Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Beaver v. *The Master in Equity of the Supreme Court of Victoria, from the Supreme Court of Victoria; delivered 29th January* 1895.

Present:

The LORD CHANCELLOR.
LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD SHAND.

[*Delivered by The Lord Chancellor.*]

The sole question to be determined in this case is, whether the partnership interest of the late Philip Falk in the business of P. Falk and Co. at Melbourne was at the time of his death situate within the Colony of Victoria so as to be liable to probate duty.

An agreement of partnership was entered into on the 25th of September 1888 between Philip Falk and his son J. D. Falk. It recited that Philip Falk had formerly carried on business in co-partnership with certain persons as merchants at Melbourne, and in co-partnership with certain other persons at Adelaide, and that both such businesses on the 1st of July 1886 belonged to Philip Falk, and that he had also carried on business in London under the style of P. and S. Falk. It further recited that Philip Falk had agreed to take J. D. Falk into partnership with him "in "the businesses so as aforesaid belonging to "him."

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The agreement contained provisions: (1) That the parties should become co-partners in the trade or business of Australian and general merchants to be carried on at Melbourne and Adelaide, or such other places in Australia as might be mutually agreed upon, such business to be carried on under the style or firm of P. Falk and Co. (2) That the parties should become partners in the trade or business of merchants to be carried on in London under the style or firm of P. Falk and Sons. (3) That P. Falk should not be bound to attend to the affairs of the partnership otherwise than as he might think fit, and that J. D. Falk should attend personally to the affairs of the partnership in London, Melbourne, and Adelaide, as might be from time to time required by P. Falk. (4) That P. Falk should be entitled to four-fifths of the net profits and J. D. Falk to one-fifth thereof, save that P. Falk was to be entitled to all the profits and was to bear all the losses arising from the trading in precious stones to be carried on in London by the partnership, paying J. D. Falk a commission in respect thereof. (5) That, subject to the provisions with reference to the introduction of a son or sons of P. Falk into the business, in case a partner should die before the expiration of the term of partnership, and if the surviving partner should be desirous of purchasing the share of the deceased partner in the property credits and effects of the partnership, the value thereof should be ascertained by valuation in the manner prescribed, but in case the surviving partner or partners should decline to purchase the share of the deceased partner, then the property credits and effects of the partnership were to be realised, and the surplus after payment of the debts was to be divided between the surviving partner or partners and the representatives of the deceased

partner according to their respective shares and interests therein.

The partners were both of them domiciled and resident in London. With some minor exceptions, to which it is not necessary to refer, all the goods sold by the firm at Melbourne were purchased by the partners in English and continental markets. No sales were made in London except in connection with the business carried on in London under the firm of P. Falk & Sons. The business at Melbourne, as well as at Adelaide, was conducted by a salaried manager. The mode of carrying on business was for those managers to send to London a statement of the goods which in their opinion were required for their respective branches for sale in Australia, and the partners in London made purchases accordingly in so far as the goods suggested by the Australian managers were approved by them. The vendors were instructed by the partners in London as to the shipment of the goods, and the invoices were paid by the partners there. The various goods shipped from England to Australia were invoiced by P. Falk & Sons in London to P. Falk & Co. in Melbourne or Adelaide as the case might be. In order to provide for the payment of the goods so purchased, it was the practice for the partners in London to cable to Melbourne or Adelaide in the first week of each month as to their commitments for purchases maturing on the 16th of the following month, and for Melbourne or Adelaide as the case might be to remit the amount cabled for so as to arrive in London about the time the commitments became due.

No record of the sales in Australia was entered in the London books. The books kept in Australia contained all particulars relating to them, and also to the expenditure incurred in Australia

in carrying on the business. At the end of the year a balance sheet was made out at Melbourne and Adelaide respectively, and forwarded to the partners in London. These balance sheets showed the net profits made at each place.

It was not the habit of the partners to enter the balance sheets so forwarded in their London books, and such remittances as were made to the partners in London from Melbourne or Adelaide on account of interest on capital, or profits, were remitted in favour of the individual partner entitled to them, and do not appear in the firm's books in London.

Upon Arthur Lionel Falk, a son of Philip Falk, attaining his majority, he was admitted as a partner pursuant to a provision in the articles of partnership as from the 1st of July 1889.

Philip Falk died on the 1st of February 1890 having by his will appointed his widow and J. D. Falk and another executrix and executors. It was proved by the widow alone.

The Supreme Court of Victoria held that the interest of P. Falk in the business carried on at Melbourne was chargeable with probate duty in Victoria.

Their Lordships see no ground to differ from this conclusion. A review of the facts to which attention has been called appears to make it abundantly clear that the Melbourne business was locally situate there. It was entirely distinct from the London business, which was carried on under a different name. The London partners purchased, indeed, some of the goods sold in Australia, in this country, but they purchased some of them on the continent of Europe. The money to pay for these goods was in all cases remitted from Australia and they were sold there. The materials necessary for making up a balance sheet were to be found only in the books kept at Melbourne. The balance sheet was made

out there, and the interest and share of profits appearing therein as due to the partners respectively was remitted direct to each individual partner. These are the leading facts which establish in their Lordships' opinion that the interest of the testator in the business carried on at Melbourne was locally situate in the Colony of Victoria. That the several businesses carried on were regarded by the testator himself as distinct, is clear from the provisions of his will. He empowers his trustees in their discretion to advance any sum not exceeding 25,000*l.* to his son J. D. Falk, either alone or conjointly with any other person or persons, so long as he or they shall continue to carry on "the business of P. Falk & Co. at Melbourne "now carried on by me in partnership with the "said Julius David Falk, or to allow any part "of my capital in such business to the extent "of 25,000*l.* to remain in such business." A similar power is given as regards the business of P. Falk and Co. at Adelaide. And the testator declared that the sum or sums "left in "such businesses or either of them" should be considered as joint and several debts owing to his estate by the person or persons "for the time "being carrying on such business respectively." The terms of the partnership agreement which have been quoted shew that the businesses were equally regarded as distinct by both the parties to that agreement.

Their Lordships will humbly advise Her Majesty that the judgment of the Supreme Court should be affirmed and this Appeal dismissed. The Appellant will pay the costs of the Appeal.