
Martel (*Appellant*) *v.* **Minister of National Revenue** (*Respondent*).

Present: Noël J.—Montreal, December 19, 1969; Ottawa, January 30, 1970.

Income tax—Office, income of—Additional salary paid Judge for extra-judicial services etc.—Whether salary or expense allowance—Judges Act R.S.C. 1952, c. 159, s. 20(1); am. 1966-7, c. 76, s. 20(1)—Income Tax Act s. 5(1)(b)(i)(A).

Section 20 of the *Judges Act*, R.S.C. 1952, c. 159, as amended by 1966-67, c. 76, s. 20(1), provides that "every judge . . . shall be paid an additional salary of $2,000 per annum as compensation for any extra-judicial services that he may be called upon to perform by the Government of Canada or the government of a province, and for the incidental expenditures that the fit and proper execution of his office as judge may require."

Held, the additional salary paid a judge pursuant to the above enactment is income from an office under s. 5 of the *Income Tax Act*: it is not an allowance for personal or living expenses expressly fixed in an Act of Parliament within the meaning of s. 5(1)(*b*)(i)(A) of the *Income Tax Act*.

Samson v. M.N.R. [1943] Ex.C.R. 17 explained;
Bherer v. M.N.R. [1968] 1 Ex.C.R. 146 referred to.

INCOME TAX appeal.

M. Paquin and *H. P. Lemay* for appellant.

A. Garon and *P. Guilbault* for respondent.

NOËL J.: The appellant appeals before this court against an assessment for the 1967 taxation year wherein the Minister of National Revenue added to his income a sum of $724.86 which he had claimed for expenses arising

from the execution of his office as judge of the Superior Court, and contesting the sum of $1,166.66 which, he said, he had erroneously added to his income for the year 1967. This amount is the pro rata share, or 7/12, of an additional sum of $2,000 added to the salaries of judges by an amendment to the *Judges Act, S.* of C. 1966-67, c. 76, and which he had begun to receive on June 1 of that same year. The appellant claims that the sum of $2,000 provided for in s. 20 of the *Judges Act,* R.S.C. 1952, c. 159 as amended by S. of C. 1966-67, c. 76 is paid annually to a judge for incidental expenditures that the fit and proper execution of his office as judge may require and should be excluded from his income under s. 5(1)(*b*)[1] and 5(1)(*b*)(i)(A) of the *Income Tax Act* which provides that "(i) travelling or personal or living expense allowances (A) expressly fixed in an Act of the Parliament of Canada" are not included in a taxpayer's income.

The appellant also submits that the expenses claimed are deductible from income under s.11 of the *Income Tax Act,* which allows such expenses notwithstanding paragraphs (*a*), (*b*) and (*h*) of subsection (1) of section 12 which, among other things, generally limits deductible expenses to those listed for the purpose of gaining income, prohibits deductions for capital outlays or losses and prohibits deductions, in paragraph (*h*), for the personal or living expenses of the taxpayer.

On the other hand, the respondent contends that in issuing the appellant's assessment for the 1967 taxation year, he assumed (a) that the appellant was drawing an income from an office within the meaning of s. 5(1) of the *Income Tax Act* during 1967; (b) that the sum of $1,166.66 which the appellant received in 1967 under s. 20(1) of the *Judges Act,* S. of C. 1966-67, c. 76, constitutes income within the meaning of s. 5(1) or an allowance "for any other purpose" within the meaning of s. 5(1)(*b*) of the said Act and, lastly, (c) that the sum of $724.86 claimed by the appellant as a deduction in respect of incidental expenditures for the fit and proper execution of his office as judge was not deductible under s. 5(1) *in fine* of the *Income Tax Act* or any other section of that Act.

In fact, the respondent relies on sections 3[2], 5(1)(*b*), 11 and 139(1)(*ab*)[3] of the *Income Tax Act,* as well as on s. 20(1)[4] of the *Judges Act,* S. of C. 1966-67, c. 76.

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[1] 5. (1) Income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year plus

. . .

(*b*) all amounts received by him in the year as an allowance for personal or living expenses or as an allowance for any other purpose . . .

[2] 3. The income of a taxpayer for a taxation year for the purposes of this Part is his income for the year from all sources inside or outside Canada and, without restricting the generality of the foregoing, includes income for the year from all

(*a*) businesses,

(*b*) property, and

(*c*) offices and employments.

