[HIGH COURT OF AUSTRALIA.]

BAILEY . . . . . APPELLANT;

AND

THE FEDERAL COMMISSIONER OF LAND TAX . . . . . RESPONDENT.

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MELBOURNE, *Sept.* 27, 28, 29.

SYDNEY, *Dec.* 20.

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

Land Tax—Assessment—Deductions—Number of deductions of £5,000*—Owner of several parcels of land—Secondary taxpayer—One of several joint owners—Deduction to prevent double taxation—Land Tax Assessment Act* 1910 (*No.* 22 *of* 1910), *secs.* 11, 33, 35, 38, 43.

Under sec. 11 (2) (*a*) of the *Land Tax Assessment Act* 1910 a taxpayer who owns several parcels of land is not entitled to a deduction of £5,000 from the value of each parcel, but to one deduction of £5,000 from the sum of the values of the several parcels.

Where one of several joint owners is also the owner in severalty of other land, the amount described in sec. 38 as "the tax payable, in respect of his interest in the land," *i.e.*, the land held in severalty, and from which that section directs that an amount is to be deducted to prevent double taxation, which amount is to be ascertained in the mode prescribed by sec. 43, is the whole amount payable by him as a secondary taxpayer in respect of that land, and not a part of that amount proportional to the value of his joint interest as compared with the value of the land owned by him in severalty.

CASE stated under sec. 46 of the *Land Tax Assessment Act* 1910.

Certain objections to an assessment under the *Land Tax Assessment Act* 1910 having been transmitted to the High Court for determination, *Griffith* C.J. stated the following case.

1. William Bailey, who died on 25th April 1906, by his will dated 12th April 1906 devised his real estate to trustees upon trusts for sale and conversion with discretionary power of postponement, but so that in the meantime and until actual conver-

sion the estate and the income thereof should be subject to the trusts declared as to the proceeds, and that for the purpose of such trusts the real estate should be deemed to be converted in equity from the time of his decease. The trusts of the proceeds, after payment of debts, legacies and an annuity to his wife, were to divide the same equally amongst his six children, of whom the appellant was one.

2. The unimproved value of the trust estate after providing for the annuity has been assessed at £128,883, and, after making six deductions of £5,000 under sec. 33 of the Act, at £99,833, the tax on which has been assessed at £1,689 11s. 4d., upon the basis that the six beneficiaries are joint owners within the meaning of sec. 36.

3. The appellant is the owner in severalty of land in the Commonwealth of the unimproved value of £19,329.

4. The appellant has been assessed upon a taxable value of £35,801, being the sum of £21,472 (one-sixth of £128,883) and £19,329, after deducting £5,000; and the tax upon land of that taxable value is £327 3s. 7d.

5. The appellant claims that he is entitled to a deduction of £5,000 from each of such sums of £21,472 and £19,329.

6. The appellant further claims to be entitled under sec. 38 of the Act as a secondary taxpayer to such deduction as is necessary to prevent double taxation, and questions have arisen as to the proper mode of ascertaining the amount of such deduction under sec. 43.

7. By reason of the progressive nature of the land tax the amount by which the tax payable by the trustees as primary taxpayers, assessed as aforesaid, is increased by the inclusion of the appellant's interest in the trust estate in their assessment is more than one-sixth of the said sum of £1,689 11s. 4d. If a deduction of the amount of that increase were made from the appellant's assessment he would not be called upon to pay anything.

8. The appellant contends that under these circumstances the amount of the deduction is to be ascertained by a comparison of the amount of the tax which would have been payable by him if his equitable interest in the trust estate had not been included in his assessment and the sum of £327 3s. 7d. assessed as aforesaid,

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that is to say, by calculating the difference between the tax payable in respect of an estate of a taxable value of £35,801 or £30,801, if his first contention is sound, and an estate of the taxable value of £14,329.

9. The respondent contends that the deduction is only to be made from so much of £327 3s. 7d. as represents the proportion of that sum attributable to the value of the appellant's equitable interest in the trust estate, and cannot exceed the amount of that proportion.

10. For the purposes of this case it is to be assumed that the trustees as the primary taxpayers have paid the land tax in respect of the trust estate.

The questions for the consideration of the Court are:—

1. Is the appellant entitled to two deductions of £5,000 or to one deduction only?

2. Ought the deduction to prevent double taxation to be ascertained in the manner contended for by the appellant or in that contended for by the respondent or in some other and what manner?

