[HIGH COURT OF AUSTRALIA.]

WILSON . . . . . APPELLANT;

AND

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

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MELBOURNE, *March* 7, 8. 9, 24.

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

Land Tax—Assessment—Joint owners—Beneficial interest under will of testator who died before 1st July 1910—Relatives of testator—Gift by will of original interest to another relative—Land Tax Assessment Act 1910—1914 (No. 22 of 1910—No. 29 of 1914), secs. 38 (7), 38A.

A testator, who died before 1st July 1910, by his will devised his land to trustees upon trust for the benefit of his eight children, all of whom survived him, as tenants in common. One of his daughters died after that date, having by her will given all her property to her husband.

Held, that the beneficial interest in the land, although still shared among a number of persons all of whom were relatives of the testator by blood, marriage or adoption, was no longer so shared under the testator's will within the meaning of sec. 38 (7) of the *Land Tax Assessment Act* 1910-1914, and, therefore, that the trustee was entitled to only one deduction of £5,000.

By *Higgins* and *Powers* JJ.—The legal position is made clear by sec. 38A of the Act. *Quære*, whether the same result would follow from sec. 38 (7) taken by itself.

CASE STATED.

On an appeal by George Lindsay Wilson, the trustee of the estate of William Wilson, deceased, against an assessment of him as such trustee under the *Land Tax Assessment Act* 1910-1914, *Rich* J. stated the following case for the opinion of the Full Court of the High Court:—

1. The appellant is the sole present trustee of the will of William Wilson, late of "Dalquhurn," Dandenong Road, East St. Kilda, in the State of Victoria, who died on 16th November 1891.

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2. By his said will the said William Wilson, after making certain specific bequests and directing the payments of certain pecuniary legacies and annuities, devised and bequeathed the whole of his real estate and the residue of his personal estate unto his trustees or trustee for the time being of his said will upon trust to sell, with full discretionary power to postpone or suspend the sale of any part or parts of his said real estate and the sale, collection and conversion of his personal estate respectively for such period or respective periods as his trustees or trustee should in their or his sole discretion judge expedient or advantageous under all the circumstances for the benefit of the several persons beneficially interested under his will, and during such interval of postponement to manage and carry on his trust estates; and he thereby directed his trustees to stand possessed of the moneys to arise from his said trust estates upon trust to pay his debts, funeral and testamentary expenses and the legacies bequeathed by his will and to appropriate and set apart a sum to provide for the annuities mentioned in his will, and he thereby declared that after making such payments the same trust money should be held in trust for all such of his children living at his death or born in due time afterwards and the children then living or afterwards born of any child of his having died in his lifetime as, being male, should attain the age of twenty-one years, or, being female, should attain that age or marry under that age, as tenants in common in a course of distribution according to the stocks and not to the number of individual objects, the issue of any child of his having died in his lifetime to take equally between them the share which the parent would have taken had he or she survived him; but, as to the share of each daughter of his in the said trust moneys, subject to the trusts thereinafter contained. And he thereby directed his trustees to retain two-thirds of the share or portion in the said moneys to arise from his said trust estates respectively in which each daughter of his should acquire an absolutely vested interest respectively, upon trust to settle the same respectively in the names of two or more trustees in such manner as his trustees should think fit or as they should be advised, but so that the personal receipt and enjoyment of the same respectively during her life inalienably

and independently of any husband should be effectually secured to her, and until such settlement should be made, the said trust premises should respectively be held by his trustees upon trust to pay the income thereof as and when the same should accrue, and not by way of anticipation, into the hands of his same daughter to be enjoyed by her as an inalienable personal provision, free, whenever she should be covert, from the control and engagement of any husband; and after the death of his same daughter, as to as well the capital of the trust premises as the income thenceforth to accrue due for the same, in trust for all or any one or more exclusively of the children and remoter issue of his same daughter in such proportions for such interests and generally in such manner as she, whether covert or sole, should by any deed or by her will or codicil appoint; and in default of appointment, and subject to any partial appointment, in trust for the child, if only one, or all the children, if more than one, of his same daughter who either before or after her death, being a son or sons, should attain the age of twenty-one years, or, being a daughter or daughters, should attain that age or marry under that age, such children, if more than one, to take in equal shares, but if no child of his same daughter, being a son, should attain the age of twenty-one years, or, being a daughter, should attain that age or marry under that age, then in trust for such persons and in such manner in all respects as his same daughter, whether covert or sole, should by will or codicil appoint, and in default of appointment, and subject to any partial appointment, upon such trusts as would by virtue of his said will affect the trust premises if his same daughter were dead a spinster and intestate without having acquired an absolutely vested interest in such trust premises under the trusts aforesaid; nevertheless he empowered his same daughter notwithstanding the trusts contained in his said will subsequently to the trust in her own favour by will to appoint the income to accrue due after her death of the said trust premises or any part of such income to and for the life or any lesser period of any husband of his same daughter who should survive her. And the said William Wilson, by his said will, declared that the other one-third part of the respective shares or portions in the said trust premises to which each of his daughters

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respectively should acquire an absolutely vested interest should be paid to his daughters respectively. And in the meantime, and until such settlements should be respectively completed, he directed his trustees to stand possessed of the funds to be settled thereby respectively and the interest and income thereof respectively upon the like trusts and with the like powers as those upon and subject to which they were to be settled.

