[HIGH COURT OF AUSTRALIA.]

SEYMOUR BROTHERS . . . . . APPELLANTS;

AND

THE DEPUTY FEDERAL COMMISSIONER OF LAND TAX (SOUTH AUSTRALIA) } RESPONDENT.

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ADELAIDE, *Oct.* 2, 4.

Barton, Isaacs and Gavan Duffy JJ.

Land Tax—Assessment—Joint owners—Partnership—Several lands of partners made assets of partnership—Lands reverting to several partners after termination of partnership—Land Tax Assessment Act 1910-1916 (*No.* 22 *of* 1910—*No.* 33 *of* 1916), *secs.* 3, 38, 42A.

Several persons, each of whom was the registered proprietor of a separate parcel of land, entered into partnership, and by the indenture of partnership it was provided that the partnership, the business of which was stock-breeding and wool-producing, should continue for five years defeasible by one year's notice in writing, and that "the assets and capital" of the partnership should consist of the several parcels of land and certain chattels, "but on the expiration or determination of the partnership the real estate shall be and remain the property of each individual in whose name it is shown to be in the certificates of title."

Held, that the partners were properly assessed under the *Land Tax Assessment Act* 1910-1916 as "joint owners" in respect of the unimproved value of the fee simple in the whole of the lands, and were therefore taxable under sec. 38 of the Act.

CASE STATED.

On 22nd August 1916 the Deputy Federal Commissioner of Land Tax for South Australia assessed Seymour Brothers as owners of certain lands for the purposes of land tax for the years 1913-1914, 1914-1915 and 1915-1916, assessing the unimproved value of the lands at £42,878, and allowing one statutory deduction of £5,000. The lands were described in the assessment as being "assets of the

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partnership in the deed dated 10th April 1914," and as consisting of six parcels of land, parcel No. 1 beneficially owned by Henry Conway Seymour, parcels Nos. 2, 3 and 4 in the name of Henry Conway Seymour as trustee of the will of Thomas Drought Seymour, parcel No. 5 in the name of Thomas George Seymour, and parcel No. 6 in the name of Charles Randolph Seymour. Against each of the three assessments Seymour Brothers appealed to the Supreme Court of South Australia, and, the three appeals having been consolidated, *Buchanan* J. stated a case for the opinion of the High Court, which, after setting out the above facts, continued substantially as follows :—

7. The Killanoola Estate, situated in the south-eastern district of this State, formerly comprised 17,413 acres of freehold land. It was for many years used and worked as a sheep and cattle station by the late Thomas Drought Seymour, first in partnership with his brothers, Robert Seymour and Charles Seymour, and then with Mrs. Mary Johnson Dunn Seymour, the widow of his brother Robert Seymour. Thomas Drought Seymour died in the year 1897, and in the year 1911 the estate was partitioned between Mrs. Mary Johnson Dunn Seymour, who took over 5,277 acres in satisfaction of her share in the station, and the trustees of Thomas Drought Seymour's will, who took over 12,136 acres in satisfaction of their testator's interest therein.

8. After Thomas Drought Seymour's death, and until 16th January 1913, the trustees of his will carried on the station in partnership with Mrs. Mary Johnson Dunn Seymour. That partnership was then dissolved, and the station has since been carried on by the appellants, under the style of Seymour Brothers, under the terms of the said indenture of partnership.

9. Thomas Drought Seymour, by his will dated 4th July 1895, appointed his widow, Mrs. Mary Jane Seymour, and Henry Conway Seymour his executors and trustees. The said Mrs. Mary Jane Seymour died in the year 1914, and John Hubert Hawdon Davison was subsequently appointed a trustee in her place.

10. Under the terms of Thomas Drought Seymour's will his widow took an annuity of £100 for her life, and, subject thereto, his estate was given to his trustees in trust as to one equal sixth part

for each of his daughters, Elizabeth Susan Seymour and Mary Ellen Seymour, and as to the remaining four equal sixth parts for his sons, Henry Conway Seymour, Charles Randolph Seymour and Thomas George Seymour, in equal shares absolutely. Each of the shares of his daughters was subject to the following trusts, namely, to pay the income to her during her life without power of anticipation, and after her decease to hold as well the capital as the income of her share upon such trusts in favour of her child or children as his, the testator's, trustees might declare by any proper settlement made on her marriage, but if she should die without having been married, or having been married should die without any child living at her death, then her share was given to such of the testator's three sons as might be alive at her death in equal shares, with a provision substituting the children of any son then dead, such children to take their father's share.

