200,000 was paid as a single consideration for all the assets of the farming business purchased together as a going concern. Accordingly, the section is looking here at the part of the consideration of £200,000 which is properly attributable to the livestock.

It was said that as a matter of practise the

Commissioner has not applied Section 101 to cases where parties have settled for themselves the price of trading stock on the sale of mixed assets. But I do not regard the past practice of the Inland Revenue Department as providing much assistance in construing what seem to me to be the unambiguous words of the section. In S's Trustees v. Commissioner of Taxes (1950) 7 M.C.D. 218 the point was not in issue and was not argued but the Magistrate seems to have accepted (at page 228) a submission by counsel for the Commissioner that Section 101 "empowered the Commissioner to determine what part of the consideration on the sale of mixed assets is attributable to trading stock, but does not provide for the case where the price of stock was fixed" (see at page 224). However in Edge v. Inland Revenue Commissioner (1958) N.Z.L.R. 42 two of the judges in the Court of Appeal expressed a contrary opinion. Again this point was not directly an issue because the correctness of the Commissioner's apportionment of a global price was not disputed by the taxpayer. Instead he contended that the following section should be applied cumulatively on grounds that the price ascertained by the Commissioner was less than the market value of the stock. The last argument was not accepted by the Court but in considering the effect of Section 101 Hutchison, J. said (at page 45):

"/S. 101/ applies where there is a sale of trading stock and other assets at a global price, as in this particular case where £21,000 was the price of the land, plant and stock, As at present advised, I do not see any reason why it should not apply also even if the price were not a global price, provided, always that the stock was sold together with other assets, E.G. a sale of land and stock stated to be at £10,000 for the land and £5,000 for the stock, a total of £15,000;"

And McCarthy, J. after remarking at page 52 that the section meets a sale or other disposal where the consideration for livestock is not ascertainable from the terms of the sale itself, went on to remark: "No doubt it can be said that it is also wide enough in its terms to cover the case of a sale of livestock along with the other assets where the price is apportioned in the terms of the sale. But

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at least since the passing of /S. 102/ in 1949, its operation to such a sale is unnecessary for /S. 102/ contains all the powers that the Commissioner could require for that class of sale." (Pages 53 - 54).

With those expressions of opinion I respectfully agree subject only to a reservation concerning the reference by McCarthy, J. to Section 102. That section is concerned with dispositions of trading stock by way of gift or for less than true value. With all respect I think it quite possible that on a mixed sale the apportioned price for trading stock could understate its value and yet there could be an additional element of latent consideration applicable to it which would prevent the application of Section 102. For example, a fair overall consideration could be allocated unfairly. In such a case the allocation of an inflated figure above the true value for other assets and the consequential deflation of the stated price for trading stock would result in a superficially low price for the stock. But it may be that the element of latent consideration really provided for the stock could demonstrate that in truth it had not been sold at an undervalue and Section 102 would thus be inapplicable. In my judgment that very situation exists in the present case.

In evidence Mr. Anker Hansen (one of the objectors) quite frankly stated that when the sale was being negotiated the vendors attempted to keep the allocated price for livestock down to their book values (which were demonstrably very much below market values): and when the purchaser wished to increase the figures he was told "if the stock price had to go any higher we would shear the sheep." He went on to explain that "this would have had the effect of reducing the value of the sheep by at least 25 shillings. Mr. Cameron did not want to lose the wool and agreed more or less straightaway." He later added that "our stock figures were lower than /the figure in the agreement/ and in order to meet the purchaser we raised them but that was as high as we were prepared to go." And he candidly explained that his insistence that the livestock figure be kept down was due to the income tax repercussions which would result from higher prices. At the conclusion of his evidence he was asked "Did you mean that the said sale would proceed at £200,000 figure but you

would take the wool out of it first if the stock prices went up as Mr. Cameron wanted?" And he replied: "Yes. I meant also from the Inland Revenue point of view the stock would actually be worth 25 shillings less per head and they could not put the values on them that the Commissioner did put." Both he and the objectors' accountant said that it had been realised that no more than £200,000 could be obtained for the farm and live-
10 stock. But, as the accountant put it, "to realise their valuation of the land and to sell it at £200,000 they would not have to be involved in a large tax payment."

On the evidence I am left in no doubt that the Objectors regarded £200,000 as approximately the current market price for the land, livestock and chattels and they were satisfied to accept that sum; but to obtain a tax advantage they de-
20 cided that the amount would have to be divided up among the assets being sold so that a deflated figure would be allocated to the livestock. Having recognised that no purchaser was likely to pay more than £200,000 for all the assets taken together, they intended, in effect, to have their price subsidised by a tax saving. Then with this end in view they were able to persuade the purchaser to agree to the artificial figure of £27,750. In the circumstances of this particular case the overall consideration is a genuine reflection of normal
30 bargaining between the parties at 'arms-length' and accordingly I doubt whether Section 102 could be applied to the unreal figure named by them as the part of the consideration referable to the livestock. But I am clearly of the opinion that Section 101 is applicable to it and also that on the facts the Commissioner was entirely justified in his decision that a suitable adjustment must be made.

I now turn to a number of arguments that the
40 figure determined by the Commissioner was excessive. First, it is said that the values should have been assessed as at 1st December, 1964 - when the agreement for sale and purchase was signed, and not as at the date in June 1965 when possession was given and taken in accord with the agreement. I do not agree. The parties intended, by their contract, that the farming business would be carried

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continued

on by the vendors until the assets changed hands in June 1965; and in every practical sense this is what happened. The enquiry contemplated by Section 101 is aimed at fixing the assessable income of a business by ensuring that when stock is sold with other assets an appropriate figure for the trading stock is brought to account at the end of the trading period concerned. In the present case I am satisfied that the relevant farming activities of the objectors ended when they gave possession to the purchaser.

Next there was a complaint that the valuation relied upon by the Commissioner was based on prices received at sales by public auction in the sale yard. In the circumstances of the case the correct basis, so it was said, was to value the stock as part of a farming business sold as a going concern. And I was asked to assume that large numbers of livestock sold in this way would fetch prices lower than sale yard prices. There is, however, no evidence upon this point sufficient to displace the determination made by the Commissioner and on this ground I reject the submission.

Then I was asked to act upon the opinion of a Stock Manager who quite recently attempted to make an assessment of the value of the stock sold in 1965. For the reasons he gave he arrived at an overall valuation of £67,395. The difficulty about the assessment, however, is that it could not be based upon inspection and the witness was obliged to make estimates of value founded upon a series of wide ranging assumptions which leave me far from satisfied that his figures could or should be preferred to the detailed valuation made at the time and on the land by Wright Stephenson & Company Limited.

Finally, in this part of the case, there is a submission that Section 101 does not permit the Commissioner to determine the true value or the market price of trading stock, but merely enables him to decide what portion of the agreed comprehensive consideration can fairly be attributed to it. No doubt a contract could be deliberately organised to pass trading stock at an under-value by the use of an artificially deflated overall consideration or in some other way. I express no opinion upon the implications which would arise in such a case, although

I suppose the Commissioner might be able, in the circumstances, to make good use of Section 102 or even Section 108; and if it should be held that Section 101 is also applicable in cases of this sort then perhaps the true value or the market price of the trading stock could properly become the figure determined by the Commissioner. But the present case is different. The consideration agreed upon for the farming business is real enough and considered as a whole, the sale and purchase was not a contrived disposition at an under-value and no element of gift attaches to it. In the circumstances I think the consideration to be determined by the Commissioner as being attributable to the trading stock must be ascertained within the comprehensive, market consideration of £200,000. The approach is one which was adopted by the Commissioner in Edge's case (supra) and it was not disapproved of by the Court of Appeal. It involves an assessment of the value of each group of assets sold and then a pro rata apportionment among them of the comprehensive consideration paid in order to avoid imbalance between the prices associated with the various groups. In the absence of some cogent evidence to the contrary it cannot be assumed in a given case that the trading stock has had a proportionately larger influence upon the overall price than other assets; and for reasons of this sort I think that normally the true value or the market price of trading stock should be related (in the fashion I have outlined) to contemporaneous valuations of the other assets, and in turn to the total price paid by the purchaser.

The only evidence concerning the value of the land sold by the objectors is contained in a recent valuation made on their behalf for the purposes of the case stated. It suggests that at the relevant time the fair market value of the land alone was £147,500; and it discloses that as at 1st February 1966 the Government Valuation of the property was the somewhat lower figure of £117,000. The valuation made for the objectors was not challenged on behalf of the Commissioner, and in the absence of any other valuation based on market prices I think, for the purposes of the case, that the market value of the land and improvements must be accepted at this figure of £147,500. The chattels included in the sale were regarded by the parties

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continued

as having a value of £3,600; and that figure has not been attacked.