3. The said William Wilson left surviving him eight children, viz., five daughters and three sons, each of whom has attained the age of twenty-one years; and no child of the testator died in his lifetime.

4. The sons of the said William Wilson and four of his daughters are still living, but one daughter, viz., Mabel Florence Simmons, the wife of Ernest Simmons, died on 29th January 1914.

5. The said Mabel Florence Simmons had no children, and by her will, bearing date 19th June 1908, she gave, devised and bequeathed all her real and personal property whatsoever and wheresoever situate unto her husband, the said Ernest Simmons, absolutely.

6. The said William Wilson at the time of his death owned a freehold property situate in the Riverina district of New South Wales known as "Goonambil," which is still unsold and is held by the appellant upon and subject to the trusts of the said will as part of his residuary real and personal estate. The debts, funeral and testamentary expenses of the said William Wilson and the legacies bequeathed by his will have been paid, and the said annuities are no longer payable, the annuitants having died.

7. Each of the four surviving daughters of the testator has married and has a child or children, but no settlement has yet been executed by any of the said daughters.

8. The unimproved value of the said freehold property has been assessed at £41,937, subject to one deduction only of £5,000, leaving a taxable balance of £36,937.

9. The appellant has appealed against the assessment of the lands held by the trustee as on 30th June 1915, and the said appeal is pending in the High Court. The appellant claims that he is entitled to a further deduction of £30,000, making the total

deductions £35,000, representing a deduction of £5,000 in respect of each of the said seven original shares of the surviving children of the said William Wilson in the said property.

11. The following question arising in the said appeal, which is in the opinion of the Court a question of law, is stated for the determination of the High Court:—Is the appellant entitled to have the said further deduction of £30,000 or any and what part thereof made?

The case was directed to be argued before a Full Bench.

The same point arose in *Emmerton* v. *Federal Commissioner of Land Tax*, and as a decision on it in favour of the appellants would have disposed of both cases, they were set down for hearing together, and arguments by counsel for the appellants in both cases were heard.

Sir William Irvine K.C. and *Mann*, for the appellant in *Wilson's Case*. Sec. 38 (7) of the *Land Tax Assessment Act* 1910-1912 is clear and unambiguous when read by itself. The first part of the sub-section sets out a condition upon compliance with which certain joint owners are to be entitled to deductions to which ordinarily joint holders are not entitled. The condition is that at the time of the assessment the beneficial interest in a certain piece of land is, under the will of a testator who died before a certain date, shared among a number of persons all of whom are relatives, by blood, marriage, or adoption, of the testator in such a way that they are taxable as joint owners. The meaning of those words is plain, and they include the present case. The words "under a settlement," &c., do not exclude the case where a person shares under a settlement or will by reason of some intermediate document. At the time of the assessment the beneficial interest in the particular piece of land was, under the testator's will, shared among the seven surviving children of the testator and the husband of his deceased daughter, who were all relatives by blood or marriage of the testator, in such a way that they are taxable as joint owners. The dictum in *Thomson* v. *Deputy Federal Commissioner of Land Tax (Tas.)* (1) to the effect that sec. 38 (7) only applies

(1) 19 C.L.R., 351, at p. 354.

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where the persons claiming the benefit of it hold their interests directly under the will without the aid of any subsequent transaction, should not be followed. What was said in *Archer* v. *Federal Commissioner of Land Tax* (1) and *Neill* v. *Federal Commissioner of Land Tax* (2) was directed only to the point that the number of original shares in an estate could not be increased by a subsequent instrument. Both those cases dealt with sec. 33 of the unamended *Land Tax Assessment Act* 1910, and the dictum in *Thomson's Case* (3) can get no support from them. As to sec. 38 (7) the test is whether the persons in respect of whom the deductions are claimed would have to obtain administration of the trusts of the will in order to enjoy their beneficial interests in the land. If the persons comply with that condition, then the further question arises, how many of the original shares into which the land was divided by the will are still held by persons who are relatives by blood, marriage or adoption of the testator? The only doubt which arises as to the meaning of sec. 38 (7) is caused by sec. 38A, which was enacted by the amending Act of 1912. "A section in a later Act cannot be used for the purpose of construing an earlier enactment, though it may repeal or vary it": *City of London Electric Lighting Co.* v. *London Corporation* (4), *per* Lord *Davey*; *In re Bolton Estates Act*; *Russell* v. *Meyrick* (5). There is no repugnancy between secs. 38 (7) and 38A from which a repeal can be implied, nor does sec. 38A purport to be an amendment of sec. 38 (7). It merely purports to give a new privilege. From the fact that sec. 38A would be useless because sec. 38 (7) had already given the privilege, no inference can be drawn that sec. 38 (7), which has a plain natural meaning, has some other meaning. See *Fryer* v. *Morland* (6).

[ISAACS J. referred to *Attorney-General* v. *Clarkson* (7).]

