

[HIGH COURT OF AUSTRALIA.]

GATEHOUSE

APPELLANT;

AND

FEDERAL COMMISSIONER OF TAXATION . RESPONDENT.

H. C. OF A.  
1935.MELBOURNE,  
March 14, 16.

Starke J.

*Income Tax (Cth.)—Assessable income—Alimony received by former wife—“Wife living apart from her husband pursuant to a decree, judgment, or order”—Alimony subject to income tax—Income derived from property—Income Tax Assessment Act 1922-1934 (No. 37 of 1922—No. 18 of 1934), secs. 4, 14 (3).*

Sec. 14 (3) of the *Income Tax Assessment Act 1922-1934* provides that “A wife living apart from her husband pursuant to a decree, judgment, order or deed of separation which provides that the husband shall periodically pay specified moneys to the wife shall not be liable to be assessed in respect of those moneys.”

*Held* that this provision did not apply to alimony received by a wife after a decree absolute for dissolution of her marriage, and that as such moneys when received by the former wife were not “income from personal exertion” within the meaning of sec. 4 of the Act, they were assessable as income from property.

APPEALS from assessment to income tax.

These were appeals by Eleanor Wright Gatehouse from assessment to income tax for the financial years 1932-1933 and 1933-1934.

Mutual admissions of fact were made by the parties which were, in substance, as follows:—

1. On 8th April 1927 the taxpayer, Eleanor Wright Gatehouse, obtained a decree nisi in the Supreme Court of Victoria for the dissolution of her marriage with James Gatehouse. By the decree nisi the question of alimony was reserved for hearing by the Court on Tuesday 12th April 1927, unless in the meantime the parties by themselves or their counsel arrived at an agreement in relation



thereto. A copy of the decree nisi formed part of these admissions. 2. Subsequently the parties arrived at an agreement in relation to alimony whereby it was agreed (*inter alia*) that the respondent should pay to the petitioner during their joint lives and while she remained unmarried alimony at the rate of £1,000 a year computed from 8th April 1927 and payable monthly, with liberty to either party to apply at any time to have an order of the Court made for payment of alimony at the rate agreed upon, and subject to the right of the respondent at any time after the making of such order to apply to the Court to vary or discharge the same as provided by the *Marriage Act* 1915 or any statutory modification thereof. This agreement was embodied in a deed dated 30th April 1927 and executed by both parties. 3. In due course, namely, on 9th July 1927, the decree nisi was made absolute. 4. James Gatehouse at all material times has carried on the business of a miller, and substantially his income has been derived from carrying on that business. 5. The taxpayer has ever since the execution of the said indenture been paid the alimony provided for therein. 6. For the two financial years ended 30th June 1933 and 30th June 1934 respectively the Federal Income Tax Commissioner has assessed the taxpayer as liable to pay income tax on the alimony payments. The tax is calculated at the rate provided for income from property. 7. The taxpayer has objected to both assessments on the following grounds:— (1) There is no provision in the *Income Tax Assessment Act* 1922-1932 rendering her liable for taxation on maintenance money received by her from her divorced husband. (2) Sec. 14, sub-sec. 3, of the said Act exempts her from taxation on the above-mentioned money. 8. The appellant and the respondent in this appeal for the purposes of this appeal only hereby mutually admit the several facts respectively above specified, saving all just exceptions to the admissibility of such facts or any of them, as evidence in this appeal provided that these admissions are made for the purpose of this appeal only and are not admissions to be used against either the appellant or the respondent on any other occasion or by anyone other than the appellant and the respondent respectively. 9. It is agreed that the Court shall on the hearing of this appeal be at liberty to

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draw inferences of fact from the foregoing statement. The agreement dated 30th April 1927 contained the following clauses:—

3. Subject to the provisions of clause 4 hereof the said James Gatehouse will also pay to the said Eleanor Wright Gatehouse during their joint lives and while she shall remain unmarried to any other person alimony at the rate of one thousand pounds per year, such alimony being computed from 8th April 1927 and being payable monthly on the first day of each month by equal monthly payments, the first of such payments being made on 1st May 1927.
4. Either party is to be at liberty at any time if so advised to apply to have an order of the Supreme Court of Victoria made in terms of clause 3 hereof and nothing herein contained is to prejudice the right of the said James Gatehouse upon the making of such order or at any time thereafter to apply to the said Court to vary or discharge the same as provided by the *Marriage Act* 1915 or any statutory modification thereof.

