ficial interest in the estate has passed to a stranger it is *primâ facie* impossible to say that "the beneficial interest" is shared between a number of persons "all of whom" are relatives of the settlor. It may seem strange, and at first sight it does seem strange, that the act of one beneficiary over whom the others, having perhaps a largely preponderating interest, have no control, should deprive them of the benefit intended to be conferred by the Act. But, on the other hand, there is no reason to suggest that a stranger was intended to have the benefit of the reduced rate of taxation which was introduced for the benefit of beneficiaries under old settlements made before the Act came into operation, and which would accrue to him if the opposite construction were adopted. Nor can it any longer be said with accuracy that the land is held by "relatives" "in such a way that they are taxable as joint owners" under the Act. The truth is that they and a stranger are together taxable as joint owners, against whom a single assessment is made, which is a joint assessment of all of them, so that, as I have already pointed out, when the deduction is made it must accrue for the benefit of all. The case therefore does not fall within the literal words of the new provision, and any non-literal construction would give rise to consequences which are quite inconsistent with the scheme of confining the benefit to relatives of the original settlor or testator. It follows that, as the law stood under the Act of 1911, the deduction could not be made.

In 1912 another amendment of the Act was made which stands as sec. 38A. In another case standing for judgment we shall have to refer at length to its provisions. For the present it is sufficient to say that it only extends the class of relatives to be benefited, and does not in any way affect the construction of the words of sec. 38 (7) to which I have referred, or the rule to be deduced from them, namely, that all the joint owners at the time of the assessment must be relatives of the original settlor or testator.

The question should therefore be answered in the negative.

BARTON J. I agree.

H. C. OF A. 1914.

PARKER v. DEPUTY FEDERAL COMMISSIONER OF LAND TAX, TASMANIA.

GAVAN DUFFY J. I agree.

Question answered in the negative.

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

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

B. L.

[HIGH COURT OF AUSTRALIA.]

ARCHER AND ANOTHER . . . . APPELLANTS;

AND

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

H. C. OF A. 1914.

HOBART, *Feb.* 17, 19.

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

Land Tax—Assessment—Deductions—Trustees—Trusts under settlement or will taking effect before 1st July 1910—*Original share held by several persons—Land Tax Assessment Act* 1910-1912 (*No.* 22 *of* 1910—*No.* 37 *of* 1912), *sec.* 38A.

Where an "original share in the land," as defined in sec. 38A of the *Land Tax Assessment Act* 1910-1912, is, under the circumstances mentioned in the section, held for the benefit of several persons each of whom is a relative by blood, marriage, or adoption of the original testator, the deduction mentioned in that section may be made in respect of them as if the share were held by one person only.

CASE stated for the opinion of the Court.

On an appeal by William Henry Davies Archer and Alexander Archer against an assessment 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 Harriett Brooke, deceased, who died on 31st August 1886. The appeal is from the assessment of the lands held by the said trustees as on 30th June 1913.

"2. The facts and circumstances set forth in the special case stated in the case of *Archer* v. *Federal Commissioner of Land Tax*, and reported in 13 C.L.R., at p. 557, are, so far as relevant, to be taken as repeated and set forth in this case.

"3. By a marriage settlement bearing date 27th December 1888 Jessie Harriett Adams, one of the children of Maria Rebecca Adams in the said special case mentioned directed the trustees of the settlement to hold her interest under the will and codicils of the said Harriett Brooke deceased (being a one-eighth share) upon trust to pay the income to herself during her life and after her death upon trust for her children, and in the event of there being no children living to take then upon trust for such person or persons as she should, whether covert or discovert, by deed revocable or irrevocable or by will or codicil appoint, with ultimate trusts over in default of appointment.

"4. By an indenture dated 13th February 1909 (supplemental to the said last stated marriage settlement), wherein it was recited that there had been no children of the marriage and that the said Jessie Harriett Adams, then Jessie Harriett Edyvean, was desirous of making an appointment in default of children, she the said Jessie Harriett Edyvean appointed that after her death the trust premises should be held by the trustees of the settlement 'on trust to pay and apply one-third of the annual income of the trust premises to William Henry Edyvean' (her husband) 'during his life, and to pay the other one-third of her said income to or for the benefit of the said Maria Rebecca Adams' (her mother) 'during her life in such manner as the trustees should think best in the interests of the said Maria Rebecca Adams And subject to the payment of one-third of the said income to or for the benefit of each of them the said William Henry Edyvean and Maria Rebecca Adams respectively as aforesaid in trust as to both the corpus and income of the said trust premises for John Garibaldi Marriott Adams' (her brother) 'the child of the said Maria Rebecca Adams absolutely.'

H. C. OF A. 1914.

ARCHER v. DEPUTY FEDERAL COMMISSIONER OF LAND TAX, TASMANIA.

"5. The said Jessie Harriett Edyvean and Maria Rebecca Adams both died before 30th June 1910. The appellants now hold the trust premises upon trust to pay one-third of the income to William Henry Edyvean for life, and subject thereto, as to the corpus and income, for the said John Garibaldi Marriott Adams absolutely.

