

"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 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 as the share bears to the whole whichever is the less." Then follows a definition of the term "an original share in the land," which I need not read. On that provision it is to be noted first that the condition of the deduction is that "the beneficial interest" in the land or 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." The "time being" is, of course, the day as of which the assessment is made.

It is next to be noted that this deduction is "in lieu of" the statutory deduction of £5000, and is a single aggregate deduction from the assessable value of the land, which enures for the benefit of all the beneficiaries, and entails a consequent reduction of the rate of taxation for the benefit of all the joint owners. This being an exception from the general rule that joint owners are treated as a single person, the party claiming the benefit of it must show that the case falls within the terms of the exception. When a share in the beneficial interest in the estate has passed to a stranger, it is *prima facie* impossible to say that "the beneficial interest" is shared between a number of persons "all of whom" are relatives of the settlor. It may seem strange, and at first sight it does seem strange, that the act of one beneficiary over whom the others, having, perhaps, a largely preponderating interest, have no control, should deprive them of the benefit intended to be conferred by the Act. But, on the other hand, there is no reason to suggest that a stranger was intended to have the benefit of the reduced rate of taxation which was introduced for the benefit of beneficiaries under old settlements made before the Act came into operation, and which would accrue to him if the opposite construction were adopted. Nor can it any longer be said with accuracy that the land is held by "relatives" in such a way that they are taxable as joint owners under the Act. The truth is that they and a stranger are together taxable as joint owners, against whom a single assessment is made which is a joint assessment of all of them, so that, as I have already pointed out, when the deduction is made it must accrue for the benefit of all. The case, therefore, does not fall within the literal words of the new provision, and any non-literal construction would give rise to consequences which are quite inconsistent with the scheme of confining the benefit to relatives of the

original settlor or testator. It follows that as the law stood under the Act of 1911 the deduction could not be made.

In 1912 another amendment of the Act was made which stands as sec. 38 (a). In another case standing for judgment we shall have to refer at length to its provisions. For the present it is sufficient to say that it only extends the class of relatives to be benefited, and does not in any way affect the construction of the words of sec. 38 (7) to which I have referred, or the rule to be deduced from them, namely, that all the joint owners at the time of the assessment must be relatives of the original settlor or testator. The question should, therefore, be answered in the negative.

BARTON, J.—I agree.

GAVAN DUFFY, J.—I agree.

Question answered in the negative.

[Solicitors—For the appellants, Simmons, Wolfhagen, Simmons and Walsh, Hobart, for Ritchie and Parker, Launceston; for the respondent, Dobson, Mitchell and Allport for the Commonwealth Crown Solicitor.]

FULL COURT—(Griffith, C.J.,
Barton and Gavan
Duffy, JJ.)
(Hobart.)

Feb. 17, 19.

ARCHER and Another, Appellants v. THE DEPUTY FEDERAL COMMISSIONER OF LAND TAX FOR TASMANIA, Respondent.

Land tax—Original share—Trustees — Assessment—Deductions — Several beneficiaries under original will or settlement—"Land Tax Assessment Act 1910-1912," sec. 38A.

By her marriage settlement made in 1888, A settled her interest under the will of her grandmother, who died in 1886, upon herself for life, with remainder to her children, and in default of children as she should appoint. There being no children of the marriage, A, in 1909, in pursuance of the power, appointed after her death one-third of the income (in the events that happened) to her husband for life, and subject thereto the income and corpus to her brother absolutely. A died before the 30th June, 1912.—

Held, that in assessing for land tax, the value of the estate of the original testatrix in the hands of the trustees, the husband and the brother of A were collectively to be treated as the holder of an original share within the meaning of section 38A of the "Land Tax Assessment Act 1910-1912," but so that only one deduction could be made in respect of it.

APPEAL by way of special case stated in pursuance of sec. 48 of the "Land Tax Assessment Act 1910-1912."

The case was as follows:—

1. The appellants are the trustees of the will of Harriett Brooke, deceased, who died on 31st August,

ARCHER v. COM. OF LAND TAX.

1886. The appeal is against the assessment of the lands held by the said trustees as on the 30th June, 1913.

2. The facts and circumstances set forth in the special case stated in the case of *Archer and Another v. The Federal Commissioner of Land Tax*, and reported in 13 C.L.R. at p. 557, 18 A.L.R. 145, are so far as relevant to be taken as repeated and set forth in this case.