[3] 139 (1) (*ab*) "office" means the position of an individual entitling him to a fixed or ascertainable stipend or remuneration and includes a *judicial office,* the office of a Minister of

The respondent declares that the appellant, during the 1967 taxation year, held an office within the meaning of s. 139(1)(*ab*) of the *Income Tax Act,* and that during that same year, under s. 20 (1) of the *Judges Act,* he received an additional salary of $1,166.66 which must, under s. 5(1) of the *Income Tax Act,* be included in the calculation of his income from his office.

Furthermore, the respondent also submits that if the sum of $1,166.66 received by the appellant does not constitute salary which must be added to his income under s. 5(1) of the Act, then it constitutes a sum received as an allowance "for any other purpose" within the meaning of s. 5(1)(*b*) of the Act and, as such, must be included in the calculation of his income.

The respondent finally submits that no deduction can be made from income from an office or employment other than those expressly provided for in s. 5(1) of the Act *in fine* and particularly in s. 11(1)(i), (ib), (*q*) and (*qa*) and subsections (5) to (11) inclusive of the said section and that, of the total deduction of $739.86 claimed by the appellant as expenditures that the fit and proper execution of his office as judge may require, the sum of $724.86 cannot be allowed because it is not in the nature of the deductions expressly allowed in the above-mentioned sections of the *Income Tax Act.*[5]

The appellant, a judge of the Superior Court of the District of Montreal, residing at Outremont, P.Q., performs his duties in the District of Montreal and sometimes in other districts. When, as judge, he attends at any place other than that at which or in the immediate vicinity of which he is by law obliged to reside he is entitled to be paid as a travelling allowance, under s. 21(1) of the *Judges Act,* his moving or transportation expenses and reasonable travelling and other expenses incurred by him in so attending. However, he cannot, according to subsection 2 of the said section ". . . be paid travelling allowance for attending at or in the immediate vicinity of the place where he resides". His travelling and living expenses when he is performing his duties as judge and attending at a place other than that at which he resides are not, he says, the only ones he has to incur in the performance of his duties or in the fit and proper execution of his office. He incurs others at the place where he resides, outside his residence in Canada and even, in certain circumstances, outside the country, for which, he says, he is not reimbursed.

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the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly, senator or member of a legislative or executive council and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity and also includes the position of a corporation director; and "officer" means a person holding such an office;

[4] 20. (1) There shall be paid to every judge who is in receipt of a salary under this Act, other than a judge of the Territorial Court of the Yukon Territory or the Northwest Territories, *an additional salary of $2,000.00 per annum as compensation for any extra-judicial services that he may be called upon to perform by the Government of Canada or the government of a province, and for the incidental expenditures that the fit and proper execution of his office as judge may require.*

[5] We should note in passing that the $15 fee paid to the Canadian Bar Association was not disallowed when the assessment was determined and this accounts for the difference in the amounts mentioned above. This item is not involved in the appeal.

The extra-judicial services that a judge has to perform include those set forth in secs. 38 and 39 of the *Judges Act,* R.S.C. 1952 c. 159, as amended c. 76 of 1967: acting as arbitrator or administrator or deputy of the Governor General, or in one of the other capacities provided for in s. 39 of the said Act, that is, as commissioner, conciliator or mediator on matters within federal or provincial jurisdiction; he is then providing extra-judicial services since at such times his role is not that which he performs as a judge in proceedings. In all such cases, however, the Act provides that the judge may, here again, receive his moving or transportation expenses and other reasonable travelling and living expenses incurred by him away from his ordinary place of residence. Therefore, when s. 20(1) of the *Judges Act* speaks of an "additional salary of $2,000.00 per annum as compensation for any extra-judicial services that he may be called upon to perform by the Government of Canada or the government of a province", this does not refer to reimbursement of the travelling and living expenses of a judge who is acting as an arbitrator, administrator or deputy of the Governor General away from his place of residence, since secs. 38 and 39 of the *Judges Act* already make provision therefor.