Starke, for the appellant.

Weigall K.C. (with him *Arthur*), for the respondent.

Cur. adv. vult.

The following judgments were read:—

Dec. 20.

GRIFFITH C.J. Sec. 11 of the *Land Tax Assessment Act* 1910 provides that:—

"(1) Land tax shall be payable by the owner of land upon the taxable value of all the land owned by him, and not exempt from taxation under this Act.

"(2) The taxable value of all the land owned by a person is—

"(*a*) in the case of an absentee—the total sum of the unimproved value of each parcel of the land.

"(*b*) in the case of an owner not being an absentee—the balance of the total sum of the unimproved value of each parcel of the land, after deducting the sum of Five thousand pounds.

Sec. 33 provides that:—

"Any person in whom land is vested as a trustee shall be assessed and liable in respect of land tax as if he were beneficially entitled to the land.

"Provided that where he is the owner of different lands in severalty, in trust for different beneficial owners who are not for any reason liable to be jointly assessed, the tax so payable by him shall be separately assessed in respect of each of those lands . . ."

Sec. 35 provides that:—

"Subject to this Act, the owner of any equitable estate or interest in any land shall be assessed and liable in respect of land tax as if he were the legal owner of the estate or interest; and the owner of the legal estate shall be deemed to be the primary taxpayer, and the owner of the equitable estate is to be the secondary taxpayer; and there shall be deducted from the tax payable by the latter in respect of the land such amount (if any) as is necessary to prevent double taxation."

Sec. 38 provides that:—

"(1) Joint owners of land shall be assessed and liable for land tax in accordance with the provisions of this section.

"(2) The joint owners shall be jointly assessed and liable in respect of the land as if it were owned by a single person, without regard to their respective interests therein. and without taking into account any land owned by any one of them in severalty, or as joint owner with any other person.

"(3) Each joint owner of land shall in addition be separately assessed and liable in respect of—

"(*a*) his individual interest in the land (as if he were the owner of a part of the land in proportion to his interest), together with

(*b*) any other land owned by him in severalty, and

(*c*) his individual interests in any other land.

"(4) The joint owners in respect of their joint assessment shall be deemed to be the primary taxpayer, and each joint owner in respect of his separate assessment to be a secondary taxpayer; and from the tax payable, in respect of his interests in the land, by each joint owner under the last preceding sub-section, there

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shall be deducted such amount (if any) as is necessary to prevent double taxation."

Sec. 43, so far as material, is as follows:—

"Where under this Act—

"(*a*) any person is deemed to be the secondary taxpayer in respect of any land or interest; and

"(*b*) it is provided that there shall be deducted from the tax payable by the secondary taxpayer, in respect of the land or interest, such amount (if any) as is necessary to prevent double taxation,

"the amount of the deduction (if any) shall be the amount by which the tax payable by the primary taxpayer is increased by the inclusion of the land or interest in his assessment:

"Provided that the amount of the deduction shall not exceed the amount by which the tax payable by the secondary taxpayer is increased by the inclusion of the land or interest in his assessment."

The trusts upon which the trust estate in question in the present case is held are to divide the proceeds of conversion, after payment of debts, legacies and an annuity, amongst the testator's six children, of whom the appellant is one. The unimproved value of the estate, after providing for the annuity, has been assessed at £128,883, from which six deductions of £5,000 have been made under the provisions of sec. 33 relating to testators who died before 1st July 1910, leaving a balance of £98,883, the tax upon which sum has been assessed at £1,689 11s. 4d. upon the basis that the six beneficiaries are joint owners within the meaning of sec. 38. No question has been raised as to the accuracy of that construction, and I assume it to be correct.

The appellant is also the owner in severalty of land of the unimproved value of £19,329.

Under these circumstances the six beneficiaries are jointly liable in respect of the tax assessed upon the joint estate, and as between themselves each is liable for 1/6th of the £1,689 11s. 4d. *i.e.*, £281 12s. 0d. It is not material whether they have or have not been formally assessed in their own names under sec. 35, for, as was held in *Sendall* v. *Federal Commissioner of Land Tax* (1), a trustee can only be assessed at the amount for which his

(1) 12 C.L.R., 653.

beneficiaries are liable. In respect of this assessment the six beneficiaries are collectively the primary taxpayer within the meaning of sec. 38, and the appellant is also a secondary taxpayer. In another sense the trustee is the primary taxpayer (under sec. 35), and the beneficiaries are secondary taxpayers, but the substantial rights of the parties are as I have first stated them. The case is, in substance, one of joint estate and separate property, and the existence of a trustee cannot affect the substantive rights or liabilities.

