

FULL COURT — (Latham, C.J.,
 Starke, Dixon, Evatt and
 McTiernan, JJ.) }
 (Adelaide and Sydney.) }

Oct. 7, Dec. 10,
 1936.

**DEPUTY COMMISSIONER OF TAXES v.
 ELDER'S TRUSTEE AND EXECUTOR
 CO. LTD.**

*Revenue—Land tax (Commonwealth) — Assessment—
 Crown leasehold—Amendment of Act—Imposition of
 liability—During financial year — Whether retro-
 spective—Appeal—Notice of objections — Whether
 appellant limited to grounds stated — Land Tax
 Assessment Act 1910, secs. 27-29—Land Tax Assess-
 ment Act 1914, sec. 3 — Land Tax Assessment Act
 1910-1934, sec. 44 (M) (3).*

By the Land Tax Assessment Act 1910 land tax was levied in respect of the unimproved value of land as owned on the 30th day of June immediately preceding the financial year for which the tax was levied. It provided that the owner of certain classes of Crown leaseholds should not be liable to land tax.

By the Land Tax Assessment Act 1914, certain Crown leases, including pastoral leases, were removed from the exemption, and they therefore became taxable. The Act came into operation on 21st December, 1914, and the amendments made by it were applied to land tax levied in and for the financial year beginning on 1st July, 1914.

Held, that a taxpayer owning a Crown pastoral lease on 30th June, 1914, was not liable to land tax for the financial year beginning 1st July, 1914.

Effect discussed of subsequent erroneous supposition by the Legislature of the effect of existing legislation.

Upon an appeal against the decision of a Deputy Commissioner of Taxes which was founded upon a notice of objection lodged in 1917, before the enactment of section 44 (M) (3) of the Land Tax Assessment Act 1910-1934,—"

Held, that the Supreme Court was at liberty to allow the appellant to rely upon a ground not stated in the notice.

Decision of Angas Parsons, A.-C.J., affirmed.

APPEAL FROM SUPREME COURT OF SOUTH AUSTRALIA.

Elder's Trustee and Executor Company Limited, trustee of the estate of William Tennant Mortlock, deceased, furnished a return for the purposes of the Land Tax Assessment Act 1910-1912 (Commonwealth), comprising the land owned by it as at noon on 30th June, 1914. The Deputy Commissioner of Taxes for South Australia made an assessment thereon, in which was included the taxpayer's interest in the unimproved value of lands held under Crown lease. The taxpayer gave notice of objection on 19th June, 1917, on the ground that the valuations of the leases were excessive; and, the objection being disallowed, the taxpayer on 27th February, 1918, required the Deputy Commissioner to treat it as an appeal, and transmit it to the Supreme Court. Later, the values of the leases having been agreed upon at a lower figure, the Deputy Commissioner, by amended assessment, assessed the taxpayer on the basis of those values, and on 19th June, 1935, the objection of 19th June,

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1917, was transmitted to the Supreme Court as an appeal, the appellant's contention being that Crown leases on 30th June, 1914, were not subject to land tax. The respondent Commissioner objected that this contention was not open, as it had not been stated in the notice of objection of 19th June, 1917.

The appeal was heard before Angas Parsons, A.-C.J., and the assessment was amended by omitting therefrom the value of the Crown leases.

The Deputy Commissioner appealed to the High Court.

Ligertwood, K.C., and *Brebner* for the appellant.—The Land Tax Acts impose taxation on land for a particular financial year. If the law as to assessment is amended at any time during the financial year, the amendment, *prima facie*, applies to all assessments for that year. The Land Tax Assessment Act (No. 29 of 1914), which came into force on the 21st December, 1914, brought into the realm of taxed lands certain Crown leases, which were previously exempt from taxation, and these Crown leases became subject to tax on the 21st December, 1914, in aid of the revenue for the financial year 1914-1915. The taxpayer owned the leases on the 30th June, 1914. The original Act of 1910 was passed more than four months after the commencement of the financial year. In *Clark Tait v. Commissioner of Taxes*, 43 C.L.R. 1, [1930] A.L.R. 1, pastoral leases, subject to resumption and reassessment of rent, were held not to come within the 1914 Act. The Land Tax Assessment Act (No. 1 of 1930) was passed to remedy that position retrospectively. The relevant amendments made by the 1930 Act were made to commence as on the 21st December, 1914, and were to apply to all assessments for the financial year beginning on the 1st July, 1914. The judgment is wrong in regarding the assessability to land tax as a quality of the land which must exist on a particular 30th June, and exemption from tax as a quality which persists until the next 30th June, unless in the meantime Parliament has passed retrospective legislation—Land Tax Act (No. 21 of 1910), secs. 2, 5; Land Tax Assessment Act 1910, secs. 10, 12, 15, 28, 29; Land Tax Act (No. 28 of 1914), sec. 4; Land Tax Assessment Act (No. 29 of 1914), sec. 3; Land Tax Assessment Act (No. 1 of 1930), secs. 3, 4. The taxpayer is bound by the grounds stated in the notice of objection—Land Tax Assessment Act 1910, sec. 44; Regulations 1912-1916, secs. 38, 40. The Court had no power to allow an amendment of the notice of objection. There was no waiver by the Commissioner. Although the question of value had been agreed between the parties, the Commissioner was bound to send on the appeal if requested by the taxpayer.