That case only applies the principle that where a section of a Statute has been interpreted by the Court in a particular way, and subsequent legislation has been passed which assumes that meaning to be right, the Courts will not afterwards give a

(1) 13 C.L.R., 557, at p. 569.
(2) 14 C.L.R., 207, at p. 215.
(3) 19 C.L.R., 351.
(4) (1903) A.C., 434, at p. 439.
(5) 72 L.J. Ch., 55, at p. 57.
(6) 3 Ch. D., 675, at p. 685.
(7) (1900) 1 Q.B., 156.

different interpretation to the section. [Counsel also referred to *Hedderwick* v. *Federal Commissioner of Land Tax* (1).] The Court can only say that sec. 38A is a guide to the meaning of sec. 38 (7) by saying that the Act of 1912 was a declaratory Act or an amending Act. But it did not purport to be either. There was no indication of an intention to alter the meaning of the earlier Acts as from the date of their enactment, as would be the case if the Act of 1912 were declaratory, and there was no intention to amend the earlier Acts, because an Act which purports to give some privilege which had been given by an earlier Act cannot be construed as an amendment of the earlier Act. The principle of reading all the Acts as one document is a false principle, because it involves changes in the meaning of the earlier Acts. If the Acts are read in succession, it must be determined what each meant when it was enacted.

Weigall K.C. (with him *Miller*), for the appellants in *Emmerton's Case*. The words "for the time being" in sec. 38 (7) indicate that it is not necessary that from the beginning the property should have been shared among persons of the class mentioned. The number of original shares cannot be increased, but if one of them has, by some mesne assignment, been divided up among a number of persons who come within the designated class, the right to a deduction in respect of that original share is not destroyed. [Counsel referred to *Lewis* v. *Federal Commissioner of Land Tax* (2); *Archer* v. *Deputy Federal Commissioner of Land Tax (Tas.)* (3); *Parker* v. *Deputy Federal Commissioner of Land Tax (Tas.)* (4).]

Starke, for the respondent. The several Land Tax Assessment Acts are to be read together, and therefore every part of each must be construed as if it had been contained in one Act: *Canada Southern Railway Co.* v. *International Bridge Co.* (5). Regard must therefore be had to sec. 38A in interpreting sec. 38 (7). Apart from sec. 38A, sec. 38 (7) has the meaning which in *Thomson's Case* (6) was placed upon it. The argument that

(1) 16 C.L.R., 27, at p. 42.
(2) 17 C.L.R., 566.
(3) 17 C.L.R., 444.
(4) 17 C.L.R., 438.
(5) 8 App. Cas., 723, at p. 727.
(6) 19 C.L.R., 351, at p. 354.

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sec. 38 (7) covers all cases where the root of title to land is a will or settlement of the kind therein described was as applicable to that case as to the present case. The meaning of sec. 38 (7) is at least doubtful, and in that view sec. 38A may be looked at to see in what sense the Legislature interpreted its own language in sec. 38 (7). The object of the legislation should be looked at. It is more likely that the Legislature intended to grant the privilege to relatives of the testator who were objects of his bounty than to all relatives who had an interest in the estate, whether they were the objects of the testator's bounty or acquired their interests apart altogether from the testator's intention to give them any interests.

Sir William Irvine K.C., in reply.

[HIGGINS J. referred to *Warburton* v. *Loveland* (1).]

Cur. adv. vult.

March 24.

The following judgments were read:—

GRIFFITH C.J. The tax imposed under the Land Tax Acts is progressive, that is to say, the rate of tax increases progressively with the value of the land. One deduction of £5,000 is in all cases allowed from the total unimproved value. The general scheme of the Act is that joint owners of land are taxed as if it were owned by a single person. They can therefore only claim a single deduction of £5,000. The result is that the tax payable by—say—five persons who are joint owners of land, is more, and may be a great deal more, than five times the amount of the tax for which each would be liable, if he held one-fifth of the land in severalty. For instance, if the land were worth £25,000 the owners would pay nothing if taxed as owners in severalty, each being entitled to the statutory deduction of £5,000. But as joint owners they are liable jointly to pay a tax upon a value of £20,000.

The Legislature was minded to relieve against this hardship in the case of family estates created under settlements and wills which came into effect before 1st July 1910, which I understand

(1) 2 Dow. & Cl., 480, at p. 500.

to be the day of the initiation of the law. As it was first framed the Act only dealt with the case of land held by trustees.

The provisions which now deal with the matter are contained in sec. 38 of the Act as amended in 1911 and 1912, upon the construction of which the question propounded in this case depends. The material provisions are as follows :—

(1) "Joint owners of land shall be assessed and liable for land tax in accordance with the provisions of this section."

(2) "Joint owners . . . . shall be jointly assessed and liable in respect of the land . . . . as if it were owned by a single person, without regard to their respective interests therein or to any deductions to which any of them may be entitled under this Act, and without taking into account any land owned by any one of them in severalty or as joint owner with any other person."

(7) "Where, 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, the beneficial interest in any land or in the income therefrom is for the time being shared among a number of persons, all of whom are relatives of the settlor or testator by blood, marriage, or adoption, in such a way that they are taxable as joint owners under this Act, then, for the purpose of their joint assessment as such joint owners, 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-section (2) of section eleven of this Act, the aggregate of the following sums, namely :—

"In respect of each of the joint owners who holds an original share in the land under the settlement or will—

(*a*) the sum of five thousand pounds, or

(*b*) the sum which bears the same proportion to the unimproved value of the land, after deducting the value of any annuity under section thirty-four of this Act, as the share bears to the whole,

whichever is the less."

