[HIGH COURT OF AUSTRALIA.]

THE KING . . . . . APPELLANT;
PLAINTIFF,

AND

ATKINSON . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1906.

MELBOURNE, *March* 14, 15, 16, 19.

Griffith C.J., Barton and O'Connor JJ.

Land Tax Act 1877 (*Vict.*) (*No.* 575), *secs.* 2, 14, 18, 21, 40, 44—*Land Tax Act* 1890 (*Vict.*) (*No.* 1107), *secs.* 3, 4, 14, 15, 18, 22, 34, 35, 39, 40, 41—*Landed Estate—Classification and Valuation—Duty of classifiers to include all separate areas "not more than five miles apart"—Sale of portion of landed estate—Subsequent sale of balance—Whether original classification stands good.*

The classification of a landed estate under sec. 3 of the *Land Tax Act* 1890 (Victoria) is not invalidated by the omission to include in the estate as classified a separate piece of land of the same owner not more than five miles distant from the land classified.

An objection by the owner to such omission must be taken at the time of the classification by appeal under sec. 22 or otherwise.

Where the owner of a landed estate sells portion of it, retaining a quantity sufficient in area and value to constitute a landed estate within the meaning of the Act, and subsequently sells the portion so retained, and the proper notices under the Act are given, the land last sold remains a landed estate in respect of which the purchaser is liable to pay land tax without any fresh classification or valuation.

The King v. *Atkinson* (1905) V.L.R., 698; 27 A.L.T., 86, reversed.

The first proposition in *The King* v. *Chirnside*, (1905) V.L.R., 522; 27 A.L.T., 52, over-ruled.

APPEAL from the Supreme Court of Victoria.

An action was brought by His Majesty the King under the *Crown Remedies and Liabilities Act* 1890, claiming from the defendant Harry Leigh Atkinson the sum of £1,742 5s. 9d. for land tax, together with interest thereon.

That sum was made up as follows:—£156 7s. 6d. (being nine several sums of £17 17s. 6d. for each half year from 28th August 1899 to 28th August 1903, inclusive) was claimed for land tax on estate No. 1194; £1280 8s. (being twelve several sums of £106 14s. for each half year from 28th February 1898, to 28th August 1903, inclusive) was claimed for land tax on estate No. 1232; and £305 10s. 3d. (being nine several sums of £33 18s. 11d. for each half year from 28th August 1899, to 28th August 1903, inclusive) was claimed for land tax on estate No. 1066. Interest on each of such half-yearly sums respectively at 8 per centum from the dates when the same became payable to the date of judgment was also claimed.

The following statement of the facts is taken from the judgment of *Madden* C.J.:—In December 1878, certain land, consisting of many allotments lying separate from one another, but all within a radius of five miles, and comprising 12,036 acres, was duly classified as estate No. 580, in the name of one Younghusband. He mortgaged this estate to Sir William Clarke. The quantity of land comprised in this estate was increased on the register to 13,072 acres, and so it remained to June 1883.

Another property in the same locality, consisting also of many different allotments separated from one another, but all within a radius of five miles, was duly classified in June 1882, as landed estate No. 988 in the name of Sir William Clarke. It consisted of 5,798 acres.

Prior to August 1883, Younghusband and Clarke sold and transferred 96 acres of estate No. 580 to the Board of Land and Works, and Clarke sold and transferred similarly 25 acres of estate No. 988 to the Board of Land and Works also. Notice of these sales and transfers, respectively, was duly given under sec. 40 of the *Land Tax Act* 1877, and the amount so disposed of from each estate was duly removed in respect of it from the register.

In August 1883, Clarke sold the remainder of both these landed estates to the defendant—No. 580 as mortgagee, and No. 988 as owner of the freehold. The defendant and Clarke duly gave to the Registrar notice under sec. 40 of the *Land Tax Act* 1877 of this sale and purchase.

H. C. OF A. 1906.

THE KING v. ATKINSON.

