lectively be treated as the holder of an original share. If they can, the case falls exactly within the Act. In my judgment, having regard to the statutory rule of interpretation of federal Statutes that words in the singular include the plural unless a contrary intention appears, there is no reason to doubt that the case falls within the Act. Indeed, if it did not, this singular position would arise, that, although sec. 38A is obviously intended to continue the benefit of the deduction as long as the property remains in the family of the original settlor, yet it only applies when the subsidiary settlement is in favour of a single person.

So far, therefore, from there being contrary intention, there is a manifest intention that the general rule shall apply. I am, therefore, of opinion that these two beneficiaries are collectively the holder of an original share within the section, but so that only one deduction can be made in respect of it. If there is no more in the case, the appellants will be entitled to succeed. But if it should turn out that any of the other shares have been alienated, the right to the deduction will cease for the reason given in the preceding case. That can be determined by the Court of first instance when the case is remitted.

For these reasons I think that the question should be answered in the affirmative.

BARTON J. I concur.

GAVAN DUFFY J. I agree.

Question answered in the affirmative.

Solicitors, for the appellants, *Ritchie & Parker*, Launceston, by *Simmons, Wolfhagen, Simmons & Walch.*

Solicitor, for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth, by *Dobson, Mitchell & Allport.*

B. L.

[HIGH COURT OF AUSTRALIA.]

COX AND OTHERS . . . . . APPELLANTS;

AND

THE DEPUTY FEDERAL COMMISSIONER OF LAND TAX, TASMANIA . . RESPONDENT.

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HOBART, *Feb.* 18.

Griffith C.J., Barton and Gavan Duffy JJ.

Land Tax—Assessment—Claim to deduction—Appeal—Compromise—Subsequent assessment re-asserting former claim—Effect of settlement of prior proceedings—Tenant for life—Estate for life—Land Tax Assessment Act 1910 (*No.* 22 *of* 1910), *secs.* 20, 25, 27, 28.

The trustees of a will having made a return for the purpose of the *Land Tax Assessment Act* of the land held by them, in which they claimed a deduction in respect of the interest of one of the beneficiaries on the ground that she was a life tenant and was entitled to the benefit of sec. 25 of the Act, the Commissioner of Land Tax refused to accede to the claim, and made an assessment accordingly. The trustees paid the amount of land tax alleged to be due, and gave notice of appeal to the High Court on the ground that the beneficiary was entitled to the benefit of sec. 25. The appeal was set down for hearing, but before it could come on for hearing the Commissioner gave notice that he submitted to the contention of the trustees, who thereupon gave notice to the Registrar that the appeal was withdrawn, and the Commissioner paid them their costs of the appeal, and refunded to them the excess amount which they had paid.

Held, that the Commissioner was precluded by the proceedings which took place on the appeal from subsequently making an amended assessment re-asserting his former claim.

By his will a testator gave all his real and personal property to trustees directing them to carry on a certain business on his real estate until his eldest surviving son should attain the age of 21 years and to pay the net profits arising therefrom to his widow until that time. He further directed that the estate should be held upon trust for his eldest surviving son who should attain that age, with a gift over in the event of none of his sons

attaining that age. He also directed that, until his eldest surviving son should attain that age, his widow should be entitled to reside in and occupy the dwelling-house on his real estate. The testator left him surviving his widow and two sons.

Semble, per Griffith C.J. and *Barton* J., that the widow had an equitable estate for years in the land, and was not a tenant for life within the meaning of sec. 25 of the *Land Tax Assessment Act* 1910.

CASE stated by *Griffith* C.J.

On an appeal by Theresa Wybelline Cox, Charles Henry Albert Youl and Charles R. Mackinnon against an assessment made by the Deputy Federal Commissioner of Land Tax for Tasmania, *Griffith* C.J. stated the following case:—

"1. The appellants are the trustees of the will of John Claude Cox, who died on 17th June 1909. The appeal is from an amended assessment, dated 22nd February 1913, of the lands held by the appellants as such trustees as on 30th June 1910, which are known as the Clarendon Estate.

"2. The said John Claude Cox, by his will dated 8th February 1908, devised all his real and personal estate to his trustees and directed them to carry on the business of farmer and grazier on his real estate known as 'Clarendon,' and to employ his stock and cattle and implements in the said business, with full powers of management until his eldest surviving son should attain the age of 21 years; and to pay the net profits arising from such business to his widow, Theresa Wybelline Cox, until such son should attain that age, and further directed that the said estate should be held upon trust for his eldest surviving son who should attain 21; and that in the event of none of his sons becoming entitled to the said estate, the said estate should be held upon trust for his brother Trevor Cox absolutely, and that until his eldest son should attain 21 his widow should be entitled to reside in and occupy his dwelling-house at Clarendon.

