Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Commissioner of Stamp Duties v. *Salting and another, from the Supreme Court of the State of New South Wales; delivered the 22nd July* 1907.

Present:

THE LORD CHANCELLOR.
LORD ASHBOURNE.
LORD MACNAGHTEN.
SIR ARTHUR WILSON.
SIR ALFRED WILLS.

[*Delivered by Lord Macnaghten.*]

The Appellant in this case is the Commissioner of Stamp Duties of the State of New South Wales. The Respondents are the executrix and executor of the will and codicil of William Severin Salting, who died on the 23rd of June 1905.

William Severin Salting and his brother, the Respondent George Salting, both resided in England. But they were partners in equal shares, though without any written agreement of partnership, in the business of graziers and sheep farmers, carried on by their agent on a station known as Cunningham Plains, in the State of New South Wales. The assets of the partnership consisted of lands, live stock, and other property of the aggregate value of 200,086*l.* 0*s.* 9*d.*

The duties imposed upon the estates of deceased persons by the Stamp Duties Act, 1898, of New South Wales as amended by the Probate Duties (Amendment) Act, 1899, are "charged and "chargeable upon and in respect of all estate

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" whether real or personal which belonged to " any testator or intestate dying after the " commencement of" the "Act."

The Commissioner was of opinion that the testator's interest in the partnership was a half share and therefore of the value of 100,043*l.*, and he considered that this sum should be added to the value of the estate shown in the affidavit and inventory lodged upon the application for resealing the Probate granted to the Respondents in England, making in all the sum of 311,343*l.* The Commissioner assessed duty on that sum. The duty at the prescribed rate of 10 per cent. amounted to 31,134*l.* 6*s.* The Respondents paid the full amount claimed, but under protest, contending that the interest of the testator in the partnership was an asset to be dealt with in England and not liable to duty in the State of New South Wales.

On appeal to the Supreme Court the contention of the Respondents was upheld by Darley, C.J., and Cohen, J., Pring, J., dissenting, and the Commissioner was ordered to refund 10,004*l.* 6*s.*, the amount of duty paid in respect of the testator's share in the partnership.

Their Lordships agree with Pring, J., who held that the case was covered by the decision of the House of Lords in *Laidlay* v. *The Lord Advocate*, 15 A.C. 468, and the opinion of this Board in *Beaver* v. *The Master in Equity* 1895, A.C. 251. In both those cases it was laid down that the question to be determined was the local situation of the asset, and that the share of a deceased partner in a business was situate where the business was carried on. All the arguments on which the majority of the Supreme Court relied were advanced in the case of *Laidlay* v. *The Lord Advocate*, and either ignored or overruled. No doubt in each of those cases there were special circumstances not to be

found in the present case, on which more or less reliance was placed. But the broad rule approved was that enunciated by Sir James Hannen in the case of *Ewing* (6 P.D., p. 23), that the share of a deceased partner is situate where the business was carried on at the time of the death. In the present case, though both partners resided in England, there can be no doubt that the business at the time of Mr. Salting's death was carried on in New South Wales.

Their Lordships therefore will humbly advise His Majesty that the Appeal ought to be allowed, the judgment of the Supreme Court reversed with costs, the Commissioner's assessment confirmed, and the amount paid by the Commissioner under the order of the Supreme Court refunded with interest.

The Respondents will pay the costs of the Appeal.