There never was any re-valuation or re-classification of either estate after this purchase of the remnants of them by the defendant and the service of the said notice, but, with slight variations as to area, estate No. 580 was in June 1884, entered in the register as estate No. 580A in the name of the defendant, and estate No. 988 was in December 1883, entered as estate No. 988A in the register in the name of the defendant.

After June 1884, the defendant purchased various other parcels of land, and he continued to acquire still other lands from time to time up to February 1898. All the lands thus subsequently acquired, as well as all the lands included in the alleged landed estates Nos. 580A and 988A, were within a radius of five miles, and the whole have always been used and worked as one station property by the defendant.

In February 1885, so much of the land so acquired by the defendant after June 1884, as he had then acquired was alleged to have been duly classified, and was placed on the register as landed estate No. 1066, in the name of the defendant.

The defendant acquired further lands after the alleged classification of estate No. 1066. Those lands, though within the same five mile area with estates Nos. 580 and 988, were valued and classified by themselves, and were in February 1893, entered on the register as estate No. 1194, in the name of the defendant.

The defendant after June 1884, acquired other lands than those already mentioned. All were within the five mile radius with these other lands already referred to, and, although the defendant expressly protested against it, were valued and classified by taking them and the land on the register as estate No. 580A together, but not including the lands of estates Nos. 988, 1066, or 1194, and the lands so valued and classified were put on the register as estate No. 1232 in the name of the defendant in February 1898.

The defendant by his defence alleged certain facts, practically those set out above, and contended that upon them he was not liable to pay any of the land tax claimed, and that no facts were stated in the writ and the particulars thereunder which would entitle His Majesty to recover interest upon any of the sums therein claimed. He also contended that there had been no

classification of the estates Nos. 1066, 1194, and 1232, because (*inter alia*) such alleged estates should have been valued and classified as one estate.

The defendant also counterclaimed for £4,420 1s. 6d., being the amount of land tax paid by him under protest since the year 1887, on the alleged landed estate No. 580A. As to this counterclaim it is only necessary to say that it was dismissed with costs.

Madden C.J., before whom the suit was heard, held that there had been no legal classification of any of the estates Nos. 1066, 1194 or 1232, and he accordingly gave judgment for the defendant with costs: *The King* v. *Atkinson* (1).

His Majesty now appealed to the High Court.

Isaacs A.G. (with him *Hayes*), for the appellant. The three estates Nos. 1066, 1194, 1232, have all been duly classified in accordance with the requirements of the *Land Tax Act* 1890, so that, *primâ facie*, the respondent would be liable. He resists payment upon the ground that the estates never became in law "landed estates" under the Act. *Madden* C.J. held that the estates in question were not properly classified for two reasons, (1) because the whole of the unclassified land belonging to one owner in one area or in areas not more than five miles apart must be classified; and (2) it must be classified as one estate. The respondent purchased two estates No. 580 and No. 988 which were originally well classified; before they were transferred to him 25 acres of the first and 96 of the second were sold for railway purposes. It was contended, and *Madden* C.J. so held, that these two estates, by the excision of the 25 and 96 acres became, on transfer to the respondent, declassified, and not subject to the tax; and that the defendant was never properly upon the register for the estates No. 580A and No. 988A; that then, when estate No. 1066 was classified, its classification was bad, because it did not take in the adjacent unclassified land in estates No. 580A and No. 988A; and so on with the other two estates now sued on.

There is no obligation upon the Crown to classify all a man's land. It classifies all of which it has knowledge that is to be dealt with for the purposes of sec. 3. Suppose the classifiers

(1) (1905) V.L.R., 698; 27 A.L.T., 86.

H. C. OF A. 1906.

THE KING v. ATKINSON.

never knew of the existence of any particular piece of land, could it be contended that the classification was a nullity? According to the respondent's contention it must be, and he could stand by and refuse to pay tax.

