

ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

McGRATH

V.

PERMANENT TRUSTEE COMPANY AND
ANOTHER

ORIGINAL

REASONS FOR JUDGMENT

Oral Judgment delivered at SYDNEY

on WEDNESDAY, 11th DECEMBER 1963

A. C. Brooks, Government Printer, Melbourne

G.7639/60

McGRATH

v.

PERMANENT TRUSTEE COMPANY AND ANOTHER

JUDGMENT
(ORAL)

JUDGMENT OF THE COURT
DELIVERED BY KITTO J.

CORAM: KITTO J.
MENZIES J.
OWEN J.

McGRATH

v.

PERMANENT TRUSTEE COMPANY AND ANOTHER

This is an appeal from a decretal order made by the Chief Judge in Equity, Mr. Justice McLelland, in proceedings which procedurally were perhaps not entirely apt for the solution of the problems to which they were directed, but everything was done by consent and there seems to be no reason to depart from the course that the parties followed.

His Honour answered the first question that was put to him by declaring that in the events which had happened and upon the true construction of the deed, the personalty referred to in the deed was, immediately prior to the death of the deceased, assets of the partnership referred to in the deed. The reference should no doubt have been not to the personalty referred to in the deed but to the personalty utilized in the partnership business at the time of the death, and the declaration should be varied accordingly.

No further question arises concerning the personalty.

There has been argument as to the construction of the deed and its effect in regard to the lands that are referred to in the schedule to the deed. There is really no room for argument. His Honour held that the lands became partnership assets and that they were assets in which the partners were interested in equal shares, and referred, in support of that conclusion, to s. 24 of the Partnership Act. His Honour's conclusion in our opinion was obviously right. The declaration made follows the question asked in the originating summons and is not entirely apt to give effect to the decision.

We think that it should be deleted and a declaration substituted for it that, on the true construction of the deed, the lands referred to in the schedule to the deed were, at the death of the deceased, assets of the partnership in which the partners were interested in equal shares.

We are not unmindful of the fact that Mr. Fox asked us not to add a declaration as to the interests of the partners, but his Honour decided that question. The decision, as I have said, seems to us to be obviously correct, and there seems to be no purpose to be served by not declaring the rights of the parties as we think they obviously are.

The costs of all parties of the appeal will be paid out of the estate.

The order will be that the decretal order be varied in the ways I have mentioned and that subject to that variation the decretal order will be affirmed. The costs of all parties of the appeal are to be paid out of the estate.