Mayo, K.C., and *Norman* for the respondent.—The taxation of land is provided for as owned at noon of the 30th June—Assessment Act 1910, secs. 12-15. The assessment being for the financial year ending 30th

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June, 1911, the tax would be levied as on 30th June, 1910. Among the leases excluded from taxation were some Crown leases, including the class now under appeal. The amendments made by the Assessment Act 1911 were made to date back, and affect assessments for the financial year beginning 1st July, 1911, though the Act was passed 18th December, 1911. The amendments made by the Assessment Act 1912, passed 24th December, 1912, were expressly made retrospective. The Assessment Act 1914, passed 21st December, 1914, amended sec. 29 so as to exclude pastoral leases from the exemption. But this was not made retrospective, and therefore did not apply to land held 30th June, 1914. By the Tax Act 1914, rates were altered, but this was made expressly retrospective to apply to land tax levied for the financial year beginning 1st July, 1914. Section 29 of the Principal Act was amended by the Assessment Act 1923 on 1st September, 1923, restoring the exemption, and the Act was made to commence on 1st July, 1923, and applied to assessments for the financial year commencing then. Section 28 of the Principal Act was amended by Act No. 1 of 1930, sec. 3, and the amendment was to be "deemed to have commenced on the date of the commencement of the Assessment Act 1914, and further "shall apply to all assessments for the financial year "beginning on the 1st day of July 1914 and all subsequent years." The commencement of the Act of 1914 was 21st December, 1914, and the amendment would not apply to assessments for the financial year beginning 1st July, 1914, unless the leases in question were otherwise subject to taxation, which they were not. For a Crown lease to be taxable it must be included in secs. 27 or 28, and not excluded by sec. 29—*Clark, Tait and Co. v. Federal Commissioner*, 43 C.L.R. at pp. 10-11, [1930] A.L.R. p. 4.

Cur. adv. vult.

The following written judgments were delivered:—

LATHAM, C.J.—The question which arises upon this appeal from the Supreme Court of South Australia is whether the interests of the respondent in certain lands held by lease from the Crown, used for pastoral purposes, and subject to a liability to resumption by the Crown during the term of the lease, are taxable under the Land Tax Assessment Act 1914. Section 27 provided for the taxation of leases of land leased after the commencement of the Act. Section 28 provided for the taxation of leases of land which had been leased before the commencement of the Act. Section 29 was in the following terms:—"Notwithstanding anything in the last two preceding sections "the owner of a leasehold estate under the laws of "a State relating to the alienation or occupation of "Crown lands or relating to mining (not being a perpetual lease without revaluation or a lease with a "right of purchase) shall not be liable to assessment "or taxation in respect of the estate."

The tax was levied upon the unimproved value of all lands within the Commonwealth owned by taxpayers and not exempt from taxation—sec. 10. Land tax was charged on land as owned at noon the 30th day of June immediately preceding the financial year for which the tax is levied. The question which arises relates to taxation for the financial year 1914-1915. In the case of that year the tax was charged on land as owned at noon on the 30th day of June, 1914. The taxpayer owned the leasehold estates in question on the 30th June, 1914, but by reason of sec. 29, he was not liable to assessment or taxation in respect of them. The question is whether certain subsequent amendments of the law have made him so liable.

The first amendment to be considered is to be found in the Land Tax Assessment Act 1914. This Act, by sec. 3, amended sec. 29 by removing certain Crown leases, including leases of land to be used for pastoral purposes, from the exemption contained in sec. 29 as it originally appeared in the 1910 Act. They therefore became taxable. This Act came into operation on 21st December, 1914. There was no provision in the Act which specified the assessments to which the amendment in question was applicable.

On the same day, 21st December, 1914, the Land Tax Act 1914 came into operation. This Act repealed the first and second schedules to the Land Tax Act 1910, and substituted other schedules declaring rates of tax. In this Act sec. 4 provided that "the amendments of the Principal Act made by this Act shall "apply to land tax levied in and for the financial "year beginning on the first day of July one thousand "nine hundred and fourteen and all subsequent "years."