(8) "In this section, 'original share in the land' means the share of one of the persons specified in the settlement or will as entitled to the first life or greater interest thereunder in the land

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or the income therefrom, or to the first such interest in remainder after . . . . a life interest of the wife or husband of the settlor or testator."

The appellant contends that the benefit of the provisions of sub-sec. 7 may be claimed so long as two conditions subsist: (1) that the land in question is subject to the trusts of the settlement or will, and (2) that all the persons for the time being entitled to share in the land or the income of it are relatives of the settlor or testator by blood, marriage, or adoption. For the Commissioner it is contended that the privilege is a personal privilege limited to persons upon whom a right to share in the land is conferred directly and immediately by the settlement or will itself, without calling in aid any subsequent transaction or event by which such a right has become vested in them.

The appellant claims the privilege under the following circumstances:—He is the trustee of the will of a testator who died before 1st July 1910, having devised his land upon trust for the benefit of his eight children as tenants in common. They all survived him, and seven are still alive. The eighth, a daughter, is dead. By the will she had an absolute right to one-third of her share, and, in the events that happened, had a general power of appointment of the other two-thirds. By her will she gave all her property to her husband. It is not contested that her will operated as a valid appointment of the two-thirds.

It follows that all the persons now entitled to claim a share in the beneficial interest in the land are relatives of the testator, so that, if the appellant's contention is correct, he is entitled to the privilege claimed in respect of seven, if not all, of the eight shares. If the Commissioner is correct, he is not—because one of them, the husband, does not share the income directly under the will but indirectly under his wife's will.

The governing words of the enactment are "where under a settlement . . . . or . . . . will . . . . the beneficial interest in any land . . . . is for the time being shared among a number of persons" &c. The words are not words of art. If A makes a will giving his property to his three children B, C and D, and dies, an ordinary person, on being asked "who shares A's property under his will?" would answer "B, C

and D." If he gave the property to his children for life with remainder to their respective children and D died, the answer would be to "B and C and the children of D." But suppose that D sells his share to X, would the ordinary person to whom the same question was put answer "B, C and X"? I do not think so. We start, then, with a construction *primâ facie* in favour of the respondent's contention.

Before referring in detail to the several considerations which, in my opinion, confirm this view, I will refer to some general considerations. Upon the appellant's construction the privilege runs with the land and attaches to it whenever the whole beneficial interest happens to be shared by persons who are relatives of the settlor or testator, a result which it is *primâ facie* very improbable that the Legislature should have intended. Upon the respondent's construction the privilege is a personal privilege of persons designated by the settlor or testator as the objects of his bounty.

It may be conceded that the words "shared under a settlement or will" are susceptible of either construction, but there are some serious if not fatal difficulties in the way of the appellant's view.

By sub-sec. 7 as originally passed a deduction of £5,000 or lesser prescribed amount was to be made in respect of "each original share in the land under the settlement or will," and the term "original share in the land," was defined (sub-sec. 8) to mean "the share of one of the persons specified in the settlement or will as entitled to the first life or greater interest thereunder in the land or the income therefrom, or to the first such interest in remainder after a life interest of the wife or husband of the settlor or testator." An amendment not material to the present case has since been made in the definition.

Under these provisions the number of permitted deductions was the same as the number of beneficiaries amongst whom the freehold of the land was shared in the first instance after the specified life estates. While the provisions so stood it might have been contended that the number of deductions was a constant, and that this result could only be obtained by allowing representation of the shares after the death of the first takers. But by the Act of 1912 the permitted deductions are to be made "in

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respect of each of the joint owners who holds an original share." This, to my mind, plainly indicates that there could be no deduction in respect of an original share the donee of which had dropped out. For, otherwise, every original share would still be deemed to be "held" by some one, and the new language would mean the same as the old. Moreover, this construction would imply that each original share is to be regarded as an aliquot part of the whole beneficial interest, the title to which may be transferred to or devolve upon other persons whose title to it would have to be deduced as in other cases.

These considerations lead me to the conclusion that the new formula means "each of the joint owners who still holds his original share." This construction excludes the notion that the privilege may devolve from a designated object of the settlor's or testator's bounty to any other person. It would not of itself exclude the seven children of the testator who still hold their original shares, but they are excluded because it can no longer be predicated of the land that the beneficial interest in it is shared "under the will" among a number of persons all of whom are relatives of the testator.

In previous cases this has been assumed to be the proper construction of sec. 38 (7). The language of the Court in *Thomson's Case* (1) was, perhaps, larger than was necessary for the decision of that case, for the land was no longer subject to the trusts of the will, but it correctly stated the law.

Sec. 38A, which was passed in 1912, makes an exception in favour of persons claiming under derivative settlements or wills taking effect before 1st July 1910. The framers of it evidently assumed that the construction of sec. 38 (7) which I adopt was the correct one, but, if the meaning of sec. 38 (7) had been clear in the sense contended for by the appellant, I should be reluctant to decide the case on that ground alone. I am not disposed to press the fiction of a continuous identical intention in the collective mind of Parliament any further than is plainly necessary.

The question must therefore be answered in the negative.

My brothers *Gavan Duffy* and *Rich* concur in this judgment.

(1) 19 C.L.R., 351.

BARTON J. The appellant claims, under sec. 38 (7) of the *Land Tax Assessment Act* 1910-1914, to be entitled as trustee to eight deductions in respect of that number of shares in the entire residue of the estate disposed of by the will of William Wilson, who died in 1891.