The appellant is also liable under sec. 38 to be separately assessed in respect of his share in the joint estate, together with the land owned by him in severalty, *i.e.*, in respect of two estates, one of the value of £21,472 (1/6th of the value of the joint estate), the other of the value of £19,329, subject to the statutory deduction under sec. 11.

The first contention put forward by the appellant, who is not an absentee, is that he is entitled to two deductions of £5,000, one in respect of each estate. He contends that in the phrase "the balance of the total sum of the unimproved value of each parcel of the land, after deducting the sum of £5,000" in paragraph (2) (*b*) the words "after deducting," &c., should be read as qualifying the words "each parcel" and not the words "the total sum." But a reference to the context negatives this construction. The words of paragraph (2) (*a*), "the total sum of the unimproved value of each parcel of the land," are entirely free from ambiguity. In paragraph (2) (*b*) the same words are repeated with the addition of the words "after deducting," &c. It is plain that the deduction is to be made once for all, and is to be made from the sum which in each member of the paragraph is described as "the total sum of the unimproved value of each parcel of the land." Even without the aid of the context I should be disposed to come to the same conclusion. The only doubt which can be suggested is raised by paragraph (3). But whatever may be the object of that paragraph, I do not think the doubt is sufficient to rebut the plain conclusion to be drawn from the context.

The result is that the appellant is entitled to one deduction of £5,000 only, and is liable to be assessed upon an estate of the value of £21,472+£19,329—£5,000, *i.e.* £35,801.

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But from the tax payable by him under this assessment there is to be deducted under sec. 38 (4) "such amount (if any) as is necessary to prevent double taxation."

The second question for determination is as to the amount of this deduction. If none were made, it is clear that the appellant would pay tax twice over in respect of his interest in the joint estate.

Sec. 43 purports to lay down a rule for determining the amount of the deduction, which is ordinarily to be "the amount by which the tax payable by the primary taxpayer is increased by the inclusion of the land or interest in his assessment." In the case of joint owners this amount is necessarily greater than the aliquot share of the individual joint owner in the joint tax. In the present case, for instance, if the appellant's interest in the joint estate were not included in the joint assessment the value of the land assessed would be only 5/6th of that actually assessed, and the numerator of the fraction denoting the rate of tax would also be only 5/6th of its actual amount. The actual result is an increase of £411, as compared with £281, the appellant's aliquot share of the joint assessment.

It seems, therefore, that, for whatever reason, the legislature intended that the relief to be given to a taxpayer so circumstanced should or might be greater than the amount of his aliquot share of the joint tax. But, as in the present case, this rule might in some cases altogether excuse the taxpayer from taxation in respect of the land held by him in severalty. Accordingly, sec. 43 goes on to provide that the amount of the deduction "shall not exceed the amount by which the tax payable by the secondary taxpayer is increased by the inclusion of the land or interest in his assessment." The words of this proviso are the same as those of the rule. There is another proviso which does not affect the matter now in question.

In the present case the effect of the inclusion of the appellant's interest in the joint estate in his individual assessment is to increase the taxable value from £14,329 (£19,329 – £5,000) to £35,801, so that, instead of being assessed at 1½d. in the pound on £14,329, he is assessed at about 2⅕d. on £35,801. The actual

amount of increase is £238, which is the maximum amount that can be deducted under the proviso.

So far the case seems plain enough. But the Commissioner contends that this sum of £238 is not to be deducted from the amount payable by the appellant as a taxpayer, and not even from the amount for which he is assessed as a secondary taxpayer, but from a part of the latter amount proportional to the value of his joint interest as compared with that of his land owned in severalty, or, in other words, from so much of the tax for which he is individually assessed as is attributable to his share in the joint estate, and that, as this amount is less than £238, the deduction prescribed by sec. 43 cannot take effect to its full extent. This contention, as I understand it, is founded on the words in sub-sec. (4) of sec. 38 "and from the tax payable, in respect of his interests in the land, by each joint owner under the last preceding sub-section, there shall be deducted" &c.