In using the valuation of livestock made by Wright Stephenson & Company Limited the Commissioner adopted a figure of £82,555, as I have mentioned earlier in this judgment. In fact the valuation totals £82,645, and the discrepancy seems to arise from the omission of the value of six horses from the Commissioner's adjusted figures. I assume from the inventory attached to the agreement for sale and purchase that the item was omitted in error and should be included. If this be done then the purchaser paid a price of £200,000 for assets which have been valued in isolation from one another at a total amount of £233,745. When the consideration actually paid is related to this last figure then the proportionate amount of the consideration which should be attributed to the livestock is £70,713.

Accordingly the answer to the first question contained in the case stated is that the Commissioner acted correctly in adjusting the partnership income of the objectors. Subject to an adjustment to include the value of six horses the Commissioner correctly made use of the valuation of Wright Stephenson & Company Limited when making the determination in terms of Section 101 of the Land and Income Tax Act 1954. However, in order to make the determination and the subsequent assessments referred to in paragraphs 5 and 6 of the case stated it was necessary for the Commmssioner to relate the total valuation of the livestock to values of the other assets sold in the fashion outlined in this judgment. Consequential amendments are, therefore, required in respect of the assessments outlined in the case.

A final question was added to the case stated at the time of the hearing and in regard to it I have received supplementary agreed facts. It does not concern the sale by the partnership to Cameron, which I have been discussing, but partnership assets which remained upon completion of that sale. Those remaining assets were a second farm at Clevedon and certain livestock; and they were transferred to Norman Hansen who was one of the partners. In return he gave credit in money. The prices agreed upon were £27,525 for the land and $4,600 for the stock, the last figure being calculated on the basis of the values

for livestock set out in the Cameron agreement of 1st December 1964. The partners now object that the Commissioner assessed each of them (including Norman) when a share of the profit in the partnership arising from the transfer of the livestock at a figure of £4,600 against the partnership book values, which were lower. They claim that the transaction is not a sale or disposition within the meaning of Section 98 (7) of the Act, and accordingly that the amount involved cannot be included in their assessable income. I agree.

Section 98 (7) is mentioned earlier in this judgment. It provides that where assets of a business are "sold or otherwise disposed of" and they consist of or include any trading stock, then the consideration received or receivable for the stock shall be brought to account in calculating the assessable income for the period concerned. The issue is whether the transfer of the remaining partnership livestock by all the partners to only one of them is a transaction within the words taken from the sub-section and which I have italicised. From the point of view of the Commissioner the difficulty is that the partners did not each have individual or separate proprietorial interests in a given number of the stock but an undivided interest with all the other partners in all of the stock. Accordingly when the transfer to Norman became effective he received from each of the other partners a fractional share in the totality of the animals which were transferred. And as Wild, C.J. pointed out in Neil v. Commissioner of Inland Revenue (1967) 10 A.I.T.R. 407 Section 98 (7) is not applicable to the sale or disposition of merely fractional interests in trading stock but to dealings which dispose of the ownership in all the stock or at least entire parts of it. The point was discussed by the High Court of Australia in Rose v. Federal Commissioner of Taxation (1951) 84 C.L.R. 118 where the comparable section in the Australian Legislation was said to be "directed at the disposal of the entirety of ownership in the assets and not the conversion of single ownership into collective ownership". Nor (it is right to add) the conversion of collective into single ownership as in the present case.

Since 1965, when the present transaction took

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Reasons for Judgment of Woodhouse J. 2nd November 1970

continued

place the statute in New Zealand has been amended by Section 9 of the Land and Income Tax Amendment Act 1966, which added to Section 98 (7) the words; "the foregoing provisions of this sub-section shall with the necessary modifications, apply in any case where a share or interest in any trading stock is sold or otherwise disposed of by any tax payer." With respect I agree entirely with the learned Chief Justice that the amendment gives added significance to the point.

In my view the transfer of the remaining livestock held by the partnership involved imparting to Norman simply the undivided fractional shares of the other partners and was not within the ambit of Section 98 (7) (as it stood before the amendment to which I have referred.) In the circumstances the answer to the formal question raised by this part of the case stated is "yes". Counsel, may, if they wish, submit a memorandum concerning costs.

No.4

Formal Judgment of Supreme Court 2nd November 1970

NO.4

Formal Judgment of the Supreme Court

This Case Stated coming on for trial on the 14th and 15th day of September, 1970 before His Honour Mr. Justice Woodhouse, after hearing the Objectors and Commissioner it is adjudged.

(a) That the Commissioner acted correctly in adjusting the partnership income of the objectors except that the assessments be so amended as to reduce the value of the livestock from £82,555 to £70,713.

(b) That the Commissioner acted incorrectly in including as partnership income in the assessments the difference between the book values of 15/- and £5.0.0. and the values of 30/- for sheep and £10.0.0. for cattle at which such livestock was transferred to NORMAN HANSEN.

DATED the 2nd day of November, 1970.

L.S.

"T.R. Uden"
DEPUTY REGISTRAR

In the Court of Appeal of New Zealand

No.5

Notice of Motion on Appeal from Judgment of Woodhouse J. 21st January 1971

NO.5

NOTICE OF MOTION ON APPEAL FROM JUDGMENT OF WOODHOUSE J.

IN THE COURT OF APPEAL OF NEW ZEALAND

IN THE MATTER of the Land and Income Tax Act, 1954

BETWEEN ANKER LIVINGSTONE WARTHO HANSEN of Wellsford, Farmer
FIRST APPELLANT

VERNER RICKARD WARTHO HANSEN of Wellsford, Farmer
SECOND APPELLANT

NORMAN GARFIELD WARTHO HANSEN of Clevedon, Farmer
THIRD APPELLANT

ARNOLD TARELTON SMITH of Takapuna, Retired Farmer
FOURTH APPELLANT

ESTHER NAOMI SMITH of Takapuna, Retired Farmer
FIFTH APPELLANT

A N D THE COMMISSIONER OF INLAND REVENUE
RESPONDENT

TAKE NOTICE that Counsel for the Appellants will move this Honourable Court ON APPEAL from part of the judgment of the Supreme Court at Hamilton given by Mr. Justice Woodhouse on the 2nd day of November, 1970, namely the part in which it was determined that the Respondent was entitled to invoke the provisions of Section 101 of the Land and Income Tax Act, 1954 in assessing the Appellants for income tax for the years 1963, 1964, 1965 and 1966 upon a Case Stated pursuant to Section 32 of the Land and Income Tax Act, 1954 and the part of the judgment incidental thereto including the determination of the value of the livestock UPON THE GROUNDS that the said judgment is erroneous in fact and in law.

DATED this 21st day of January, 1971.

"P.F. Feenstra"

Solicitor for the Appellants

In the Court of Appeal of New Zealand

No.6

Reasons for Judgment of North P. 16th July 1971

NO.6

REASONS FOR JUDGMENT OF NORTH P.

C.A. 6/7

IN THE COURT OF APPEAL OF NEW ZEALAND

IN THE MATTER OF the Land and Income Tax Act 1954

BETWEEN ANKER LIVINGSTONE WARTHO HANSEN of Wellsford, Farmer
FIRST APPELLANT

VERNER RICKARD WARTHO HANSEN of Wellsford, Farmer
SECOND APPELLANT

NORMAN GARFIELD WARTHO HANSEN of Clevedon, Farmer
THIRD APPELLANT

ARNOLD TARELTON SMITH of Takapuna, Retired Farmer
FOURTH APPELLANT

ESTHER NAOMI SMITH of Takapuna, Retired Farmer
FIFTH APPELLANT

A N D THE COMMISSIONER OF INLAND REVENUE
RESPONDENT

Coram: North P.
Turner J.
Haslam J.

Hearing: 17 and 18 May 1971

Counsel: Mahon Q.C., and Feenstra for Appellants
Mathieson and Cathro for Respondent

Judgment: 16 July 1971

JUDGMENT OF NORTH P.

An appeal from part of the judgment of Woodhouse J. on a case stated pursuant to s.32 of the Land and

Income Tax Act 1954.

The facts are fully recorded in the judgment under appeal and accordingly it is unnecessary for me to repeat in any detail what Woodhouse J. has said. There are however, one or two matters, which I think require emphasis, in order that the argument we heard from Mr. Mahon and Mr. Feenstra for the appellants can the better be understood. The appellants for a number of years carried on a farming partnership on two properties situated at Glen Murray and Clevedon. On 1 December 1964 they entered into a conditional agreement to sell the Glen Murray property consisting of some 4,926 acres, together with livestock and chattels thereon, to Lochiel Cameron Limited for a purchase price of £200,000, with possession to be given and taken on 2 June 1965. There were a number of reasons why it was necessary that the contract should be only a conditional one, thus it was a term of the contract that the appellants would, in the meantime, obtain at their own expense, the freehold title to the land (with a limit of £22,500). Another was that the agreement was subject to the purchaser being able to arrange the necessary finance. The contract contained the following provision:-

> "17. The said purchase price is apportioned as to the sum of £168,450 for the land and buildings specified in the first schedule hereto and to the sum of £31,550 for the live and dead stock chattels and shares specified in the second schedule hereto,"

The second schedule attributed the sum of £27,750 to the livestock on the property and this was the figure used by the appellants as a basis for arriving at the assessable income of the partnership for the year ending 31 March 1966. But the Commissioner considered this sum to be inadequate.

