lucidity, and which may be stated thus: If property originally settled be such that had the settlor died immediately before the date of the settlement it would have been liable to pay probate duty, then so much of such property and of the proceeds thereof arising through realization and reinvestment as is comprised in the settlement at the death of the settlor remains liable to taxation under sec. 112 of the *Administration and Probate Act* 1890. I therefore think that the judgment appealed from is right, and the appeal should be dismissed.

RICH J. I agree.

Appeal dismissed with costs.

Solicitor for the appellant, *E. J. D. Guinness*, Crown Solicitor for Victoria.

Solicitors for the respondents, *Davies & Campbell.*

B. L.

[HIGH COURT OF AUSTRALIA.]

FLEMMICH . . . . . APPELLANT;

AND

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

Land Tax—Assessment—Joint owner also owning land in severalty subject to lease—Assessment as secondary taxpayer—Deduction to avoid double taxation—Method of ascertaining amount of deduction—Value of whole of land of taxpayer—Deduction of value of lease—Land Tax Assessment Act 1910-1914 (*No.* 22 *of* 1910—*No.* 29 *of* 1914), *secs.* 28, 38, 43, 43A.

Where a joint owner of land is also an owner in severalty of other land and is separately assessed under sec. 38 (3) of the *Land Tax Assessment Act* 1910-1914 in respect of his whole interests, the land held by him in severalty is to be assessed according to the ordinary rules for assessing land so held.

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If, therefore, the land held in severalty is subject to a lease granted before the commencement of the Act the taxpayer is entitled to have the unimproved value of the lease of the land held in severalty deducted from the unimproved value of that land for the purpose of apportioning the amount of his assessment between his interest in the joint estate and the land held in severalty.

CASE STATED.

On an appeal by Nea Vivian Flemmich from an assessment of her for land tax for the years ending 30th June 1912, 1913, 1914 and 1915, *Rich* J. stated the following case for the opinion of the High Court :—

1. Henry Charles White, who died on 24th February 1905, by his will dated 5th October 1904 devised certain land in the Commonwealth to trustees upon trust for his three daughters for life with remainders over. The said testator's said daughters, of whom the appellant is one, are all living.

2. Under powers given them by the said will the trustees on 30th August 1906 conveyed portion of the said land to the appellant in fee simple, and the appellant on 30th August 1906 leased the same to the said trustees for 21 years from 1st August 1906.

3. The trustees have been assessed and have paid land tax for the year 1911-1912 as primary taxpayers in respect of the land of which the appellant and her sisters are joint owners under the said will.

4. The appellant has been assessed for the said year 1911-1912 upon a taxable value of £59,040 made up as follows :—

5. The appellant's one-third interest for life under the said will was assessed at £49,544. Her interest in land held in severalty was assessed at £14,496—being £19,796 the value of the said land less £5,300 which represents the interest under sec. 28 of the Act of the lessees under the said lease.

6. The sum of £49,544 and £14,496 is £64,040, from which the deduction of £5,000 under sec. 33 of the Act was made—leaving £59,040, on which the tax is £730 2s. 5d.

7. From this amount of £730 2s. 5d. the appellant is entitled under sec. 38 of the Act, as a secondary taxpayer, to such deduction as is necessary to prevent double taxation, and questions have arisen

as to the proper mode of ascertaining the amount of such deduction under secs. 43 and 43A of the Act.

8. The amount of the tax in respect of the land payable by the appellant as secondary taxpayer is less than that payable by the trustees as primary taxpayers.

9. The respondent claims that the deduction is £521 13s. 6d., leaving £208 8s. 11d. as the amount of tax which appellant is liable to pay.

10. In arriving at this amount of £521 13s. 6d. the respondent, in applying the provisions of sec. 43A of the Act, took the "unimproved value of the land or interest referred to" at £49,544, and the "unimproved value of all the land owned by" the appellant at £69,340, made up of £49,544 plus £19,796, and did not deduct £5,300 the value of the lessees' interest under sec. 28 of the Act.

11. The appellant contends that, in arriving at "the unimproved value of all the land owned by" the appellant, according to the proper construction of sec. 43A of the Act the said £5,300 should have been deducted, and that therefore the said unimproved value was £64,040, made up of £49,544 plus £14,496, and so the deduction under sec. 43 should be £564 17s., leaving £165 5s. 5d. as the amount of tax which the appellant was liable to pay.

12. The same question arises as to the proper method of making the deductions under sec. 38 of the Act in respect of the tax payable by the appellant for the years 1912-1913, 1913-1914 and 1914-1915.

The question for the consideration of the Court is whether the deduction to prevent double taxation in the said four years ought to be ascertained in the manner contended for by the appellant or in that contended for by the respondent, or in some other and what manner.