Neither is there any provision in the Act that all land, upwards of 640 acres in area and £2,500 in value, in one area, or areas not more than five miles apart, must be classified as one estate. No case except that now under appeal has so decided. In many instances it might be most inconvenient. If injustice is done to the taxpayer by the exclusion of any area, his remedy is by appeal under secs. 22 *et seq.* The respondent never appealed against the classification of estates Nos. 1066, 1194 and 1232, and cannot now be heard to say that they were not properly classified. Anything that happened before the creation of those three estates is immaterial; they were three duly constituted landed estates. No appeal was made, and the defendant is estopped.

[GRIFFITH C.J. referred to *Allen* v. *Sharp* (1).]

That case is cited in *Livingstone* v. *Mayor, Aldermen, and Councillors of Westminster* (2).

Mitchell K.C. and *Lewers* (with them *Atkinson*), for the respondent. The *Land Tax Act* 1877, was passed in a period of political turmoil, and is a model of bad drafting. The main purpose of the legislature is clear throughout, however, and the Act has been interpreted by a series of judicial decisions extending over twenty-five years. The main principle of the Act is that a "landed estate" is alone subject to the tax; and land does not become a "landed estate" until the requisite area has been properly classified. Classification is a condition precedent: *R.* v. *McLellan* (3); and no retrospective liability can take place for any land prior to its being valued and classified as a "landed estate": *R.* v. *Buckley Swamp Estate Co. Ltd.* (4). It is a "landed estate" that must be classified as a whole. In *R.* v. *Gidney* (5), the defendant was owner of 949 acres in two parcels of 645 acres and 304 acres, each of which originally formed portions of two separate "landed estates," the 645 acres being portion of a first-class, the 304 acres

(1) 2 Ex., 352.
(2) (1904) 2 K.B., 109, at p. 119.
(3) 17 V.L.R., 19.
(4) 18 V.L.R., 657; 14 A.L.T., 140.
(5) 24 V.L.R., 795; 20 A.L.T., 275.

of a second-class estate. *Hodges* J. held, and his decision was affirmed on appeal (1), that until both parcels had been valued as one "landed estate" the defendant was not liable for the land tax, either on the two together or on the 649 acres, which was of sufficient area by sec. 3 to constitute a "landed estate." In *R.* v. *Chirnside* (2) the owner of 24,425 acres sold 608 acres and had his name removed in respect thereof from the register; subsequently he sold the remaining 23,817 acres to the defendant, whose name was without classification put upon the register in substitution. It was held by the Full Court that the defendant had never been properly on the register in respect of a "landed estate." The principle is obviously a fair one, because when once a "landed estate" is split up, it does not follow that any of the component parts separately will be of the same class as the whole blended together; one portion may contain all the rich land and river flats, another mountainous scrub. In the second part of *R.* v. *Chirnside* (2), it was held that, where an owner has parted with a portion of his estate, he remains liable to tax on the remnant for which he is still upon the register, if sufficient to be a "landed estate" under sec. 3; but it was only so held because the Act provides no machinery for re-classification, or for an owner getting off the register except in the manner provided by secs. 35 and 41; and when he is once properly on the register he is deemed to be the owner, although he may have parted with the land, until his name is removed. The second part of *R.* v. *Chirnside* (2), was wrongly decided.

It is a necessary corollary that the whole of the land of any owner within the five-mile area must be classified together as one estate; otherwise there would not be equality of taxation. As here the two original estates 580 and 988 had become "declassified" within the principle of *R.* v. *Gidney* (3) on transfer to the respondent, he was never properly on the register in respect of the estates 580A and 988A. Consequently, when in 1885 the estate No. 1066, the first of those sued upon, was formed, all the land in

(1) 25 V.L.R., 81; 21 A.L.T., 57.
(2) (1905) V.L.R., 522; 27 A.L.T., 52.
(3) 24 V.L.R., 795; 20 A.L.T., 272; 25 V.L.R., 81; 21 A.L.T., 57.

H. C. OF A. 1906.

THE KING v. ATKINSON.