Subsequent legislation in the Land Tax Assessment Act 1923 repealed the amendment made in sec. 29 by the Land Tax Assessment Act of 1914, to which I have referred, and reinstated sec. 29 in its original form, so that the respondent's leasehold interests in the lands in question again became non-taxable. The alteration made in the law in 1923 did not, however, extinguish the respondent's liability (if any) to taxation for the year 1914-1915, because sec. 3 of the Act provided that the Act should be deemed to have commenced on the first day of July, 1923, and that it should apply to assessments for the financial year commencing on that date and all subsequent years. Here again is a definite provision clearly specifying the assessments to which the amended Act is to apply. In other amending Land Tax Assessment Acts, namely, No. 12 of 1911, sec. 13, and No. 37 of 1912, sec. 12 (2), as well as in No. 29 of 1923 already mentioned, it was provided that the amendments of the Principal Act made by the Acts in question should apply to assessments for a specified financial year beginning on the 1st July immediately prior to the coming into operation of the Act.

The "Land Tax Assessment Act 1930" was passed after the decision of this Court in *Clark, Tait and Co. and Another v. The Federal Commissioner of Land Tax*, [1929] 43 C.L.R. 1, [1930] A.L.R. 1, in which it was held that, although Crown leases of land used for pastoral purposes were taxable antecedently to 1923, the method provided in the Land Tax Assessment Act 1910-1927 for valuing leasehold interests was such as to be inapplicable where (as in this case) leased land was subject to liability to resumption. Section 3 of the Act of 1930 provided a new method for valuing such leasehold interests. Section 4 of the same Act provided that the amendment made by sec. 3 should be deemed to have commenced on the date of the commencement of the Land Tax Assessment Act 1914, i.e., 21st December, 1914—the first date upon which it was provided that pastoral leases held from the Crown should be subject to land tax. It was further provided in the same section that the amendment made by sec. 3 "shall apply to all assessments 'for the financial year beginning on the 1st day of 'July one thousand nine hundred and fourteen and 'all subsequent years.'"

The last-mentioned provision shows that Parliament, in enacting the Act of 1930, proceeded upon the assumption that pastoral leases were taxable in respect of the financial year beginning on the 1st July, 1914—i.e., that persons who were lessees under such leases on the 30th June, 1914, were liable to tax. Such an assumption, however, cannot make law, unless there are affirmative provisions positively bringing the subject-matter in question into the taxing area. It is unnecessary for me to refer to the many cases which establish that the intention to impose a charge upon the subject must be shown by clear and unambiguous language. It is therefore necessary to go back to the Land Tax Assessment Act 1914 in order to see whether it imposes a charge in respect of the pastoral leases in question.

It is clear that the amendment made by that Act applies so as to bring into tax Crown pastoral leases held on 30th June, 1915, and subsequent years up to 30th June, 1922. The question is whether the Act also applies in the case of such leases as held on 30th June, 1914.

It has not been contended for the Commissioner that the amendment made by the 1914 Act should be construed as applying to all assessments of land tax which happen to be made after the 21st December, 1914, whether for the year 1914-1915 or for other years, but not to assessments made before that date. Such a construction of the Act would be so unjust as between individuals and so irrational in principle that it should not be adopted unless no other construction is open upon a fair reading of the words.

The contention submitted to the Court for the Commissioner is that the amendment applies to all assessments for the financial year 1914-1915, and that there-

fore Crown leases of land used for pastoral purposes held by a person on the 30th June, 1914, are taxable. The argument rests upon the contention that every amendment of the Land Tax Assessment Act must *prima facie* be held to relate to all assessments for the then current year, as well as to subsequent assessments. The 1914 Act came into operation on 21st December, 1914. It was not in operation on the 20th December, 1914, or on any antecedent date. It was in operation on and after the 21st December, 1914, until the further amendment was made in 1923. It contains the amendment which brings into the taxing area land which would be otherwise untaxed. No tax is chargeable as against any person in respect of any land unless that land was owned by that person on the 30th June in a relevant year, and unless its unimproved value, with or without other land owned by the same person, exceeds £5000. Further, the rate of tax depends upon the value of all the taxable land owned by the taxpayer. Thus the state of ownership of land upon the 30th June is an element which must necessarily be considered in determining both liability to tax and amount of tax. On the 30th June, 1914, the leases in question were not liable to assessment or tax. There is no provision which in clear and definite terms provides that they shall be so liable. It may have been intended to make them liable, but the Legislature has not introduced into the Land Tax Assessment Act 1914 the provision which, in several other Acts to which reference has been made, applied amendments made after the 30th June immediately preceding a financial year to all assessments in respect of that financial year.

Thus the practice of the Legislature, as shown by the examples quoted, is contrary to the contention that, without express words, amendments of the Act apply to all assessments for the current year. Further, the general principle, to which I have already referred, that a tax must be shown to be expressly imposed in accordance with a literal construction of a taxing Act, is also contrary to the contention. On the 30th June, 1914, any person who owned pastoral leases of the description mentioned was free from land tax in respect of them. He was entitled to make his arrangements upon that basis, unless the Legislature, by quite clear words, stated that tax was imposed in respect of them. I am unable to find such clear words, and therefore, in my opinion, these leases are not assessable to taxation for the financial year beginning on 1st July, 1914.

Upon the hearing of the appeal before the Supreme Court of South Australia a preliminary objection was taken on behalf of the Commissioner, and that objection has been repeated in this Court. The objection is that the taxpayer is not entitled to contend that he is not liable to taxation in respect of the leasehold interests included in the assessment.

