[HIGH COURT OF AUSTRALIA.]

HART . . . . . APPELLANT;

AND

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

H. C. OF A. 1913.

HOBART, *Feb.* 20.

Griffith C.J. Barton and Isaacs JJ.

Land Tax—Taxable value—Liability—Joint owners—Assessment—Deductions—Settlement—Intestate estate—Administration decree—Land Tax Assessment Act 1910-1912 (*No.* 22 *of* 1910—*No.* 37 *of* 1912), *secs.* 11 (2) (*b*), 38A—*Statute of Distributions—Deceased Persons' Estates Act* 1874 (*Tas.*).

The next of kin taking under the intestacy of a person who died before the 1st July 1910 cannot claim the benefit of the provision in sec. 38A of the *Land Tax Assessment Act* 1910-1912, relating to deductions in cases where, under a settlement made, or the will of a testator who died, before that date, the beneficial interest in any land or in the income therefrom is for the time being shared among a number of persons who are relatives by blood or marriage of the settlor or testator in such a way that they are taxable as joint owners under the *Land Tax Assessment Act* 1910-1911.

SPECIAL CASE.

On an appeal under Part V. of the *Land Tax Assessment Act* 1910, *Griffith* C.J. stated the following case for the opinion of the High Court under sec. 46 :—

1. The appellant is the administrator of the real estate of Alfred Taylor Hart, who died on 4th July 1908, intestate, leaving his widow and four children him surviving, all of whom are still living, who are his sole next of kin entitled on distribution to his estate.

2. One of the said children has attained the age of 21 years.

H. C. OF A. 1913.

HART v. FEDERAL COMMISSIONER OF LAND TAX.

3. By an order of the Supreme Court of Tasmania dated 11th November 1908, and made under the provisions of the *Deceased Persons' Estates Act* 1874, it was ordered that the sale of the real and personal estate of the said intestate should be postponed until further order without prejudice to the rights of the infant children to apply when they came of age for a sale or partition, and that until sale the business of the intestate might be carried on by the appellant as administrator, and directions were given as to payment of income for the support and maintenance of the intestate's widow and infant children, and otherwise as to the administration of his estate.

4. By subsequent orders of the Supreme Court of Tasmania, dated respectively 24th May 1909 and 23rd March 1910, certain portions of the intestate's real estate were directed to be sold and have since been sold.

5. The unimproved value of the unsold residue of the said real estate on 30th June 1911 has been assessed at £16,698, from which amount the appellant was allowed one deduction of £5,000.

6. The appellant claims that he is entitled to separate deductions in respect of the share of the widow and in respect of the share of each of the children of the said intestate.

The question for the determination of the Court is: Whether the appellant is entitled to more than one deduction of £5,000 in respect of the whole of the said real estate, and, if so, how many deductions.

Waterhouse, for the appellant. The main point to be determined in this appeal is as to the meaning that is to be given to the word "settlement" in the amendment of sec. 38 of the Principal Act. It is not defined in the Act, but its ordinary meaning would seem to be any instrument by which the disposition of land is appointed, or fixed or settled. In all the other States of the Commonwealth a "settlement" has been defined as including, among other things, an Act of Parliament. A man dying intestate leaves the law to make his will for him. The spirit of the Act seems to show that it was intended to give the privileges to all those persons entitled as equitable owners; and next of kin are equitable

owners. The *Statute of Distributions*, the *Deceased Persons' Estates Act*, and the administration decree by the Court together constitute a settlement.

[GRIFFITH C.J.—The decree does not create any new right.]

In *Vine* v. *Raleigh* (1) it was held that a will and an Act together constituted a settlement.

[ISAACS J.—In that case you have a settlement to start off with.]

Dobson, for the respondent, was not called on.