580A and 988A adjacent and intermixed, which was unclassified, should have been included; and so on with the two other estates. A glance at the map in evidence will show how pieces of land have been apparently picked at random and flung into any one of the three estates. It is said that the respondent is not hurt, because all three estates sued upon are fourth-class. But he has been compelled to pay land tax for 17 years on 580A as a third-class estate. The land always was fourth-class land, as became apparent when the bulk of it was eventually included in 1232. The amount of tax wrongly paid by the respondent on the basis of 580A being a third-class estate was £4,420 1s. 6d. He counterclaimed for this; but *Madden* C.J. held that it was a payment made in mistake of law, and he cannot dispute the soundness of the decision. He fought the present case on principle, because the Crown would not allow any refund of the £4,420 1s. 6d. wrongly paid. This very instance shows how unfair to the taxpayer it actually is if the classifiers can pick and choose any portions within the area to make up a "landed estate," instead of including in one estate the whole of the unclassified land.

The Crown contends that the respondent's remedy was to appeal to the Commissioners against the classification; and not having done so, he is now estopped. There is no appeal on the question whether a "landed estate" has been legally constituted or not; the only appeal provided is on the question of fact whether the land has been placed in its proper class; and *Madden* C.J. has expressly so held (3). The Land Tax Commissioners are not judicial officers, but experts in land values. The Registrar deals with ownership: Secs. 31-36, 39, 41, 42. On an appeal to the Commissioners which is only as to value, their powers by sec. 26 are only to reduce the classification of "the" land the subject of appeal, or confirm the classification. They have no power to deal with matters of the inclusion or exclusion of land. This is shown by sec. 54; the improper valuation does not stop enforcement of tax, which can if the appeal is allowed be refunded. By sec. 41 a person is only deemed an owner when "properly" placed upon the register. In other words, wrong valuation does not stop enforcement; wrong

(3) (1905) V.L.R., 698, at p. 708; 57 A.L.T., 86, at p. 88.

entry on the register does. The Sixth Schedule also shows that the appeal is only against the *valuation* of the lands specified.

Isaacs A.G. in reply. The Commissioners in order to determine the valuation on appeal must take all surrounding circumstances into consideration, including the fact of the value being affected by the inclusion or exclusion of any area. If the classifiers in classifying wrongly refused to include or exclude any area, they might be compelled by mandamus: *R.* v. *De Rutzen* (1). [Counsel also referred to *Simpkin* v. *Robinson* (2).]

Cur. adv. vult.

GRIFFITH C.J. This was an action brought by the Crown against the defendant to recover arrears of land tax in respect of three landed estates which appear upon the land tax register as Nos. 1066, 1194, and 1232, and of which the defendant is the registered owner. The defence is that these alleged landed estates had never been properly classified, that, therefore, they were not landed estates within the true construction of the *Land Tax Act* 1890, and, therefore, that no land tax was payable in respect of them. The learned Chief Justice of Victoria, before whom the case was heard, was of that opinion, and gave judgment for the defendant.

The question to be determined depends entirely upon the construction of the Statute. In the construction of a taxing Act we have nothing to go by as to the intention of the legislature except what they have said. We are not at liberty to speculate as to what they might have done if certain possible applications of the provisions of the Act had been present to their minds. The duty of the Court is simply to read the language of the legislature and find out whether the particular case falls within the Statute, and, if it does, to give effect to it; and if the case does not fall within the Statute it is their duty to let the defendant go free.

I will refer briefly to some of the provisions of the Statute. The *Land Tax Act* 1890 is a re-enactment of the *Land Tax Act* 1877 with only one variation. Sec. 3 provides that:—

(1) 1 Q.B.D., 55.

(2) 45 L.T. (N.S.), 221.

H. C. OF A. 1906.

THE KING v. ATKINSON.

Griffith C.J.