The Commissioner accordingly purporting to act in terms of s.101 (i) of the Land and Income Tax Act 1954, determined that of the total consideration of £200,000, the part attributable to livestock should be £82,555. This figure was arrived at by the adoption by him of a Valuation of the livestock made for the purchaser by Wright-Stephenson and Co.

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Reasons for Judgment of North P. 16th July 1971

continued

Ltd. on 14 June 1965, just 12 days after settlement of the transaction in terms of the agreement for sale and purchase. The appellants objected to the Commissioner's assessment and requested that a case be stated for the opinion of the Supreme Court.

The case stated came before Woodhouse J. on 14 and 15 September 1970 when he was called upon to determine a number of questions, some of which no longer concern us. The crucial question with which we are concerned is whether the Commissioner, on the facts of this case, was entitled to invoke the provisions of s.101 and substitute another figure for the sum stated by the parties in the contract as the amount the purchaser was to pay for the livestock. In the Court below, one of the appellants, Mr. A.L.W. Hansen who had taken a leading part in the negotiations for the sale of the property, said with complete frankness that the appellants were well aware that if a sale eventuated, income tax would be payable on the difference between the price received for their livestock and their book value. Accordingly, it was his object to persuade (if he could) a purchaser to pay the global price the appellants had determined upon and as well to acknowledge in the contract that the livestock was being purchased at their book value of 21/- for sheep and £5 for cattle. He was asked what attitude Mr. Cameron had adopted to this proposal. He said:-

> "He clearly understood the implications of taking the stock at that figure and he just would not agree. Mr. Thomas and Mr. Tabor were backing him up and we finally said we would put the price for the cattle from £5 to £10 and 21/- to 30/- for the sheep."

These figures were finally accepted, and as I have said, were recorded in the contract. For the reasons given by him, Woodhouse J. held that the Commissioner was entitled to invoke the provisions of s. 101 (1). The appeal is from this part of his judgment.

In this Court, two main submissions were made on behalf of the appellants:-

(a) S.101 is applicable only where the consideration or purchase price for trading

stock is not ascertainable from the terms of the sale itself;

(b) If contrary to the appellant's first submission, the Commissioner did have authority to determine the part of the consideration attributable to the live-stock, the valuation he acted upon should have been made as at the date of the execution of the contract and not as at the date of settlement.

In order to appreciate the argument we heard from Mr. Mahon, it is necessary to recall that in earlier days, if a business was sold as a going concern, the proceeds of sale derived from trading stock was not assessable because the sale was not made in the course of the taxpayer's business, (see Doughty v. Commissioner of Taxes 1927 A.C. 327). At a date after the facts in this case revealed the flaw, but before the litigation ended, the Legislature intervened to abrogate this principle by passing s.7 of the Land and Income Tax Amendment Act 1924 when the words in brackets were added to what is now s.88 (i) (a) which reads:-

"Items included in assessable income - (i) without in any way limiting the meaning of the term, the assessable income of any person shall for the purposes of this Act be deemed to include, save so far as express provision is made in this Act to the contrary, -

(a) All profits or gains derived from any business (including any increase in the value of stock in hand at the time of the transfer or sale of the business, or on the reconstruction of a company)."

But even so, the 1924 amendment did not provide any machinery for ascertaining the part of the consideration attributable to trading stock when there had been a sale for a single global sum. To meet this omission, s.5 of the Land and Income Tax Amendment Act 1926 was enacted. This section is now s.101 of the present Act and reads:-

"(1) Where any trading stock is sold together with other assets of a business, the

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part of the consideration attributable to the trading stock shall, for the purposes of this Act, be determined by the Commissioner, and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser."

In the present Act, s.101 is one of a number of sections, commencing with s.98, dealing with the valuation of trading stock including livestock and the fixing of standard values. But as Mr. Mahon was at pains to point out, the provisions now contained in s.101 precede by many years the other sections which purport to set out something in the nature of a code for the treatment of trading stock. Therefore, in his submission, it was a mistake to reason, as Woodhouse J. did, that assistance in the interpretation of s.101 is to be obtained by studying the context in which that section now appears, and particularly the provisions of s.98 (7) and (8). I have had the benefit of considering what my brother Turner has said in the judgment he is about to deliver. I agree with him that without calling in aid the approach that commended itself to Woodhouse J., there is no justification for the contention advanced by Mr. Mahon that s.101 (1) is applicable only in cases where the contract is silent as to the price which the parties themselves have attributed to trading stock in fixing a global purchase price. It may be that the draftsman had chiefly in mind cases where the contract was silent as to the part of the consideration attributed to the trading stock, but in my opinion the language he chose to use was wide enough to cover every case "where any trading stock is sold together with other assets of the business." This is certainly such a case. I thought, if I may say so, the weakness in Mr. Mahon's argument was exposed when he felt obliged to concede that if he was right, all that a vendor had to do was to see that the price to be paid by the purchaser for his trading stock in no circumstances exceeded their book value, however unrealistic that figure might be at the time of the sale. Mr. Mahon answered that such a case might be caught by either s.102 or s.108, but neither of these sections would, I think, be available to the Commissioner in a case such as the present one where the parties were "at arms length" and the purchaser could see he would lose a desirable business deal

unless he met the vendor's demand, however unreasonable he may have thought it to be.

But in any case, this is not a case where it has been shown that the Courts have interpreted what is now s.101, as limited to the kind of transaction Mr. Mahon had in mind. This being so, I see no obstacle in the way of the adoption of the approach which commended itself to Woodhouse J., once it be accepted that the language of the section is capable of the wider interpretation. I agree with the conclusion he reached. Accordingly, I am of opinion that Mr. Mahon's first submission must be rejected.

I turn now to consider the appellant's second submission. It is quite true as Mr. Mathieson for the Commissioner argued, that until shortly before the settlement date the agreement for sale and purchase did not become unconditional. Therefore, in his submission, the proper time for the Commissioner to determine the part of the consideration attributable to the livestock was the date fixed for completion. On the other hand, Woodhouse J. quite obviously has appreciated that there was some difficulty in accepting that submission in its entirety for on any view of the matter the appellants had committed themselves to accept a total price of £200,000 for the property as a going concern, whatever fluctuations there might be, either in the value of land or of the trading stock in the intervening period of 6 months. Woodhouse J. overcame the problem by deciding that while there should be an assessment of the value as at the date of settlement of the land and the livestock, yet as he said, "It involves an assessment of the value of each group of assets sold and then a pro rata apportionment among them of the comprehensive consideration paid in order to avoid imbalance between the prices associated with the various groups." Accordingly, he first arrived at the value of the land and for this purpose accepted the valuation obtained by the appellants, namely £147,500. The value of the chattels were not in dispute and he therefore took the figure of £3,600. Then he accepted - as had the Commissioner, the valuation of the livestock made by Wright-Stephenson and Co. Ltd., namely £82,645. These three items totalled £233,745, and he said:-

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continued

"If this be done then the purchaser paid a price of £200,000 for assets which have been valued in isolation from one another at a total amount of £233,745. When the consideration actually paid is related to this last figure then the proportionate amount of the consideration which should be attributed to the livestock is £70,713."

Mr. Mahon was supported by Mr. Feenstra in developing this second submission. There are I think, very obvious difficulties in the way of accepting the date the contract was signed as the point of time when "the part of the consideration attributable to the trading stock" should be determined. To begin with, as I have said, the contract was a conditional one and therefore the property agreed to be sold was at the risk of the purchaser only "from the time this contract becomes effective" (cl.4). Therefore, it seems to me to be quite impossible to regard 1 December 1964 as the appropriate date. Moreover, on no view of the case had any income been "derived" by the appellants until long after 1 December 1964. On the other hand, there are objections - as Woodhouse J. saw - in the way of accepting 2 June 1965 as the appropriate date unless some adjustment is made to take care of any fluctuations in the value of the land or of the trading stock which may have occurred during the interregnum period of 6 months. In my opinion, Woodhouse J. was justified in adopting the formula he did, which in a measure recognises the force of both points of view. Accordingly, I would not disturb his decision that the appropriate figure for the livestock should be £70,713.

In conclusion, I should record that I was left quite unconvinced that there was any substance in Mr. Feenstra's final contention that the Commissioner was wrong in using as a basis for his determination the value of the stock if sold separately from the land in several lots. Nor am I willing to revise the figure of £82,645 adopted by the Commissioner, for I am in no position to decide whether the evidence of the stock valuer, Mr. Hope, should be preferred to the valuation of Wright-Stephenson and Co. Ltd. in the absence of any help from Woodhouse J. who had the advantage of listening to the evidence and he has certainly said nothing to encourage me to

take a view different from his. For these reasons, I would dismiss the appeal.

This being the opinion of us all, the appeal is dismissed with costs to the respondent 400 dollars and all reasonable disbursements.

