clear that they cannot affect the status. The conviction cannot, therefore, be relied on as sustaining the present charge.

The certificate of exemption was not produced, and we do not know the circumstances under which it was given. It may be that on looking at it it would appear that the case fell within sec. 4 of the Act, or it may not. But no such case was made before the magistrate, and it is quite impossible to send the case back to him for inquiry on a point not made.

The magistrate was, under the circumstances, right in refusing to convict. Whether any other remedy is open to the Commonwealth Government is a matter which does not arise for our decision, and it is not desirable to express any opinion upon it. The appeal must therefore be dismissed.

BARTON J. I am entirely of the same opinion, and do not think that any words of mine could make the matter clearer.

GAVAN DUFFY J. I agree.

Appeal dismissed with costs.

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

Solicitors, for the respondent, *Ewing, Hodgman & Seager.*

B. L.

[HIGH COURT OF AUSTRALIA.]

PARKER 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—*Beneficiaries—Relatives of original settlor or testator—Land Tax Assessment Act* 1910-1912 (*No.* 22 *of* 1910—*No.* 37 *of* 1912), *secs.* 38 (7), 38A.

In order that the benefits conferred by sec. 38 (7) and sec. 38A of the *Land Tax Assessment Act* 1910-1912 may accrue, all the joint owners at the time of the assessment must be relatives by blood, marriage, or adoption of the original settlor or testator.

CASE stated for the opinion of the Court.

On an appeal by Robert Lewis Parker and Sidney Hawley 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 a settlement dated 29th April 1848 made by James Cox and Eliza Cox, his wife, who both died before 30th June 1910. The appeal is from an assessment of the lands held by the said trustees as on 30th June 1912 which are known as the Fernhill Estate.

"2. By the said settlement the lands in question were conveyed to the trustees thereof and their heirs in trust for Eliza Cox, Ellen Cox and Frances Cox, the daughters of the said James Cox and Eliza Cox, his wife, during the term of their said respective natural lives equally to be divided among them share and share

alike as tenants in common and not as joint tenants, and after the respective deaths of the said daughters Ellen Cox, Eliza Cox and Frances Cox to stand possessed of the respective shares of and in the said lands to which such deceased daughter was entitled in her lifetime in trust for such one or more of the children or more remote issue of such daughter for such estate or estates in shares in favour of any one or more of such children or more remote issue as she should by her or their last will and testament in writing direct and appoint, and in default of such direction and appointment and subject thereto in trust for all and every child and children of such deceased daughter his her or their heirs and assigns for ever, if more than one as tenants in common. And in case any or either of them the said daughters should depart this life without leaving lawful issue living at her or their decease or respective deceases then the share or shares hereinbefore limited to her or them should go and be in trust for such persons or person in such manner and form as such daughter or daughters should appoint.

"3. The said Eliza Cox the younger, afterwards Eliza Dixon, who had no children, died on 26th April 1897. By her will dated 29th November 1896 she directed and appointed that the trustees of the said settlement should after her death stand seised of her one undivided one-third part or share of and in the lands and hereditaments comprised therein upon trust as to one-half thereof for her sister Cornelia Innes, the wife of John Henry Innes, of New Town, near Hobart, in Tasmania, Esquire, in fee for her sole and separate use and as to the other one-half upon trust for Isla Stuart Bloomfield, the eldest daughter of her sister Margaret Bloomfield, in fee for her sole and separate use.

"4. The said Ellen Cox, afterwards Ellen Burnett, who had no children, died on 4th September 1903. By her will and a codicil thereto dated respectively 9th June 1902 and September 1902 she gave to the Reverend Edgar Lee, vicar of Christchurch in the parish of Doncaster, an annuity of £150 a year payable half-yearly during his life, and declared that such annuity should be paid out of the annual and other rents and income of her share and interest in the 'Fernhill' Estate in Tasmania thereinafter appointed and disposed of. And she further directed and

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appointed that the trustees of the said settlement should subject to the payment of the said annuity to the Reverend Edgar Lee stand seised of and interested in her said share in the said Fernhill Estate and the rents and profits thereof upon trust for her sister Margaret Bloomfield for life.

"5. The said Reverend Edgar Lee is not a relative of the original settlors by blood, marriage, or adoption.