In dealing with this argument it is important to bear in mind that in every case of joint estates the amount by which the tax payable by the secondary taxpayer is increased by the inclusion of the joint interest in his assessment is always greater than the amount attributable to that interest in his assessment. The excess represents the difference between the rate which would be imposed upon the separate interest if it stood alone and the higher rate imposed upon it after, and by reason of, the inclusion of the joint interest. Yet, both in the rule in sec. 43 and in the first proviso, the amount by which the tax payable is increased by reason of the inclusion of the joint interest, and not the amount attributable to that interest, is prescribed as the basis for calculating the deduction.

The Commissioner's contention therefore involves the substitution for the limit prescribed by sec. 43 of another limit, which is always different from, and always less than, that prescribed. Thus, while the legislature says that the maximum deduction shall be a sum X, the Commissioner says "No, the maximum deduction shall be a sum Y., which is always less than X." In other words, the maximum sum which is prescribed to be deducted is always greater than the sum from which it is to be deducted. Such a construction is so improbable as to require very cogent argument to support it.

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The contention is, in effect, that in sec. 38 (4) the phrase should be read "from the proportion of tax payable in respect of his interest in the land," and that, to harmonize with this reading, the first proviso to sec. 43 should be read "shall not exceed so much of the tax payable under the separate assessment as is arithmetically attributable to the value of the joint interest as compared with the value of the land held in severalty."

This contention involves several assumptions, each of which will be found on examination to involve a *petitio principii.*

First, it assumes that the words "in respect of" as used in sec. 38 (4) are synonymous with "upon." Secondly, it assumes a distinction between the several parcels of the land of the taxpayer as separate and distinct subjects of taxation. Thirdly, it assumes that "double taxation" necessarily means the imposition of tax twice "upon" the same parcel of land regarded as a direct object of taxation.

I will examine these assumptions separately.

1. If a Taxing Act provides that no tax shall be payable upon land unless the owner is also the owner of other land of a specified value, but that in that case a tax shall be payable, it is strictly accurate to say that the owner is taxed in respect of his ownership of the other land. If the result of the ownership of other land is to increase the rate of tax upon the first land, it is equally accurate to say that the increased amount is payable in respect of the ownership of the other land. "Tax payable in respect of land" and "tax payable in respect of the ownership of land" have *primâ facie* the same meaning. The words "tax payable, in respect of his interests in the land" in sec. 38 (4) are not therefore necessarily limited to a proportionate part of the whole tax payable in respect of the aggregate estate. The insertion of the comma between the words "tax payable" and the words "in respect of" seems indeed to have been made in order to express this idea. It is no answer to say that the words "by reason of" could have been used to express the same idea.

2. I can find no warrant in the Act for splitting up the tax payable under an assessment into several portions attributable respectively to the several parcels of which the aggregate estate is composed.

The rate of tax depends upon the value of the aggregate, and every penny of it is, in a very real sense, a tax in respect of the whole.

3. The expression "double taxation" is itself ambiguous. If it was intended merely to mean the payment of tax twice by the same person "upon" the same land, it would have been very easy to say so in plain words, such as "When the same land is included in more assessments than one, a taxpayer shall not be liable for tax upon that land under more than one assessment, but shall be liable for the amount proportionately attributable to it under the assessment under which the amount attributable to it is the greater."

In a case like the present the taxpayer is first taxed on his share in the joint estate at a rate increased by the inclusion of his share with those of the other joint owners, and then taxed on his land held in severalty at a rate increased by the inclusion with it of his share in the joint estate. This may, not inaccurately, be spoken of as double taxation in respect of the joint interest.

The scheme of sec. 43 appears to be that the Treasury shall forego the fortuitous profit which it derives from the inclusion of the individual's joint interest in the rest of the joint property, but only to an extent equal to the burden cast upon him by the inclusion of that interest with his separate property. If no deduction were made, his rate of taxation would be twice increased in respect of his joint interest, first, by reason of its inclusion with the other joint interests, and, secondly, by its inclusion with his separate estate. In my opinion this would be double taxation in the sense in which that term is used in the Act.