Solicitors for Appellant: Messrs. Chapman, Feenstra and Cartwright, Hamilton

Solicitors for Respondent: Crown Law Office, Wellington.

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REASONS FOR JUDGMENT OF TURNER J.

Reasons for Judgment of Turner J. 16th July 1971

IN THE COURT OF APPEAL OF NEW ZEALAND C.A. 6/71

IN THE MATTER of the Land and Income Act, 1954

BETWEEN ANKER LIVINGSTONE WARTHO HANSEN of Wellsford, Farmer
First Appellant

A N D VERNER RICKARD WARTHO HANSEN of Wellsford, Farmer
20 Second Appellant

A N D NORMAN GARFIELD WARTHO HANSEN of Clevedon, Farmer
Third Appellant

A N D ARNOLD TARELTON SMITH of Takapuna, Retired Farmer,
Fourth Appellant

A N D ESTHER NAOMI SMITH of Takapuna, Retired Farmer
Fifth Appellant

30 A N D THE COMMISSIONER OF INLAND REVENUE
Respondent

In the Court of Appeal of New Zealand

No.7

Reasons for Judgment of Turner J. 16th July 1971

continued

Coram: North P.
Turner J.
Haslam J.

Hearing: May 17th and 18th 1971

Counsel: Mahon Q.C. and Feenstra for Appellants
Mathieson and Cathro for Respondent

Judgment: July 16th 1971

JUDGMENT OF TURNER J.

The essential facts, as to which there is no contest, are to be found satisfactorily summarised in the judgment of Woodhouse J. I will refer only to the part of the learned Judge's decision which is the subject of appeal, for this appeal is brought from part only. In their agreement dated December 1st 1964, for the sale of a farm as a going concern, appellants had agreed with the purchaser for a total purchase price of £200,000, and had in a subsequent clause in the agreement expressly apportioned this sum, as between realty and chattels, as being as to £168,450 for the realty and as to the balance of £31,550 for the live and dead stock and chattels. Of this latter amount it is accepted on this appeal that £27,750 was agreed by the parties as attributable to the livestock. The agreement provided that the transaction should be settled, possession being given and taken and the consideration moneys paid, six months after the execution of the agreement, viz. on June 2nd 1965. For the purposes of assessment for income tax for the year ended 31st March 1966 the appellants brought in the sum of £27,750 as the price received for the livestock on the preceding June 2nd, returning as income the difference between this sum and the standard value of the stock sold as appearing in their balance sheet for income tax purposes at the end of the previous year. The Commissioner, relying in this regard on Section 101 (1) of the Land and Income Tax Act 1954, disallowed the figure of £27,750 returned by appellants as to the price realised for the stock as above, and attributed a value of £82,555 to it, valuing it as at the date of settlement June 2nd 1965. Appellants asked for a case to be stated to the Court. On this case being argued, Woodhouse J. upheld the Commissioner's principal

contention on the point now under appeal, but on the facts reduced the valuation of the stock as fixed by him from £82,555 to £70,713. On appeal from this decision appellants now come before this Court on points of law.

Section 101 (1) of the Land & Income Tax Act 1954 is as follows :

> "Where any trading stock is sold together with other assets of a business, the part of the consideration attributable to the trading stock shall, for the purposes of this Act, be determined by the Commissioner, and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser."

Two principal points were put forward in this Court, the appellants submitting:

(a) That Section 101 (1) is not applicable to a case in which the parties have themselves expressly, in their agreement, apportioned the consideration between land and chattels, but is applicable only to transactions in which a global consideration, without apportionment, appears in the contract.

(b) Independently of the validity of the first submission, that the valuation in the present case should have been made as at the date of execution of the agreement, and not as at the date of settlement.

I will deal with these submissions separately, in the order in which they appear above.

If Section 101 (1) be read using the ordinary and literal meanings of its words, those words seem to me plainly to be applicable to the transaction before us. In the case before us it is admitted that the livestock sold was trading stock; it was clearly sold with other assets of the (farming) business - i.e. the other chattels and the land; and the Commissioner has purported to determine that of the consideration of £200000 provided for

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by the agreement of the parties £82,555 should be attributable to the trading stock sold. If his determination is properly made, then the section says that the amount so determined is deemed to be the amount paid.

But Mr. Mahon and Mr. Feenstra submitted that notwithstanding that the section may very obviously so be read, its history precludes this approach. Woodhouse J., in the judgment appealed from, in accepting the obvious reading, pointed out that Section 101 is placed in a group of sections in the Act which deals with standard values of trading stock. He thought that this fact assisted in the acceptance of the reading which he favoured. Mr. Mahon reminded us that Section 101 (1) was in this statute for several years before the other standard-value sections were enacted into law; and this, he said, lessened the force of Woodhouse J.'s reasoning - for the section, he submitted, ought not now to be read differently from the way in which it was read when, in the same words, it was originally enacted.

It was argued of course by Mr. Mathieson in this case that Woodhouse J. was right in interpreting S.101(1) as it stands, with reference to the context in which it is now to be found in the statute, among sections enacted long after S. 101 (1) itself was passed into law. I do not find it necessary to decide upon this contention, as I have concluded to my own satisfaction that even if Mr. Mahon's submissions, as I have set them out so far in this judgment be accepted, the plain meaning of S. 5 (1) of the 1926 Act was, at the date of its passing, sufficient, and S. 101 (1) of the 1954 Act is still sufficient without aid from its context, to catch the present transaction, and to empower the Commissioner to make an apportionment of the purchase price paid in the transaction under review in this appeal.

Section 5 (1) of the Land & Income Tax Amendment Act 1926, as originally passed, added this provision to the Act then currently in force:

> "5(1). Where any trading stock is sold together with other assets of a business, the part of the consideration attributable to the trading stock shall, for the purposes of the principal Act, be determined by the Commissioner, and the

part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser."

It will be seen that the words of the section are identical with those of the present section 101(1), except for the unimportant substitution in the current section of the words "this Act" for the words "the principal Act" which quite properly appeared in the original amending section.

Mr. Mahon, in inviting us to examine the meaning which should be placed upon the text of Section 5 (1) of the 1926 Act as at the date of its enactment, asked us to approach the matter by noticing that the enactment of the subsection was obviously inspired by the appeal then pending in the Privy Council from the decision of the Court of Appeal in Doughty v. Commissioner of Taxes 1926 N.Z.L.R. 279. In that case the judgment of the Court of Appeal was delivered on March 31st 1926 and that of the Privy Council on January 21st 1927. It is reported in 1927 A.C. 327. There had been a sale of the whole of the assets of a partnership, including its entire trading stock, to a company incorporated by the partners, at a global price, unapportioned as between trading stock and other assets, and the question arose as to whether it was competent as the law then stood for the Commissioner, from evidence furnished by balance sheets and other documents, to attribute a separate price to the trading stock. In the ultimate event their Lordships held that it was not, reversing the decision of the Court of Appeal in this regard; and it was undoubtedly to nullify the effect of such a possible decision in the Privy Council that S.5(1) of the 1926 Act was introduced into the statute before the Judicial Committee had considered the matter - not of course with the intention that it should have any effect in the Doughty case itself, but in order that the matter should be "clarified" in favour of the Commissioner in the cases of other taxpayers in respect of whose assessments a similar question might later arise.

It is convenient to mention, at this stage, the point made at the opening of Mr. Mahon's argument - viz. that any increase in the value of trading stock reflected in the price paid on the liquidation of a

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continued

business had been expressly included in the definition of "assessable income" in the statute by an amendment contained in the Land & Income Tax Amendment Act 1924. This, as a matter of interest, had been another of the questions raised in Doughty's case; but it has not concerned the Courts since 1924, having been made the subject of an express provision in favour of the Commissioner in that year.

Mr. Mahon invited us to examine the text of S.5(1) of the Amendment Act of 1926. First, he said, it is apparent that the Legislature did not by the amendment empower or direct the Commissioner to ascertain or determine the market price which the stock would have brought if sold in open market, and to tax the taxpayer upon that price. The corresponding Australian section, he said, did so provide; but not S.5(1) of the New Zealand Act of 1926. Section 5(1) empowered the Commissioner to do no more than to determine what part of the actual consideration paid was properly to be attributable to the stock.