11. In the year 1913, for the purposes of dividing up between the sons their respective interests in the real estate of Thomas Drought Seymour, the said real estate (except parcel 4) was divided into five parcels of values proportionate to the respective interests of the sons and daughters therein, and three of such parcels, being parcels 1, 5 and 6, were transferred to the respective sons, and the parcels 2 and 3 were retained by the trustees to answer the trusts in favour of the said daughters in respect thereof, the result being that (*a*) Henry Conway Seymour became the registered proprietor of an estate in fee simple in 1,927 acres of land (part of the said lands), being parcel No. 1 ; (*b*) Thomas George Seymour became the registered proprietor of an estate in fee simple in 2,036 acres of land (part of the said lands), being parcel No. 5 ; (*c*) Charles Randolph Seymour became the registered proprietor of an estate in fee simple in 3,435 acres of land (part of the said lands), being parcel No. 6 ; (*d*) the said Henry Conway Seymour, as trustee of the will of Thomas Drought Seymour deceased, remained the registered proprietor of an estate in fee simple in 4,069 acres of land (part of the said lands), being parcels No. 2 and 3, which said 4,069 acres of land the said Henry Conway Seymour held upon trust for the testator's daughters, Elizabeth Susan Seymour and Mary Ellen Seymour, upon the trusts declared by the will of their father, Thomas

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Drought Seymour, as to their shares under his said will as the same are set out in par. 10 of this case.

12. It is admitted that Henry Conway Seymour as to parcel 1, Thomas George Seymour as to parcel 5, Charles Randolph Seymour as to parcel 6 and the trustees for the time being of the estate of Thomas Drought Seymour as to parcels 2, 3 and 4 were prior to and at noon on 30th June 1913, and have been ever since (save as hereinafter mentioned) at all times material to these appeals, the respective individual registered proprietors of an estate in fee simple in the said lands.

13. The firm of Seymour Brothers has at all times material to these appeals consisted of the following persons, namely, Henry Conway Seymour, Charles Randolph Seymour, Thomas George Seymour, Elizabeth Susan Seymour and Mary Ellen Seymour, who are the appellants.

14. The firm has carried on upon the said lands the trade or business of cattle, sheep and horse breeders, and sellers and vendors of wool, and producers and sellers of all the stock and produce usually produced and grown on a sheep station, from 16th January 1913, under the terms subsequently set out in an indenture of partnership, which was substantially as follows :—

This indenture, made the tenth day of April, in the year one thousand nine hundred and fourteen, between Henry Conway Seymour and Charles Randolph Seymour, of Killanoola, in the State of South Australia, landed proprietors, Thomas George Seymour, of Waimiro, Waimato, near Gisborne, in the Dominion of New Zealand, landed proprietor, Elizabeth Susan Seymour and Mary Ellen Seymour, of Killanoola, aforesaid, spinsters: Whereas the said parties hereto are interested in the lands, tenements, cattle, horses, sheep and other estate set forth in the schedule hereunder marked A to the extent and proportion therein shown, and in the personal estate in the schedule hereunder marked B, and they have agreed to become partners and to carry on business as such partners on the conditions and terms hereinafter appearing: Now this indenture witnesseth that each of the said parties covenants with the other of them that they will continue and remain as partners

for the purposes and period and subject to the stipulations and provisions hereinafter expressed and contained.

(1) The business of the partnership shall be the trade or business of cattle, sheep and horse breeders, and sellers and vendors of wool, and producers and sellers of all the stock and produce usually produced or grown on a sheep station.

(2) The partnership shall be deemed to have commenced on 25th March 1913, and shall continue for the term of five years: Provided that if the said parties hereto or either of them shall desire the termination of the said partnership and shall give one year's notice in writing to the others of them of such, their, his or her desire, then the said partnership shall terminate one year after such notice shall be served on or posted to the other partners, addressed to the usual or last known place of abode of each.