3. By a marriage settlement bearing date the 27th December, 1888, Jessie Harriett, one of the children of Maria Rebecca Adams, in the said special case mentioned, directed the trustees of the settlement to hold her interest under the will and codicils of the said Harriett Brooke, deceased (being a one-eighth share), upon trust to pay the income to herself during her life, and after her death upon trust for her children, and in the event of there being no children living to take, then upon trust for such person or persons as she should, whether covert or discover by deed revocable or irrevocable, or by will or codicil appoint with ultimate trusts over in default of appointment.

4. By an indenture dated 13th February, 1909 (supplemental to the said last stated marriage settlement), wherein it was recited that there had been no children of the marriage, and that the said Jessie Harriett Adams, then Jessie Harriett Edyvean, was desirous of making an appointment in default of children, she the said Jessie Harriett Edyvean, appointed that after her death the trust premises should be held by the trustees of the settlement "in trust 'to pay or apply one-third of the annual income of 'the trust premises to William Henry Edyvean (her 'husband) during his life and pay the other one-third 'of her said income to or for the benefit of the said 'Maria Rebecca Adams (her mother) during her life 'in such manner as the trustees should think best in 'the interests of the said Maria Rebecca Adams and 'subject to the payment of one-third of the said income to or for the benefit of each of them the said 'William Henry Edyvean and Maria Rebecca Adams 'respectively as aforesaid in trust as to both the 'corpus and the income of the said trust premises 'for John Garibaldi Marriott Adams the child of the 'said Maria Adams absolutely.'"

5. The said Jessie Harriett Edyvean and Maria Rebecca Adams both died before the 30th June, 1912. The appellants now hold the trust premises upon trust to pay one-third of the income to William Henry Edyvean for life, and subject thereto, as to the corpus and income, for her brother John Garibaldi Marriott Adams absolutely.

6. The unimproved value of the estate of the said Harriett Brooke in the hands of the appellants has been assessed at £31,398, subject to the one deduction of £5000, leaving an assessable value of £26,398. The appellants claim that they are entitled to a further deduction in respect of the share of the said Jessie Harriett Edyvean settled in manner hereinbefore

stated, that is to say, a deduction of £3924, being one-eighth of £31,398, the total unimproved value.

The question for the determination of the Court is—Whether the appellants are entitled to have the said deduction made?

Waterhouse, for the appellants, referred to—*Archer v. The Deputy Federal Commissioner of Land Tax*, 18 A.L.R. 145; "Land Tax Assessment Act 1910-1912," sec. 48; No. 12 of 1911, sub-sec. (7) of sec. 38; Act No. 37 of 1912, sec. 9.

L. L. Dobson for the respondent.—Appellants' arguments are based on the assumption that the new sec. 38A (1) is intended to relieve the taxpayer from the construction put on sec. 7 of Act 1911—*Committee of London Clearing Bankers v. Commissioners of Inland Revenue*, (1896) 1 Q.B. 222. None of these persons is a joint owner "who holds an original share," nor by himself holds such a share. Sec. 38A (1) has no application if the settlement of the share is in favour of more persons than one.

Waterhouse in reply.

Cur. adv. vult.

GRIFFITH, C.J.—The question submitted in this case depends upon the construction of sec. 38A of the "Land Tax Assessment Act," which was introduced by an amendment of the Act in 1912. I have referred in my judgment in the previous case—*Parker v. The Deputy Federal Commissioner of Land Tax* (*ante*, p. 117—to the provisions of the law as they stood before that amendment. Sec. 38A is as follows:—
 "(1) 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 (in this section referred to as the 'original settlement or will') together with a settlement made before that day by a 'beneficiary under the original settlement or will of 'his share thereunder or a will of a beneficiary under 'the original settlement or will 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 who are relatives by blood marriage or adoption of the original settlor or testator '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-sec. (2) of 'sec. 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 original 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 'sec. thirty-four of this Act as the share bears to the 'whole whichever is the less."