But if Mr. Mahon's argument be accepted even so far, where does it lead him? His submission could perhaps have had some degree of validity in a case in which the total consideration actually received for the assets was for some reason substantially less than their value if sold on the open market. An example of what happens in such a case may be found in the calculations of the Commissioner in Inland Revenue Commissioner v. Edge 1956 N.Z.L.R. 799 at p. 801 - a case which later went to appeal, the judgments of the members of the Court of Appeal being cited to us by both sides on argument in the appeal before us. But the submission seems to me to be one which goes to the method of valuation only. It can have no significance in deciding whether the Commissioner has power in a given case to revise the figures put on the stock by the parties. Nor is there anything in S. 5(1) which says as is implicit in Mr. Mahon's argument, that the section has no application to cases in which the parties have purported to apportion the price for themselves as between land and stock. The section is a general one. Mr. Mahon, in pointing out that the section was enacted -- as I think is to be accepted - with the pending appeal in Doughty's case in mind, attempted to persuade us that the section must be read as going no further than was strictly necessary

to deal with cases exactly like Doughty's case, in which case there was a global consideration not apportioned by the parties. But there is no reason whatever to put such a restricted meaning on the words of the section. Why should the Legislature have deliberately restricted the powers which it gave to the Commissioner, so as to deal with cases exactly like Doughty and no others? I see no reason whatever for reading the section in a restricted way, and I read its general language then, as I read S 101 (1) now, to give the Commissioner the necessary power to apportion in every case in which in one transaction the parties have sold trading stock together with other assets, whether they have sold them for an unapportioned global consideration or whether they have purported to apportion the consideration between the assets, oreven have purported to fix separate prices without expressly adding them together into a total consideration. The test in every case is simply whether the transaction is one of which the effect is to sell trading stock and other assets together. And I add to my own conclusion the fact that it is supported by the obiter dicta of both Hutchison J. and McCarthy J. in Edge v. I.R.C. 1958 N.Z.L.R. 42, a case in which it was not strictly necessary to determine this point.

If, as I am disposed to hold, such was the scope and purpose of S. 5(1) of the Act of 1926 when originally passed, it is certain that the scope of the section has not been diminished, nor its purpose weakened, by the context in which the same provision is now to be found in the 1954 Act. So far, at least, I am in agreement with Woodhouse J. in the judgment under appeal. Sections 98 to 102 form a group of sections in the current Act dealing with trading stock. There is no need to review them in any detail in this judgment; it will be sufficient to point to one or two of the provisions directly in point in the present case. Section 98 (7) provides for the case in which in any income year the whole of the assets of a business owned by the taxpayer are sold, and those assets include trading stock. That is this case. In such circumstances the consideration received or receivable for the trading stock, or as the case may be the price which under the Act the trading stock is deemed to have realised, must be taken

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into account in calculating taxpayers' assessable income. Which, then, is to be taken into account in this case - the "consideration received", or the "price which under the Act the trading stock is deemed to have realised?" The answer to this question is to be found in the next subsection, subsection (8). This reads:

> "Subject to the provisions of Sections 101 and 102 of this Act, the price specified in any contract or sale or arrangement as the price at which any trading stock is sold or otherwise disposed of as aforesaid shall be deemed for the purpose of this section to be the consideration received or receiable for the trading stock."

In cases to which neither S. 101 nor S. 102 is applicable, then the price at which the trading stock is sold is the amount to be taken into account; but this is all subject to Sections 101 and 102, and in cases to which those sections have application the answer is to be found in them, and not in subsection (8).

Section 101 is of course the provision which we have been considering. I have held it to apply to this case. Where this is so the part of the consideration in respect of the whole transaction which the Commissioner determines is attributable to the trading stock is deemed to be the price paid for the trading stock by the purchaser. The present case is a case, then, in which Section 98 (8) has no application, because Section 101 (1) overrides it, and in applying Section 98 (7) the amount to be taken into account in assessing the taxpayer is "the price which under this Act to trading stock is deemed to have realised" as provided by S.101(1).

For the reasons therefore which I have been at some pains to express in deference to Mr. Mahon's detailed argument, and which seem to me possibly a little different from those which influenced Woodhouse J. to the same decision, I have come to the conclusion that the learned Judge in the Court below was right in deciding that S. 101 empowered the Commissioner, in the present transaction, to apportion the consideration between the trading stock and the other assets sold.

Mr. Feenstra submitted argument for the appellant on a second point, the validity of which in no way depended on the success of Mr. Mahon's principal submission. Mr. Feenstra's submission was that the Commissioner's determination as to quantum was founded upon wrong principles. This submission was divided into two lesser submissions. The first was that the Commissioner had proceeded upon a valuation of the stock made as at the date of settlement - June 2nd 1965 - whereas he should have apportioned the consideration as at the date of the signing of the agreement, when the consideration was agreed upon. The second submission was that in any case it was wrong to value the stock as if disposed of separately from the land, in different lots, to the best advantage, since (so it was submitted) such a calculation might bring about a result which attributed too low a value to the land. I will deal with each of these two submissions separately.

As to the first of them - the submission as to the date as at which the valuation should have been made - the question seems to me most logically approached by noticing that the Commissioner is empowered, by S. 101 (1), to determine <u>for the purposes of the Act</u> what part of the consideration is to be attributed to the stock. This must mean that the determination which the Act empowers is one <u>having fiscal effect</u>. It cannot have fiscal effect in this case, unless it is one whose effect is to quantify <u>derived income</u>. The determination, therefore, must be one attributing to the stock its appropriate part of the consideration as at a time when that consideration, or a part of it, <u>is derived as income as profit or gain</u>. It therefore seems to me necessary to inquire: when was it in this case that the purchase price of the livestock, or, rather, that part of it which represents profit or gain, must be regarded as being <u>income derived</u> for the purposes of the Act?

In this case the agreement was signed on December 1st 1964; the moneys were paid on June 2nd 1965. There was a reason for this. This was not a case in which the sale was made, and possession given, at one date, but payment was postponed for stock the property in which had already passed. In that kind of case it could be expected that a

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continued

provision for the payment of interest by the purchaser might have found its way into the agreement. Such a provision is very conspicuously absent in the agreement before us. What happened here was that the parties, in December 1964, settled the terms on which they bound themselves, six months later, to buy and sell - but subject, however, to the fulfilment in the meantime of a number of conditions which they set out in the agreement and without the fulfilment of which all would yet come to naught. In the interim the vendors had to obtain the freehold. If they did not there certainly would be no settlement in the following June. Then there was a condition that if the vendors found that they had to pay to the Crown more than £22,500 for the freehold "the sale evidenced by this agreement shall be subject to renegotiation at the request of the Vendors". The agreement, then, was not a final one until the freehold had been obtained at a price of £22,500 or less. Then there was a condition requiring the consent to the contract of parties who had an interest in the stock, but who had not executed the agreement:

> "The sale evidenced by this agreement is subject to the consent of the vendor Verner Rickard Wartho Hansen and of Norman Garfield Wartho Hansen (in respect of live and dead stock only). Such consents to be obtained and notified to the Purchaser on or before the 15th day of December 1964".

There was also a condition precedent as to the purchaser's ability to arrange finance. This reads:

> "The agreement is subject to the Purchaser being able to arrange sufficient finance prior to the 31st day of January 1965 and the Purchaser will forthwith do and execute all necessary acts and documents in an endeavour to obtain such finance. The Purchaser will forthwith notify the Vendors or their Solicitor as soon as such finance has been arranged, but in the event of such finance not being arranged by the said 31st day of January 1965 or such later date as the parties may agree upon this Agreement shall be void and the purchaser entitled to a refund of all monies paid".

This last clause even by itself makes it certain that

this was not to be a finally binding agreement at least until January 31st 1965 or such date as the parties might later agree as to the date by which finance had to be available. It was to give time for the vendors and the purchaser respectively to comply with all these preliminary obligations, all of which had to be met before one became finally bound to buy and the others sell, that parties provided for a period of delay. And they put into their agreement a clause that during this period of delay the vendors should not shear the sheep.

One thing at least seems perfectly clear from all this: the transaction between vendor and purchaser as it stood immediately on the execution of the agreement on December 1st 1964 was not one from which the vendors as yet derived or could be deemed to derive any income. It was a conditional, not an unconditional, agreement; for all that anyone knew, the sale might not ever eventuate.

And an examination of the terms of the document takes matters further than this. Not only is it clear that at least until the conditions set out in the agreement were fulfilled there was no sale; it is also clear that the parties had provided in their agreement for time within which they could make arrangements for complying with those conditions. They had agreed, on December 1st 1964, what the terms of the sale would be, including the price to be paid, as at that time, six months later, when, all the preliminary obligations on both sides having in the meantime been met, the price should be paid, and possession should be given and taken.

I have no doubt that in these circumstances the Commissioner was right in deciding that the price which he had to apportion was the price actually paid on settlement day; and that the stock which he had to value in apportioning that price was the stock as it was on the day of the settlement, with the wool unshorn still on the backs of the sheep. For it was on this day that the profit or gain was first derived from the sale of the stock which alone could have the fiscal consequences which would empower the Commissioner to allocate the consideration for the purposes of this Act.

In the Court of Appeal of New Zealand

No.7

Reasons for Judgment of Turner J. 16th July 1971

continued

Mr. Feenstra's second submission was that he was in any case wrong to value the stock as if sold separately from the land. He submitted that the result was that if to the value of the stock as so ascertained there were added the value of the land as if sold separately, the total would be found to exceed the aggregate of £200,000 actually received; and this (he said) demonstrated that the valuation placed on the stock by the Commissioner in this case was "unreal". Mr. Feenstra called in aid a valuation made by Mr. P.D. Sporle, as at "autumn 1965", showing the value of the land separately as £147,500. This valuation, as Woodhouse J. pointed out in his judgment, was not the subject of any challenge before him. If to this sum is added the sum of £82,555 which the Commissioner seeks to attribute to the stock, the total, after adding in £3,800 for the value of certain chattels included in the agreement, as to which there is no dispute, amounts to no less than £233,855 - £33,855 more than the amount actually received.