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The original objection was lodged on the 19th June, 1917. It was in the following terms:—"The departmental valuations of pastoral leases are excessive. I claim that the assessment should be made on a taxable balance of £ ."

It may be observed that the taxpayer had made a return including the pastoral leases, in which he valued them at about £5000. There is nothing in the objection to show that the taxpayer contended that no assessment whatever should be made in respect of the pastoral leases. The objection was that the valuations were excessive, and that the value should be reduced, apparently to nothing.

On the 2nd February, 1918, the objection was disallowed, and on the 27th February, 1918, the taxpayer required the Commissioner to treat the objection as an appeal, and to transmit it to the Supreme Court of South Australia. Negotiations with respect to the value of the leases ensued, and ultimately, in August, 1934, an agreement on values was reached. The taxpayer then for the first time raised a contention in the following terms:—"The taxpayer contends that the taxation of pastoral leaseholds was not made retrospective so as to enable any assessment to be made for such land held on 30th June, 1914. Our client will obtain legal advice as to the liability for tax on land held at 30th June, 1914, and we will communicate further with you regarding such last-mentioned assessment." This is the first indication of any such contention, and it will be observed that at this time (seventeen years after the objection was made) the taxpayer was only proposing to obtain legal advice on this aspect of the matter. I cannot see that the Commissioner acted wrongly in any respect in forwarding to the Supreme Court the only objection which had been made within the prescribed time. Nor is the Commissioner guilty of any impropriety in submitting for the decision of the Court the question whether the taxpayer was entitled to rely upon a ground of objection which he raised for the first time seventeen years after he had requested that his objection be treated as an appeal.

I have had much doubt as to whether this preliminary objection should not be held to be effectual. The other members of the Court, however, are of opinion that it should not prevail, and I am not prepared to dissent from this opinion. The matter is now covered by statute—Land Tax Assessment Act 1910-1934, sec. 44M (3).

The judgment of the Supreme Court should be affirmed.

STARKE, J.—The legislation affecting this case is confused and confusing. I have reached the same conclusion as the Chief Justice, and concur in his opinion. But I desire to add some observations upon the argument for the Commissioner, that the ground taken by the respondent on this appeal, that it was

not liable for the tax, was not open to it, because not stated in the notice of objection, and that it should be confined to an objection that the departmental valuations were excessive. Under the Land Tax Act 1910-16 a taxpayer might, within the prescribed time, appeal to the High Court, or other tribunal, against any assessment by the Commissioner with respect to his land, on the ground that he was not liable for the tax or any part thereof, or that the assessment was excessive—sec. 44. The Governor-General in Council was authorised to make regulations not inconsistent with the Act, prescribing all matters which by the Act were required or permitted to be prescribed or were necessary or convenient to be prescribed for giving effect to it—sec. 74. Under this authority the Governor-General purported to make regulations dealing with, *inter alia*, appeals against land tax. They are contained in Part IV. of St. Rules 1912, No. 141, as amended, and deal with "Appeals Against Land Tax" (clauses 32-39), and "Objection in Lieu of Appeal" (cl. 40). Appeals against land tax, under sec. 44, were required by these regulations to be made to the Court within thirty days from the service of the notice of assessment, and the appellant, by cl. 38, was restricted on the hearing of any appeal to the grounds stated in the Notice of Appeal. Under clause 40 ("Objection in Lieu of Appeal") it was provided that where a taxpayer was dissatisfied with his assessment, but did not desire to appeal to the Court, then he might within thirty days from the date of service of the notice of assessment, state his objections in writing to the Commissioner, who might allow them wholly or in part. The Commissioner was required to give notice of his decision upon the objections to the taxpayer, who might, within a prescribed period, ask that his objections be treated as an appeal, and "all objections which may be treated as appeals shall be transmitted to the Court of Appeal selected by the taxpayer as formal appeals." But it is not expressly provided that, on an appeal by means of this procedure, the appellant is restricted to the grounds stated in his objection. Nor is the implication of such a provision necessary, for all that is transmitted to the Court of Appeal is the objection of the taxpayer upon which the Commissioner has made a decision. In the present case, the taxpayer pursued the procedure provided in clause 40 of the Regulations, and objected to an assessment on the ground that the departmental valuations were excessive; but in February, 1918, the Commissioner disallowed the objection, and the taxpayer, being dissatisfied with the decision of the Commissioner, required him in due time to transmit the objection to the Supreme Court of South Australia, which he did in 1935, "as an appeal from the said assessment as lastly amended" on 31st August, 1934."