If the interest of the secondary taxpayer in the joint estate is a half interest, and this half interest is of the same value as his separate property, it is obvious that the amounts by which the assessments of the primary and secondary taxpayer are respectively increased are equal. If the half joint interest is of less value than the separate estate, the increase to the primary taxpayer's assessment will be less than to the secondary taxpayer's, but it may still be greater than the amount attributable to the joint interest in the latter's assessment (which is the Commissioner's basis of comparison). If, for instance, the value of the

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joint estate is £30,000, so that the value of the half interest is £15,000, and if the value of the separate estate is £20,000, then the amount by which the primary taxpayer's assessment is increased is the difference between 10,000* $(1 + \frac{10,000}{30,000})$d., or 13,333d., and 25,000† $(1+\frac{25,000}{30,000})$d., or 45,333d., *i.e.*, 32,000d., the share attributable to each joint interest being 22,666d. In the same case, the amount by which the secondary taxpayer's assessment is increased is the difference between 15,000** $(1+\frac{15,000}{30,000})$d., or 22,500d. and 30,000†† $(1+\frac{30,000}{30,000})$d., or 60,000d., *i.e.* 37,500d. The share attributable to the joint interest in this case is 3/7 of 60,000d., or 25,714d., which is less than 32,000d., the prescribed amount of deduction under the general rule of sec. 43. In this case the proviso does not come into operation at all, and if the Commissioner's contention is accepted, the rule itself is to be disregarded.

In the case where a trustee is the primary taxpayer in respect of a trust estate which is not also a joint estate, the amount by which the primary taxpayer's assessment is increased by the inclusion of the secondary taxpayer's interest in his assessment is always less than that by which the secondary taxpayer's assessment is increased by the inclusion of that interest in his assessment, unless the secondary taxpayer has no other land, in which case the amounts are equal, so that the first proviso to sec. 43 in this case does not come into operation.

In the case of joint estates (whether held on trust or not) the amount by which the primary taxpayer's assessment is increased by the inclusion of a secondary taxpayer's interest may, as I have shown, be less than, equal to, or greater than, the amount by which the secondary taxpayer's assessment is increased by the inclusion of that interest in his assessment. In the first two cases the proviso has no operation. In the third it applies, whatever its effect may be.

The cases of mortgagees (sec. 32) and unpaid vendors (sec. 37) are practically governed by the same conditions as the case of joint estates.

* *i.e.* half of £30,000—£5000.
† *i.e.* £30,000—£5000.
** *i.e.* £20,000—£5000.
†† *i.e.* £20,000+£15,000—£5000.

The adoption of the Commissioner's contention, therefore, involves the consequence that the rule which purports to be laid down by the proviso to sec. 43 does not become operative under any circumstances. Such a construction is, in my opinion, inadmissible, if any other is open.

It appears to me that, both in the rule and in the proviso, the legislature deliberately rejected the basis contended for by the Commissioner, namely, of distributing and apportioning the tax between the different parcels of the land of the secondary taxpayer, and, as deliberately, adopted a basis which would in many cases give him a greater relief than that contended for. For, as I have shown, the amount to be deducted under the proviso is always, and that to be deducted under the rule is sometimes, greater than the amount which would upon an apportionment be attributable to the included interest. In my opinion, the legislature have in sec. 43 supplied an explicit definition of the senses in which they have used the phrases "double taxation" and "in respect of his interest in the land" in sec. 38.

The Commissioner invites us to disregard the explicit statutory rules so far as regards joint interests, except so far as they may produce the same result as another rule which he invites us to substitute for them. This is, of course, the same thing as disregarding them altogether.

As I have shown, sec. 38 is capable of being construed in such a way as to be consistent with and give full effect to sec. 43, and in my judgment that construction should be adopted.

At best there is an ambiguity, though I do not find any, and in such a case the onus is upon the Crown to establish the liability of the taxpayer.

The first question should therefore be answered:—"To one deduction only"; and the second:—"In the manner contended for by the appellant."

BARTON J. I have had the advantage of reading the judgment just delivered. Agreeing with it, I have only a few words to add. The appellant's first contention is that before the tax can be rightly computed he is entitled to have £5000 deducted from