Woodhouse J. acceded at least in some degree to the justice of Mr. Feenstra's submission, and, applying the "scaling" process used by the Commissioner in Edge v. Commissioner of Inland Revenue, 1956 N.Z.L.R. 799, 801, 1958 N.Z.L.R. 42, he "scaled down" the Commissioner's valuation of the trading stock, reaching an ultimate figure of £70,713, which he thought, within the total actual figure of £200,000, would represent a fair value to be attributed to the stock.

I have felt some doubt as to whether for myself I would have been persuaded, as a trial Judge, to go so far. There seems to be no contest but the livestock, sold, if valued separately, was worth a total of £82,645 as at June 2nd 1965. It seems to me hardly realistic to suggest that if the land had been sold separately on the same date it would have realised a further sum of £147,500; for if this was indeed a possibility within anyone's reasonable contemplation, why did the vendors not in fact sell the land and stock separately, and thereby put another £33,000 into their pockets? I find Mr. Feenstra's contentions hard to reconcile with the realities of the situation, in which appellants in fact deliberately chose to sell as a going concern, simply because they were firmly of opinion - as indeed their advisers were too - that by so selling a greater

aggregate price would be obtained than by selling land and stock separately.

But having expressed my sense of uneasiness as to the reality of Mr. Feenstra's proposition, I must remember that Woodhouse J. has accepted it, with the important ingredient of fact which it must be acknowledged to contain; and that his decision was not the subject of any cross-appeal by the Commissioner before us. It may be that substantial justice was in fact done by the compromise of the matter which Woodhouse J. was persuaded to accept. Certainly there are cases, of which Edge v. Commissioner of Inland Revenue (supra) is an obvious one, in which the "scaling down" process adopted by Woodhouse J. in this case may prove the justest course. Remembering these considerations, I am willingly persuaded to accept Woodhouse J.'s result. It follows that, all the submissions made for appellants in this case having failed, this appeal should be dismissed.

Solicitors for Appellants: Chapman, Feenstra & Cartwright, HAMILTON.

Solicitors for Respondent: Crown Law Office, WELLINGTON

In the Court of Appeal of New Zealand

No.8

Reasons for Judgment of Haslam J. 16th July 1971

NO.8

REASONS FOR JUDGMENT OF HASLAM J.

IN THE COURT OF APPEAL OF NEW ZEALAND No.C.A.6/71

IN THE MATTER of the Land and Income Tax Act 1954

BETWEEN ANKER LIVINGSTONE WARTHO HANSEN of Wellsford, Farmer
First Appellant

A N D : VERNER RICKARD WARTHO HANSEN of Wellsford, Farmer
Second Appellant

A N D : NORMAN GARFIELD WARTHO HANSEN of Clevedon, Farmer
Third Appellant

A N D : ARNOLD TARELTON SMITH of Takapuna, Retired Farmer
Fourth Appellant

A N D : ESTHER NAOMI SMITH of Takapuna, Retired Farmer
Fifth Appellant

A N D : THE COMMISSIONER OF INLAND REVENUE
Respondent

Coram: North P.
Turner J.
Haslam J.

Hearing: 17th and 18th May, 1971.

Counsel: Mahon Q.C. and Feenstra for Appellants
Mathieson and Cathro for Respondent.

Judgment: 16th July, 1971.

JUDGMENT OF HASLAM J.

When referring to the Land and Income Tax Act 1954 in the course of delivering the judgment of the

majority of the Judicial Committee in Mangin v. C.I.R. (1971) N.Z.L.R. 591 at 592 Lord Donovan observed :-

> "The history of an enactment and the reasons which led to its being passed may be used as an aid to its construction".

The decision in Doughty v. Commissioner of Taxes (1927) A.C. 327 revealed a gap in the current taxing statute in respect of a certain type of commercial profit, viz. when stock in trade was sold as part of the assets of a business. The facts in that case related to the income tax returns of the appellant for the year 1920, and to overcome the defect the legislature enacted s.7 of the Land and Income Tax Act 1924, whereby (inter alia) in s.79(1)(a) of the Land and Income Tax Act 1923 (now s.88(1)(a) of the current statute) the first item of assessable income viz. "all profits or gains derived from any business" was extended by the addition of the phrase which still survives, i.e. "including any increase in the value of stock in hand at the time of the transfer or sale of the business, ...". To facilitate the enforcement of that amendment, which taxpayers could hardly be expected to keep in mind when drawing their documents on the disposal of a business, the prototype of the current s.101 was introduced in s.5 of the amendment of 1925. In its original form, this section enacted subss.(1) and (2) of s.101 in wording almost identical with their current content, and subs. (3) in s.5 of the 1926 amendment has since been deleted by the amendment of 1960 and now appears elsewhere. The present s.101(4), with an immaterial difference in arrangement, was first inserted by s.11(1) of the amendment of 1951.

It is now convenient to set out those passages of s.101 which are relevant for the purposes of the instant case:-

> "(1) Where any trading stock is sold together with other assets of a business, the part of the consideration attributable to the trading stock shall, for the purposes of this Act, be determined by the Commissioner, and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser.

In the Court of Appeal of New Zealand

No.8

Reasons for Judgment of Haslam J. 16th July 1971

continued

(2) For the purposes of this section any trading stock which has been disposed of otherwise than by sale shall be deemed to have been sold, and any trading stock so disposed of and any trading stock which has been sold for a consideration other than cash shall be deemed to have realised the market price thereof at the date of the disposition of sale, but, where there is no market price, trading stock shall be deemed to have realised such price as the Commissioner determines.

(4) For the purposes of this section the expression "trading stock" ... includes live stock ...".

I pause here to remark that the adjective "attributable" in subs. (1) above can readily be read as the equivalent of "capable of being attributed", and as embracing both sales in which there is a global price for trading stock and other assets, as well as similar transactions where the parties have severed the consideration in respect of each of those items.

The topic of liability for tax on trading stock (including livestock) has since received further clarification when the present s.98(7) and (8) was first enacted by s.16 of the Land and Income Tax Amendment 1939. Sub-section (8) has importance for present purposes and reads :-

"Subject to the provisions of sections 101 and 102 of this Act, the price specified in any contract of sale or arrangement as the price at which any trading stock is sold or otherwise disposed of as aforesaid shall be deemed for the purposes of this section to be the consideration received or receivable for the trading stock."

It will be noted that subs.(8) alludes in particular to the type of sale in which a separate price is specified for the trading stock. Once again, s.98(1) includes "livestock" within that term. I agree with the learned Judge that the opening words of subs.(8), viz. "subject to the provisions of sections 101 ..." would be irrelevant if the latter did not embrace the type of sale referred to in subs.(8). This feature alone appears to me to be

sufficient to answer Mr. Mahon's primary argument.

Whether or not Mr. Mahon is correct in contending that the original scope and purpose of s.101 cannot be affected by the terms of s.98(8) of the current Act, it is clear that when enacting the Land and Income Tax Act 1954 to consolidate as well as to amend the law on the subject, the legislature intended that ss.98 to 102 inclusive should constitute a sub-code for dealing with liability for taxation when trading stock (including livestock) is disposed of with other assets. The mischief aimed at is obviously the avoidance of taxation which would otherwise be payable on commercial profits arising from the sale of trading stock. Liability could still be evaded if the parties were free to attribute such price as they saw fit to the latter item in a composite sale with other assets. Therefore, in my opinion, s.101 should not be read restrictely, but should be construed as applying to sales of that class in the broadest terms, whether or not the consideration for land and chattels be severed in the contract embodying the transaction.

In further answer to Mr. Mahon's submission that the price specified in the contract of sale for the trading stock should be treated as conclusive for tax purposes (subject only, he conceded, to s.108) it must be remembered that when the prototype of s.101 was first enacted in 1926, ad valorem stamp duty was already payable upon both realty and goodwill in an agreement for sale. Transfers of chattels have always been exempt from conveyance duty. I hope that I am not mistaken in suggesting that the practice has long obtained of a differentiation being made in writing for stamp duty purposes at the very outset, to enable the Commissioner to assess the appropriate ad valorem duty on the sale of a business which includes either land or goodwill. For that purpose it has been usual for the terms of the contract itself to separate these two items, or in the alternative, for the solicitors as authorised agents of the parties to provide for the Commissioner the values pertaining to each class of asset. Therefore, as the majority of sales of a business as a going concern includes among "other assets" items which attract ad valorem duty, as a rule the parties themselves may be expected to

In the Court of Appeal of New Zealand

No.8

Reasons for Judgment of Haslam J. 16th July 1971

continued

attribute part of the consideration to the trading stock alone.