According to the appellant, there are, however, other kinds of extra-judicial services which a judge is called upon to perform, either at his place of residence or elsewhere, and for which he incurs expenses or costs for which he is not reimbursed. Indeed, there are expenses arising from his attendance at plenary sessions of judges convened to study various questions relating to justice, procedure and administration of the courts; to date, four of these have been held in the province of Quebec. In this case, he says, expenses include the fee or share that each judge of the Superior Court contributes to pay the secretarial staff and other incidental expenses. There are also meetings of committees within the group which are held more frequently. According to the appellant, this entails travelling and sometimes living expenses that the judge must pay. At these meetings or plenary sessions, consideration is given to reforms to be made in such laws as the *Bankruptcy Act* and the *Divorce Act,* for example, views are exchanged, discussions are held with various officials on questions concerning justice, such as revision of the *Civil Code* and the *Code of Civil Procedure,* jurisdictional conflicts between the provinces and the federal government, the preparation of rules of practice, etc., all in the best interest of justice and of litigants. This would be consistent with the fit and proper execution of his office as judge. He must sometimes attend dinners, lectures and events held by the provincial and Montreal Bar Associations, as well as farewell dinners for colleagues; all these entail expenses. According to the appellant, judges, at least those in Quebec, sometimes assist the chief justice and help him in the study of improvements to be made with regard to the courts, staff and premises; a better administration of justice is possible when these problems are solved. As an example, he cites

the numerous meetings held to study and alter the plans for the new court house in Montreal, and which required many trips for which reimbursement was not provided. A judge also has other expenses of a different nature. He must acquire books and constantly update his personal library, which for him is indispensable for the fit and proper execution of his office since the books in the Bar library in Montreal are not always available, and even when they are the time it takes to get them may unduly delay the legal process. Furthermore, a personal library permits him to work at home, especially during a trial, and, as a result, expedites his judgments. According to the appellant, subscriptions to current law reviews, as well as the binding of the sections, must also be regarded as "incidental expenditures that the fit and proper execution of his office as judge may require", as provided in s. 20(1) of the *Judges Act*, and here again he must pay the cost.

He contends that his automobile and taxi expenses for travelling back and forth between the court house and his home should also form part of such expenditures. A car is not a luxury, he says, especially since often at the end of the day he takes one or more files and books home to study, and even frequently to enable him to write his judgments. He adds that it is not proper, practical or reasonable for a judge, carrying bulky files, to take the subway or bus or to have to drive at his own expense in order to fulfill the obligations and duties that his office demands of him. The appellant declares that in his capacity as judge he must also attend meetings of law associations such as the provincial and the Canadian Bar, meetings of university groups and dinners, which he always does at his own expense, as do other judges who are members of such groups. Indeed, he must pay his fees if he wants to remain a member of such associations and he does so, he says, so that he can better perform his duties as a judge. He is sometimes even called upon to pay the costs of participating in conferences of professional associations either in or outside the country. As examples he mentions the Canadian Bar Association in Canada and the American Judicature Society in the United States. It is advisable, he says, in the general interest of justice, and useful in the fit and proper execution of his office as judge, that he attend such meetings which are given over to the study of numerous questions concerning justice, such as criminology, major social problems of the day, international law, and the like. He concedes that these are not government undertakings but holds that they do, nevertheless, give him an opportunity to acquire knowledge and thus to perform his duties better. Finally, he says, it is fitting for a judge to belong to a service club. It is not good for a judge to isolate himself from reality, if he wants to perform his judicial duties properly. He contends that he must keep abreast of major current issues, as well as of the problems raised in the modern world in which we live. By belonging to a service club he will meet his fellow citizens and thus be better informed. He regards this too as an expense which, once again, will enable him to perform his duties better. Turning finally to a more prosaic subject, he says that a judge must have a gown and special clothing which have to be renewed from time to time, but he receives no allowance for this purpose. This is another expense related to the fit and proper execution of his office as judge. He also claims certain disbursements for "office equipment, telegrams, stationery, etc.".

Taking into consideration all the extra-judicial services and incidental expenditures which these various activities entail, he claimed in this 1967 income tax return a total of $739.86 as "expenditures resulting from the execution of his judicial office" and he is now claiming full deduction of the 7/12 of the additional sum of $2,000 which he drew in 1967.