"3. The said testator left him surviving three children, namely, a son, John Burnett Cox, born 12th May 1902; a son, Thomas Cox, born in July 1905, and a daughter born 1st May 1904.

"4. On 28th February 1911 the appellants duly made a return of the said land for the purposes of the *Land Tax Assessment*

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Act 1910, in which the unimproved value thereof was assessed at £13,311, subject to the statutory deduction of £5,000.

"5. The appellants claimed that under the terms of the said will the widow of the testator was a tenant for life of the said lands without power to sell, within the meaning of sec. 25 of the said Act, and that they were therefore entitled to have the unimproved value of the land calculated on the basis prescribed by that section in such cases. The respondent, in the first instance, acceded to their claim and assessed the unimproved value of the estate at the sum of £6,434 with an assessable value of £1,434, on which amount the appellants duly paid the land tax.

"6. On 30th October 1911 the respondent issued to the appellants an amended notice of assessment of the said lands, in which the unimproved value thereof was assessed at £12,103 subject to the statutory deduction of £5,000.

"7. The appellants duly gave notice of appeal against the said last mentioned assessment, upon the ground that the widow was entitled to the benefit of sec. 25 of the said Act, and duly set down the appeal for hearing.

"8. Before the said appeal could come on to be heard the respondent gave notice to the appellants that he accepted their contention, and in consequence of such notice the appellants did not proceed with the appeal and withdrew the same, and the respondent paid the costs thereof.

"9. On 22nd February 1913 the respondent issued to the appellants a document purporting to be a notice of amended assessment, by which they assessed the unimproved value of the estate as against the said widow at its full unimproved value.

"10. The appellants claim that the unimproved value of the said estate should be assessed upon the basis that the said widow is tenant for life thereof without power to sell, within the meaning of sec. 25 of the said Act. The respondent claims that she is not tenant for life within the meaning of that section.

"The questions for the opinion of the Court are:

"1. Whether, under the circumstances hereinbefore stated, it was competent for the respondent to issue the notice of 22nd February 1913, or whether he is precluded from

doing so by the proceedings taken upon the appellants' appeal instituted in the year 1911?

"2. Whether the appellants as representing the said widow are entitled to the benefit of the provisions of sec. 25 of the said Act?

Waterhouse, for the appellants. The widow's estate is for an indeterminate period, and at common law would be an estate for life: 1 *Co. Litt.*, 42a; *In re Carne's Settled Estates* (1); *Hewlins* v. *Shippam* (2). Whether the widow has an estate for life or not the Deputy Commissioner is precluded from raising that question now, for on the earlier appeal this very question was raised and he acceded to the appellants' contention. Sec. 59 of the *Land Tax Assessment Act* 1910 does not entitle him under such circumstances to make a claim for further land tax.

L. L. Dobson, for the respondent. As to the question whether the widow had an estate for life: in the cases referred to, apart from the death of the person entitled, no definite time was fixed beyond which his estate could not in any case extend. The widow's estate is an estate for years subject to a conditional limitation: *Edwards' Compendium of the Law of Real Property*, 2nd ed., pp. 46, 47; *In re Machu* (3); *Encyclopædia of the Laws of England*, 1st ed., vol. III., p. 249. As to the first question, all that the Deputy Commissioner intended to admit on the former appeal was that sec. 25 applied to equitable as well as legal tenants for life, as was decided in *Sendall* v. *Federal Commissioner of Land Tax* (4). That admission does not prevent him from now contending that the widow is not a tenant for life: *Wilding* v. *Sanderson* (5); *Hickman* v. *Berens* (6). The parties to the agreement were not *ad idem*. Nothing but an order made by the Court will bind the Crown.

Waterhouse, in reply. It cannot with certainty be said when the period during which the widow will be entitled to the rents and profits will end. If, in addition to the uncertainty as to the

(1) (1899) 1 Ch., 324, at p. 329.
(2) 5 B. & C., 221.
(3) 21 Ch. D., 838, at p. 842.
(4) 12 C.L.R., 653.
(5) (1897) 2 Ch., 534.
(6) (1895) 2 Ch., 638.

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duration of the widow's life, there is a further uncertainty as to the period during which she is entitled to the rents and profits, her estate is one of freehold. If she is a tenant for years then the case falls within sec. 28, and the result as to the amount of the tax will be practically the same.