This practice, which certainly prevailed at the time when s.101 was originally introduced in 1926, in my view offers a further answer to Mr. Mahon's submission on this point. For completeness it may be appropriate to refer to s.54 of the Stamp Duties Act 1954 (enacted in succession of s.68 of the Stamp Duties Act 1923) which is more explicit than s.101 in enabling the Commissioner to apportion the consideration "between the several properties in proportion to their value and the Commissioner shall not be bound to accept any apportionment expressed in the instrument". This provision gave statutory effect to the decision of the full Court in Zealandia Soap and Cancle Company Ltd. v. Minister of Stamp Duties (1922) N.Z.L.R. 1117.

Therefore, while the parties might at the outset be tempted in sales of this type to attribute an excessive value to chattels in the hope of reducing stamp duty, they must be concerned with the proportion of consideration attributable to livestock. If Mr. Mahon were correct in submitting that the parties' figure for the live-stock was final for tax purposes, the vendor on quitting his farm could avoid all liability for tax in terms of s.88(1)(a) of the Act on the difference between his standard values and the market price on the live-stock on the day of the sale. I agree that s.101 is sufficient in terms and scope to defeat such a result.

I do not find any difficulty on the use of the singular noun "consideration", for, in a composite sale, that term is apt to describe the overall price, as well as its components. This distinction is recognized in s.57 of the Stamp Duties Act 1954. In my opinion therefore, in a transaction such as the present the Commissioner is empowered to invoke s.101 to determine the part of the consideration attributable to the trading stock for the purposes of the Act, and that fictional price is deemed to be the actual price for the assessment of the vendor as taxpayer on closing his books of account after selling his farm or business.

A sale of the type exemplified in the present case, viz. a farm as a going concern with live and

dead stock has for many years been common experience in this country, with the necessary legal distinctions, as applicable, being drawn between realty and goods, e.g. In Re: Duthie (1900) 19 N.Z.L.R. 359; Douglas v. Commissioner of Stamps (1904) 24 N.Z.L.R. 716; Poynter v. Holt (1916) G.L.R. 69; McCorkindale v. Wilson (1920) N.Z.L.R. 94. I therefore agree that Mr. Mahon must fail upon his first point.

The date at which the part of the consideration attributable to the live-stock should be determined by the Commissioner, and the material in fact used by him for that purpose, has already been canvassed in the judgments just delivered. There were only two competing dates, viz. 1st December, 1964 and 2nd June, 1965. I have to assume that there was no necessity for the Court to be informed more fully about the factual background of the contract under review, e.g. shearing practices in that district, the revenue to be expected from this farm between 1st December and the following 2nd June from crops or other sources. Woodhouse J. found that it was intended by the parties that the business should be carried on by the vendors and no doubt he is correct in that conclusion. There is mention of other stock on the farm property above the numbers stipulated in the schedule, i.e. 850 sheep and 309 cattle, but the context does not refer to the drafting of this stock for the purposes of completing the sale, nor to stock management in the interim. While cl.4 purports to deal with the passing of the risk in general terms in alluding to "property", the remainder of that clause is more appropriate in expression to improvements to realty, viz. dwelling and farm buildings. Although it was argued that the stock had been intended by the parties to pass upon signature of the contract as on the sale of specific goods, I suggest that the foregoing factors raise doubts at the outset upon this question. Furthermore, in cl.25 the provision about not shearing the sheep appears to be inconsistent with their being already owned by the purchaser, since the vendor has expressly agreed to refrain from shearing before delivery but would only have been entitled to shear when he chose if he had still owned the flock. I agree that the only consistent reading that can be given to this contract is that it was conditional

In the Court of Appeal of New Zealand

No.8

Reasons for Judgment of Haslam J. 16th July 1971

continued

at the outset and did not become enforceable until :-

(a) the consent of two of the vendors in respect of live and dead stock was obtained and the purchaser notified by 15th December, 1964.

(b) the purchasers being able to arrange "sufficient finance prior to 31st January, 1965".

(c) the approval of the Land Valuation Court in terms of clauses 12 and 13 and subject to the Land Settlement Promotion Act 1952.

I therefore agree that as the farm property and the live and dead stock was not intended to pass unless and until completion took place on 2nd June, 1965, the Commissioner was correct in accepting values pertaining to the stock as at that date. Such an interpretation of the present contract appears consistent with the reasons expressed by Sim J. in McCorkindale v. Wilson (supra). For the purposes of closing the books of the vendor's farming undertaking at Glen Massey and making the appropriate returns for assessment of tax, the income from the sale of stock was not "derived" until that date, and then only because all conditions stipulated in the contract had been fulfilled.

With respect, I agree with the pro rata reduction of the figures attributable to land and to live and dead stock on the principle applied by the learned Judge. He has followed the formula adopted in the Zealandia case (supra) in a different context, but the inherent justice of such an approach is emphasised in that, in the final result, the total consideration fixed by the parties is not exceeded. Furthermore, if this formula had not been applied, and the original figures of valuation for each item had been left at large, the Commissioner would in effect had exceeded his powers under s.101, because he would have written up not only the part of the consideration attributable to the trading stock, but also would have accorded a similar process to the remainder of the consideration pertaining to the realty. Section 101 does not authorise the latter result.

The other questions before the learned Judge were not the subject matter of appeal. I therefore

agree that this appeal must fail.

Solicitors for Appellants: Chapman, Feenstra & Cartwright, Hamilton.

Solicitors for Respondent: Crown Law Office, Wellington.

In the Court of Appeal of New Zealand

No.8

Reasons for Judgment of Haslam J. 16th July 1971

continued

NO. 9

No.9

JUDGMENT OF COURT OF APPEAL

Judgment of Court of Appeal 16th July 1971

IN THE COURT OF APPEAL OF NEW ZEALAND No. C.A.6/71

IN THE MATTER of the Land and Income Tax Act 1954

BETWEEN ANKER LIVINGSTONE WARTHO HANSEN of Wellsford, Farmer
First Appellant

A N D VERNER RICKARD WARTHO HANSEN of Wellsford, Farmer
Second Appellant

A N D NORMAN GARFIELD WARTHO HANSEN of Clevedon, Farmer
Third Appellant

A N D ARNOLD TARELTON SMITH of Takapuna, Retired Farmer
Fourth Appellant

A N D ESTHER NAOMI SMITH of Takapuna, Retired Farmer
Fifth Appellant

A N D THE COMMISSIONER OF INLAND REVENUE
Respondent

J U D G M E N T

BEFORE THE RIGHT HONOURABLE MR. JUSTICE NORTH (PRESIDING)
BEFORE THE RIGHT HONOURABLE MR. JUSTICE TURNER

In the Court of Appeal of New Zealand

No.9

Judgment of Court of Appeal 16th July 1971

continued

BEFORE THE HONOURABLE MR. JUSTICE HASLAM

Friday the 16th day of July 1971

THIS APPEAL coming on for hearing on the 17th and 18th days of May 1971 AND UPON HEARING Mr. Mahon Q.C. and Mr. Feenstra of Counsel for the Appellants and Mr. Mathieson and Mr. Cathro of Counsel for the Respondent THIS COURT DOTH HEREBY ORDER that the appeal be and the same is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that the Appellants shall pay to the Respondent by way of costs and disbursements the sum of $600.00 as set out in the schedule annexed hereto

BY THE COURT

Signed.

D.JENKIN
REGISTRAR

SCHEDULE

Costs in the Court of Appeal	
As ordered by the Court of Appeal	400.00
Costs in the Supreme Court	
Not fixed by Woodhouse J. but as agreed between counsel	200.00
	$600.00

In the Court of Appeal of New Zealand

No.10

Order granting Final Leave to Appeal to Her Majesty in Council 16th December 1971

NO.10

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

IN THE COURT OF APPEAL OF NEW ZEALAND No. C.A. 6/71

IN THE MATTER of The Land and Income Tax Act 1954

BETWEEN ANKER LIVINGSTONE WARTHO HANSEN of Wellsford, Farmer
First Appellant

A N D VERNER RICKARD WARTHO HANSEN of Wellsford, Farmer
Second Appellant

A N D NORMAN GARFIELD WARTHO HANSEN of Clevedon, Farmer
Third Appellant

A N D ARNOLD TARELTON SMITH of Takapuna, Retired Farmer
Fourth Appellant

A N D ESTHER NAOMI SMITH of Takapuna Retired Farmer
Fifth Appellant

A N D THE COMMISSIONER OF INLAND REVENUE
Respondent

Thursday the 16th day of December 1971

Before The Right Honourable Mr. Justice North
President of the Court

The Right Honourable Mr. Justice Turner

UPON READING the Notice of Motion of the Respondent dated the 23rd day of November 1971, and the Affidavit of DAVID MacDONALD HOWDEN filed herein AND UPON HEARING Mr. Upton of Counsel on behalf of the Respondent and Mr. Grace of Counsel on behalf of the Appellant THIS COURT HEREBY ORDERS that final leave to appeal to Her Majesty in Council from the judgment of the Honourable Court delivered herein on Tuesday the 16th day of July 1971 be and is hereby granted to the Respondent.