"6. The unimproved value of the estate of the said Harriett Brooke in the hands of the appellants has been assessed at £31,398 subject to one deduction of £5,000, leaving an assessable value of £26,398. The appellants claim that they are entitled to a further deduction in respect of the share of the said Jessie Harriett Edyvean settled in manner hereinbefore stated, that is to say, a deduction of £3,924 being one-eighth of £31,398, the total unimproved value.

"The question for the determination of the Court is:

"Whether the appellants are entitled to have the said deduction made."

Waterhouse, for the appellants.

L. L. Dobson, for the respondent, referred to *Committee of London Clearing Bankers* v. *Commissioners of Inland Revenue* (1).

Cur. adv. vult.

Feb. 19.

GRIFFITH C.J. The question submitted in this case depends upon the construction of sec. 38A of the *Land Tax Assessment Act*, which was introduced by an amendment of the Act in 1912. I have referred in my judgment in the previous case (*Parker* v. *Deputy Federal Commissioner of Land Tax, Tasmania* (2)) to the provisions of the law as they stood before that amendment.

Sec. 38A is as follows:—

"(1) Where, under a settlement made before 1st July 1910 or under the will of a testator who died before that day (in this section referred to as the 'original settlement or will') together with

(1) (1896) 1 Q.B., 222. (2) *Ante*, p. 438.

a settlement made before that day by a beneficiary under the original settlement or will of his share thereunder or a will of a beneficiary under the original settlement or will who died before that day, 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, marriage, or adoption of the original settlor or testator in such a way that they are taxable as joint owners under this Act, then, for the purpose of their joint assessment as such joint owners, there may be deducted from the unimproved value of the land, instead of the sum of £5,000 as provided by paragraph (*b*) of sub-sec. 2 of sec. 11 of this Act, the aggregate of the following sums, namely :—

"In respect of each of the joint owners who holds an original share in the land under the original settlement or will—

(*a*) the sum of £5,000, or

(*b*) the sum which bears the same proportion to the unimproved value of the land, after deducting the value of any annuity under sec. 34 of this Act, as the share bears to the whole,

whichever is the less."

An important change is here introduced. While the amendment of sec. 38 made by the Act of 1911 had only included persons holding directly under a settlement or will taking effect before 1st July 1910, this provision includes persons holding under a settlement or will taking effect before that day, together with a like settlement or will made by a beneficiary under the original settlement or will. But the condition of the benefit is still to be that the beneficiaries are relatives by blood, marriage, or adoption of the original settlor or testator. A change is also made in the language by using the words "a number of persons, who are relatives by blood, marriage, or adoption" instead of the words "a number of persons all of whom are relatives by blood, marriage, or adoption." But the original sec. 38 as amended by the Act of 1911 was not altered in that respect. In cases falling within that section all the beneficiaries must be relatives, as we decided in the previous case (*Parker* v. *Deputy Federal Commissioner of Land Tax, Tasmania* (1)), and the provision now under

(1) *Ante*, p. 438.

H. C. OF A. 1914.

ARCHER v. DEPUTY FEDERAL COMMISSIONER OF LAND TAX, TASMANIA.

Griffith C.J.

consideration does not make any difference in such a case. But it extends the class of relatives to be included in the benefit so as to include those taking under what has been called a subsidiary settlement or will. The deduction is to be made "in respect of each of the joint owners who holds an original share in the land under the original settlement or will." I need not repeat the definition of "an original share." In the present case the land is held by trustees under the will of a testator who died in 1886, and the assessment is in respect of land as held on 30th June 1913. There were several beneficiaries under the original settlement. Their right to claim deductions under sec. 33 of the original Act was discussed and determined by this Court in the case of *Archer* v. *Federal Commissioner of Land Tax* (1). It is sufficient, for the present purpose, to say that two of the beneficiaries were grandchildren of the settlor, namely, Jessie Harriett Adams and John Garibaldi Marriott Adams. In 1909 Jessie Harriett Adams, then Jessie Harriett Edyvean, made an appointment directing that her share should be held by the trustees of the settlement in trust as to one-third to pay the annual income thereof to her husband during his life, and as to another one-third to pay the annual income for the benefit of her mother during her life, and subject to those payments to hold the share in trust for her brother John Garibaldi Marriott Adams. She and her mother are both dead. There is no question that Mrs. Edyvean's share was an original share within the definition given in the Act, or that what she settled was that original share. The words of sec. 38A are "together with a settlement made before that day by a beneficiary under the original settlement or will of his share thereunder." The subject matter of the settlement therefore falls within the Act, and the result of it was that three persons, all being relatives of the original settlor by blood or marriage, became entitled to interests in Mrs. Edyvean's share. They therefore fall within the exact words of sec. 38A unless that construction is cut down by the use of the words "each of" in the phrase "each of the joint owners who holds an original share in the land under the original settlement or will." The question, therefore, is whether her brother, J. G. M. Adams, and her husband can col-

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