

BETWEEN:

THE MINISTER OF NATIONAL } APPELLANT;
REVENUE }

1953
Apr. 2
1954
Mar. 8

AND

JOHN MacINNESRESPONDENT.

*Revenue—Income Tax—Income War Tax Act, R.S.C. 1927, c. 97, s. 32(2)
—Term “property substituted therefore” does not include property
substituted for substituted property.*

The respondent gave money and bonds to his wife. With the money she purchased other bonds. She sold some of these and with the proceeds the respondent bought other shares for and on her behalf. Subsequently, the respondent sold these shares for her and bought other shares for her. She invested the balance of the proceeds in other securities. From the last named shares and the other securities she derived income and the respondent was assessed in respect of it. The respondent appealed successfully to the Income Tax Appeal Board and the Minister appealed from its decision.

Held: That a tax liability cannot be fastened upon a person unless his case comes within the express terms of the enactment by which it is imposed. It is the letter of the law that governs in a taxing Act.

2. That since section 32(2) of the Income War Tax Act does not expressly extend the liability of the husband to be taxed on the income derived from property transferred by him to his wife or from property substituted therefor to the income derived from property substituted for such substituted property he is not liable under the section.

APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard before the President of the Court at Vancouver.

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W. H. Campbell, and T. Z. Boles for appellant.

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W. Murphy, Q.C. and F. Bonnell for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT now (March 8, 1954) delivered the following judgment.

This is an appeal from the decision of the Income Tax Appeal Board, *sub nomine No. 19 v. Minister of National Revenue* (1), dated July 9, 1951, allowing the respondent's appeal from his income tax assessment for 1948.

There is agreement on the facts. From about 1939 and up to March, 1947 the respondent made gifts of money and bonds to the value of more than \$9,000 to his wife Agnes MacInnes. With the money she purchased other bonds. In March, 1947 she sold some \$9,000 worth of these bonds and on March 21, 1947, deposited \$9,486.36 in her savings account. On April 8, 1947, she handed the respondent her cheque for \$9,000 to enable him to buy for her 900 treasury shares of Western Canada Steamships Limited of the nominal or par value of \$10 each and the respondent bought the said shares for and on her behalf and also bought shares for and on behalf of other persons. By reason of the fact that Western Canada Steamships Limited was a private company and had its full quota of shareholders the respondent had all these shares registered in his name, but it is agreed that he purchased the 900 shares for and on behalf of his wife and that they were her property. There were no dividends or other receipts of income from these 900 shares. On August 29, 1947, the respondent sold the said shares for his wife together with the shares which he had bought for other persons to Torcan Limited for \$73.125 per share and on the same day purchased for her and the other persons common and preferred shares of Western Canada Steamship Company Limited in her name and in their names respectively and issued his cheque to her for \$28,800.00, being the balance of the proceeds of the sale of the 900 shares of Western Canada Steamships Limited. She invested this sum in other securities and in 1948 received income from these securities and from the preferred shares

of Western Canada Steamship Company Limited amounting to \$2,606.68. In assessing the respondent for 1948 the Minister added this amount to the amount of taxable income reported by him on his return. The respondent objected to the assessment and appealed to the Income Tax Appeal Board. The appeal turned on whether the facts brought the case within the ambit of section 32(2) of the Income War Tax Act, R.S.C. 1927, Chapter 97, which provides as follows:

32. (2) Where a husband transfers property to his wife, or *vice versa*, the husband or the wife, as the case may be, shall nevertheless be liable to be taxed on the income derived from such property or from property substituted therefor as if such transfer had not been made.

The Board held that this section was not applicable in the circumstances of the case and allowed the appeal from the assessment referring it back to the Minister for re-assessment by reducing the amount of the respondent's taxable income by \$2,606.68. From this decision the Minister appeals to this Court.

The issue in the appeal is a very narrow one, namely, whether the term "property substituted therefor" in section 32(2) of the Act includes property substituted for substituted property. Mr. W. S. Fisher, Q.C., who delivered the judgment of the Board, took the view that section 32(2) was applicable only in respect of the income from the transferred property or from any property substituted for it but was not applicable in respect of the income arising from property substituted for the substituted property. While this objection to the validity of the assessment appears to be a technical one I am of the opinion that it was well founded and that Mr. Fisher was right in allowing the appeal on the ground stated by him.

It was pointed out in *Connell v. Minister of National Revenue* (1) that section 32 (2) of the Income War Tax Act is a special provision imposing upon a taxpayer a tax liability under certain specified circumstances which, apart from the section, would not have rested upon him. It is, therefore, essential to valid imposition of liability under the section that it should clearly apply to the facts of the case. It is well established that a tax liability cannot be fastened upon a person unless his case comes within the

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(1) [1946] Ex. C.R. 562 at 566.

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express terms of the enactment by which it is imposed. It is the letter of the law that governs in a taxing Act. This was laid down by the House of Lords in the leading case of *Partington v. Attorney General* (1) where Lord Cairns made the classic statement:

If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

Moreover, the Court has no right to assume that a transaction is within the intention or purpose of a taxing Act if it does not fall within its express terms. There is no intention to tax other than that which its words express. Lord Halsbury, L.C. put this rule clearly in *Tennant v. Smith* (2) where he said:

And when I say "what is intended to be taxed", I mean what is the intention of the Act as expressed in its provisions, because in a taxing Act it is impossible, I believe, to assume any intention, any governing purpose in the Act, to do more than take such tax as the statute imposes. In various cases the principle of construction of a taxing Act has been referred to in various forms but I believe they may all be reduced to this, that inasmuch as you have no right to assume that there is any governing object which a taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subject for taxation, you must see whether the tax is expressly imposed.

Cases, therefore, under the Taxing Act always resolve themselves into the question whether or not the words of the Act have reached the alleged subject of taxation.

These are basic principles of income tax law.

Consequently, if Parliament had intended that a husband should be liable to tax in respect of income derived not only from property transferred by him to his wife and property substituted therefor but also from property substituted for such substituted property it should have expressed its intention in clear terms. It could easily have done so. Just as in the case of the proviso to section 6(1)(n) Parliament expressly stated that the term "previous owner" included a series of owners so it could have declared in section 32(2) that "property substituted therefor" included property substituted for substituted property regardless of the number of substitutions, as in fact, it did when it enacted section 22(3) of the Income Tax Act, Statutes of

(1) (1869) L.R. 4 H.L. 100 at 122. (2) [1892] A.C. 150 at 154.

Canada 1947-48, chapter 52, by section 6 (1) of chapter 29 of the Statutes of 1952. While this, of course, nullifies the effect of the decision appealed from in respect of assessments for 1952 and subsequent years it has no bearing on the present case which must be dealt with under the law as it stood in 1948 when the assessment appealed from was made.

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In my opinion, since section 32(2) does not expressly extend the liability of the husband to be taxed on the income derived from property transferred by him to his wife or from property substituted therefor to the income derived from property substituted for such substituted property he is not liable under the section. The Income Tax Appeal Board was, therefore, right in allowing the appeal and referring the assessment back to the Minister and this appeal must be dismissed with costs.

Judgment accordingly.