[HIGH COURT OF AUSTRALIA.]

BAIRD AND OTHERS . . . . . APPELLANTS;

AND

THE FEDERAL COMMISSIONER OF LAND TAX . . . . . } RESPONDENT.

H. C. OF A 1915.

MELBOURNE, *Feb.* 26; *March* 1.

Griffith C.J., Barton and Isaacs JJ.

Land Tax—Assessment—"Joint owners"—Beneficial interest in land under will—Trust for conversion—Land still held by trustees—Interest in land under intestacy—Aggregation of interests—Statutory deductions—Land Tax Assessment Act 1910 (*No.* 22 *of* 1910), *secs.* 3, 33, 35, 38.

By the will of a testator who died before 1st July 1910 his real and personal estate, including certain land, was given to trustees upon trust for realization with powers of postponement and management, and to hold the proceeds of realization upon trust for his children, who at his death were six in number. On 30th June 1910 the trustees still held the land.

Held, that under the *Land Tax Assessment Act* 1910 the six children were as of 30th June 1910 "joint owners" of the land.

On the death of their mother, who died intestate before 1st July 1910, the six children as her next of kin became jointly entitled to certain other land forming part of her estate.

Held, that under the *Land Tax Assessment Act* 1910 the six children were as of 30th June 1910 "joint owners" of that other land.

Held, further, that the six children were liable under the Act to be assessed as of 30th June 1910 as joint owners of an estate comprising the aggregate of the land held by the trustees of their father's will and that in which they were interested as next of kin of their mother; and that on such assessment they were entitled under sec. 33 of the Act to six deductions of £5,000.

CASE STATED.

On the hearing of an appeal by Samuel John Baird, Andrew

Hamilton Baird, Ada Elizabeth Corbett, Grace Mary Good, Emily Charlotte Baird and Annie Edith Baird, against an assessment of them for land tax as of 30th June 1910, *Rich* J. stated the following case under sec. 46 of the *Land Tax Assessment Act* 1910-1912 :—

" 1. Samuel Baird, late of Woodlands, near Koroit, in the State of Victoria, died on 21st August 1903, having duly made his last will and two codicils thereto (probate of which was duly granted), whereby he devised all his real estate and bequeathed the residue of his personal estate to trustees upon trust for realization with powers of postponement and management, and to stand possessed of the net moneys to arise from such realization (after payment of debts, funeral and testamentary expenses, Government duties and the costs and expenses of and incidental to the execution of the trusts of the will and appropriation of a fund to answer by its income the payment of an annuity to testator's wife) upon trust (in the events which have happened) for the children of the testator, the share of each of the testator's daughters being, however, directed to be held in trust for investment and payment of the income to such daughter without power of anticipation as an inalienable provision during her life or until she should do or suffer some act or thing whereby the same income or any part thereof might be aliened or encumbered and cease to be payable into her own hands, and in that event upon certain other trusts during the remainder of the life of such daughter, and from and after the death of such daughter upon trust for the children or remoter issue of such daughter as she should by will appoint and in default of appointment for her children, with further trusts on failure of the preceding trusts. And the testator by his will directed that pending realization the rents, income and yearly produce of his estate should be deemed income from his said residuary estate.

" 2. The appellants are all the children of the testator referred to in the preceding paragraph, viz., four daughters and two sons.

" 3. On 30th June 1910 the unimproved value of the land owned by the trustees of the said will as such trustees if they had been the absolute owners thereof would have been £65,571, but the aggregate value of the life interests of the four daughters and

H. C. OF A. 1915.

BAIRD v. FEDERAL COMMISSIONER OF LAND TAX.

the absolute interests of the two sons based on the unimproved value of the land owned by the trustees of the said will as such trustees on 30th June 1910 was £50,588, and therefore the taxable value of the land owned by the trustees of the said will as such trustees on 30th June 1910, after making deductions to the extent of £30,000 as authorized by sec. 33 of the *Land Tax Assessment Act* 1910, was £20,588.

"4. Charlotte Emily Baird, widow of the said testator and mother of the appellants, died on 11th January 1910 intestate, leaving land in Australia the unimproved value whereof on 30th June 1910 has been assessed by the Commissioner of Land Tax for the purposes of the *Land Tax Assessment Act* 1910 at the sum of £1,326, and the appellants as the next of kin of the said Charlotte Emily Baird were on the said 30th June 1910 the owners of equitable interests in the land left by her as aforesaid. Letters of administration of the said estate were duly granted.

"5. The appellants claim that on 30th June 1910 they were not and that they are not to be regarded as having been on the said day joint owners within the meaning of the *Land Tax Assessment Act* 1910 of the lands owned by the trustees of the said will as such trustees as aforesaid, and if they are to be so regarded, then that for the purpose of ascertaining the taxable value of the land in question the deductions authorized by sec. 33 of the *Land Tax Assessment Act* 1910 should be made from the unimproved value thereof either before or after they are brought into joint ownership account, and that accordingly the assessment (if any) should be made on a taxable balance of £16,914, or in the alternative £21,914.