"For the purposes of this Act a parcel or parcels of land of upwards of six hundred and forty acres in extent forming one area or separate areas not more than five miles apart valued for the purposes of this Act at upwards of Two thousand five hundred pounds shall be called a 'landed estate.'" Sec. 4 provides that every owner of a landed estate or of two or more landed estates shall pay an annual tax at the rate of £1 5s. per cent. of the capital value thereof over and above the sum of £2,500. Sec. 5 declares what persons are to be deemed to be owners of landed estates for the purposes of the Act, and sec. 6 provides that land tax for each and every year commencing on 28th August is to be payable half-yearly on 1st December and 1st June. Then come provisions for estimating the capital value of landed estates. The Governor in Council may appoint Commissioners of Land Tax and classifiers. By sec. 14, which originally became law in 1877, the classifiers or any two of them "shall classify every landed estate in respect of which any person is liable to pay land tax under the provisions of this Act." I refer next to sec. 18 of the Act of 1877 (now sec. 19), which provided that: "As soon as conveniently may be the Commissioners shall proceed to make out from the returns received by them from the classifiers a classification for Victoria, and such classification shall be in the prescribed form and shall state against each landed estate the class as of which it is classified, and such Commissioners shall sign such classification and cause the same to be published in the *Government Gazette*, and from time to time as additional lands are classified the Commissioners shall make out in the prescribed form a classification for such lands and shall sign such classification and cause the same to be published in the *Government Gazette*." It is obvious that the intention of the legislature was that the whole of the landed estates then existing in Victoria should be classified forthwith; and that construction is borne out by the provision in sec. 31 of the Act of 1877 (sec. 32 of the Act of 1890) that "the registrar shall enter the classification for Victoria and the valuation of the lands comprised therein as the same are valued for the purposes of this Act in a book or books, and from time to time as additional lands are classified shall make such additions thereto as may be necessary; and such book

or books shall constitute the valuation for Victoria." The first part of sec. 18 of the Act of 1877 was not re-enacted by the Act of 1890, because that portion had been exhausted immediately after the first valuation was made. All that remains is contained in sec. 19 of the Act of 1890, which provides that from time to time as additional lands are classified (whatever that may mean) the Commissioners are to add the result to the register.

The mode of classification is prescribed by sec. 15 of the Act of 1890. The classifiers are to estimate the number of sheep that can be depastured on the land, and according to such estimate they are to return the landed estate as of one of four classes, that is to say, land capable of carrying two sheep or more to the acre is to be returned as of the first class; land capable of carrying three sheep to two acres and less than two sheep to the acre, as of the second class; land capable of carrying one sheep to the acre and less than three sheep to two acres, as of the third class; and land not capable of carrying one sheep to the acre, as of the fourth class. Land classified as of the first class is to be deemed to be of the value of four pounds per acre; land of the second class, of three pounds per acre; land of the third class, of two pounds per acre; and land of the fourth class, of one pound per acre.

The Register having been made up, provisions are contained in sec. 34 and some following sections relating to it. Sec. 34 provides that a copy of "the valuation for Victoria" and of the Land Tax Register is to be published in the *Government Gazette* each year, and "a copy of the *Government Gazette* containing the same shall be sufficient evidence for all purposes of such valuation and such register." Sec. 35 provides that "any person whose name is upon the Land Tax Register in respect of any land may at any time apply to the registrar to remove his name therefrom," apparently only upon the ground that he is not the owner of the land within the meaning of the Act. If the registrar refuses to remove the applicant's name, he may apply to the Supreme Court for an order *nisi* calling upon the registrar to show cause why he should not do so. Sec. 39 provides that the registrar shall from time to time, as he may be informed of changes in the ownership of land, make corrections in the Register, and sec. 41 provides that "where the name of any person is properly placed

H. C. OF A. 1906.

THE KING v. ATKINSON.