An important change is here introduced. While the amendment of sec. 38 made by the Act of 1911 had only included persons holding directly under a settlement or will taking effect before 1st July, 1910, this provision includes persons holding under a settlement or will taking effect before that day, together with a like settlement or will made by a beneficiary under the original settlement or will. But the condition of the benefit is still to be that the beneficiaries are relatives by blood, marriage or adoption of the original settlor or testator. A change is also made in the language by using the words "a number of persons who are relatives by blood marriage or adoption," instead of the words "a number of persons all of whom are relatives by blood marriage or adoption." But the original sec. 38, as amended by the Act of 1911, was not altered in that respect. In cases falling within that section all the beneficiaries must be relations, as we decided in the previous case of *Parker v. Deputy Federal Commissioner of Land Tax*, and the provision now under consideration does not make any difference in such a case. But it extends the class of relations to be included in the benefit, so as to include those taking under what has been called a subsidiary settlement or will. The deduction is to be made "in respect of each of the joint owners who holds an original share in the land under the original settlement or will." I need not repeat the definition of "an original share."

In the present case, the land is held by trustees under the will of a testator who died in 1886, and the assessment is in respect of land as held on 30th June, 1913. There were several beneficiaries under the original settlement. Their right to claim deductions under sec. 33 of the original Act was discussed and determined by this Court in the case of *Archer v. The Deputy Federal Commissioner of Land Tax*, 18 A.L.R. 145. It is sufficient for the present purpose to say that two of the beneficiaries were grandchildren of the settlor, namely, Jessie Harriett Adams and John Garibaldi Marriott Adams. In 1909 Jessie Harriett Adams, then Jessie Harriett Edyvean, made an appointment directing that her share should be held by the trustees of the settlement in trust as to one-third to pay the annual income thereof to her husband during his life, and as to another one-third to pay the annual income for the benefit of her mother during her life, and subject to those payments to hold the share in trust for her brother, John Garibaldi Marriott Adams. She and her mother are both dead.

There is no question that Mrs. Edyvean's share was an original share within the definition given in the Act, or that what she settled was that original share. The words of sec. 38A are—"Together with a settlement made before that day by a beneficiary under the original settlement or will of his share thereunder." The subject-matter of the settlement, therefore, falls within the Act, and the result of it was that three persons, all being relatives of the original

settlor by blood or marriage, became entitled to interests in Mrs. Edyvean's share. They therefore fall within the exact words of sec. 38A unless that construction is cut down by the use of the words "each of" in the phrase "each of the joint owners who holds an original share in the land under the original settlement or will."

The question, therefore, is whether her brother, John Garibaldi Marriott Adams, and her husband can collectively be treated as the holder of an original share. If they can, the case falls exactly within the Act. In my judgment, having regard to the statutory rule of interpretation of Federal Statutes that words in the singular include the plural, unless a contrary intention appears, there is no reason to doubt that the case falls within the Act. Indeed, if it did not, this singular position would arise, that, although sec. 38A is obviously intended to continue the benefit of the deduction as long as the property remains in the family of the original settlor, yet it only applies where the subsidiary settlement is in favour of a single person. So far, therefore, from there being a contrary intention, there is a manifest intention that the general rule shall apply.

I am, therefore, of opinion that these two beneficiaries are collectively the holder of an original share within the section, but so that only one deduction can be made in respect of it.

If there is no more in the case, the appellants will be entitled to succeed. But if it should turn out that any of the other shares have been alienated, the right to the deduction will cease, for the reason given in the preceding case. That can be determined by the Court of first instance when the case is remitted.

For these reasons, I think that the question should be answered in the affirmative.

BARTON, J.—I concur.

GAVAN DUFFY, J.—I agree.

Question answered in the affirmative.

[Solicitors—For appellants, Simmons, Wolfhagen, Simmons and Walch, Hobart, for Ritchie and Parker, Launceston; for respondent, Dobson, Mitchell and Allport for the Commonwealth Crown Solicitor.]

FULL COURT—(Griffith, C.J.,

Barton and Gavan

Duffy, JJ.)

(Hobart.)

Feb. 16.

**BAIN, Informant Appellant v. AH KEE,
Defendant Respondent.**

Prohibited immigrant—Previously convicted—Second prosecution — Evidence of prior conviction—Relevancy of — "Immigration Restriction Act 1901-1912," secs. 3, 5, 7.

The defendant was, in the year 1909, convicted of being a prohibited immigrant, and was sentenced. On entering