

## [HIGH COURT OF AUSTRALIA.]

READING . . . . . APPELLANT ;

AND

THE FEDERAL COMMISSIONER OF }  
LAND TAX } RESPONDENT.*Land Tax—Vested remainders—Land Tax Assessment Act 1910, secs. 33, 46.*H. C. OF A.  
1912.BRISBANE,  
April 30.Griffith C.J.,  
Barton and  
Isaacs JJ.

R. left real estate to trustees upon trust to pay the income thereof to his wife during the minority of his children, and upon trusts for their benefit (subject to certain other trusts) thereafter. All the children had attained majority at time of the assessment.

*Held* that on construction of proviso to sec. 33, the trustees were entitled to the statutory deduction in respect of each of the children's shares.

*Archer v. Federal Commissioner of Land Tax*, (13 C.L.R., 557), followed.

CASE stated by *Griffith C.J.* for the opinion of the High Court.

The special case was as follows:—

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

1. The appellant is the sole trustee of the will of George Reading of Brisbane, deceased, who died on 24th November 1876 leaving real estate in Queensland.

2. The testator by his will devised his residuary real estate to trustees upon trusts which so far as material to be stated were as follow:—

Upon trust for conversion with discretionary powers of postponement and upon further trust until his youngest child should attain 21 or being a daughter marry under that age to pay the



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income to his widow (the now appellant) during her life for her own use she thereout maintaining and educating his children (with other trusts for their benefit if she should die before the youngest child should attain 21 or being a daughter marry): And if his wife should be living after the youngest child should have attained 21 or being a daughter have married under that age he directed as follows:—"Then my trustees or trustee shall stand possessed of my residuary estate to pay out of the income thereof the weekly sum of £5 to my said wife during her life and subject to the said annual sum in trust for all my children who being a son or sons shall attain the age of 21 years or being a daughter or daughters shall attain that age or marry in equal shares."

3. The testator left five children him surviving, one of whom is since deceased.

4. The youngest surviving child attained the age of 21 on 3rd January 1897 since which date the trustees of the will for the time being have paid to the appellant the said weekly sum of £5.

5. The unimproved capital value of the residuary real estate of the testator in Queensland undisposed of has been assessed by the respondent at the sum of £15,000.

6. The appellant claims to be entitled under the provisions of sec. 33 of the *Land Tax Assessment Act* 1910 to a deduction in respect of each of the shares of the said four children of the sum of £5,000 or such lesser sum as is equal to the unimproved value of the share.

7. The appellant also claims to be entitled under the provisions of sec. 34 of the said Act to a deduction in respect of the said annuity of £5 per week.

8. The respondent refuses to allow more than one deduction of £5,000 in respect of the said shares or to allow any deduction in respect of the said annuity and has assessed the taxable value of the said land at £10,000.

The questions for the determination of the Court are:—

- (1) Whether the appellant is entitled to a deduction of the prescribed amount in respect of each of the shares of the testator's four children or to a deduction of £5,000 only.



- (2) Whether the appellant is entitled to a deduction in respect of the said annuity of £5 per week, and if so, in what manner such deduction should be calculated.

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*Stumm* K.C. (with him *Hart*), for appellant.

*McGregor* for the respondent.

*Per curiam.* The first question must be answered on the authority of *Archer v. Federal Commissioner of Land Tax* (1), that the appellant is entitled to a deduction in respect of each share.

The second question need not be answered.

*Question answered accordingly.*

Solicitors, for appellant, *Nicol Robinson, Fox & Edwards* Brisbane.

Solicitors, for respondent, *Chambers, McNab & McNab*, Brisbane.

N. McG.

(1) 13 C.L.R., 557.