Griffith C.J.

upon the Land Tax Register in respect of any land such person shall for the purpose of estimating his liability under this Act be deemed an owner of such land notwithstanding that he may have afterwards parted with his interest in the same to any other person until he has forwarded to the registrar a notice and acknowledgment in the form or to the effect in the Seventh Schedule hereto signed by himself and the person to whom he has parted with his interest in the same," &c. Under this section it has been held by the Supreme Court of Victoria in *The King* v. *King* (1) that when a man's name appears in the Land Tax Register he continues to be the owner of a landed estate, although he may have parted with portion of the land constituting that estate, so long as the proper notice required by that section has not been given. Sec. 40 provides that "in all proceedings in any Court of justice touching the liability of any person to land tax other than a proceeding to remove the name of such person from the Land Tax Register the Land Tax Register shall be evidence against such person, but any such Court before which any such proceeding is pending may if it seem fit upon such terms as may seem just order any such proceedings to stand over and allow any such person to make an application for the removal of his name from such Register." The Supreme Court also held in *The King* v. *King* (1), that the proper interpretation of that section is that the register shall be conclusive evidence as to ownership, provided that the party has not taken advantage of the section to apply to have his name removed from the register. I have intentionally omitted to refer to some of the provisions as to appeals from classification, because they will come in more conveniently in dealing with the arguments for the defendant.

The contention of the defendant is that, although he is the registered owner of these estates, nevertheless he is entitled to say in an action for land tax that he is not liable to pay any tax in respect of them. Briefly, it is said that an estate is not a landed estate until it is classified and valued; that it cannot be valued until it is classified; that a classification and a valuation, which are defective in not including all the land which might have been included, is a nullity; and that the person sought to be taxed can

(1) 29 V.L.R., 949; 26 A.L.T., 59.

take advantage of that position at any time when an action is brought against him for the tax. That argument is founded upon sec. 3, the words of which are:—"For the purposes of this Act a parcel or parcels of land of upwards of Six hundred and forty acres in extent forming one area or separate areas not more than five miles apart valued for the purposes of this Act at upwards of Two thousand five hundred pounds shall be called a landed estate." Approaching that section with no preconceived ideas as to what the legislature might have meant, but merely with an inquiring mind as to what the legislature has said, there are three conditions prescribed in order to discover what is a landed estate: The land need not be all in one parcel, but it must have a minimum area of 640 acres, and it must have a minimum value of £2,500. If it is in separate areas those areas must be "not more than five miles apart." Those words are sought to be used in support of the argument that the legislature meant that there could not be a classification or valuation of a landed estate unless all pieces of land held by the same owner and being "not more than five miles apart" were included in the valuation and classification. The answer to any argument of that sort is that the legislature has not said so either expressly or by necessary implication. It is suggested that, although the legislature has not said so, it may be inferred from the consequences which might flow from a contrary conclusion. With great respect I think these consequences cannot be considered for that purpose. If the legislature has used plain language we have nothing to do with the consequences. It is for the legislature to consider whether the Act operates harshly. In my opinion the words "not more than five miles apart" are a mere negative proviso for the benefit of the taxpayer when his landed estate consists of more than one piece of land. A negative proviso cannot be construed as imposing a positive and imperative duty, and the most that can be said for it is that it is for the benefit of the taxpayer, and, if he chooses to waive it, he cannot afterwards rely on it.

I will now deal with some other arguments in support of the defendant's contention. It is said that the classifiers have no jurisdiction except to classify the whole estate. For the reasons

H. C. OF A. 1906.

THE KING v. ATKINSON.

Griffith C.J.