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each of the two values which may be called his two assets, and not merely one deduction of £5000 from their aggregate. He bases this claim on the use in sec. 11 of the Act, paragraph (*b*), of the words "the balance of the total sum of the unimproved value of each parcel of the land, after deducting the sum of Five Thousand Pounds." He says the deduction is to be made in the case of each parcel from the total of its unimproved value, so that if there were half a dozen parcels there would have to be half a dozen deductions—£5000 for each parcel. The phrase is open to that construction as a possible one, but I do not think it the more probable one, and even if there had not been a context to illumine paragraph (*b*) I do not think the appellant would have succeeded in raising an ambiguity. But by sub-sec. (1) land tax is payable by the owner upon the taxable value of "all the land owned by him and not exempt from taxation under this Act," and by sub-sec. (2) the taxable value of all the land owned by a person is "(*a*) in the case of an absentee—the total sum of the unimproved value of each parcel of the land." The meaning so far is perfectly clear, and is that, in order to arrive at the taxable value of the whole of a man's land, we are in the case of the absentee to add up the unimproved values set against the several parcels that he owns. The phrase, then, before its repetition in paragraph (*b*), has acquired a meaning which it *primâ facie* has again in that paragraph, in the absence of some very strong reason to the contrary, which the appellant has not adduced. In respect of question 1 I think, therefore, that he fails.

Question 2 is one of greater difficulty. During the argument I was somewhat impressed with the contention for the Commissioner. But there are increasing difficulties in the way of that view as one proceeds to apply the words of the enactment to their subject matter, and I think the Chief Justice in so applying, them, has shown that if the Commissioner's contention is the right one, then the first proviso to sec. 43 is in effect a mere futility. For the process of attributing proportions of the tax to different properties, one part to that in respect of which the owner is a secondary taxpayer, and the other part to that which he holds separately from the joint or trust estate, and then making the deduction from the former part alone, results in

nearly all cases, if not in all, in leaving the larger of two sums to be deducted from the smaller. It can scarcely have been the deliberate intention of the legislature to designate such an attempted operation as a "deduction," and it is more reasonable to conclude that it contemplated the deduction of the less from the greater of two sums. I cannot deny that, apart from the practical application of the words to the subject-matter, the view put forward by Mr. *Weigall* for the Commissioner is open, and, if we were obliged to stop at the mere words of the sections, I should be disposed to think that view a probable one. But the other construction being also open, we have to say which of the two is the more reasonable, and that question is to be solved only by applying each of them to the several classes of cases which will arise, for these cases constitute the subject matter. When that is done, as it has been by his Honor, I cannot but think that the appellant's construction as set forth in paragraph 8 of the special case is the more reasonable of the two. It does no violence to the terms of the Act: unlike the construction urged on us for the respondent, it is in consonance with what is well understood by "deduction" as a word designating a certain arithmetical process, and, also unlike that construction, it leaves the first proviso applicable to all cases that, so far as can be foreseen, will arise in the relation of primary and secondary taxpayers; and I think it must have been intended to be so applicable.

My answers to the questions are,—(1) that the appellant is entitled to one deduction only, which is to be made from the total of the unimproved values of all his lands, and (2) that the deduction to prevent double taxation ought to be made in the manner contended for by the appellant.

O'CONNOR J. The trustees under the will have been assessed in respect of the whole trust estate. For the purpose of their assessment six deductions of £5,000 have been made from the unimproved value of the land by virtue of sec. 33, being £5,000 on account of each of the joint beneficiaries including the appellant. The joint owners of whom the appellant is one have not been jointly assessed under sec. 38. Nor can they now be made

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liable as joint owners under that section, for it is to be taken on this appeal that the trustees have paid the amount due on their assessment, which necessarily includes the joint interests of the joint owners. To any claim for the tax now made by the Commissioner on the joint owners as owners of the joint estate the payment by their trustees would be a complete answer. Under these circumstances I can see no reason for introducing the potential liability of the joint owners of the joint estate as a factor in the adjustment of the present assessment. The trustees, having been assessed and having paid the tax in respect of the whole estate, have become the primary taxpayers, and the amount of their payment is the only amount payable by a primary taxpayer which is material in the present controversy. In addition to assessing the estate in the trustees' hands, the Commissioner has assessed the beneficiaries, including the appellant, separately in respect of the shares to which they are respectively entitled. Whether the appellant's assessment is under sec. 38 sub-sec. 3 or under sec. 35 is immaterial. It is the one liability founded on the equitable ownership of the land to the extent of his individual interest. As regards that interest the appellant thus becomes the secondary taxpayer, and the Commissioner demands from him payment of the tax directly assessed on his individual share. His trustees having paid the whole of the land tax assessable on the land are entitled under sec. 62 to claim from him repayment of his proportion, namely, one-sixth of the amount of their payment on account of the joint estate. If the claims of the Commissioner and of his trustees were both enforceable the appellant would be compelled to pay tax in respect of the same interest in the same land twice over. But sec. 35 expressly provides that in such a case the equitable owner is entitled to a deduction from the amount of his tax in order to prevent double taxation, and the rule to be followed in making the deduction is laid down in sec. 43. The question raised on this appeal is how the rule is to be applied under the circumstances stated in the special case. So far I have been dealing only with matters strictly relevant to the prevention of double taxation where the legal owner and the equitable owner are both assessed in respect of the same land. But there are two matters not strictly relevant in that connection