In 1918, however, the Justices of the High Court, pursuant to sec. 47 of the Land Tax Act 1910-16,

made Rules of Court regulating the practice and procedure in relation to appeals against land tax assessments. It is Statutory Rule 1918, No. 52, and now stands as Order L.L.A. of the Rules of this Court. Some doubt existed whether Part IV. of the Regulations made by the Governor-General were valid, in view of the express power given in sec. 47 to the Justices of the High Court to regulate the practice and procedure in relation to appeals against land tax assessment, and those doubts, I believe, led to the Rules of Court in 1918. A special power was given to the Court in relation to the matter, and, when exercised, established the practice and procedure of the Court to which its rules applied. The general power given to the Governor-General was necessarily superseded, if it existed, and also any regulation made by him. Irregular in form as the appeal is in the present case, yet it should be regarded as an appeal brought under sec. 44 of the Land Tax Act 1910-16, as regulated by the Rules of Court made in 1918, and not by the Regulations made by the Governor-General.

The grounds of appeal, under sec. 44, as already set forth, are that the taxpayer is not liable for the tax or any part of it, or that the assessment is excessive. The Rules of Court require that the appellant shall, in his notice of appeal, specify his grounds of appeal, and in the ordinary course of procedure he would be confined to those grounds, but an Appeal Court has still in reserve the power to allow such amendments as are just. The objection taken by the Deputy Commissioner thus becomes a matter of form, and was curable by amendment in the Supreme Court of South Australia, and should now be treated as so cured. But this opinion may mislead unless I add a reference to the Act 1927 (No. 30)—Land Tax Assessment Act 1910-27, sec. 44M (3)—"A taxpayer shall be limited "on the hearing of the appeal to the grounds stated "in his objection." But that provision has no application to the present case, which began by a notice of objection in June, 1917, before the Act was passed, and before the procedure under it was established.

The appeal should be dismissed.

DIXON, EVATT and McTIERNAN, JJ.—The taxpayer, who is the respondent to the appeal, complains of the inclusion in its assessment for land tax for the financial year beginning 1st July, 1914, of a number of pastoral leases held from the Crown in South Australia.

The Land Tax Assessment Act 1910-1912 provided that land tax should be levied and paid upon the unimproved value of all lands within the Commonwealth owned by taxpayers, and not exempt from taxation under the Act; that it should be payable by the owner of land upon the taxable value of all land owned by him and not so exempt; and that it should be charged on land as owned at noon on the 30th day of June

immediately preceding the financial year in and for which the tax is levied—secs. 10 (1), 11 (1) and 12.

On 30th June, 1914, the taxpayer held the pastoral leases in question, but at that date they were excluded from liability to land tax by sec. 29, which provided that the owner of a leasehold estate under the laws of a State relating to the alienation or occupation of Crown lands (not being a perpetual lease without revaluation, or a lease with a right of purchase) should not be liable to assessment or taxation in respect of the estate. This provision was, however, amended by the Land Tax Assessment Act 1914, which was assented to on 21st December, 1914. Section 3 of that Act provided that sec. 29 of the Land Tax Assessment Act 1910-1912 should be amended by the omission of the words following the reference to a perpetual lease, and by the insertion in their stead of other words the effect of which was to exclude from the exemption given by sec. 29 most kinds of Crown lease and in particular pastoral leases. This exclusion from the exemption remained in operation until the financial year beginning 1st July, 1923, when it was ended by the Land Tax Assessment Act 1923. But the financial year as from which the exclusion took effect was not specified by the Land Tax Assessment Act 1914 and in this appeal we are called upon to decide the question whether the exclusion operated for the financial year beginning on 1st July, 1914, so that the taxpayer would be liable for that financial year in respect of the pastoral leases which it held on 30th June, 1914.

In 1929 a decision was given by this Court to the effect that Crown leases for terms of uncertain duration, reserving rents of indeterminate amounts, could not be taxed during the period when the exemption had been excluded, because the method prescribed by sec. 28 of the Assessment Act for computing the value could not be applied—*Clark, Tait and Co. v. Federal Commissioner of Land Tax*, [1929] 43 C.L.R. 1, [1930] A.L.R. 1.

In the following year, by the Land Tax Assessment Act 1930, sec. 28 was amended so as to supply a method of calculating the value of such leases, and thus remove the objection upon which the decision was founded. The matter is relevant to the present question only because the amending Act of 1930 contains a provision showing that the Legislature understood that the exclusion made by the Act of 1914 from the exemption of Crown leases operated in respect of the financial year beginning 1st July, 1914. Sub-section (2) of sec. 4 of the Act of 1930 provides that the amendment made in sec. 28 shall be deemed to have commenced on the date of the commencement of the Land Tax Assessment Act 1914, and shall apply to all assessments for the financial year beginning on the first day of July, 1914, and all subsequent years.