The respondent, by counsel, admitted at the hearing of the appeal that the amounts of expenditures claimed by the appellant for 1967, i.e., $739.86, had been paid by the appellant and that all were related to a judge's duties. The appellant details the expenditures as follows:

1967
Deductible Expenses
(in the calculation of income)
resulting from his office as judge

1. *Dues* paid to the Canadian Bar Association	$	$ 15.00
2. *Second Plenary Meeting* of the Judges of the Superior Court of Quebec, at Montreal, November 25 and 26, 1967—Study sessions for judges and exchanges with the Superintendent of Bankruptcy of Ottawa and meeting with the Federal Minister of Justice and the Associate Minister of Justice of the Province of Quebec (dues: $25.00 and incidentals: $25.00)		50.00
3. *Meetings* (dinners with lectures and events held by the Province of Quebec and Montreal Bar Associations)		
September 11, 1967—cheque dated August 31	20.00	
October 18, 1967—cheque dated October 10	5.00	
November 6, 1967—cheque dated October 23	10.00	35.00
4. Meeting January 21, 1967, McGill Law Graduates—cheque dated January 16	12.00	12.00
5. *Law Books*:		
La Synthèse des lois françaises (Boyer)	18.00	
Bibliothèque du Droit canadien (R. Boult)	15.00	
Procédure civile française (9 vol.) (Chauveau)	25.00	
Privilège ouvrier (Giroux)	8.50	
Droit civil canadien (21 vol.) (Delorimier)	90.00	
Répertoire Droit Civil Français (Dalloz)	15.50	
Quebec Civil Procedure Forms (Weber)	21.00	
Canadian Law List (Canada Law Book)	10.35	
Enforcing the Law (Jackson)	6.00	
C.C.H. on Charitable Donations	2.35	
Essai sur le Service Public (M[e] P. Garant)	7.25	
American Judicature Journal (6 copies)	2.35	
Challenge of Crime in a Free Society (USA)	2.50	
Task Force Report—The Police (USA)	1.19	
Les Juges de la P. de Q. (P. G. Roy)	1.50	
Code de Procédure Civile annoté (M[e] J. Rein)	7.25	
Dictionnaire de Droit Canonique français (5 vol.)	25.00	
Amendements au Code Civil et Code de Procédure Civile (Kingsland)	8.00	
Dictionnaire Robert et Quillet	22.95	289.69
6. *Miscellaneous* (office equipment, telegrams, stationery, etc.)		30.00
7. *Stamps* (office use)		30.00
		461.69

8. *Subscriptions* to legal reviews and law reports:		
C.C.H. Dominion Reports Service	35.00	
Rapports de Pratique	14.00	
Canadian Bankruptcy Reports (Vol. 9)	20.00	
Canadian Bankruptcy Reports (Vol. 10)	22.50	
Revue Thémis (U. of M.)	6.00	
Quebec Corporation Manual (DeBoo)	15.00	
Canada Corporation Manual (DeBoo)	15.00	127.50
9. *Events in Honour of Retiring Colleagues*:		
The Honourable Mr. Justice C. E. Ferland (April)	21.65	
The Honourable Mr. Justice Ben Robinson (December)	21.52	43.17
10. *Binding* of legal reports:		
Rapports C.S.—C.B.R. (1966)	8.00	
Revue du Barreau (1966)	4.00	
Revue Légale (1966)	4.00	
Rapports de Pratique (1966)	4.00	
Rapports Cour Supérieure (1966)	4.00	
Lois et règlements de faillite	3.50	
Canadian Bar Review and other volumes (since 1937)	63.00	
My judgments from 1963 to 1966 (4 vol.)	17.00	107.50
Total expenses arising from the performance of judicial duties:		739.86

Section 5 of the *Income Tax Act* states that income from an office is the salary, wages and other remuneration received by the taxpayer plus, *inter alia*, "all amounts received by him in the year as an allowance for personal or living expenses or as an allowance for any other purpose" except "travelling or personal or living expense allowances expressly fixed in an Act of the Parliament of Canada" or other exceptions which do not apply here.

Counsel for the appellant very ably pointed out, in a vigorous plea, that in s. 20(1) of the *Judges Act*, i.e., an Act of the Parliament of Canada, are expressly fixed allowances for personal expenses encompassing not only those which appellant had claimed in his 1967 return, but also the total amount provided for in the said section.