By the Court

D. Jenkin
REGISTRAR

In the Supreme Court of New Zealand

Objectors' Exhibit "A"

Memorandum of Transfer

1st June 1965

EXHIBIT "A"

(with irrelevancies omitted)

MEMORANDUM OF TRANSFER (No. S 323058)

WE, A.L.W. HANSEN, V.R.W. HANSEN and A.T. SMITH being registered as proprietors in fee simple as tenants in common in equal shares in the piece of land containing 4946 acres containing all the land in Certificate of Title Volume 4B Folio 777 South Auckland Registry in Consideration of £168,450 DO HEREBY TRANSFER the said land to LOCHIEL CAMERON LIMITED of Dunedin incorporated to carry on farming.

DATED 1st June, 1965.

Signed.

"Agreement stamped with duty of £1684.10 on 1-3-65 denoting fee paid 3-6-65."

Transfer Registered 20th August, 1965 by Downie, Stewart, Payne, Forrester and Armitage, Solicitors, Dunedin.

Objectors' Exhibit "B"

Copy Valuation of Livestock

14th June 1965

EXHIBIT "B"

COPY

Phone: 31830

P.O. Box 16
AUCKLAND. C. 1.

WRIGHT STEPHENSON AND CO. LIMITED 14.6.65.

Lochiel Cameron Ltd.,
c/o Mr. R.H.T. Cameron,
No. 5. R.D.,
TUAKAU.

Dear Sirs,

As requested we have to-day inspected the livestock running on your property at Glen Murray, and our valuation of these is as set out below:

575	Breeding Cows £38	21850
50	" " £34	1700
25	Cows £25	625
650		24175
100	Heifers empty £28.10.0.	2850
50	Steers (20 month) £36	1800
15	Bulls £75	1125
6	Hacks £15	90
450	Weaner Calves £25.10.0.	11475
		£41515
1900	6 tooth Romney Wethers £3.18.0.	7410
3700	4 tooth Romney Wethers £4.2.0.	15170
4200	2 tooth Romney Wethers £4.5.0.	17850
200	4 & 6th Romney Wethers £3.10.0.	700
10000		£41138
		£82645

The tallies of stock listed above are those supplied by you, these being the actual tallies which were checked and found to be correct as at the 10th June, 1965.

Yours faithfully,

WRIGHT STEPHENSON & CO. LIMITED

Stock Department

In the Supreme Court of New Zealand

Objectors Exhibit "C"

Valuation of Land

10th September 1970

EXHIBIT "C"

(with irrelevancies omitted)

SPORLE BERNAU AND ASSOCIATES

Messrs. Chapman, Feenstra & Cartwright,

10th September 1970.

Dear Sirs,

Re: HANSEN BROTHERS AND SMITH

Pursuant to your instructions, we made a recent inspection of the farm property formerly in the ownership of Messrs. Hansen Brothers and Smith and report to you as follows:

Area and Description:

4,946 acres, 2 roods, 0 perches more or less being Allotments 190 and 191 Parish of Whangape situated in Blocks 3 and 4 Awaroa Survey District and Blocks 15 and 16 Onewhero Survey District and being all that land contained in Certificate of Title Volume 4B 777 South Auckland Registry.

Valuation:

Our assessment of the fair market value of this property as at March, 1965, is $295,000.00.

This valuation is based on comparable farmland sales transacted in Raglan County during the period June 1964 to June 1965 and our general knowledge of this particular property at that time.

We have known this property for a considerable number of years and, though we did not make a detailed inspection in 1965, we did inspect and value farm properties which adjoin the north and south boundaries respectively at that time.

Improvements to the property which have been completed by the purchaser are not included in our assessment and comprise 80 chains of new fencing and repairs to the buildings.

We retain full field notes and comparable sales data and these can be made available to you at any time.

Yours faithfully,
SPORLE, BERNAU & ASSOCIATES

Per: "P.D. Sporle"

In the Supreme Court of New Zealand

Objectors' Exhibit "C"

Valuation of Land

10th September 1970

continued

HANSEN BROTHERS & SMITH - Autumn 1965

VALUATION DETAILS

BUILDINGS

House 1952	3500	
Garage	300	
House 1957	5000	
Shearers Quarters	300	
Old Shearers Quarters	50	
Woolshed and Implement Shed	5500	
Old sheds (2)	50	
Homestead	7300	
Garage	200	
Old Woolshed etc.	500	
Store Shed	100	
Total Value of Buildings		22,800

FENCING:

Boundary ½	430	at $7	3010
Internal	2160	at $8	17280
Road	180	at $7	1260
	2770	chains	
Total value of Fencing:			21,550

CLEARING, CULTIVATION, GRASSING & CONSOLIDATION

750 at $80	60000	
2650 at $50	132500	
1000 at $6	6000	
Total Value of Clearing Cultivation Grassing and Consolidation:		198,500

OTHER IMPROVEMENTS:

Yards and dip	2370	
Roads and Bridges	1800	
Water supply	1400	
Electricity	380	
Shelter	300	
House surrounds	400	
Total Value of Improvements		6,650
TOTAL		249,500

In the Supreme Court of New Zealand

Objectors' Exhibit "C"

Valuation of Land

10th September 1970

continued

UNIMPROVED VALUE:

1000 acres at $16	16000	
2450 acres at $10	24500	
1000 acres at $4	4000	
496 acres at $2	1000	
Total of Unimproved Value:		45,500
CAPITAL VALUE:		$295,000

SPORLE, BERNAU & ASSOCIATES

"P.D. Sporle"

SALES DATA

VENDOR	AREA	CONSIDERATION	DATE	GOVERNMANT VALUATION 1.2.1966	INCREASE ABOVE GOVERNMENT VALUATION
Gilmor	752 acres	$ 68,000	1.6.65	$ 57,060	19½%
Jolly	1087 acres	$ 89,384	28.6.65	$ 68,780	30%
Nicholsen	799 acres	$ 32,000	4.6.65	$ 27,800	15%
Tapp	1126 acres	$ 117,970	9.6.65	$ 99,100	19%
Michie	573 acres	$ 73,750	7.6.65	$ 60,100	23%
Power	550 acres	$ 107,870	1.6.65	$ 84,600	27½%
Gillanders	849 acres	$ 109,300	1.6.64	$ 96,250	14½%
Hansen & Others (Assessment by Sporle)	4946 acres	$ 295,000	1.6.65	$234,000	26%

"P.D. Sporle"

SPORLE, BERNAU & ASSOCIATES

In the Supreme Court of New Zealand

Objectors' Exhibit "D"

Statement of Livestock Values

June 1965

EXHIBIT "D"

LIVESTOCK VALUES JUNE 1965

400	BREEDING COWS	35-0-0
200	" "	30-0-0
50	" "	22-0-0
80	HFRS	27-0-0
20	"	22-0-0
50	STEERS	27-0-0
15	BULLS	75-0-0
250	M/S WEANERS	22-0-0
120	" "	19-0-0
80	" "	15-0-0
950	6th WETHERS	3-0-0
570	" "	2-15-0
380	" "	2-10-0
1850	4th WETHERS	3-7-6
1100	" "	3-2-6-
750	" "	2-17-6
2100	2th WETHERS	3-12-6
1260	" "	3-7-6
840	" "	3-0-0
200	M/A "	2-5-0

Average price wool 40 pence

TOTAL £67,395

In the Supreme Court of New Zealand

Objectors' Exhibit "E"

Statement of Livestock Values

1st December 1964

EXHIBIT "E" (By consent)

VALUES OF LIVESTOCK AS AT 1-12-64

CATTLE				
200	at cow value of	£25	5,000	
450	at cow and calf value of	£40	18,000	
15	bulls at value of	£75	1,125	
50	hfrs at value of	£25	1,250	
50	hfrs tailenders at value of	£12	600	
50	steers at value of	£15	750	26,725
SHEEP				
As per total value as at June 1965			32,040	
Less 25/- per sheep for 10,000 sheep being			12,500	
Balance				19,540
Total value of sheep and livestock at 1-12-1964				£46,265

IN THE PRIVY COUNCIL No. 13 of 1972

ON APPEAL

FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN :

ANKER LIVINGSTONE WARTHO HANSEN
VERNER RICKARD WARTHO HANSEN
NORMAN GARFIELD WARTHO HANSEN
ARNOLD TARELTON SMITH
ESTHER NAOMI SMITH Appellants

- and -

THE COMMISSIONER OF INLAND REVENUE Respondent

RECORD OF PROCEEDINGS

MESSRS. MACFARLANES,
Dowgate Hill House,
London, EC4R 2SY.
Solicitors for the
Appellants.

MESSRS. ALLEN & OVERY,
9/12 Cheapside,
London, EC2V 6AD.
Solicitors for the
Respondent.