I have given, the existence of an estate is sufficiently established when you have the minimum area, being of the minimum value, and the condition fulfilled that the separate portions are not more than five miles apart. But it is said that, if the classifiers were able to select portions of the whole holding of a land owner, they might take the most valuable portions and leave out the least valuable, and that the result might be that the value of the estate thus created might be higher than it would be if all the land were included. That is conceivable. A case was put in argument of a landed estate consisting of rich flats surrounding a barren mountain, and the classifiers omitting altogether from their classification the mountain, which, if included, might have brought down the average value of the whole estate. I apprehend that, in such a case, if the mountain were entirely surrounded by the rich flats, it would be all one parcel of land. Possibly the legislature did not think it necessary to provide for a man objecting that he was taxed in respect of less land than he ought to have been. In that view, it would be a *casus omissus*. But in a case like that the real complaint would be of over-valuation. Sec. 16 requires the classifiers to ascertain as they may be best able the name and address of every owner of any landed estate classified by them, to make a return thereof respectively, and in such return, where several persons are returned as the owners of any landed estate, to specify, as they may be best able, the respective interests of such persons therein. The classifications when completed are to be published in the *Government Gazette* (sec. 18), and by sec. 22 "within one month after publication of the classification of any land in the *Government Gazette* as aforesaid, any owner thereof may appeal against such classification to the Commissioners." It is said that the only ground of appeal is excessive valuation. Possibly it is. That is the only question which is really important in the supposed case. Over-valuation might occur in one of two ways. Either the land owner complains that he is only taxed in respect of part of his land, with the result that the taxable value is increased by the omission—a highly improbable case—or that the land valued has been valued too highly. In either case he could appeal, and, if the Commissioner refused to entertain the appeal in the first case, I think that the general provisions of the law

are sufficient to do justice in such a case. The observations in *The Queen* v. *Smith* (1), which has been referred to in several cases before us lately, I think throw some light on that point. But in truth, for the reasons I have given, it appears to me that such an objection cannot be taken. If it can, it must be taken at the time of classification whether by way of appeal or by some other means. In the present case the defendant took no objection at that time, but now, after the lapse of several years, he says that a piece of his land within five miles of that which was classified was not included in the classification, and that therefore the whole proceeding is void. I will refer briefly to the facts which are said to raise this defence.

Some years before the defendant became proprietor of estate No. 988, portion of it had been sold by his vendor, and it is said that, although his vendor was properly upon the register in respect of the remainder of the land, that remainder when purchased by the defendant became in law unclassified land. It is then said that some parts of estate No. 1066 are within five miles of No. 988, and that consequently the attempted classification of estate No. 1066 was absolutely futile and void, because No. 988 was not included in it. I cannot follow that argument. First of all, estate No. 988 continued, in my opinion, to be classified, and the defendant was the registered owner of it at the time of the classification of estate No. 1066. Consequently the fact that the defendant was owner of estate No. 988 could not in any way affect the propriety of the classification of estate No. 1066. The same argument is used with respect to estate No. 1194, with the additional fact that in that case there was a piece of unclassified land within five miles of it, of which the defendant was owner, but which was not included in the classification. Estate No. 1232 consists of land which was formerly No. 580 together with some other land which the defendant had acquired before reclassification. In my opinion, the classification of all these estates was valid and within the provisions of the Act, and none of the objections taken by the defendant can be maintained. The notion of declassification of an estate by sale and transfer of portion of it and subsequent sale and transfer of the remainder, although

(1) 3 App. Cas., 614.

H. C. OF A. 1906.

THE KING v. ATKINSON.

O'Connor J.

that remainder still continued to be a landed estate while in the hands of the vendor, is unintelligible to me. For these reasons I am of opinion that the appeal should be allowed.

BARTON J. I am entirely of the same opinion, and I have nothing to add to what has been said by the learned Chief Justice.