Except for the evidence of legislative intention supplied by this provision, we should have felt little

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doubt that the exclusion effected by the Act of 1914 from the exemption conferred on Crown leases by sec. 29 did not operate in respect of the financial year beginning 1st July, 1914. The conditions of liability to land tax for that financial year were fixed as on 30th June, 1914. Returns by taxpayers for the purpose of the assessment and levy of land tax for that year were due on 31st August, 1914. The financial year was half-way through when the amending Act was passed. It had been, as it still is, the general practice in amending taxation Assessment Acts to specify the first financial year to which the amendments shall apply, particularly in the case of past or current financial years. Such a provision was conspicuously absent from the Land Tax Assessment Act 1914. In these circumstances it appears to us that if the question now before us had come up for decision before the passing of the Act of 1930, or if it were now considered independently of that Act, there would be no foundation for an interpretation of the Act of 1914 which would produce a new liability for the financial year beginning 1st July, 1914, in respect of Crown leases held as at 30th June, 1914. Both presumption and reason would be against it. But sub-sec. (2) of sec. 4 of the Act of 1930 seems to be framed on the contrary view. It appears to assume that Crown leases falling within the decision in *Clark, Tait and Co.'s Case* would have been taxable for the financial year beginning 1st July, 1914, but for the considerations leading to that decision. It may be true that leases might conceivably exist which, while affected by those considerations, were never within the exemption given by sec. 29, leases with a right of purchase—but granted with a term of uncertain duration or at rents to be fixed from time to time. This possibility, one may be sure, is not the true explanation of the adoption by sec. 4 (2) of the Act of 1930 of the financial year beginning 1st July, 1914, as the commencing point of the amendment, although, having regard to sec. 26 of the Land Tax Assessment Act 1910-1912 and to the condition of sec. 27 (3) before it was amended by sec. 2 of the Act of 1914, that may be the first financial year in which sec. 28 could apply to a Crown lease not covered by the exemption given by sec. 29 of the Assessment Act 1910-1912. Doubtless the true explanation is that, in drafting the Act of 1930, it was supposed that the exclusion by the Act of 1914 of Crown leases from the exemption took effect for the financial year beginning 1st July, 1914.

But, in our opinion, the supposition ought not to lead us to give that effect to the Act of 1914. "An Act of Parliament does not alter the law by merely 'betraying an erroneous opinion of it'—Maxwell. *Interpretation of Statutes* (6th ed.), p. 544; and *per* Lord Atkinson, *Ormond Investment Company v. Betts*, [1928] A.C. 143 at p. 164. "Where the interpretation 'of a statute is obscure or ambiguous or readily 'capable of more than one interpretation, light may

"be thrown on the true view to be taken of it by the 'aim and provisions of a subsequent statute'—*per* Lord Atkinson, *ibid.* In *Cape Brandy Syndicate v. Inland Revenue Commissioners*, [1921] 2 K.B. 403 at page 414, Lord Sterndale said—"I quite 'agree that subsequent legislation, if it proceeded upon an erroneous construction of previous 'legislation, cannot alter that previous legis-'lation; but if there be any ambiguity in the earlier 'legislation, then the subsequent legislation may fix 'the proper interpretation which is to be put upon 'the earlier.'" In reference to this statement, Lord Buckmaster said, in *Ormond Investment Company v. Betts*, [1928] A.C. 143 at p. 156—"That is, in my 'opinion, an accurate expression of the law, if by 'any ambiguity' is meant a phrase fairly and 'equally open to divers meanings." But it is not permissible to construe an unambiguous phrase in an earlier Act by an erroneous assumption of its effect contained in a later Act which did not purport to alter or amend the earlier Act—*per* Lawrence, L.J., *Port of London Authority v. Convey Island Commissioners*, [1932] 1 Ch. 446 at p. 493.

In the present case the Act of 1930 did not intend to amend the Act of 1914. It was not concerned with it, and was dealing with a matter unconnected with the question for what financial year the amendments made by the Act of 1914 first took effect. On that question it did no more than proceed upon an assumption. It was a question depending, not on an ambiguous word or phrase, but on the absence from the Act of 1914 of any express statement of the financial year first to be affected. The ordinary rules of interpretation supplied the deficiency, and, in our opinion, made it clear, that the amendments first applied, not to the financial year then current, for which the land tax liabilities had accrued nearly six months before, but to the then next ensuing financial year.

In our opinion, the taxpayer is not liable to assessment for land tax for the financial year beginning 1st July, 1914, in respect of pastoral leases from the Crown which it held on 30th June, 1914.

Angas Parsens, J., who heard the taxpayer's appeal to the Supreme Court of South Australia, adopted the same view as we have expressed, and gave effect to it by the order from which the Deputy Commissioner of Taxation now appeals.

It is contended that it was not open to the learned Judge to do so, because the ground relied upon was not taken by the taxpayer in his notice of objection to the amended assessment by which the pastoral leases were brought under tax for the financial year beginning 1st July, 1914. It appears that the taxpayer's assessment for that financial year was made on 14th July, 1915, but did not include the pastoral leases. These were included by an amendment of which the taxpayer was notified on 23rd May, 1917.

