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I think she must fail for the reasons expressed in the judgment of the Chief Justice and adopted by the other members of the Supreme Court.

I agree that the appeal should be dismissed.

Appeal dismissed. By consent, no costs against the appellant. Trustees to have costs out of the estate.

Solicitors, for the appellant, *Thynne & Macartney.*

Solicitors, for the respondents, *Atthow & McGregor*; *Walter R. Scott.*

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HIGH COURT OF AUSTRALIA.]

MANT AND OTHERS . . . . . APPELLANTS;

AND

THE DEPUTY FEDERAL COMMISSIONER OF LAND TAX FOR QUEENSLAND } RESPONDENT.

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BRISBANE, *July* 30; *Aug.* 2.

Isaacs, Gavan Duffy and Powers JJ.

Land Tax—Assessment—Statutory deductions—Joint owners—Legal and equitable interests—Partnership—Business of graziers—Lands owned by individual partners—Mutual rights for partnership purposes—Land Tax Assessment Act 1910-1914 (*No.* 22 *of* 1910—*No.* 29 *of* 1914), *secs.* 2, 11, 27, 28, 35, 38, 42.

For the purpose of assessment of land tax, the personal right created by a contract of partnership in a grazing business allowing the stock of the firm to be agisted on lands owned severally by members of the partnership does not constitute the partners "joint owners" of such lands within the meaning of the *Land Tax Assessment Act* 1910-1914.

Consequently, the partners in such business are not liable to be assessed as joint owners of the whole of such lands under the provisions of the *Land Tax*

Assessment Act 1910-1914, but each of the partners is entitled under that Act to be separately assessed and allowed a deduction of £5,000 from the unimproved value in respect of the land owned by him.

CASE STATED.

On the hearing of an appeal by Charles Outram Mant and George Smyth Mant (the trustees of the will of George Mant, deceased), Charles Outram Mant, George Smyth Mant, Constance Mabel Kessels (formerly Mant), Mary Gertrude Mant, Ethel Maud Lewis (formerly Mant) and Edith Ellen Mant, against an assessment of them for land tax, *Isaacs* J. stated a case under sec. 46 of the *Land Tax Assessment Act* 1910-1914, which was, substantially, as follows:—

1. Prior to and in the year 1900 George Mant (now deceased) was the owner of Gigoomgan Station, near Maryborough, in the State of Queensland, comprising 31,149 acres of freehold land under the provisions of the Real Property Acts of Queensland.

2. On 30th June 1900 the deed of partnership hereinafter referred to was duly executed by the respective parties thereto.

3. The said freehold lands continued to stand in the name of the said George Mant until the year 1907.

4. In the year 1907 the partners in the firm mentioned in the said deed agreed to distribute the said lands amongst the members of the said partnership, and in pursuance of the said agreement the said George Mant retained in his own name a piece of land of the area of 5,366 acres, being part of the area in par. 1 hereof mentioned, and transferred by instruments duly registered in the Real Property Office to the following persons lands of the areas set out next to their respective names:— C. O. Mant, 5,120 acres; Geo. Smyth Mant, 4,624 acres; Mrs. C. M. Kessels (formerly Constance Mabel Mant), 4,870 acres; Miss Mabel Gertrude Mant, 2,721 acres; Mrs. E. M. Lewis (formerly Ethel Maud Mant), 4,193 acres; and Miss Edith Ellen Mant, 4,255 acres. The consideration mentioned in each of the said transfers was natural love and affection.

5. The said lands referred to in the last preceding paragraph comprise the whole of the lands referred to in par. 1 hereof, and are the subject matter of this appeal.

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6. Upon such transfer as aforesaid both the legal and equitable estates in the said respective lands vested in the respective transferees.

7. The said George Mant, since deceased, continued to manage the said partnership until the day of his death, hereinafter mentioned, and the stock of the said partnership continued to depasture on the said lands until such date. The said partnership, until the death of the said George Mant, continued to use the said lands for the purposes of the said partnership and to pay all outgoings in respect of the said lands, but no rent was paid to the said respective transferees for the use of the said lands and no alteration was made in the proportionate shares of the said partners in the remaining partnership assets.

8. The said George Mant died on 24th January 1913 having first made his will with two codicils, probate of which was granted on 10th June 1913.

9. On 26th June 1913 the deed of partnership hereinafter referred to was duly executed by the respective parties thereto.

10. Since the date of the said deed in the last paragraph mentioned the parties thereto have carried on business on the lands mentioned in par. 1 hereof in conformity with the provisions of the said deed and under the management of George Smyth Mant in the said deed mentioned.

11. Separate returns were furnished for the years 1913-1914 by the trustees of the will of the said George Mant deceased with respect to the said area of 5,366 acres, and by the other appellants in respect of the lands so transferred to them as aforesaid.

12. The unimproved values of the said lands as of 30th June 1913 are respectively as follows:—(The area and unimproved value of the land of each of the appellants were here set out—the total unimproved value of the whole of the said lands being £38,916).

13. All pecuniary legacies bequeathed by the will of the said George Mant had been paid or provided for prior to 26th June 1913.

14. It is admitted for the purposes of this appeal only that the said lands were respectively of the same values at the date of their respective transfers as mentioned in par. 12 hereof.

15. The respondent assessed the appellants as joint owners under the provisions of the *Land Tax Assessment Act* 1910-1912 and the *Land Tax Act* 1910, and the appellants have duly appealed from such assessment.

16. The appellants claim that they are entitled to be separately assessed in respect of the said lands in par. 12 hereof mentioned, and that as the several owners of the said lands they are each entitled to a statutory deduction of £5,000.