(3) If any of the said partners shall become insolvent or make any assignment for the benefit of his or her creditors, or shall do anything contrary to the provisions or stipulations herein contained, it shall be lawful for either of the other partners to give notice in writing to such partners so becoming insolvent, assigning his or her estate or breaking any of the covenants herein contained, of his or her intention to terminate the said partnership, and the said partnership shall be thereupon determined, but without prejudice as to the right of the solvent or non-offending partners to carry on the said business for a period of twelve calendar months if they shall deem it desirable so to do.

(4) The partnership shall be carried on under the name of "Seymour Brothers," and all cheques, bills, notes, letters and writings which shall be drawn, accepted or written by or on behalf of the partnership shall be signed on behalf of the firm.

(5) The assets and capital of the said firm shall consist of the property described in the schedule hereunder written marked A and the other property in the schedule hereunder marked B, but on the expiration or determination of the partnership the real estate shall be and remain the property of each individual in whose name it is shown to be in the certificates of title except property in the name of the said Henry Conway Seymour as trustee, which shall be

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held on the trusts affecting the same, and the partners shall be interested in the personal estate as follows: the said Henry Conway Seymour, Charles Randolph Seymour and Thomas George Seymour to two-ninths each, and the said Elizabeth Susan Seymour and Mary Ellen Seymour to one-sixth each thereof, subject to the trusts contained in the will of Thomas Drought Seymour deceased.

(6) Proper books of account shall be kept at Killanoola by the person or persons managing for the time being, and full and correct entries shall be made therein of all the moneys, goods, cattle, sheep, debts and other effects belonging to or owing by the said partnership, or which shall be received, paid or sold or contracted for in the course of business of the partnership, and of all the transactions and things in anywise relating to the said business as are ordinarily entered in books of account kept by persons engaged in the business of stock and station owners, together with all such circumstances of names, times and places as may be necessary or useful for the better manifestation of the estate and proceedings of the business of the partnership, and such books of account shall be open for inspection by any of the said partners, or anyone they or either of them may appoint, at all reasonable times, and any of them may take copies of the same.

(7) In the first week in March and the first week in September in every year during the partnership a full and general account shall be taken by the partners of cattle, sheep, horses and property which shall at the time of taking such account be the property of the said co-partnership, and of all such moneys and effects to which they are entitled, and of all debts due to the said co-partnership, of all such matters and things as are usually comprehended in general accounts of a like nature taken by persons engaged in the business of stock and station owners, and such accounts shall, after being audited as hereinafter is provided for, be submitted to the partners by the manager or overseer for the time being, and be signed by the partners.

(8) The said accounts and books shall be inspected and audited by some duly qualified person as auditor, and he shall certify to the correctness or otherwise of the same, and may make any remarks as to his approval or disapproval, or any suggestion as to the better

mode of keeping such accounts or books, or any other suggestion as to the correctness or otherwise of the books.

(9) The parties shall be entitled to the net profits arising from the partnership in the shares hereinbefore specified, and they shall pay to the said Henry Conway Seymour, Charles Randolph Seymour and Thomas George Seymour two-ninths each of such profits, and to the said Elizabeth Susan Seymour and Mary Ellen Seymour one-sixth each of such profits.

(10) None of the said partners shall lend any of the money or deliver upon credit any of the goods of the partnership to any person or persons whom the other partners shall previously by notice in writing have forbidden him to trust, nor shall any of the said partners borrow any money on behalf of the said firm without the like consent.

(11) Neither partner shall do or willingly suffer anything whereby or by reason whereof any of the stock in trade, capital or property of the said partnership may be seized or attached or extended or taken in execution.