*Walker*, for the appellant.

*Reynolds*, for the respondent.

*Cur. adv. vult.*

March 16.

STARKE J. delivered the following written judgment:—

These are appeals from assessments to income tax for the financial years 1932-1933 and 1933-1934. On 8th April 1927 the taxpayer obtained a decree nisi for the dissolution of her marriage with James Gatehouse, and the decree became absolute on 9th July 1927 (*Marriage Act* 1915 (Vict.), sec. 136). The decree nisi further ordered that “the question of alimony be reserved for hearing by the Court . . . unless in the meantime the parties by themselves or their counsel arrive at an agreement in relation thereto” (*Marriage Act* 1915, secs. 142, 143). An agreement dated 30th April 1927 was made between the taxpayer and James Gatehouse. It recited the decree nisi, and that the parties had agreed that the question of alimony should be settled in the manner and upon the terms therein-after appearing. It also contained the following covenant on the part of James Gatehouse: “3. Subject to the provisions of clause 4 hereof the said James Gatehouse will also pay to the said Eleanor



Wright Gatehouse" (the taxpayer) "during their joint lives and while she shall remain unmarried to any other person alimony at the rate of one thousand pounds per year, such alimony being computed from 8th April 1927 and being payable monthly on the first day of each month by equal monthly payments the first of such payments being made on 1st May 1927."

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Clause 4 provided that either party was to be at liberty at any time if so advised to apply to have an order of the Supreme Court of Victoria made in terms of clause 3, and nothing was to prejudice the right of James Gatehouse upon the making of such order or at any time thereafter to apply to the Court to vary or discharge the same as provided by the *Marriage Act* 1915 or any statutory modification thereof. Since the execution of this agreement the taxpayer has received the payments therein provided. The Commissioner assessed the taxpayer in respect of payments made under this agreement, for the financial years 1932-1933 and 1933-1934, and the assessment must, in my opinion, be sustained.

The taxable income of a taxpayer is the amount of income remaining after all deductions allowed by the Act have been made. There is no definition of income in the Act. It denotes a person's receipts or what comes in to him. The taxpayer's right to the sum assessed in this case arises from the covenant contained in the indenture already mentioned. An obligation to pay is created by the indenture which is legally enforceable by her. It is paid to and "comes in" to the taxpayer by reason of that obligation. It is, no doubt, for her maintenance and support, and it was compared with an allowance made by a man to his wife or to his children. But such an allowance is normally part of the husband's or the father's income, and does not, as in this case, arise from an obligation legally enforceable by the recipient. The taxpayer here would not, I think, be in any better position if the money were payable under an order made by the Supreme Court: it would still be her income. But it is possible that the Supreme Court might have thrown the burden of the tax upon the divorced husband without infringing the provisions of sec. 93 of the *Income Tax Assessment Act* 1922-1934 (cf. *Blount v. Blount* (1)).

(1) (1916) 1 K.B. 230, at p. 238.



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It was contended, however, that the provisions of sec. 14 (3) of the *Income Tax Assessment Act 1922-1934* exempted from income tax the moneys paid to the taxpayer under the agreement mentioned. The section provides:—"A wife living apart from her husband pursuant to a decree, judgment, order or deed of separation which provides that the husband shall periodically pay specified moneys to the wife shall not be liable to be assessed in respect of those moneys." But that section does not cover this case. The marriage relationship was dissolved. The parties to the marriage are no longer husband and wife. The taxpayer is not a wife living apart from her husband under any decree, judgment, order or deed of separation. It is a matter for the consideration of the legislature whether payments such as are made in the present case should not also be exempted from income tax; there seems little in principle to distinguish them from the moneys exempted under sec. 14 (3).

Lastly I should add that the income received by the wife does not fall within the definition of income from personal exertion, and must, therefore, fall under the description of income from property.

The appeals are dismissed.

*Appeals dismissed.*

Solicitor for the appellant, *Bernard Nolan*.

Solicitor for the respondent, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

H. D. W.