

[HIGH COURT OF AUSTRALIA.]

WEATHERLY APPELLANT;

AND

THE FEDERAL COMMISSIONER OF }
LAND TAX } RESPONDENT.

H. C. OF A. *Land Tax—Assessment—Life tenant—Lease for a definite term—Lease from year*
1915. *to year—Land Tax Assessment Act 1910-1914 (No. 22 of 1910—No. 29 of*
~~~~~ *1914), sec. 42A.*

MELBOURNE,  
*Sept. 24.*

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

A lease from year to year is a lease for a definite term within the meaning of sec. 42A of the *Land Tax Assessment Act 1910-1914*, and, therefore, the lessee under such a lease is not to be deemed to be the life tenant of the land leased.

CASE STATED.

On an appeal by Lionel James Weatherly from an assessment for income tax for the year ending 30th June 1913, *Griffith C.J.* stated a case for the opinion of the Full Court, which, so far as is material, was as follows :—

1. By indenture of lease made 30th June 1909 between William Weatherly, therein described and therein and herein called “the lessor,” of the one part, and Lionel James Weatherly, therein described and therein and herein called “the lessee,” of the other part, the lessor for the consideration therein mentioned demised and leased unto the lessee certain freehold lands within the Commonwealth of Australia as therein mentioned, with the exception and reservation also therein mentioned, to be held by the lessee for a period of six calendar months from 30th June 1909, and thereafter from year to year until the said lease should be determined on 31st December in any year by either party giving to the other six calendar months’ previous notice in



writing, yielding and paying therefor during the continuance of the said lease unto the said lessor the rent therein mentioned.

3. Notice determining the said lease has not been given by either party to the said lease to the other party and at noon on 30th June 1912 the lessee was in possession, control and occupation of the land expressed to be demised and leased by the said indenture of lease under and subject to the terms and conditions of such indenture of lease.

4. On 15th April 1915 the Commissioner of Land Tax, by an amended assessment, caused the said Lionel James Weatherly to be assessed for land tax in respect of certain lands for the financial year 1912-1913.

6. Included in the said amended assessment were the lands described in the said indenture of lease, and the said Commissioner assessed the said Lionel James Weatherly in respect of the lands described in the said lease on the footing that the said Lionel James Weatherly was, or was deemed to be, the lessee for life of the said land pursuant to the *Land Tax Assessment Act* 1910-1914, sec. 42A, and was assessable as in the said Act provided.

7. The said Lionel James Weatherly objected to the said assessment.

8. The said Commissioner disallowed the said objection, and the said Lionel James Weatherly asked that the said notice be treated as a notice of appeal, and selected the High Court as the Court of Appeal.

9. The said Commissioner on 2nd July 1915, pursuant to the *Land Tax Assessment Act* 1910-1914 and the regulations thereunder, transmitted the said objection to the High Court for determination.

The question for the determination of the Court is whether the said Lionel James Weatherly is or is to be deemed to be in respect of the land described in the said indenture of lease a tenant for life of the said land and assessable on that footing for land tax pursuant to the *Land Tax Assessment Act* 1910-1914.

*Mann*, for the appellant. A lease from year to year is a "lease for a definite term" within the meaning of sec. 42A of the *Land*

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H. C. OF A. *Tax Assessment Act 1910-1914*. A tenant from year to year holds  
 1915. for a year certain, and in every year for another year certain.  
 WEATHERLY [He was stopped.]

v.  
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 COMMISSIONER OF  
 LAND TAX.

*Starke*, for the respondent. A tenancy from year to year is for a term, but not for a definite term. The term has no visible boundaries: *Oxley v. James* (1). It may be for one year or it may be for one hundred years. The term is certainly for a year, but there is an interest growing out of each year of the holding. [He also referred to *Leighton v. Theed* (2).]

[RICH J. referred to *Preston on Conveyancing*, 3rd ed., p. 76.]

A lease for a definite term is one which itself fixes a point of time beyond which the lease cannot extend.

The judgment of the COURT was delivered by

GRIFFITH C.J. Sec. 42A of the *Land Tax Assessment Act 1910-1914* provides that "where land is occupied, controlled, or used by a person who is not the owner and there is no lease or agreement for a lease for a definite term in respect of the occupancy, control, or user of the land, the person occupying, controlling, or using the land shall be deemed to be the lessee for life of the land and shall be assessable as provided in sec. 27 of this Act." The appellant in this case is the lessee under a written lease from year to year. A lease from year to year is for a term well known to the law, and in our opinion the term is a definite term within the meaning of the section. The question must therefore be answered in the negative.

*Question answered in the negative. Costs to be costs in the appeal.*

Solicitors, for the appellant, *Whiting & Aitken*.

Solicitor, for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

(1) 13 M. & W., 209, at p. 212.

(2) 2 Salk., 413.