(12) Within three calendar months after the expiration or determination of the partnership a full and general account in writing shall be taken of all the cattle, horses, sheep and other the property of the said partnership, and a just valuation shall be made of all the particulars included in the said account which require and are capable of valuation, and immediately after such last mentioned account shall have been so taken and settled the partners or the survivors of them shall forthwith make due provision for the payment of all moneys and debts then due by the partnership and for meeting all liabilities thereof, and subject thereto all the moneys, property, debts and effects then belonging or due to the partnership shall be divided between the partners in the proportion in which they are hereinafter declared to be entitled to the same, with the exception of the shares of the said Elizabeth Susan Seymour and Mary Ellen Seymour in the capital stock or personal estate which shall be held by the trustees for the time being of the will of Thomas Drought Seymour deceased upon the trusts therein declared respecting the shares of the said Elizabeth Susan Seymour and Mary Ellen Seymour, and such instruments in writing shall be executed respectively for

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facilitating the getting in of outstanding debts and effects of the partnership, and for indemnifying each other touching the premises, and for vesting the sole rights and property in the said respective shares of the said property in the partners to whom the same respectively shall upon such division belong, and for releasing to each other all claims on account of the partnership as are usual in cases of the like nature.

(Schedule A set out a number of sections of land totalling 1,927 acres in the name of Henry Conway Seymour, a number totalling 4,738 acres in the name of Henry Conway Seymour as trustee of the will of Thomas Drought Seymour, a number totalling 2,036 acres in the name of Thomas George Seymour, and a number totalling 3,435 acres in the name of Charles Randolph Seymour. Schedule B set out a number of sheep, cattle and horses, and included the household furniture, goods, chattels, station plant and effects then on the station and used thereon.)

15. The lands comprised in Schedule A to the said indenture of partnership are identical with the lands as described in the assessment.

16. In Schedule A to the said indenture of partnership section 71 Hundred of Robertson, containing 249 acres, and section 72 in the same hundred, containing 195 acres, were included. These sections were part of parcel 4, and were not included in the partition mentioned in par. 7 of this case, and remained in equity the property of Mrs. Mary Johnson Dunn Seymour and the trustees of the will of Thomas Drought Seymour. After the partnership under the said indenture commenced, the firm of Seymour Brothers purchased the said sections from the trustees of the will of Thomas Drought Seymour, and paid Mrs. Mary Johnson Dunn Seymour her share of the proceeds. The said two sections have ever since been held by Seymour Brothers as partnership assets and property.

17. As shown in the books of the partnership, the capital account thereof on the 25th day of March 1913, consisted of the following items :—(These items consisted of cash, sheep, cattle, horses, plant and sections 71 and 72 in the Hundred of Robertson).

None of the said lands except the said sections 71 and 72 Hundred of Robertson appear in the books of the partnership. The entries

in the books of the firm dealing with the capital account of the partnership were made by a firm of accountants (Smith, Officer & Co.), and were made by them as the auditors and accountants of the said partnership from particulars (including a copy of the indenture of partnership) sent to them by Henry Conway Seymour, the managing partner, who left it to them to prepare the capital account entries and gave no instructions to omit or include any of the said lands. The partners other than Henry Conway Seymour have never personally approved or disapproved of such entries, but such other partners left it to the said Henry Conway Seymour, subject to the oversight of the said firm of accountants, to make whatever entries he thought fit.

18. Certain moneys of the partnership have from time to time been expended by Seymour Brothers on the properties of which the members of the said firm are the registered proprietors of an estate in fee simple, and such moneys so expended have been debited in the books of the firm against the individual registered proprietors as follows: against the said Henry Conway Seymour in respect of that part of the said lands of which he is the individual registered proprietor, the sum of £106 3s.; against the said Elizabeth Susan Seymour in respect of that part of the lands stated in Schedule A to the said partnership indenture to be in the name of the said Henry Conway Seymour as trustee of the will of Thomas Drought Seymour deceased, the sum of £32 4s. 6d.; against the said Mary Ellen Seymour in respect of that part of the lands stated in Schedule A to the said partnership indenture to be in the name of Henry Conway Seymour as trustee of the will of Thomas Drought Seymour deceased, the sum of £24 11s. 3d.; and against the said Thomas George Seymour in respect of that part of the said lands of which he is the registered proprietor, the sum of £144 2s. 6d. These debits were made by the said firm of accountants. They were not instructed by the members of the firm or any of them to make such entries in the manner in which they made them, and they have not been approved or disapproved by any member of the firm other than the said Henry Conway Seymour, who instructed the said firm of accountants as to the respective ownership of the lands

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upon which the improvements had been made and what items were to be charged against the lands of each individual partner.