The testator left surviving him five daughters and three sons. They are all still alive except his daughter Mrs Simmons, who died in 1914. She left the whole of her property to her husband absolutely by her will, dated in 1908. As he was a relative by marriage of the testator, the beneficial interest in William Wilson's land was at the time of the assessment shared among a number of persons all of whom were relatives of the testator by blood or marriage, and who are taxable as joint owners under the Land Tax Acts. They are therefore all entitled to the deduction mentioned in sec. 38 (7) if, within the meaning of that provision, the property is shared among them under the will of the testator, who, as has been said, died before the 1st July 1910.

Is it then "under" the will of William Wilson that they—that is, all of them—share the beneficial interest—the whole of it—in this land? That seems to be the sole matter for decision. If they do, then the fact of Mr. Simmons's acquisition of a share under his wife's will does not deprive him and the other participants of the benefit of the sub-section. But before we can hold that they have this protection, we must be satisfied that by the effect of the word "under" the protection runs with the share, so that no matter how many assignments or devises there may be of any or all of the shares, the protection will endure so long as they are *in esse* as shares, and so long as the successive assignees or devisees are such relatives as are indicated in the sub-section. For if the first assignment or devise does not destroy the protection, neither will later ones.

The appellant therefore has to sustain a very wide proposition, the very nature of which leads to doubt as to whether the Legislature could have intended to give the privilege so remarkable an extent. One can understand that Parliament was ready to deal exceptionally with those whom a testator or a settlor has designed to be the objects of his bounty, but it is difficult to

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understand why it should intend this exceptional treatment to be enjoyed by a succession of assignees whose only claim to it would be relationship, and of whose very existence the testator or settlor would in many cases be scarcely aware. Still, if that is the clear meaning of the provision, effect must be given to it.

While the appellant's contention is that the privilege was intended to go with the land, the contention for the Commissioner is that it was intended to be personal to a certain class of beneficiaries who originally participated by virtue of the settlement or will, or at most to them and to those to whom their shares as such descended upon the intestacy of the original holders. He points to the fact that if the class is any larger there is no line of demarcation, and that the privilege is of indefinite duration so long as assignments of shares as such, among any who may be relatives of the testator or settlor, continue.

Who, then, are the participants in beneficial interest "under" any will or settlement? I do not find that there is any technical use of the word that can be relied on in this connection. What is its natural meaning? Ordinarily speaking, a person holds land under a will or settlement when he holds by virtue of the document in the sense that the will or settlement is in favour of the holder himself. The question, "who holds under Smith's will?" would not in general be answered by any of us to the effect that Jones holds under it, if Jones has bought from Smith's beneficiary. Jones would in that case be said to be a purchaser from the latter, not a holder under Smith's will. It is the same if the purchaser is a relative of Smith, and even also of Smith's beneficiary himself. "Under the contract" generally means "under the terms of the contract," and in the same way "under the will" primarily means "under the terms of the will." In other words, I think that the appellant asks for a meaning not altogether usual to be applied to the word "under."

In stating the deductions authorized, the section says they are to be: "In respect of each of the joint owners who holds an original share in the land under the settlement or will"—certain sums. There is a proviso (8) that "original share in the land" means the share of one of the persons specified in the settlement or will as entitled to the first life or greater interest thereunder

in the land or the income from it, or entitled to the first such interest in remainder after a life interest of the settlor or of the wife or husband of the settler or testator.

Now, the deduction is clearly confined to joint owners (within the statutory definition of that term) who each hold an original share as thus explained by the section. Each share, then, must be that of one of the persons specified in the settlement or will as entitled in the manner set forth in sub-sec. 8. Mr. Simmons has acquired an original share as the devisee of the original holder of an original share. But is it an original share in his hands within the meaning of the two sub-sections? After some hesitation, until I look at the next section, I think it is not, and that he does not share "under the will" of William Wilson. To hold so would be to give to those three words an extension greater, as I cannot but think, than Parliament could have had in its mind.

So far for sub-secs. 7 and 8. When I come to consider the new section, 38A, my hesitation is much lessened. There the privilege is extended to shares under a will or a settlement taking effect before 1st July 1910, together with a settlement or will taking effect before that day and made by a beneficiary under the original settlement or will in respect of his share thereunder. The last expression, "his share thereunder," primarily points to a share under the terms of the original settlement or will, and it is used in connection with the phrase "a beneficiary under the original settlement or will," who is—evidently, one must almost say—a person who derives a benefit by virtue of the terms of that document. The argument for the appellant is that sec. 38A means nothing—that is to say, that it is merely a tautology in relation to sec. 38 (7). It is true that Legislatures are sometimes guilty of tautology, being composed of human beings. But tautology is perhaps less to be expected in a Statute than in any other document demanding clear expression, and we are bound to give, if reasonably possible, a meaning not only to every sentence but to every word of an Act of Parliament, and to strive against the conclusion that it contains enactments or even words or phrases that are needless. I think the intention of sec. 38A is to extend within certain definite bounds, but not beyond them, the

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personal privilege granted by sec. 38 (7). Doing so, it goes to show that the bounds within which the benefits of sec. 38 (7) are confined are narrower. If they are narrower, then the contention of the appellant must fail. The Parliament has said "thus far and no further."