Loxton K.C. (with him *Milner Stephen*), for the appellant. Under sec. 28 the appellant is entitled to deduct from the unimproved value of the land which she owns severally the unimproved value of the lease to which it is subject. What is left after making that deduction is, for the purposes of taxation, the unimproved value of the land which the appellant owns severally, and when added to the

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unimproved value of the land of which she is a joint owner constitutes the unimproved value of all the land owned by her. [Counsel was stopped].

Pike, for the respondent. The words "all the land owned by him" in sec. 43A have the same meaning as in secs. 11 and 15. The allowance of a deduction in respect of a lease of the land does not lessen the unimproved value of the land. Sec. 43A gives a mathematical formula for ascertaining the amount of the deduction to be made in order to avoid double taxation.

GRIFFITH C.J. The appellant is a joint owner of land. Her share or interest is one-third, which is valued at £49,544. She is also the owner in severalty of land of the total value of £19,796 which is subject to a lease granted by her before the commencement of the *Land Tax Assessment Act* 1910. By virtue of sec. 28 of the *Land Tax Assessment Act* 1910-1912 she is entitled to have the value of that lease deducted from the total value of the land leased. The value of the lease has been assessed at £5,300. The value of the land which she holds in severalty—*i.e.*, her value of the reversion—is therefore for the purposes of taxation £14,496 only. The trustees of the land of which she is a joint owner have been assessed on the basis of the land being held by a single person, and the result is that her one-third share of the total tax paid in respect of that land is very much greater than the tax she would have been liable to pay if she were taxed as the owner in severalty of land of one-third of the total value. Besides being liable to pay her share of the tax upon the jointly owned land she is liable under sec. 38 to be separately assessed as a secondary taxpayer on the value of her individual interest in the joint estate, namely, £49,544, together with the value of the land which she holds in severalty, namely, £14,496, making altogether the sum of £64,040. The tax payable upon that value is £730 2s. 5d., which sum is apportionable between the value of her share of the land of which she is a joint owner and the value of the land of which she is the owner in severalty. If that sum is divided proportionately, the proportion attributable to the land of which she is a joint owner is £564 17s., and that attributable to

the land of which she is the owner in severalty is £165 5s. 5d. The trustees have already paid for her a sum of money much larger than the sum attributable to the land of which she is a joint owner. Therefore the whole of that sum of £564 17s. must under sec. 43 be deducted, and what is left, namely, £165 5s. 5d. is the amount of the tax which is attributable to the land which she holds in severalty, which is valued at £14,496. That is the contention of the appellant, and that is what sec. 43 of the Act says in plain terms. It provides that the amount of the deduction in such a case as this is "the amount of tax payable in respect of the land or interest by the secondary taxpayer." The amount to be deducted is the whole of that amount, because more than the whole of it has already been paid by the trustees. The object, as the Act says, is to avoid double taxation in respect of the same land.

The Commissioner contends that sec. 43A has some application to the case. It provides that "Where in this Act reference is made to the tax payable by a person in respect of any land or interest, the reference is to so much of the whole tax payable by him as bears to the whole tax payable by him the proportion which the unimproved value of the land or interest referred to bears to the unimproved value of all the land owned by him." Applying that section to the present case, it provides for estimating the proportion of the total tax which the appellant is entitled to deduct, and the proportion is to be that which the value of her share in the joint estate bears to the value of the whole of the land of which she is owner. Mr. *Pike* contends that those are not the true elements of the proportion. He says that the proportion should be that which the value of her share in the joint estate bears to the total value of the land held in severalty without deducting the value of the lease. There is no ground for such a contention. The taxable value of the land held in severalty is assessed once for all. The effect of the deduction would not be to prevent double taxation. The only effect would be that both the appellant and the leaseholder would be taxed on the value of the leasehold estate.

I am of opinion that the appellant's contention is right, and that the question submitted should be answered accordingly.

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BARTON, J. I agree.

GAVAN DUFFY J. I agree.

RICH J. I agree.

Question answered accordingly. Costs to be costs of appeal.

Solicitors for the appellant, *Stephen, Jaques & Stephen.*

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

B. L.

[HIGH COURT OF AUSTRALIA.]

JOSKE . . . . . APPELLANT;
INFORMANT,

AND

THE DENTAL CASH ORDER COMPANY PROPRIETARY LIMITED . . . } RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *Feb.* 23, 24, 28.

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

Dentist—Prohibition of use of words—"Dental company"—Combination with other words—"Dental Cash Order Company"—Meaning of words added—Evidence—Medical Act 1915 (*Vict.*) (*No.* 2695), *sec.* 72.

Sec. 72 of the *Medical Act* 1915 (Vict.) provides that "No person who is not registered as a dentist shall, nor shall any company (other than an association consisting wholly of registered dentists), . . . take or use or have attached to or exhibited at any place (either alone or in combination with any other word or words or letters) the words 'dental company' or 'dental institute' or 'dental hospital' or 'dental college' or 'college or school of