19. Certain moneys of the partnership to the extent of £495 7s. 3d. have been expended on section 53 Hundred of Robertson, portion of parcel 4, and remain in the books of the said firm to the debit of improvements account.

20. The said Henry Conway Seymour has had from the commencement of the partnership the control and management of its affairs, and has made the station entries in the books of the firm and attended to all its concerns.

21. All accounts for expenses as well as rates and taxes (including land taxes) upon the said lands have been charged to and paid for by Seymour Brothers, and the moneys received on account of the said trade or business have gone into one common partnership fund, and the profits made from the said trade or business carried on by the firm have been divided between the members of the firm.

22. At all times material to the said appeals the said lands have been occupied, controlled and used by the partnership, and there has not been nor is there any lease or agreement for lease for a definite term in respect of such occupancy, control or user, or other document setting forth or defining the interest of the said firm in the said lands other than the provisions of the said indenture of partnership.

23. The respondent claims that the appellants are liable to be assessed as joint owners of the said lands for the unimproved value of the fee simple, and that one deduction only of £5,000 ought to be made from the said unimproved value thereof, or in the alternative are liable to be assessed under section 42A of the *Land Tax Assessment Act* 1910-1914 as lessees for life of the said lands.

24. The appellants contend that they are wrongly assessed, on the ground that they were not, on the dates mentioned in the assessments respectively, the joint owners of the fee simple of the said lands or the lessees for life thereof (other than sections 71 and 72 Hundred of Robertson), within the meaning of the *Land Tax Assessment Act* 1910-1914, but were entitled and liable to be separately assessed in respect of the said lands according to their respective registered interests therein, and that as the several and individual owners of the said lands they are each entitled to a statutory

deduction of £5,000, or in the alternative that the firm of Seymour Brothers is entitled and liable to be assessed as the joint owner of a leasehold estate in the said lands (other than the said sections 71 and 72) for a term limited to the term of the said indenture of partnership, and that the appellants are entitled and liable to be assessed as the several and individual owners of the said lands (other than the said sections 71 and 72), less the value of such leasehold estate and less a statutory deduction of £5,000 each.

25. The questions for the determination of the Court are :—

(1) Whether the appellants were rightly assessed as joint owners for the unimproved value of the fee simple of the said lands with one deduction only of £5,000 ; or

(2) Whether the appellants should be assessed as lessees for life of the said lands ; or

(3) Whether the appellants ought to be assessed in respect of the said lands according to one or other of the contentions of the appellants set out in par. 24 of this case.

Grundy K.C. (with him *Cleland* K.C. and *Davison*), for the appellants. The effect of the deed of partnership is that the partners are not, as such, owners or joint owners of the whole of the land, but are entitled during the continuance of the partnership to occupy and use the whole of the lands for the purposes of the partnership. If that is so, the case falls within *Mant* v. *Deputy Federal Commissioner of Land Tax (Qd.)* (1), and the partners are only taxable severally in respect of the land of which each is the registered proprietor. If the partners are joint owners of any interest at all in the land, it is of a leasehold interest for the term of the partnership (*Pocock* v. *Carter* (2)). If that were so, the partners would be taxable under sec. 27 of the *Land Tax Assessment Act* 1910-1916. Sec. 42A can have no application, for under the partnership deed it cannot be said that any of the land is occupied, controlled or used by a person who is not the owner. [Counsel also referred to *Fisher* v. *Deputy Federal Commissioner of Land Tax (N.S.W.)* (3).]

Poole (with him *Powers*), for the respondent. The effect of clause

(1) 20 C.L.R., 564. (2) (1912) 1 Ch., 663. (3) 20 C.L.R., 242.

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5 of the deed of partnership is that the whole of the land became in equity the property of the partnership. The partnership had an equitable estate in fee subject to being divested. Even if that be not so, during the term of the partnership the partnership received or was entitled to receive the rents and profits of the whole of the land. The partners were therefore "joint owners" according to the definition of "owner" and "joint owners" in sec. 3. If they are not joint owners, they occupy, control or use the land, and, there being no lease, they are under sec. 42A to be deemed lessees for life and are taxable accordingly. [Counsel also referred to *Glenn* v. *Federal Commissioner of Land Tax* (1).]