17. The respondent claims that the appellants are liable to be assessed as joint owners of the whole land, and that one deduction only of £5,000 ought to be made from the said unimproved value of £38,916.

The question for the determination of the Court is whether the appellants were rightly assessed as joint owners with one deduction of £5,000.

By the deed of partnership dated 30th June 1900, mentioned in par. 2 of the special case, which was made by and between the said George Mant and the above-named appellants, it was provided (*inter alia*) that the business of the partnership was to be that of graziers, to be carried on at or upon Gigoomgan Station under the firm name "George Mant"; that the partnership was to continue during the life of the said George Mant and for a term of five years after his death; that the capital of the partnership was to consist of the equities of redemption in the freehold lands of the said George Mant and other lands (if any) comprising and used or rented in connection with Gigoomgan Station, and of all other lands which might be acquired by or on behalf of the partnership, and of the equities of redemption of the said George Mant in all the cattle, horses, plant, chattels and effects then upon or about that station, and all other cattle, horses, plant, chattels and effects which might at any time thereafter be purchased or acquired by or on behalf of the partnership; and that the capital of the partnership and the net profits of the business were to belong to the partners in certain shares.

The deed of partnership dated 26th June 1913, mentioned in par. 9 of the special case, was made by and between the above-named appellants, and, amongst the covenants therein, it was provided that the business of the partnership was to be that of

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graziers, to be carried on at or upon Gigoomgan Station under the firm name "George Mant"; that the said partnership was to continue till 24th January 1918 and thereafter until determined by notice in writing given by any of the partners to the other partners; that the capital of the partnership was to consist of the cattle, horses, plant, chattels and effects then upon or about that station, and all other cattle, horses, plant, chattels and effects which might at any time thereafter be purchased or acquired by or on behalf of the partnership, and all lands which might thereafter be acquired by or on behalf of the partnership; that the capital of the partnership and the net profits of the business were to belong to the partners in certain shares; that during the continuance of the partnership each of the parties was to allow the stock of the firm to be agisted on their respective freehold and other lands previously forming part of Gigoomgan Station free of charge to the firm, but all rates and costs of upkeep of fences and improvements on the said lands were to be borne by the firm.

Hart, for the appellants.

Macgregor, for the respondent.

During argument reference was made to *Davies* v. *Games* (1); *Halsbury's Laws of England*, vol. XXII., p. 6; *Commissioner of Taxes* v. *Smith* (2).

Cur. adv. vult.

Aug. 2.

The judgment of the COURT, which was read by ISAACS J., was as follows:—

No question arises as to the reality and *bona fides* of the partition of the land, or the *bona fides* of the agreement recorded in the deed of partnership. It is a conceded fact that the several parcels belong in law and equity exclusively to the respective persons in whose names they stand, and have not been made part of the partnership stock. No one person has any proprietary

(1) 12 Ch. D., 813. (2) 26 N.Z.L.R., 961.

interest whatever in the land of any other. The only right which any one of the partners has in respect of the land of any other is a personal right, created by the contract of partnership; and that contract does not provide that the land shall be partnership property or capital. The only capital of the partnership—in other words, the only property owned jointly—consists of live stock and chattels. The contract simply permits common agistment on the severally owned lands. That mutual right is not, in our opinion, the kind of right comprehended by the *Land Tax Assessment Act*.

The term "joint owners," by sec. 3, means "persons who own land jointly or in common, whether as partners or otherwise."

"'Owner' . . . . includes every person who jointly or severally, whether at law or in equity—(*a*) is entitled to the land for any estate of freehold in possession; or (*b*) is entitled to receive, or in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise."

Having regard to that definition, the definition of "unimproved value," the provisions of secs. 27 and 28 as to leaseholders, sec. 35 as to equitable owners, and the general tenor of the Act, we think that the case is not brought within the joint tenancy provisions of the Statute.

The appellants do certainly derive benefit from the land and from its produce, but not as owners. The owner of each respective parcel does not, even as to his own land, receive the profits of the land as owner—though, of course, subject to his contract he would be entitled to do so,—but the partnership by his permission receives them, and then he, *quâ* partner, shares the profits of the partnership. So that those who are not owners of any given portion of the land are not, as owners, entitled to receive its produce; what they receive in fact, they receive under the partnership contract, which stops short of creating an interest in the land itself.

The Commissioner then relied on sec. 42 of the Act. It was urged that, as before the partition in 1907 the land, though standing in the father's name alone, was held by him in trust for all the then partners, and was then occupied, and has been ever

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since the partition actually occupied, by the partners for the time being, they are, by the terms of the section, to be deemed owners of the land. This cannot be maintained. The case does not come within the letter of this section, as a taxing provision requires.

None of the appellants was a "person making the" conveyance or transfer of the land. George Mant was that person.

Both contentions failing, the question must be answered in the the negative, and the case remitted with that opinion.

Question answered in the negative.

Solicitors, for the appellants, *Flower & Hart.*

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

R. G.

HIGH COURT OF AUSTRALIA.]

PRITCHARD . . . . . APPELLANT;
COMPLAINANT,

AND

JEVA SINGH . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1915.

MELBOURNE, *Sept* 9.

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

Practice—High Court—Special leave to appeal—Question of procedure—Court of Petty Sessions—Jurisdiction—Service of summons—Order to review—Justices Act 1890 (*Vict.*) (*No.* 1105), *secs.* 23 (3), 89 (4), 141.

On a complaint before a Court of Petty Sessions of Victoria to recover a sum of £9 an affidavit, in the usual form, of service of the summons was filed. At the hearing objection was taken on behalf of the defendant that the service was bad, and an application for an adjournment was made. The justices