He contends that section 20 refers to a sum paid as compensation for expenditures and not as a payment of income. Income tax is a tax on income only and any sum, regardless of what it is called, that is not received as income, salary, wages and fees, i.e., as earnings resulting from the taxpayer's activities, is not, he says, income. He adds that any amount which is paid as compensation, the word used in the English text of s. 20(1) of the *Judges Act*, is not, and cannot be, income. Citing *Moravetz*[6], he says that when considering compensatory payments, account must be taken of the reason for their existence, what they replace or what they pay. In *Burmah Steamship Co. v. C.I.R.*[7], he declares, it was ruled that a sum of £1,500 had to be included

[6] Taxation of Compensatory Payments, at p. 769.
[7] 16 T.C. 67.

in a company's profits even though this was an amount paid by a shipyard for damages suffered as a result of delays in repairing a ship. Payment of this sum made up for a loss in profits; consequently, the damages recovered had to be considered as profit. The test is the same here, according to the appellant, since the sum that the appellant is claiming as a deduction or the sum of $2,000 mentioned in s. 20(1) of the *Judges Act* is given as an allowance for incidental expenditures. It is true, he says, that s. 20(1) uses the words "traitement supplémentaire" and in the English text "additional salary", but decisions on taxation matters have established that it is not sufficient that certain words have been used to describe a sum, and that it is necessary in each case to examine and ascertain the true character and real nature of the sum in question, as well as the purpose for which it is authorized (cf. *St. John Dry Dock and Shipbuilding Co. v. M.N.R.*[8], Thorson P.):

> "The fact that an amount is described as a Government subsidy does not itself determine its character in the hands of the recipient for taxation purposes. In each case the true character of the subsidy must be ascertained and in doing so the purpose for which it was granted may properly be considered."

Mr. Justice Thorson expressed the same idea in *Samson v. M.N.R.*[9] when he declared at page 35:

> "... The assessability for income tax purposes of any particular amount does not depend upon what it is called, but rather upon what it really is."

According to the learned counsel for the appellant, it is therefore necessary to ascertain the true nature of this sum of $2,000 granted to judges each year and to ask, as in the question asked by the Lord President (Clyde) in *Burmah Steamship Co. v. C.I.R.* (*supra*), at page 73, what "hole" is filled by the amount received:

> ". . . The contemplated "hole" in the Appellant's profits was unfortunately made, and in my opinion the damages recovered must go, as a matter of sound commercial accounting, to fill that "hole" and, therefore, constitute a proper item of profit in the Appellant's profit and loss account."

Section 20(1) does not stop, he says, at the words "traitement supplémentaire" and "additional salary"; they have to be linked to the words "as compensation for" and then, he argues, the word "salary" or "traitement" loses its meaning and we then have a compensatory payment, i.e., as compensation for (and this is taken from the last part of the subsection) "extra-judicial services that he may be called upon to perform [for] the Government of Canada or the government of a province" and "incidental expenditures that the fit and proper execution of his office as judge may require". Counsel for the appellant contends that the French text does not render the real meaning of the word "compensation" which is used in the English text when this word is translated by the words "à titre d'indemnité" for extra-judicial services and "en dédommagement" for incidental expenditures. The exact translation of the words "as compensation for" would be, he says, "en compensation de", words which could have and should have been used in the French text in order to render the true meaning of the words used in

[8] [1944] Ex. C.R. 186 at p. 193.
[9] [1943] Ex. C.R. 17.

the English text which do indicate that this is a reimbursement for expenditures or costs. According to counsel for the appellant, we should not let ourselves be trapped by words. Although I see very little difference between the words used in the two versions of this section, and since, in case of disagreement, both versions can be considered when interpreting its meaning, I am quite willing, for the purposes of this appeal, to use only the words "en compensation de" (as compensation for) as used in the English version.

He admits that the items for which compensation is provided in s. 20(1) of the *Judges Act,* are joined by a disjunctive particle but the compensatory amount, he says, is given for both reasons. Indeed, the section contains nothing whereby it can be allotted to one in preference to the other. He contends that we must not go further than the legislator, and since the latter wanted to include the two items in the same compensation, according to the *ejusdem generis* rule they should be considered in the same way, i.e., as a compensatory payment, even though the words "extra-judicial services" are used in the first case. At this stage, he cites the judgment handed down in *Samson v. M.N.R.* (*supra*) and more particularly that part of the judgment of Thorson P. which is found at page 38:

> "The fact that statutory payments of allowances are stated in a fixed amount does not change their character. In each case the true intendment of the statute must be ascertained. If a statutory enactment or its equivalent makes it clear, that a payment authorized by it is not by way of remuneration but only by way of reimbursement of expense, then the amount of such payment is not taxable income in the hands of the recipient unless the Income War Tax Act has clearly made it so, either in express terms or by necessary implication. If there is any reasonable doubt in the matter it should be resolved in favour of the taxpayer, for Parliament by appropriate legislation can easily put the matter beyond dispute."