Within thirty days the taxpayer objected "to the assessment of land tax . . . contained in the notice of assessment" of that date, and gave as the reason that the departmental valuations of the pastoral leases were excessive, and claimed that the assessment should be on a taxable balance of £ — (*sic*). The objection was disallowed by notice dated 2nd February, 1918, and the taxpayer within thirty days requested that the objection should be treated as an appeal and transmitted to the Supreme Court of South Australia. The transmission was withheld pending, no doubt, the solution of the many difficulties attending the taxation of Crown leaseholds. At length, on 19th June, 1935, the transmission was made. The procedure followed clause 40 of the Land Tax Regulations 1912-1916 (S.R. 1912, No. 141, as amended by S.R. 1913, No. 335, and S.R. 1914, No. 5). That clause was expressed to give to a taxpayer who, although dissatisfied with a land tax assessment, did not desire to appeal to the Court, a right to lodge objections to it with the Commissioner, and then, if he was dissatisfied with the Commissioner's decision upon his objection, to require that the objections be treated as an appeal, and transmitted to the Court. Clauses 32 to 39 of the same Regulations provided the procedure for a direct appeal against an assessment by a form of notice stating reasons. The procedure for land tax appeals is now regulated by secs. 44 to 44M of the Land Tax Assessment Act 1910-1934, provisions which were introduced by Act No. 30 of 1927, and superseded the Regulations. The Regulations are recognised by sec. 24 of that Act, which seems to imply that they shall not operate in relation to fresh appeals, rather than to "repeal" them or to repeal *pro tanto* the power under which they were made. It may be that sec. 11 of the Acts Interpretation Act 1904-1932, or sec. 8 of the Acts Interpretation Act 1901-1932, preserves rights under regulations abrogated by statute, but this is not clear. We assume, however, that, in relation to pending matters, the Regulations lost none of the force they possessed.

What force they did possess was a problem that remained unsolved when they were superseded. Section 46 of the Land Tax Assessment Act 1910-1916 conferred upon the Justices of the High Court a power to make Rules of Court for regulating the practice and procedure in relation to appeals against assessments. It would appear at first sight that the existence of this power must exclude the application to the same matter of the general power conferred upon the Executive by sec. 74 to make regulations not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Act. But sec. 44, which gives to the taxpayer the right of appeal, imposes the condition that he shall appeal "within the prescribed time." Section 9 of the Acts Interpretation Act

1904-1932 provides that in any Act, unless the contrary intention appears, "prescribed" means prescribed by the Act or by the regulations under the Act. Perhaps Rules of Court may satisfy the description "regulations" in this definition.

But we think that the latter view is that sec. 44 and sec. 74 combined to empower the Executive to fix by regulations the time within which the appeal might be brought. Rules of Court were not made, it seems, until 1918, when S.R. No. 52 of 1918 introduced Order L.L.A., sec. 1 of which applied, we think, to land tax appeals in all Courts. It may be that, in default of Rules of Court, it was "convenient" within the meaning of sec. 74 to prescribe the full procedure on appeal, but it is difficult to suppose that two authorities were meant to possess and exercise concurrently two independent powers of equal strength to regulate the same matter. The power of regulating appeals generally under sec. 74 could be at best *ad interim* pending the making of Rules of Court. If clauses 33 to 39 ever were valid, we think they ceased to operate when S.R. No. 52 of 1918 was made. The contention that the taxpayer could not rely upon the freedom of the pastoral leases from liability to land tax for the financial year beginning 1st July, 1914, was based upon clause 38. This clause provided that the appellant should be restricted on the hearing of any appeal to the grounds stated in the notice of appeal. The clause does not in terms apply to proceedings under clause 40. In those proceedings there is no notice of appeal. It is only by making an implication in clause 40 that clause 38 can be incorporated. There is, in our opinion, no warrant for making such an implication. Clause 40 itself was probably valid because it does not interfere with the procedure after the institution of an appeal. The power of the Executive to make regulations would extend to giving a right to carry in objections to the assessment and to providing that a taxpayer who does so shall have thirty days after the decision to appeal. The Rules of Court appear to fix the same time. Rule 1 speaks of the "decision of the Commissioner."

Perhaps, in strictness, the taxpayer should have given notice of motion, as well as requiring the Commissioner to treat the objection as an appeal. That point was not taken and, if it had been, it could have been cured under the non-compliance provisions of the Rules of Court. But, in our opinion, clause 38 had no force, at any rate after S.R. No. 52 of 1918, and never did apply to proceedings under clause 40 of the Regulations.

The objection in fact taken was to the assessment, and there was nothing except the discretion of the Court before which it came as an appeal to restrict the appellant to the "reason" given in support of the objection. We do not see how the fact that in sec. 44 of the Land Tax Assessment Act 1910-1916, which continues to apply to this case as a result of sec. 8

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of the Acts Interpretation Act 1901-1932, two grounds of appeal are expressly mentioned, operates to restrict the power of the Court to allow the appellant to rely on one of them, although, in giving the notice of appeal, he mentioned the other of them only.

In our opinion it was open to Angas Parsons, J., to entertain the ground of appeal upon which the taxpayer succeeded, and His Honour's order was rightly made.