GRIFFITH C.J. The appellants in this case are the trustees of the will of John Claude Cox, who died in 1909. By his will he devised and bequeathed all his real and personal property to the trustees, and directed them to carry on his business of farmer and grazier on his real estate known as "Clarendon" until his eldest surviving son should attain the age of 21 years, and to pay the net profits arising from the business to his widow until that time. He further directed that the estate should be held upon trust for his eldest surviving son who should attain that age, and that if none of his sons should become entitled to the estate it should be held upon trust for his brother Trevor Cox. He also directed that until his eldest surviving son should attain the age of 21, his widow should be entitled to reside in and occupy his dwelling-house at Clarendon. The testator left two sons, one born in May 1902 and the other in July 1905. In 1911 the appellants duly made a return for the purposes of federal land tax, in which they claimed that upon the proper construction of the will the widow was a tenant for life without power to sell within the meaning of sec. 25 of the Act of 1910, and was entitled as such to the benefits of that section. This would have had the effect of reducing the assessable value of the estate from about £8,000 to about £1,400. Their contention was in the first instance accepted, and land tax, computed on that basis, was duly paid. Later in the same year an amended assessment was made by the Commissioner, in which he refused to give effect to this contention, and claimed that the value of the land should be assessed upon the footing of the widow being taxable as an absolute owner. The result was to increase the amount of the tax by something over £30. The trustees thereupon gave notice of appeal against that amended assessment on the ground that the widow was entitled to the benefit of sec. 25. The appeal was set down for hearing in this Court, but before it could come on for hearing the

respondent gave notice to the appellants that he submitted to their contention. They thereupon gave notice to the Registrar that the appeal was withdrawn, and the respondent paid them their costs of the appeal, and refunded to them the excess amount which they had, as required by law, paid as soon as the amended assessment was made.

So the matter appeared to have ended. But in 1913 the respondent issued a notice purporting to be an amended assessment, in which he re-asserted his former claim of 1911. The trustees object that under the circumstances I have stated the respondent is precluded from doing so. They contend that the proceedings which took place upon the appeal of 1911 had the effect of a settlement of a matter in litigation between parties, and further that in effect the respondent is now seeking to recover from the appellants a sum of money which was paid by him to them under an alleged mistake of law, namely, thinking that the widow was entitled to the benefit of sec. 25 of the Act.

The first question submitted by the case is whether the respondent is so precluded. Though some doubt has occurred to my mind during the progress of the case, I have come to the conclusion that he is. The matter was in actual litigation between the parties in the manner prescribed by the Act. While that litigation was pending an agreement was come to by which the respondent submitted to the appellants' claim, paid their costs and paid the amount claimed from him. Under those circumstances it seems to me impossible to re-open the matter. Although it is not, strictly speaking, *res judicata*, the compromise followed by payment operates as an executed agreement for valuable consideration. No reason has been suggested why, having regard to the provisions of the Act as to appeal and the direction that money held by the Court to have been overpaid shall be refunded, such an agreement should not be binding on the Crown. I think the same effect should be given to this compromise as to a compromise of an action for the recovery of money paid under compulsion. An appeal under the Act is, in substance, such an action, and it would be strange, indeed, if in such a case, where the money claimed has been recovered by the action upon a settle-

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ment of it, the defendant should afterwards be allowed to bring another action to recover it back from the plaintiff. I think, therefore, that the first question should be answered to the effect that the respondent was precluded from issuing the notice of 22nd February 1913.

As to the other point I will say a few words, as it has been fully argued, and an expression of opinion upon it may be useful in other cases, although, under the law as it now stands, it cannot affect the extent of the appellants' liability to taxation in future. I have already stated the terms of the will. It was contended by Mr. *Waterhouse*—and for some time I was disposed to accept his contention—that, upon a proper construction of the will, the widow is a tenant for life according to the meaning of that term at common law. But on further consideration I have come to the conclusion that the true position of the widow is that she has an estate for years. It is true that estates for years are generally created by demises *inter vivos*. But there is no reason why they should not be created by will. If an estate for years is so created it is not, of course, an estate for life. In my opinion what was given to the widow was an equitable estate for a term the maximum duration of which was 21 years from the birth of the younger son, which was in July 1905, that term being subject to determination in either of three events: first, the earlier attainment of the age of 21 by the elder son; secondly, the death of both sons; and, thirdly, the death of the widow herself. It is settled that an estate created, by whatever means, for a fixed term or with a defined end subject to prior determination by the death of the grantee, is an estate for years, and not an estate for life. If it is determinable upon any other contingency it is none the less an estate for years, and not an estate for life. I think, therefore, that if the case had rested on the second point alone the respondent would not have been entitled to the benefit of sec. 25.

BARTON J. I agree in the conclusion at which the learned Chief Justice has arrived as to the first question, and for the same reasons. As to the second question, as the case is concluded by the answer to the first question it seems to me unnecessary to