One is helped by the consideration that the main purpose of sec. 38 is the taxation of joint owners in respect of the jointly held land as if were owned by a single person, with the consequence that in ordinary cases there is only a single deduction. The privilege given by sub-sec. 7 and extended by sec. 38A is one to which it lies upon the claimant to show that he is entitled. The least that can be said is that his claim is not covered by the sub-section with sufficient clearness to enable a Court to say that he has discharged that burden.

I think that the appeal should be dismissed, or, in other words, that the question should be answered in the negative.

ISAACS J. I am clearly of opinion that the Commissioner is entitled to succeed. I form that opinion even upon the language of sub-secs. 7 and 8 of sec. 38 without the aid of sec. 38A.

The meaning of sub-sec. 7, read by itself apart from the new proviso as to more than one settlement or will, &c., I take to be this. It assumes first of all that under the preceding provisions of the Statute certain persons are joint tenants, within the meaning of the Act, of certain land and assessable as such, and that the unimproved value is ascertained and set down at a sum exceeding £5,000 and awaits a statutory deduction. In ordinary cases that deduction is a single sum of £5,000, and then by sub-sec. 7 provision is made for a special deduction where there is a special condition of affairs, the nature of which is the problem here.

As I construe the enactment, that condition of affairs exists where it is the provisions themselves of a settlement or will operative before 1st July 1910 which of their own force in the events that have happened share at the time of assessment the whole beneficial interest in the land or income among all those persons, being relatives of the settlor or testator, and which thereby constitute them for the time being "joint tenants"

assessable in respect of the land. This is, as I think, decisively shown by the words "in such a way that they are taxable as joint owners under this Act." That the sharing must be according to the settlement or will, that it must be of the whole beneficial interest, that all the beneficiaries must be relatives of the settlor or testator at the time of the assessment, are propositions common to both sides.

The appellant, however, contends that the fact that a settled share is assigned does not make it less a settled share under the settlement, and that the assignee of a relative is as much within the condition as the assignor, and holds the assigned share "under the settlement."

But that seems to be impossible in face of the words I have quoted, because, as to assignees, it cannot be said that the sharing is made "under the settlement or will" in "such a way that they are taxable as joint owners" under the Act. Looking at the instrument—settlement or will—and at the events it contemplates, and the persons it has in view, it is clear that the assignee is outside it, and therefore if he is a joint tenant it is not the settlement, but some other transaction operating on the settlement, which makes him so.

To use the language of another branch of the law, the settlement is not the *causa causans* but a *causa sine quâ non* of this participation in the property the subject of the settlement. In other words, the share of an assignee is not held by him "under the settlement." The scheme of the sub-section seems tolerably plain. It is to give special consideration to strictly family settlements, operating before the introduction of the Bill which became the Act, and to grant that special consideration only provided the rights are created by the settlement itself, and are confined to members of the family, and even then only in respect of the limited number of those members of the family holding "original shares" as defined in sub-sec. 8.

Although there is no similarity of design, between the Land Tax Act and the English Settled Estate Acts, there is in the latter legislation a phrase which has raised, as here, the question of what is meant by an estate or interest being under a settlement. The observations of the learned Judges, being founded on general principles, are applicable here.

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In what may be regarded as a leading case, *Cardigan* v. *Curzon-Howe* (1), *Chitty* J., speaking of a settlement, says:—"If a remainderman and tenant in fee mortgage, that is not a mortgage which subsists or arises under the settlement. The charge arises only because a person who has an interest under the settlement, as the holder of any other interest, can assign it or mortgage it; and, by parity of reasoning, I am disposed to think that that would also be the right view with reference to a mortgage created by the tenant for life mortgaging his own life interest. But that, again, *would not be an estate, interest, or charge subsisting, arising, or to arise under the settlement*; it would be a mortgage made by a man who is the owner of the life estate and is entitled to deal with it as he thinks fit." In *In re Dickin and Kelsall's Contract* (2) *Swinfen Eady* J. observed:—"But (as *Chitty* J. said) a mortgage by a tenant for life of his own interest is not an estate, interest, or charge subsisting, arising, or to arise under the settlement; *it does not take effect by virtue of any of the limitations, powers, or provisions of the settlement*, but because the person who is the owner of the life estate has by the general law the right to assign, mortgage, deal with, or dispose of his life interest, as his own property, in such manner as he may think fit." (The italics are mine.) In *In re Davies and Kent's Contract* (3) the Court of Appeal adopted that reasoning.

As a mortgage is an assurance of the debtor's interest in the property, though defeasible, it stands for the purposes of this question on the same footing as any other assignment, and the question is, as here, whether the assignee—absolute or defeasible—holds the assigned interest under the settlement.

Consequently I do not need the assistance of sec. 38A in coming to a conclusion adverse to the appellant.

But when the section is looked at, the matter is hardly open for contest. Learned counsel for the appellant strongly contended that the earlier clause was unambiguously clear in their favour, and that, short of specific declaration by the Legislature or a direct amendment of sub-sec. 7, its meaning remained as before—

(1) 40 Ch. D., 338, at p. 343. (2) (1908) 1 Ch., 213, at p. 221.
(3) (1910) 2 Ch., 35, at pp. 55, 58, 59.

the evident assumption made by Parliament when it passed sec. 38A being ineffectual to control that meaning, and not to be disregarded by the Court.