We think that the appeal should be dismissed, with costs.

Appeal dismissed, with costs.

[Solicitors—For the appellant, Fisher, Powers, Jeffries and Brebner, agents for W. H. Sharwood, Commonwealth Crown Solicitor; for the respondent, Norman Waterhouse, Chapman and Johnston.]

FULL COURT — (Latham, C.J.,

Rich, Dixon, Evatt and

McTiernan, J.J.)

(Sydney.)

Nov. 30, Dec. 15,
1936.

COMMERCIAL BANKING CO. OF SYDNEY LTD. v. BUCKNELL.

Practice—High Court—Interlocutory order of Supreme Court—Application for leave to appeal therefrom—Discretion of Court—Indication of matters relevant to such application — Distinction between leave to appeal and special leave to appeal—Judiciary Act 1903-1934, secs. 35 (1) (a) (b), 39 (2) (c).

Although in applications for special leave to appeal under section 35 (1) (b) of the Judiciary Act 1903-1934, special circumstances must exist to justify granting leave, in the case of applications for leave to appeal from interlocutory orders under section 35 (1) thereof, the existence of special circumstances is not necessary to justify leave, but such leave will not be granted as of course without consideration of the nature and circumstances of the particular case.

Matters relevant upon an application for leave to appeal from an interlocutory order indicated.

In an application for leave to appeal, under section 35 (1), from an interlocutory order, viz., a judgment of the Full Court of the Supreme Court of New South Wales directing a new trial, it appeared that the plaintiff in an action for £2272 was nonsuited, on the ground that the claim was barred by the Statute of Limitations. The Full Court on appeal held that there was a sufficient acknowledgment to take the case out of the statute, and ordered a new trial.

Held that, as the order really determined the matter in controversy, and the amount involved was more than £300, leave to appeal should be granted, upon the condition that, if the appeal should be dismissed, judgment should be entered for the plaintiff for the amount claimed.

The purpose of section 35 (1) (b) and of section 39 (2) (c) of the Act is to establish the *prima facie* rule that judgments and orders, to which those sections apply, should not be subject to appeal to the High Court, and to empower the Court to make exceptions in such particular cases as appear to it to possess features making them special.

APPLICATION for leave to appeal.

In an application for leave to appeal from a judgment of the Full Court of the Supreme Court of New

South Wales, it appeared that the applicant, Norman Charles Bucknell, had obtained an advance on overdraft from the Commercial Banking Co. of Sydney Ltd. in the amount of £2272 15s. In an action brought in the Supreme Court, and tried before Milner Stephen, J., and a jury, the Bank sought to recover this amount, with interest. The defendant pleaded, *inter alia*, that the alleged cause of action did not accrue within six years before the action was brought, and the Bank joined issue on this plea. On this issue the Bank tendered a letter by the applicant as an acknowledgment of the debt sufficient to take the case out of the Statute of Limitations. The letter was in the following terms:—

"I have to acknowledge the receipt of your letter of the 8th November last. I remember my interview with your late General Manager a few months ago, when it was put before me by him that I should pay you £500 in cash in reduction of my liability to your Bank . . . and at the same time give you a promissory note for a further £500 in full liquidation of the debt. To this proposition I neither dissented nor agreed as, under the peculiar circumstances of the matter having been in abeyance for nearly seven years, I considered that your bank would make no further claim beyond the £2000 that I had already paid. . . For this reason I should be absolved from any further payment."

Milner Stephen, J., was of opinion at the trial that this letter was not sufficient to take the case out of the Statute of Limitations, and granted a nonsuit.

The plaintiff appealed by way of notice of motion to the Full Court of the Supreme Court, and the Full Court ordered a new trial. The defendant applied to the High Court for leave to appeal, on the grounds that the Full Court was in error in holding that the letter constituted an acknowledgment of the debt sufficient to take the case out of the Statute of Limitations, and in applying to the letter the principle of construction of ascertaining, first, if there was an admission of the debt; and secondly, if any words existed inconsistent with the promise to pay thereby implied.

Monahan, K.C. (with him Wesche), for the applicant.

Cur. adv. vult.

LATHAM, C.J.—This is an application for leave to appeal from an interlocutory order. The plaintiff claimed £2272 15s. and interest. The plaintiff was nonsuited, the learned trial Judge holding that the claim was barred by the Statute of Limitations. The plaintiff appealed, and the Full Court, holding that there was a sufficient acknowledgment to take the case out of the statute, ordered a new trial. The result, in the circumstances of this case, is that the plaintiff must succeed upon the new trial which has been ordered. Thus the interlocutory order really determines the controversy between the parties, as the only defence to the claim depends upon the Statute of Limitations. The order is a judgment given in respect of a sum amounting to the value of £300, and an appeal may be brought to this Court by leave of the Supreme Court or of this Court—Judiciary Act 1903-1934, sec. 35 (1) (a) (1). This Court takes this