which I shall now mention as they must, it appears to me, be taken into consideration in making the present adjustment. In addition to his interest in the joint estate the appellant is the owner in his own right of other land. In his assessment is included both his share in the trust estate and other land in his own right. The total amount is £35,801 made up as follows:— £21,472 (being one sixth of £128,883 the amount at which the trust estate was assessed) and £19,329 the assessed value (after deducting £5000) of the appellant's other lands. The tax on the total assessment made up of those first two items is £327 3s. 7d. The question of double taxation arises directly only in regard to one of the items of the appellant's assessment, that is to say, his one-sixth share of the joint estate. As regards the other item there is no double taxation in the sense of the same interest being taxed twice over, but there is double taxation arising indirectly by reason of the following circumstance, which is the other matter to which I have referred. The aggregation of the appellant's interest and the five other interests in the joint estate raises the rate of the tax on the joint estate. So that the one-sixth of the tax paid by the trustee on the whole estate is necessarily a larger sum than the appellant would have been liable for to the Commissioner on the separate assessment of his one-sixth share. To relieve a person circumstanced as the appellant is from all the extra burden imposed on him by reason of the joint estate as well as the separate estate being taxed, it would be necessary, not only to prevent his paying over again an amount which his trustees had already in effect paid to the Commissioner on his behalf, but also to prevent him from having his individual interest taxed at a higher rate than its value would justify by reason of its aggregation with the rest of the trust estate. Whether or not the Act has provided for the latter as well as for the former adjustment will depend upon the construction of sec. 43 which embodies the only adjustment which the legislature has directed to be applied. Such being the circumstances of the assessment I turn now to the material sections.

The object of sec. 43, plain on the face of it, is to prevent the double taxation which, but for some such provision, must take place under the scheme of the Act whenever there is a legal and

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an equitable estate in land. The provisions of the section would appear *primâ facie* to be applicable only where a primary and a secondary taxpayer are liable to be assessed in respect of the same land or interest. The rule and its limitation are stated in separate paragraphs. The rule is in the following words:— "The amount of the deduction (if any) shall be the amount by which the tax payable by the primary taxpayer is increased by the inclusion of the land or interest in his assessment."

The rule is to be applied in cases where the Act provides that there shall be deducted from the tax payable by the secondary taxpayer in respect of the land or interest such amount (if any) as is necessary to prevent double taxation. Whether the liability of the secondary taxpayer in this case is under sub-sec. 3 of sec. 38, or under sec. 35, it is clear that under the Act the joint owner is entitled to have deducted from the tax payable on his individual share a certain amount to prevent double taxation. The rule directs how that amount is to be ascertained. As I have already pointed out, the trustees of the whole estate must be taken to be the primary taxpayers, and there can be no other primary taxpayers for the purpose of the present assessment. We must now ascertain by what amount the tax payable by the trustees in respect of the whole estate was increased by the inclusion of the appellant's land or interest in the assessment.

The additional amount made payable by the trustees by reason of the inclusion in their assessment of the appellant's share is £411 16s. That, therefore, is the amount to be deducted. The next thing to be ascertained is from what sum is the deduction to be made. Is it to be made only from the sum payable by the secondary taxpayer on the land or interest which otherwise would be taxed twice over, separating for that purpose the amount assessed on that land from other lands which may be included in the assessment, or is the deduction to be made from the total amount of his assessment including lands not subject to double taxation, if any such were included, as well as those which were? The words "increased by the inclusion of the land or interest in his assessment" occurring at the end of the proviso are undoubtedly ambiguous. What is meant by "his assessment"?