In view of what I have said, the argument of transparent clearness in favour of the appellant cannot be sustained. But supposing the language of sub-sec. 7 to be ambiguous in itself—which, if the matter rested there, might present a difficulty for the Crown—that ambiguity would be altogether dispersed by sec. 38A.

Applying the principle stated by Sir *F. H. Jeune* in *Attorney-General* v. *Clarkson* (1), I am distinctly of opinion that, reading the whole enactment together as one (see *Acts Interpretation Act* 1901, sec. 15), the view I have expressed as to the meaning of sub-sec. 7 of sec. 38 is the interpretation now placed upon it by Parliament itself, and therefore the one we, as the interpreters of the will of Parliament, are bound to place upon it. The later section assumes that it is the compound operation of both the original and the subsidiary instruments which shares the beneficial interest among the persons assessed "in such a way that *they* are taxable as joint owners under this Act," in contradistinction to the similar operation of the original instrument alone under sec. 38 (7).

For these reasons, considered independently, I am of opinion that the view I have in a previous case expressed is correct, and that the appellant fails.

HIGGINS J. The ultimate question in these cases is as to the meaning of secs. 38 and 38A of the *Land Tax Assessment Act* 1910-1914. The decisions and the dicta in *Archer's Case* (2) in *Neill's Case* (3) and in *Thomson's Case* (4) are interesting historically, as explaining, to some extent, the course of legislation in the Acts of 1910, 1911 and 1912; but what we have to decide is the effect now of the Act as amended, and as applied to an assessment for 30th June 1915 (*Wilson's Case*). Under sec. 13 of the Act of 1911, the amendments made by it were to

(1) (1900) 1 Q.B., 156, at p. 165.
(2) 13 C.L.R., 557.
(3) 14 C.L.R., 207.
(4) 19 C.L.R., 351.

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apply to assessments for 30th June 1912 and subsequent years; and under sec. 12 of the Act of 1912 the amendments thereby made were to apply to assessments for 30th June 1913 and subsequent years.

If we had to consider sec. 38 (7) only—the part added by the Act of 1911 and amended by the Act of 1912—there seems to me to be considerable force in the argument that each of the original shares in Wilson's estate ought to have the sum of £5,000 deducted from it, even if no longer held by the original beneficiary. In the first place, the words on which the Court based its decision in *Archer's Case* (1), confining the benefit of the deductions to the case of the shares being held by the original beneficiaries, were omitted in sec. 38. These words were "*in the first instance*," in the phrase "in respect of each share into which the land is in the first instance distributed under the will." Moreover, on taking sec. 38 (7) as it stands, we find that the conditions prescribed as necessary to secure the benefit of the deductions seem to be all verbally satisfied in the case of *Wilson*—a case of relations holding all the original shares under the will. For the testator died before 1st July 1910; the beneficial interest is for the time being shared under the will among persons all of whom are relatives of the testator; each holds an original share in the land; and the land is shared in such a way that they are taxable as joint owners. It is urged, indeed, that the words "under the will" must mean immediately by the provisions of the will. But if A and B are beneficiaries for life or in fee simple under a will, and B has assigned his interest to a money-lender C who receives the half-share of income, it is not inaccurate to say that the beneficial interest is for the time being shared under the will between A and C. The half-share of income comes to C under the will as distinguished from all other titles. The words "under the will" or other instrument have frequently been discussed in cases arising under covenants for quiet enjoyment; and they are always treated as referring to title *in pursuance of* the will, as distinguished from title *against* the will. I know of no case in which the words are treated as implying title immediately *from* the will (cf. *Kelly* v. *Rogers* (2); *Foa on Landlord and Tenant*,

(1) 13 C.L.R., 557.

(2) (1892) 1 Q.B., 910.

2nd ed., pp. 225-226; and see sec. 34 of this Act, referred to in argument by my brother *Rich*).

In this case of *Wilson*, one of the original beneficiaries, Mrs. Simmons, a daughter of the testator, has died without children, but her husband, by her will, holds her "original share" in the land. An "original share" in the land is defined by sec. 38 (8) as meaning (so far as material) "the share of one of the persons specified in the will as entitled to the first life or greater interest thereunder in the land." It is therefore asked, "what is there in sec. 38 to prevent existing beneficiaries from getting the benefit of the extra deductions, so long as the existing beneficiaries are all relations, as defined by the section?" But it was decided in 1912 by this Court that under the Act of 1910 no beneficiaries were to get the benefit of the deductions unless they derived their interests immediately from the testator —unless they were original holders as well as holders of original shares (*Archer's Case* (1); *Neill's Case* (2)). The Act of 1911, with secs. 38 (7) and (8), had been passed before these decisions, but it did not apply to the assessments of 30th June 1910, the subject of the decisions. This Act of 1911—from which the present sec. 38 (7) and (8) is derived—transferred the provision for the deduction from the section as to trustees (sec. 33) to the section as to joint owners (sec. 38); and, as I have said, it omits the words "in the first instance," on which the Court based its decision. On the other hand, apart from this omission there is no indication of any intention to alter the effect of sec. 33 so far as regards the confining of the benefit of deductions to original beneficiaries; and the words "original share" are used in the Act of 1911 in such a way as to suggest that the same idea was to be conveyed as by the words "in the first instance." The benefit of the deductions, under the Acts of 1911 and 1912 (now sec. 38 (7)), was conferred "in respect of each of the joint owners who holds an original share in the land." It may be that the draughtsman conceived that to say "each of the joint holders who holds an original share" was equivalent to saying "each of the joint holders who originally held and still holds an original share in the land." The construction of sec. 38 is doubtful; and

(1) 13 C.L.R., 557. (2) 14 C.L.R., 207.