Cleland K.C., in reply. Sec. 42A contemplates a person having the actual occupation, control or use of land to the exclusion of the owner, and has therefore no application to the interest of the partnership under the deed. The words "entitled to receive, or in receipt of," the rents and profits in the definition of "owner" refer to a person entitled to such receipt by virtue of his estate and not by virtue of a contract. The deed of partnership gives no estate in the land to the partnership, but it merely confers a right to use and occupy the land during the term of the partnership. The interest of the partnership is rather an irrevocable licence than anything else. [Counsel also referred to *Union Trustee Co. of Australia Ltd.* v. *Federal Commissioner of Land Tax* (2).]

[ISAACS J. referred to *In re L'Herminier*; *Mounsey* v. *Buston* (3).]

Cur. adv. vult.

Oct. 4.

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

Case stated by *Buchanan* J. under sec. 46 of the *Land Tax Assessment Act* 1910-1914 for the opinion of this Court. The facts, so far as material, may be shortly stated. Five members of the Seymour family were severally registered proprietors of separate parcels of land in South Australia. By deed dated 10th April 1914, after

(1) 20 C.L.R., 490, at p. 497. (2) 20 C.L.R., 526.
(3) (1894) 1 Ch., 675.

reciting their several proprietorship of those lands, they entered into partnership as cattle, sheep and horse breeders and sellers of wool and stock producers. The term of the partnership was five years as from 25th March 1913, defeasible by certain notice. The style of the partnership was "Seymour Brothers." Clause 5 of the deed was as follows:—"The assets and capital of the said firm shall consist of the property described in the schedule hereunder written marked A and the other property in the schedule hereunder marked B, but on the expiration or determination of the partnership the real estate shall be and remain the property of each individual in whose name it is shown to be in the certificates of title except property in the name of the said Henry Conway Seymour as trustee, which shall be held on the trusts affecting the same, and the partners shall be interested in the personal estate as follows: the said Henry Conway Seymour, Charles Randolph Seymour and Thomas George Seymour to two-ninths each, and the said Elizabeth Susan Seymour and Mary Ellen Seymour to one-sixth each thereof, subject to the trusts contained in the will of Thomas Drought Seymour deceased." Clause 9 provided for the respective shares of the net profits to which the parties were entitled. Clause 11 was in these terms: "Neither partner shall do or willingly suffer anything whereby or by reason whereof any of the stock in trade, capital or property of the said partnership may be seized or attached or extended or taken in execution."

The Deputy Commissioner assessed "Seymour Brothers" as owner of the lands at 30th June 1913, and again in 1914 and 1915. The unimproved value of the lands was assessed and is admitted to be correctly assessed at £42,878. The Deputy Commissioner allowed one statutory deduction of £5,000, leaving a taxable balance of £37,878. The Deputy Commissioner claimed that the firm were liable to be assessed either (1) as joint owners of the lands for the unimproved value of the fee simple, or alternatively (2) as lessees for life under sec. 42A, and that one deduction only of £5,000 should be allowed. The appellants contest both those claims, and contend that they are liable to be assessed only (1) as several owners of the lands according to their respective registered titles, or (2) as joint lessees of all the lands for five years.

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It has been properly conceded on both sides that the matter must be determined by ascertaining the legal position of the parties in relation to the land assessed, in view of the terms of the partnership deed, and then by applying to that position the relevant provisions of the Assessment Acts. The effect of clause 5 is not to make a series of leases of the various parcels of land, but to mutually convert for the purposes of the partnership the separate property in the land of the respective owners thereof into joint property. Each owner surrenders to the partnership his individual right in respect of the land, and acquires in return a corresponding partnership share in respect of the lands of his co-partners, limited similarly by the purposes of the partnership. By the *Partnership Act* 1891 (S.A.), sec. 22, land or any interest therein which is made partnership property is as between the partners and in the absence of contrary provision regarded as personal property. This is long established law. (See *Davis* v. *Davis* (1), and the older cases there cited.) If no limitation had been placed on the quantum of interest so converted into joint property, it would be competent to the partners on the termination of the partnership to reconvert it into realty, and again to sever their interests as at the outset (*Myers* v. *Myers* (2)). The parties, however, provided for this in advance by clause 5, and this specific provision emphasizes the initial act of making the various parcels of land partnership " assets and capital " for the purposes of the partnership. The rights of creditors are affected by that provision. See, for instance, sec. 23 of the *Partnership Act* 1891, limiting in such case the rights of an execution creditor of an individual partner.