The expression, it is true, is wide enough to cover the total amount of the secondary taxpayer's assessment, whatever lands it may have included, and the section is thus open to the construction for which the taxpayer is contending. But whether that construction will best carry out the intention of the legislature is a matter which cannot be decided without a close examination of many sections of the Act. Some strong reasons were put forward in support of the taxpayer's view of the matter. Having regard to the object of sec. 43, appearing, as I have pointed out, plainly on its face, it would appear at first sight that the section must be read as limited to the attainment of that object, that is to say, as directing the deduction to be made only from so much of the whole amount of the tax as is attributable to the parcel or parcels of land which otherwise would be doubly taxed. If that were the intention of the legislature to be gathered from the Act as a whole, there would, I think, be no difficulty in separating, for the purposes of the adjustment, the values of the different parcels of land covered by the assessment. The Act requires separate valuation of parcels in the taxpayer's return, and contemplates separate assessments of the value of each parcel in each assessment. The very rule with which we are dealing necessitates the separation of the assessments on different parcels in the case of most trust estates. Otherwise it would be impossible to ascertain the amount by which the primary taxpayer's payment is increased by the inclusion of the secondary taxpayer's land or interest in the assessment.

But the difficulty of interpretation does not lie in that direction. The question of construction to be solved is much more substantial. It is to ascertain whether the intention of the legislature, as expressed in the Act, was to confine the adjustment to the instances in which both the legal and the equitable owner had become liable to pay land tax in respect of the same parcel of land, or whether there is to be gathered from the language the legislature has used the intention also to relieve the secondary taxpayer from payment of the higher rate of tax which his share of the trust estate would, in effect, have to bear by reason of its incorporation in the trust estate as a whole. I have had the

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advantage of reading the judgment of my brother the Chief Justice, and I agree with him that an examination of all the relevant sections makes it plain that the adjustment intended by the legislature was, not only to remove the hardships occasioned to the secondary taxpayer by the imposition of a double tax on the same land, but was also an adjustment which would relieve him of the burden of the higher rate. It is clearly impossible, as my learned brother has shown, to effect the latter object if the adjustment under sec. 43 is to be applicable only to the portion of the secondary taxpayer's assessment which relates to the parcels of land doubly taxed. The words " his assessment " at the end of the proviso in sec. 43 are, as I have pointed out, capable of being interpreted so as to include the amount of tax in respect of the secondary taxpayer's whole assessment. Unless it is so interpreted the intention of the legislature to make a fair adjustment in respect of the higher rate cannot be given effect to. I therefore agree that the proper interpretation of sec. 43 is to be found in reading the rule and the proviso together, and in the light of the intention and object of the legislature which is to be gathered from the various sections to which my brother the Chief Justice has referred. So interpreted, the section must be read, in my opinion, as directing the deduction to which I have already referred to be made from the whole amount of tax levied in respect of the secondary taxpayer's whole assessment. The relief provided by the section may well be described as rough and ready. There will, no doubt, be many cases in which the deduction allowed from the whole assessment, joining lands not doubly taxed with those which are doubly taxed, will lessen the taxpayer's burden much beyond the needs of a fair adjustment. That, however, is the method which Parliament has laid down, and it must be followed.

As to the first question submitted I agree with the conclusion at which my colleagues have arrived, and for the reasons they have given.

For these reasons I am of opinion that the question submitted should be answered as follows:—

1. The appellant is entitled to only one deduction of £5,000.

2. The deduction to prevent double taxation ought to be ascertained in the manner contended for by the appellant.

Questions answered accordingly.

Solicitors, for the appellant, *Elder & Graham.*

Solicitor, for the respondent, *C. Powers*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

BENNETT . . . . . APPELLANT.
DEFENDANT,

AND

COLONIAL SUGAR REFINING COMPANY LIMITED . . . . . } RESPONDENTS.
COMPLAINANT.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

Master and servant—Master a joint-stock company—Term of service—Unlawful refusal and neglect to fulfil agreement—Masters and Servants Act 1861 (*Qd.*) (25 *Vict. No.* 11), *secs.* 2, 3.

A joint-stock company may be a "master" within the meaning of sec. 2 of the *Masters and Servants Act* 1891.

An agreement by a labourer to serve an employer for a certain number of months with a provision that the employer may discharge the labourer at any time, and without notice, upon paying him the amount due under the agreement, is within sec. 3 of the *Masters and Servants Act* 1861.

Special leave to appeal from the Supreme Court of Queensland: *Colonial Sugar Refining Co. Ltd.* v. *Bennett*, 1911 St. R. Qd., 191, refused.