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it might be our duty to hold, in accordance with *Armytage* v. *Wilkinson* (1), that the taxpayer is entitled to the benefit of the doubt, if sec. 38 alone had to be considered. There the Judicial Committee said that in a case of real difficulty of interpretation we should "give a liberal construction to words of exception confining the operation of the duty."

But sec. 38 is not the only section to be considered, and sec. 38A seems to preclude all doubt. It was added to the Act on 24th December 1912, and applies to the assessments now under review. It uses the same phraseology as sec. 38 (7) and (8) (so far as relevant) with a significant addition. For it provides that where under the will of a testator who died before 1st July 1910 "*together with . . . a will of a beneficiary under the original . . . will who died before that day*" the beneficial interest " . . . is for the time being shared among a number of persons who are relatives by blood, marriage, or adoption of the original . . . testator in such a way" &c., then there is to be a deduction "in respect of each of the joint owners who holds an original share . . . under the original . . . will" of "the sum of £5,000" &c. That is to say, if relatives of the testator enjoy the land under the original will *together with* a will of the beneficiary who died before 1st July 1910, the benefit of the deductions is to be allowed. There is no repeal of sec. 38 (7) or (8). This sec. 38A would be wholly unnecessary, would be absolutely futile and inoperative, if the contention for the appellant were right; counsel for the appellant admit it.

It was obviously framed under the impression that sec. 38 (7) and (8) applied to none but original holders of shares, and it gave the benefit of the deductions in a very limited class of cases where there are derivative holders. If we read sec. 38 and sec. 38A together, it is, to my mind, perfectly clear that under the words used by Parliament in those sections, the only case of derivative holders in which the benefit of the deductions can be claimed is the case mentioned in sec. 38A.

But it was urged that sec. 38A is to be put aside altogether in considering sec. 38. I wholly disagree with this view. From

(1) 3 App. Cas., 355, at p. 370.

the time that the amending Act of 1912 was passed, it was intended to operate as to all assessments made for the financial years beginning 1st July 1912. The Act as amended is one Act, and must be construed as a whole in all its sections—*ex visceribus actûs*. It is for us to construe this conglomerate Act in such a manner that, if possible, all its words may be operative, receiving full and consistent meaning; and it is possible. It is possible if we treat sec. 38 (7) and (8) as confined to original holders, and not otherwise. The whole of the Act has to be construed together, and not a part only by itself (*Lincoln College's Case* (1)). As Sir *John Nicholl* said in *Brett* v. *Brett* (2), "to arrive at the true meaning of any particular phrase in a Statute, that particular phrase is not to be viewed, detached from its context in the Statute: it is to be viewed in connection with its whole context." As Lord *Herschell* said in expressing the opinion of the Judicial Committee in *Colquhoun* v. *Brooks* (3), "it is beyond dispute . . . that we are entitled and indeed bound when construing the terms of any provision found in a Statute to consider any other parts of the Act which throw light upon the intention of the Legislature and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act." It is true that if sec. 38 were clear and explicit, we should not refuse to give effect to it because of mere inferences to be drawn from the words of a section "which speaks with less perspicuity, and of which the words may be capable of such construction as by possibility to diminish the efficacy of the other provisions of the Act." This is the doctrine laid laid down by the House of Lords in *Warburton* v. *Loveland* (4); the quotation from this case contained in *Craies'* work on *Statutes* (2nd ed., p. 106) is inaccurate and misleading. In the present case, sec. 38A has the necessary perspicuity and sec. 38 has not.

I cannot accept the contention that the Commissioner must show that Parliament intended either to make a declaration of the law *ex post facto* or to amend the law; that is not necessary. It is enough to show that on the true interpretation of the whole

(1) 3 Rep, 59b.
(2) 3 Add., 210, at p. 216.
(3) 14 App. Cas., 493, at p. 506.
(4) 2 Dow. & Cl., 460, at p. 500.

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Act as it stands the derivative beneficiaries were not intended to get the deductions.

In this case no one impugns the doctrine on which the Court has hitherto acted that a share in the proceeds of real and personal estate directed to be sold constitutes a share in the land for the purposes of the Act; and, as in duty bound, I accept the doctrine for the purposes of this case. It is conceded that all the beneficiaries must be entitled to the benefit of the deductions, or none (see *Parker's Case* (1)). In *Wilson's Case* Mr. Simmons, the beneficiary under the will of his wife, an original holder, is a derivative beneficiary ; and none of the other beneficiaries can, under what seem to be the very artificial and arbitrary provisions of the Act, claim the deductions.

The question should, in my opinion, be answered in the negative—that there is no right to any deduction other than that of the one sum of £5,000.

POWERS J. I have had the advantage of reading the judgment of my brother *Higgins*. I agree with it, and I agree that the appeal should be dismissed.

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

Solicitors for the appellant, *Boothby & Boothby*.

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

B. L.

(1) 17 C.L.R., 438.