O'CONNOR J. I am of the same opinion, and have very little to add. The only light that can be got upon the meaning of the sections which have been the subject of argument is that to be gathered from looking at the Act as a whole. The Act is a land tax Act of limited operation. The limit is defined in secs. 3 and 5, and it is a minimum limit. The tax is imposed by sec. 4 upon owners of landed estates, and the minimum landed estate which can be subject to tax is described in sec. 3. Now, there are three elements which go to form the landed estate which is to be the subject of taxation under the Act. No estate of lower value than that can be taxed. Every estate above that, if it comes within the conditions, may be taxed. The conditions are these:—The land must be of the value of upwards of £2,500. There is machinery in the Act for settling that value. If the classifiers, who make the valuation in the first place, value the land too highly, the owner may appeal to the Commissioners, and, by sec. 34, the decision of the Commissioners as to valuation must be final. The next element is that the land must be the land of the owner, who is to be made liable for the tax. There is authority given to settle that matter by special machinery under the Act. If a person is put upon the register as owner of a landed estate, he may, if he wishes, apply to the Commissioners to have his name removed from the register. If the Commissioners decide against him, he may appeal to the Supreme Court. So that in regard to that matter there is special machinery to settle whether he is the owner or not. Then comes the third element, that is, area. There is no machinery to settle that. If the area is less than 640 acres it is clear there is no jurisdiction to classify the estate, it cannot be brought under the Act, and is not liable to taxation. But if the estate is above that area and of a greater

value than £2,500, then the question is whether there is any power under the Act to inquire into the area of the estate and the form in which it is put together. There is no difficulty in regard to the first class of cases dealt with by sec. 3, that is to say, where the land is one parcel of more than 640 acres. But inasmuch as the Act provides that a landed estate may be made up of several blocks of land each of less than 640 acres, there is a limitation imposed upon the classifiers, and the limit is this—if the landed estate is made up of several blocks of land, the blocks must not be more than five miles apart. It is very difficult to see how that section can be applied if the literal meaning of the words "not more than five miles apart" be taken. Because in that case, as was pointed out by the Attorney-General, if the meaning is that each area must be within five miles of the outside boundary of the other, there might be an estate consisting of a chain of small blocks extending for twenty or thirty miles. That cannot be the meaning of the words "not more than five miles apart," and it is difficult to say what is their meaning. But, whatever the meaning is, it is clear that it was never intended to impose on the classifiers the obligation of including every separate area belonging to the same owner which is "not more than five miles apart" from another area of the same owner. That, after all, brings us back to this point:—The legislature having imposed a minimum quantity of land which can be classified as a landed estate, has it imposed upon the classifiers the obligation of including in their assessment every separate area within the five mile limit, imposed by sec. 3? I quite concur as to the desirability and the fairness of including all areas within the limit for the purpose of estimating the value to be put upon the whole of the estate. Mr. Mitchell used very strong arguments which entirely appealed to my judgment on the question of fairness, but it appears to me that those were all arguments to be addressed to the legislature. Before we can give effect to them we must find our justification in the Act itself for imposing this obligation upon the classifiers, and I can see none. It might be a more equitable way of taxing the land, but the answer is that the legislature has not provided for it. Under these circumstance the first answer to the defence made here is that there is no obligation upon the classifiers to

H. C. OF A. 1906.

THE KING v. ATKINSON.

O'Connor J.

classify in the manner contended for. It follows that the register as to valuation and ownership standing, the owner is liable to pay tax.

With regard to the second matter, whether the classification is subject to appeal as to value, I see no difficulty in assenting to the argument that it was open to the person aggrieved to appeal to the Commissioners on the ground that the valuation was not fair within the meaning of the Act. "Classification" in this Act means valuation. There is no authority in the Commissioners except as to value. They have no authority to determine finally as to ownership, nor as to whether the area of the land is sufficient to constitute an estate which is taxable. All they have to do is to value, and, in considering the value of an estate that has been classified, the question whether the classifiers have included or not included other land, whether belonging to the same owner or not, which would affect the value of the estate when classified, seems to me to come within the authority to hear appeals as to valuation. It is unnecessary to add more. I agree that the appeal must be allowed.

Appeal allowed. Judgment for the defendant set aside. Judgment for the Crown with costs. Defendant to pay the costs of the appeal.

Solicitor, for appellant, *Guinness*, Crown Solicitor for Victoria.

Solicitors, for respondent, *Scheele & Scheele*, Melbourne, for *F. J. Macoboy*, Bendigo.

B. L.