In law the members of the firm, or as the Act calls them " the firm," were jointly the equitable owners of the aggregated land during the term and for the purposes of the partnership, and were entitled as against the respective registered proprietors of the several parcels to receive, and they did in fact receive, the rents and profits of each and every parcel of those lands. In this respect the case is fundamentally different from *Mant* v. *Deputy Federal Commissioner of Land Tax* (*Qd.*) (3). It is trite law that the equitable

(1) (1894) 1Ch., 393, at pp. 402 *et seqq.*
(2) 61 L.T., 757.
(3) 20 C.L.R., 564.

interest which a person has in land is commensurate with the relief which equity would give by way of specific performance (*Howard* v. *Miller* (1) and *Central Trust and Safe Deposit Co.* v. *Snider* (2)). It is clear also that equity would enforce as against each separate owner the rights created by the deed in favour of the firm to treat the lands as partnership property for the period fixed by the deed, subject to any defeasance arising pursuant to its terms.

Applying to those conclusions the provisions of the Assessment Act, we find that the firm of "Seymour Brothers," that is, all the members of the firm, were at each of the dates mentioned—because it is not disputed that the deed reaches back to the earliest of the dates mentioned—the "joint owners" of all the lands in question, according to sec. 3 (the definition section). Then, by sec. 38, joint tenants are to be assessed jointly, and as if a single owner, without regard to their respective interests therein, or to any deductions to which any of them may be entitled under the Act. The fact that the joint interest so created lasts for five years only is immaterial. It might be for the partners' joint lives, and the interest would still be less than a fee simple.

The material circumstance is that at the respective dates—namely, 30th June—in each year of assessment (see sec. 15) the firm were within the meaning of the Act "joint owners" of the lands assessed, and so the principle applies as stated by the learned Chief Justice in *Glenn* v. *Federal Commissioner of Land Tax* (3), in these words: "For the tax is an annual tax, and the 'owner' of the land is the person who is in the present enjoyment of the fruits which presumably afford the fund from which it is to be paid."

The case does not fall within sec. 42A. That section assumes a person or persons to occupy, control or use the land to the exclusion of the owner within the meaning of the Act, without any lease or agreement for a lease but under some arrangement with the owner of an indefinite nature.

The case will be remitted to the Supreme Court of South Australia with the opinion of this Court that the appellants were rightly assessed as joint owners for the unimproved value of the fee simple

(1) (1915) A.C., 318, at p. 326. (2) (1916) 1 A.C., 266, at p. 272.
(3) 20 C.L.R., at p. 497.

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of the land with one deduction only of £5,000. Costs to be costs in the appeal.

Order accordingly.

Solicitors for the appellant, *Davison & Daniel*, Mount Gambier, by *Rupert Pelly*.

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

B. L.

[HIGH COURT OF AUSTRALIA.]

DRUMMOND . . . . . APPELLANT;

AND

THE REGISTRAR OF PROBATES (SOUTH AUSTRALIA) . . . . . } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

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ADELAIDE, *Oct.* 1.

Barton, Isaacs and Gavan Duffy JJ.

Administration and Probate—Resealing foreign probate—Person entitled to apply—Executor of deceased executor—Administration and Probate Act 1891 (*S.A.*) (*No.* 537), *sec.* 26 (1)—*Additional Rules under the Administration and Probate Act* 1891 (*S.A.*), *rule* 94.

Sec. 26 (1) of the *Administration and Probate Act* 1891 (S.A.) provides that "When any probate . . . granted by any Court of competent jurisdiction . . . in the United Kingdom . . . shall be produced to and a copy thereof deposited with the Registrar, such probate . . . shall be sealed with the seal of the Supreme Court of South Australia, and shall have the like force and effect and the same operation in South Australia, and every executor . . . thereunder shall have the same rights and powers, perform the same duties, and be subject to the same liabilities, as if such probate . . . had been originally granted by the Supreme Court of South Australia."