"6. The respondent claims that the appellants are the persons entitled for life or greater interests to share in the income of the estate of the said Samuel Baird, and are also the persons beneficially interested in the intestate estate of the said Charlotte Emily Baird, and that they must therefore for the purposes of the *Land Tax Assessment Act* 1910 be regarded as having been on the said 30th June 1910 joint owners of the lands owned by the trustees of the will of the said Samuel Baird as such trustees as well as of the lands in the estate of the said Charlotte Emily Baird in which they were beneficially interested, and that the taxable value for the year 1910-1911 of all such lands is to be

arrived at by taking the unimproved values of all the said lands without making any deduction in accordance with sec. 33 of the said Act and from the total amount of such unimproved values deducting one sum of £5,000.

"The questions for the determination of the Court are:—

"(1) Whether the appellants were or are to be regarded as having been on 30th June 1910 joint owners within the meaning of the *Land Tax Assessment Act* 1910 of the lands owned by the trustees of the will of the said Samuel Baird or of their interests therein.

"(2) Whether the appellants were or are to be regarded as having been on 30th June 1910 joint owners within the meaning of the *Land Tax Assessment Act* 1910 of the aggregate of the lands owned by the trustees of the will of Samuel Baird and of the lands comprised in the estate of Emily Baird deceased or of their (the appellants') interests therein.

"(3) Whether if they are to be so regarded in either of the above cases the deductions authorized by sec. 33 of the said Act for the purpose of ascertaining the taxable value of the land owned by the said trustees as such trustees should be made from the unimproved value thereof.

"(4) Upon what sum, if any, should the assessment be made?"

Mann, for the appellants.

Weigall K.C. (with him *Gregory*), for the respondent.

During argument reference was made to *Bolling* v. *Hobday* (1); *Australian Mutual Provident Society* v. *Gregory* (2); *Sendall* v. *Federal Commissioner of Land Tax* (3); *Isles* v. *Federal Commissioner of Land Tax* (4); *Archer* v. *Federal Commissioner of Land Tax* (5); *Neill* v. *Federal Commissioner of Land Tax* (6); *Commissioner of Taxes* v. *Smith* (7).

Cur. adv. vult.

(1) 31 W.R., 9.
(2) 5 C.L.R., 615.
(3) 12 C.L.R., 653.
(4) 14 C.L.R., 372.
(5) 13 C.L.R., 557.
(6) 14 C.L.R., 207.
(7) 26 N.Z.L.R., 961, at p. 970.

H. C. OF A. 1915.

BAIRD v. FEDERAL COMMISSIONER OF LAND TAX.

March 1.

GRIFFITH C.J. read the following judgment:—The assessment appealed from is made as of 30th June 1910.

The appellants are the six children of a testator who died before that day, leaving his real estate and the residue of his personal estate to trustees upon trust for realization with power of postponement, and after realization to stand possessed of the proceeds upon trust, in the events that have happened, for his children, his daughters (four) taking life interests only. Until realization the income from the land was to be deemed income from his residuary estate.

The questions for determination arise under the *Land Tax Assessment Act* as originally passed in 1910. Most of the provisions upon which they arise have since been altered or amended, and similar questions are not likely to arise in future.

The unimproved value of the land of the testator calculated according to the provisions of that Act was £50,588.

The first question submitted is whether the appellants were or are to be regarded as having been on 30th June 1910 joint owners of the land within the meaning of the *Land Tax Assessment Act.*

In my opinion this question should be answered in the affirmative. I do not think it necessary to give reasons at length for this conclusion. It is sufficient to say that on 30th June 1910, the relevant date, all the children were entitled to equitable life interests or greater interests in the land.

After their father's death the appellants became jointly entitled to other land the property of their mother, who died intestate on 11th January 1910. The unimproved value of this land was £1,326.

The second question submitted is whether under these circumstances the appellants are to be regarded as having been on 30th June 1910 joint owners within the meaning of the Act of the aggregate of the land held by the trustees of their father's will and of the land held by their mother's administrator.

In my opinion they must be so regarded. They were the equitable joint owners of both properties. By sec. 38 joint owners are to be regarded as a single person. The statutory single person is therefore the same with respect to both estates,

and "all the land owned by him" is to be aggregated for the purpose of land tax (sec. 11).

The third proviso of sec. 33 of the Principal Act (since repealed) was as follows:—

"Provided further that, in the case of land vested in a trustee, under a settlement made before the first day of July, One thousand nine hundred and ten, 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 five thousand pounds 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 Five thousand pounds, or the unimproved value of the share, whichever is the less."

The father's estate was clearly within the terms of this proviso, and in the assessment of land tax against the trustees they were entitled to the deductions allowed by it. We are informed that in the first instance they were assessed and paid the land tax on this basis. But the Commissioner now contends that they are deprived of the benefit of the proviso by reason of their beneficiaries being also equitable joint owners of the mother's estate. The object of the proviso was plainly to confer a privilege on the beneficiaries, not on the trustee. Sec. 35 provides that the owner of an equitable estate or interest in land is to be assessed and is liable as if he were the legal owner of the estate or interest. The words of the proviso, read literally, are exactly applicable to the case, for it can be predicated of the father's estate that it was vested in trustees upon trust for the benefit of a number of persons relations of the testator, in which case "for the purpose of ascertaining the taxable value of 'the land' owned by him as such trustee" the deductions claimed were to be made. The land owned by him as trustee is the same land whether he s taxed or the beneficiaries are taxed in respect of it, and

H. C. OF A. 1915.

BAIRD v. FEDERAL COMMISSIONER OF LAND TAX.