However, we must be wary of this judgment, as the present President of our court pointed out in *Bherer v. M.N.R.*[10]. Indeed, the former *Income War Tax Act* did not contain a provision similar to s. 5(1) of the present Act, which now clearly states that the income of a taxpayer includes not only the "salary, wages and other remuneration" that he receives, but also "all amounts received by him in the year as an allowance for personal or living expenses or as an allowance for any other purpose" with the exception mentioned above, namely travelling or personal or living expense allowances expressly fixed in an Act of the Parliament of Canada as allowed under s. 5(1)(*b*)(i)(A) of the Act. According to the appellant, the payment of $2,000 under s. 20(1) of the *Judges Act* is therefore not wages or salary if it does not fall under s. 5(1) of the *Income Tax Act,* nor an allowance for expenses under s. 5(1)(*b*), but a compensatory payment allowed by an Act of equal legislative authority which, in addition, is provided in s. 5(1)(*b*)(i)(A).

The appellant also contends that s. 20(1) [of the Judges Act] clearly provides for a compensatory payment for expenses and that this would be a specific allowance expressly *établie* (as provided in s. 5(1)(*b*)(i)(A) in an

[10] [1968] 1 Ex.C.R. 146 at p. 151, [1967] C.T.C. 272 at p. 276.

Act of the Parliament of Canada [The *Income Tax Act*]), since this word is used in the French text and the word *"fixed"* in the English text and not the words *"exempt"* or *"exempted"* which could very well have been used and which would have been more exacting with regard to the allowances so permitted.

Despite the interest aroused by some of the arguments of counsel for the appellant, which were, it must be added, very ably presented, and despite the attractiveness of his interpretation of the sections of the Act in question, it seems impossible for me to accept them for the following reasons.

First, it is far from certain that, if the sum of $2,000 mentioned in s. 20(1) of the *Judges Act* were given as an allowance (and I shall discuss this further on), all the expenses included in that sum or claimed by the appellant would be personal expenses, as maintained by the learned counsel for the appellant. Indeed it appears to me that the incidental expenditures provided for in this section would, for the most part, be amounts received "as an allowance for any other purpose" as mentioned in s. 5(1)(*b*) of the [*Income Tax*] *Act, in fine,* and the amounts so received could not be deducted even if s. 20(1) of the *Judges Act* were to be regarded as "an Act of the Parliament of Canada" which would expressly permit the allowances provided for in s. 5(1)(*b*)(i)(A) [of the *Income Tax Act*], since this sub-paragraph mentions only an allowance for "travelling or person or living expenses". Furthermore, it seems to me that if the sum of $2,000 is given as allowances, the latter must be considered to be allowances "for any other purpose" even though, in s. 12(1)(*h*) of the [*Income Tax*] *Act,* personal or living expenses seem to be given extended meaning by including travelling expenses in personal expenses (while permitting the deduction, however) as well as the cost of meals and lodging away from home and even though, as counsel for the appellant pointed out, it is possible under s. 11 of the Act, notwithstanding the three categories of expenses not allowed in s. 12, to accept as expenses a few which are not incurred for the purpose of gaining or of producing income, others which are in the nature of a capital outlay and, lastly, a few, as in s. 12(*h*) of the Act, which are clearly personal expenses.

I cannot agree that, because in some cases the law has seen fit to allow certain expenses which are not ordinarily deductible, it should be inferred that the legislator meant to do likewise in adopting s. 20 of the *Judges Act,* and consider expenses personal when they are not. Nor can I accept the proposition of counsel for the appellant to the effect that, because s. 12 of the [*Income Tax*] *Act* states that there are three kinds of non-deductible expenses, i.e., those not incurred for purposes of gaining income, capital outlays and personal expenses, there are only these three kinds of expenses and that, since the expenses provided for in s. 20(1) [of the *Judges Act*] do not come under the first two headings (not being applicable to a business or property), the

incidental expenditures provided for in s. 20(1) must necessarily be personal expenses. Section 5(1)(*b*) of the [*Income Tax*] *Act, in fine,* mentions allowance for any other purpose" and, consequently, it seems to me that if an expenditure is neither an expense incurred for the purpose of gaining income nor a capital outlay, it does not necessarily follow that it is a personal expense. It might very well, indeed, be an expenditure for another purpose, such as, for instance, the allowances received in *Bherer v. M.N.R.* (*supra*) for entertainment expenses or the allowance received in *Ransom v. M.N.R.*[11] to enable the taxpayer to make up the loss suffered in the sale of his house after his employer had transferred him to another locality. It seems to me that the legislator would have had to express himself more clearly than he did in s. 20(1) of the *Judges Act* before it could be said that the incidental expenditures mentioned therein are or must all be regarded as personal expenses.