GRIFFITH C.J. Under sec. 38 of the Principal Act joint owners of land, whether legal or equitable, are treated as a single person and assessed jointly, so that only one deduction of £5,000 is allowed from the unimproved value of the joint estate. But, by an addition made to that section by the Act of 1911, certain privileges are conferred on joint equitable owners who claim under a settlement of earlier date than 1st July 1910, or the will of a testator who died before that date. In the present case there is no will and no deed of settlement. The beneficiaries are the next of kin of the former owner, who died intestate before 1st July 1910. It is suggested that in such a case the beneficiaries are substantially in the same position as persons who take under a settlement or will. Of course, such persons do not in fact claim under a will. How can it be suggested that they claim under a settlement?

The settlement spoken of in the Act is evidently an instrument made before 1st July 1910 by which shares are given to several persons, relatives of the settlor.

It is difficult to give reasons for the obvious. It is enough to say that it is impossible to bring the case of intestacy under the word "settlement."

In construing a taxing Act you cannot speculate as to the general intention of the legislature. The Act imposes certain liabilities upon joint owners, and makes a specific exception in certain specified cases only. The appellant in this case cannot bring himself within the exception. One deduction only of

(1) (1896) 1 Ch., 37.

H. C. OF A. 1913.

HART v. FEDERAL COMMISSIONER OF LAND TAX.

Isaacs J.

£5,000 can therefore be allowed, and the question submitted must be answered accordingly.

BARTON J. I am entirely of the same opinion, and it is unnecessary to add words.

ISAACS J. I quite agree, and will quote a few words of a very eminent Judge, which, I think, are relevant to the construction of the word "settlement." In *Attorney-General* v. *Glossop* (1) *Collins* M.R., dealing with the English *Finance Act*, and a question arising thereon, said:—"The Acts have been framed by draftsmen acquainted with conveyancing terms, and they must in the nature of things be addressed to a large extent to a section of the public familiar with those terms; and I do not think that it would be right or possible, in dealing with the provisions of the Finance Acts, to ignore altogether the technicalities of conveyancing, and to disengage one's mind entirely from all acquaintance with the technical terms which conveyancers use, and in which likewise to some extent the draftsmen of Acts of Parliament couch the provisions which they frame."

Now, the word "settlement," as used in the Act, primarily connotes an instrument which is executed by a person called the settlor, and under which, broadly speaking, several persons would take successive interests in the ownership or enjoyment of property. There is nothing in the context to countervail that primary signification. There are other words which have been referred to by the learned Chief Justice in the clause itself, which, so far from detracting from the primary meaning to which I have referred, strengthen it. In addition to that, if the argument addressed to us by the appellant were correct, a will would be included within the meaning of "settlement." But the legislature, by expressly referring to wills, show that they did not consider that wills would be so included. The express additional reference to wills indicates that the legislature did not intend them to be already dealt with under the term settlement. If so, *à fortiori*, the case of an intestacy does not come within that term.

(1) (1907) 1 K.B., 163, at p. 172.

I therefore agree with the opinion expressed by my learned brothers.

H. C. OF A. 1913.

HART v. FEDERAL COMMISSIONER OF LAND TAX.

Appeal dismissed with costs.

Solicitors, for the appellant, *Ritchie & Parker*, Launceston.

Solicitors, for the respondent, *Dobson, Mitchell & Alport*, Hobart.

N. McG.

[HIGH COURT OF AUSTRALIA.]

MOUNT BISCHOFF TIN MINING COMPANY, REGISTERED . . . PLAINTIFFS, } APPELLANTS;

AND

MOUNT BISCHOFF EXTENDED TIN MINING COMPANY, NO LIABILITY DEFENDANTS, } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

New trial—Evidence—Weight of evidence—Trespass—Common Law Procedure Act 1855 (*Tas.*) (19 *Vict. No.* 16), *secs.* 1, 2.

In an action for trespass, where the boundary line between two adjacent leases was in dispute, it appeared that at or about the time of the plaintiffs' original lease in 1874 the boundary in question was actually marked on the ground by the plaintiffs' lessor, the Crown; that its position could still be identified; and that the plaintiffs' occupation had continuously extended up to that line. There was no evidence to controvert these facts.

H. C. OF A. 1913.

HOBART, *Feb.* 18, 19, 20.

Griffith C.J., Barton and Isaacs JJ.