Griffith C.J.

the Act, so far from saying that the taxable value is to be assessed on a different basis according to the person against whom the assessment is made, says by sec. 35 that it is to be taxed on the same basis. Having regard to the object of the proviso, as already pointed out, I am of opinion that in such a case the beneficiaries are not deprived of the benefit of it by reason of their joint ownership of other land. I am therefore of opinion that the third question, which is whether the deductions authorized by the proviso to sec. 33 should be made in their assessment as joint owners of land, should be answered in the affirmative.

The result is that the taxable value of their estate is £20,588 (that is, the total value of £50,588, as stated in the case, less six deductions of £5,000) plus £1,326, that is, £21,914. The claim for a further deduction of £5,000 obviously cannot be allowed. The result will be an addition of about £16 to the taxable value of the appellants' estate.

BARTON J. I agree.

ISAACS J. read the following judgment:—The Commissioner in this case contends that where "joint owners" within the meaning of the *Land Tax Assessment Act* 1910 are assessed under sec. 38 of that Act as originally framed, they have no right to the benefit of the third proviso to sec. 33 as that section then stood unless the land referred to in that proviso constitutes the whole of the land assessed under sec. 38. The argument was that under sec. 38 the assessment must be for all the land owned by the joint tenants, and that the special deduction under the third proviso to sec. 33 could not apply to land not the subject of the settlement.

But the main object of sec. 38 as it then stood, was to provide that in case of joint ownership all the land owned by joint owners should primarily not be regarded as divided into as many pieces as there were joint owners, but that their statutory joint ownership of the whole land should be regarded in its entirety. The section was framed without limitation of time. It assumed for the joint ownership one general deduction of £5,000. Separate interests were provided for by separate assessments,

but as a secondary consideration. The section was of general application. Sec. 33, however, specially applying to trusts, did, by the third proviso, further contain a special provision as to time, and the central point to remember about this is, that it was to do what the legislature conceived to be justice to certain beneficiaries in relation to certain land. There is no dispute that the trustee validly claimed the special deduction. But for whose benefit? Not his own. And the proviso does not say that the deduction can only be claimed where the beneficiaries are not possessed of any other land. It was not denied that if the beneficiaries owned no other land than that comprised in their father's estate they would be entitled to the substituted deduction under the third proviso to sec. 33, notwithstanding their own assessment was made under sec. 38. That right would exist, because one rule for the construction of Statutes is that where a special provision and a general provision both cover a given subject, the special provision governs it (see *per Quain* J. in *Dryden* v. *Overseers of Putney* (1)). But if the right would attach in that case, what words take it away when there is other land? Provided the value of that other land is counted in, and no double deduction is allowed, I am of opinion that the special consideration allowed by Parliament to the specified instance, and admitted in the case of the trustee, cannot be refused to the persons whom the trustee represents and in whose interests it is allowed to him. As to whether the appellants are joint owners of the father's estate, I am of opinion they are covered by paragraph (*b*) of the definition of "owner" in the Act, because on assessment day they were jointly entitled in equity to receive the rents and profits of the land. With regard to the mother's land, they are joint owners for the reasons stated by Lord *Macnaghten* in *Blake* v. *Bayne* (2) following *Cooper* v. *Cooper* (3).

The same persons being joint owners of both the father's lands and the mother's lands are joint owners of the aggregate. The land itself is assessable under sec. 38 not the interests of the beneficiaries. They are regarded as joint owners of the land, and it is to be assessed (sec. 38 (2)) "without regard to their

(1) 1 Ex. D., 223, at p. 232.
(2) (1908) A.C., 371, at p. 384; 6 C.L.R., 178, at p. 188.
(3) L.R. 7. H.L., 53.

H. C. OF A. 1915.

BAIRD v. FEDERAL COMMISSIONER OF LAND TAX.

Isaacs J.

respective interests therein." So assessing it, I am not prepared to decide that by reason of any other provision in the Act the taxable value of the land belonging to the father's estate is less than £65,571, the unimproved value of the land itself. But as it has been assumed by both parties that the beneficiaries as joint tenants are taxable only on a basis of £50,588, the value of their interests, the Court is not called upon to give any decision on the point. I wish to guard myself from being supposed to decide that the assumption is correct.

In making the special deductions, the unimproved value of each share being more than £5,000, there is to be deduction of £5,000 for each of six shares, in all £30,000. The balance, plus £1,326, the value of the mother's estate, is £21,914, upon which the assessment should be made.

Questions answered:—1. *Yes.* 2. *Yes.* 3. *Yes.* 4. £21,914. *Respondent to pay costs of special case. Case remitted.*

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

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

B. L.