It is therefore clear that, even if we were to accept the appellant's point of view that s. 20(1) refers to "allowances . . . expressly fixed in an Act of the Parliament of Canada", at the most this could only mean allowances "for travelling or personal or living expenses" and it would not be possible to include therein allowances "for any other purpose" which, as I pointed out above, appear to me to include a large part of the "incidental expenditures" mentioned in the section.

There is, however, a more serious obstacle to allowing this appeal. Indeed, it does not appear to me that the sum of $2,000 provided in s. 20(1) of the *Judges Act* was meant as an allowance, even though, at the end of this section, it is said to be "for the incidental expenditures that the fit and proper execution of his office as judge may require". The section indicates at the beginning that it is an "additional *salary*", and this is the same word that is used in s. 9[12] of the *Judges Act* in which the basic *salaries* of judges of the Court of Queen's Bench and of the Superior Court in the Province of Quebec are set. It is also the word used in s. 5(1) of the *Income Tax Act,* which states that "Income from . . . an office or employment is the *salary,* wages and other remuneration . . . received by the taxpayer in the year. . . ."

The words of a statute should not be considered separately; to ascertain their true meaning, they should always be placed in their proper context. Indeed, the passage by Viscount Simonds in *Attorney General v. Prince Ernest Augustus of Hanover,*[13] at page 461, clearly establishes the fact that the words in a statute should be so interpreted:

> ". . . So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use "context" in its widest sense, which I have

[11] [1967] C.T.C. 346.

[12] The salaries of the judges of the Court of Queen's Bench and of the Superior Court in and for the Province of Quebec are as follows:

	Per annum
(*a*) The Chief Justice of Quebec	$30,000.00
(*b*) Eleven puisne judges of the Court of Queen's Bench, each	26,000.00
(*c*) The Chief Justice of the Superior Court	30,000.00
(*d*) The Associate Chief Justice	30,000.00
(*e*) Seventy-three puisne judges of the Superior Court, each	26,000.00

[13] [1957] A.C. 436.

> already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern the statute to remedy."

Thus, this context is not limited solely to the statute in which the word "salary" is found, in which, as we have seen, the same word is used in a preceding section which clearly deals with the basic salary of a judge, but also extends to related acts or statutes *in pari materia,* such as the *Income Tax Act,* in which the same word is used to designate precisely the taxable income of a taxpayer. I find here a coincidence such that I must conclude that the legislator purposely used in s. 20(1) [of the *Judges Act*] the same word that he had used previously to describe the basic salary in s. 9 of the *Judges Act* and the taxable salary in s. 5 of the *Income Tax Act.* Using this word to describe the $2,000 given under s. 20(1) of the *Judges Act* indicates, it seems to me, that it is indeed remuneration—additional, it is true—but which must, nevertheless, form part of the judge's income, even though this section mentions that part of the said amount is given as compensation for incidental expenditures; all the legislator has done thereby is explain why he had decided to give this additional amount, just as he had previously stated that it was also as compensation for the extra-judicial services that judges might be called upon to perform.

This is not all, however, and if I had been somewhat hesitant in basing my decision on the interpretation which I have just given of s. 20(1) of the *Judges Act,* my doubts would have been dispelled by s. 30[14] of the *Judges Act,* which states that this additional salary of $2,000 is included in the basic amount on which the annuity of a retired judge as well as the annuity of the widow of a deceased judge are calculated. In these circumstances, how can this amount be anything other than "salary, wages or other remuneration" when it continues to be used after the judge's retirement and even after his death, at a time when, obviously, there can no longer be any question of incurring incidental expenditures.

I am therefore obliged—regretfully, I must say—to dismiss this appeal. However, it seems to me that since the distinguished appellant, through his action, has permitted a judgment to be handed down testing for the first time a section of an Act affecting judges appointed by the federal Government, this appeal will be dismissed without costs.

[14] 30. For the purposes of the provisions of this Act respecting annuities, there shall be included in the salary of which a judge was in receipt under this Act at any time after the coming into force of section 20, the amount of any additional salary provided for by that section whether or not at that time such additional salary was being paid to him.