"6. The said Frances Cox, afterwards Frances Strong, died on 9th February 1864, and under the said settlement her one-third share in the estate devolved upon her two children, namely, E. L. Strong and Frances J. Trafford as tenants in common.

"7. On 1st October 1911 the said E. L. Strong and Frances J. Trafford assigned the said one-third share to one Daniel Viney, who is not a relative of the original settlors by blood, marriage, or adoption.

"8. On 30th June 1912 the beneficial interest in the said Fernhill Estate or in the income thereof was divisible among the persons and in the proportions following, that is to say:—Cornelia Innes, one-sixth share; Isla Stuart Bloomfield, one-sixth share; Rev. Edgar Lee and Margaret Bloomfield, one-third share; Daniel Viney, one-third share.

"9. The unimproved value of the said Fernhill Estate has been assessed at £10,399 subject to the statutory deduction of £5,000. The appellants claim to be entitled to a deduction of £3,466 in respect of the share which was of the said Ellen Burnett and was disposed of by her in manner aforesaid, being one-third of the total unimproved value of the said estate, and to two further deductions of £1,733 each in respect of the two one-sixth shares which were of the said Eliza Dixon and were disposed of by her in manner aforesaid.

"The question for the determination of the Court is:—

"Whether the appellants are entitled to the said deductions or any of them or any part thereof."

Waterhouse, for the appellants.

L. L. Dobson, for the respondent.

Cur. adv. vult.

GRIFFITH C.J. The assessment in question in this case is of land held by the appellants as trustees under an old settlement made in 1848 by Mr. and Mrs. Cox. By that settlement the beneficial interest in the lands in question was given in equal shares to three daughters of the settlors for their respective lives with remainders to their respective children, and, in default of children, as they might respectively appoint. Two of them, who had no children, appointed their respective shares to relatives of the settlors by blood or marriage. The share of the third daughter passed under the original settlement to her children, who alienated it to a stranger in blood.

On these facts the question arises for determination whether any deduction beyond the statutory deduction of £5,000 can be made from the total unimproved value of the land. There is no doubt that the beneficiaries under the settlement are joint owners within the meaning of the Act. The general scheme of the Act is that joint owners of land are treated as a single owner. That provision is contained in sec. 38 of the Principal Act of 1910, which enacts that:—"The joint owners shall be jointly assessed and liable in respect of the land as if it were owned by a single person." But the same Act allowed an exception to the rule in the case of certain family settlements. That exception was not contained in sec. 38, which dealt with joint owners, but in sec. 33, which dealt with land held by trustees. The third proviso to sec. 33 (1) was as follows:—"Provided further that, in the case of land vested in a trustee, under a settlement made before 1st July 1910, or under the will of a testator who died before that day, upon trust to stand possessed thereof for the benefit of a number of persons who are relatives of the settlor or testator, then, for the purpose of ascertaining the taxable value of the land owned by him as such trustee, 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 share into which the land is in the first instance distributed under the settlement or will amongst such beneficiaries, the sum of £5,000, or the unimproved value of the share, whichever is the less."

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Griffith C.J.

The Act of 1911, which is the one under which this case falls to be decided, repealed this proviso and substituted, as an addition to sec. 38, another provision which stands as sub-sec. 7 and is as follows:—"Where, under a settlement made before 1st July 1910, or under the will of a testator who died before that day, the beneficial interest in any land or in the income thereof is for the time being shared among a number of persons, all of whom are relatives of the settlor or testator by blood, marriage, or adoption, 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 original share in the land under the 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 as the share bears to the whole,

whichever is the less."

Then follows a definition of the term an "original share in the land" which I need not read. On that provision it is to be noted, first, that the condition of the deduction is that "the beneficial interest" in the land or the income therefrom is for the time being shared among a number of persons, "all of whom are relatives of the settlor or testator by blood, marriage, or adoption." The "time being" is, of course, the day as of which the assessment is made. It is next to be noted that this deduction is in lieu of the statutory deduction of £5,000, and is a single aggregate deduction from the assessable value of the land, which enures for the benefit of all the beneficiaries, and entails a consequent reduction of the rate of taxation for the benefit of all the joint owners. This being an exception from the general rule that joint owners are treated as a single person, the party claiming the benefit of it must show that the case falls within the terms of the exception. When a share in the bene-

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.