## IN THE MATTER OF AN APPEAL UNDER THE INCOME WAR TAX ACT, 1917, AND AMENDMENTS *IN RE* JUDGES' SALARIES

1924
May 23.

*Income War Tax Act, 1917—Judges' Salaries—Exemptions—Local Judges in Admiralty—Judges' Act, as amended by 10-11 Geo. V, c. 56.*

Where a judge has accepted the increase in salary provided for by 10-11 Geo. V, c. 56, being an amendment to the Judges Act, he loses the benefit of the exemption previously enjoyed under section 27 of the Act, and such salary thereupon becomes liable to taxation under The Income War Tax Act, 1917 and Amendments.

2. While the office of Local Judge in Admiralty may be held by a judge of another court, it is nevertheless a separate and distinct office; and the salary of a Local Judge in Admiralty not having been increased by the provisions of the Act aforesaid is not liable to taxation under The Income War Tax Act, 1917, and Amendments, being still exempted by section 27 of the Judges' Act.

(1) [1884] 29 Ch. D. 336 at 419. (2) [1918] 18 Ex. C.R. 115 at 131 *et seq.*

1924

IN RE TAXATION OF JUDGES' SALARIES.

Audette J.

APPEAL from decision of the Commissioner of Taxation. Heard by the Honourable Mr. Justice Audette at Ottawa, May 6, 1924.

*Christopher Robinson, K.C.* for appellant.

*C. P. Plaxton* for the Crown.

The facts are stated in the reasons for judgment.

AUDETTE J., this 23rd May, 1924, delivered judgment (1).

This is an appeal, under the provisions of sections 15 *et seq* of The Income War Tax Act, 1917, and amendments thereto, from the assessment, for the year ending 31st December, 1920, of that part of the appellant's income dealing with both his salary as Local Judge in Admiralty of the Exchequer Court of Canada and also his salary as Judge of a provincial Superior Court.

At the opening of the argument I called attention of the parties to the fact that while I was not actually interested in the present case, I would however, be affected by the determination of the question submitted and I offered to recuse myself and to ask for a judge *pro hac vice* to be appointed to hear the case, who would not be interested in the determination of the question. Both parties refused and insisted that I should proceed with the hearing of the case and exercise my jurisdiction, and I did so.

I may also say as a prelude that I am not satisfied with the manner in which the case comes before me. I have not before me the concrete decision from which this appeal is made. The matter has been determined by the Commissioner of Taxation and not the Minister. This objection has been answered by counsel for the Crown, calling my attention to section 22 of the Act, as amended by 9-10 Geo. V, ch. 55, sec. 9, which reads as follows:

22. The Minister shall have the administration of this Act and the control and management of the collection of the taxation levied thereby, and of all matters incident thereto, and of the officers and persons employed in that service. The Minister may make any regulations deemed necessary for carrying this Act into effect, and may thereby authorize the Commissioner of Taxation to exercise such of the powers conferred by this Act upon the Minister, as may, in the opinion of the Minister, be conveniently exercised by the Commissioner of Taxation.

Acting under the provision of this section the Acting Minister of Finance has filed a document whereby he authorizes the Commissioner of Taxation

(1) An appeal has been taken to the Supreme Court of Canada.

to exercise the powers conferred upon the Minister under and by virtue of certain sections of the Act

—a power of attorney in the usual form.

Now the statute is clear and unambiguous in its terms and says that that power may be given by *regulations*. That was not done. And it adds that the authority is given

as may, in the opinion of the Minister, be conveniently exercised by the Commissioner of Taxation.

Does the word "conveniently" here mean anything else than that it is "fit and proper?" Indeed, the Commissioner of Taxation is the one who first pronounces upon the assessment and then he is made to hear an appeal from his own finding and, finally, his decision, from which there is appeal, is non-existing and not to be found on the record. Yet it is the finding, the pronouncement from which the present appeal is taken to this court. This state of things should be attended to and remedied. It is not proper to sit on appeal from one's own decision; it is subversive of good judicial tradition. This delegation of power involves in itself an irregularity.

The parties asked me to hear the appeal notwithstanding these irregularities and I have consented; but these matters should be straightened out in a reasonable and logical manner and records on appeal should be presented in a satisfactory condition.

Having said so much I now come to the determination of the question of what may be called the Admiralty salary which affects only seven persons in the Dominion of Canada.

The appellant was appointed, under the provision of section 8 of The Admiralty Act, a Local Judge in Admiralty, on the 14th November, 1916, and his salary as such is fixed by section 5 of The Judges' Act (ch. 138 R.S.C. 1906) which enacts that

the salaries of the local judges in Admiralty of the Exchequer Court, as such judges, shall be . . . .

There is a special section of the Act fixing such salaries as there is a special section fixing the salaries attached to the office of judge of the several other courts.

By subsection 3 of section 27 of the same Act it is provided that:

The salaries (of the judges) . . . shall be free and clear of all taxes . . . imposed under any Act of the Parliament of Canada.

1924

IN RE TAXATION OF JUDGES' SALARIES.

Audette J.

Then comes the Act 10-11 Geo. V, ch. 56 (1920), an Act to amend the Judges' Act, whereby the salaries of all high Court Judges were increased excepting, however, the salaries of the Admiralty Judges and by section 11 thereof it was provided as follows:

> 11. (1) The provision of subsection three of section twenty-seven of the said Act as to taxes and deductions shall not apply to any judge whose salary is increased by the present Act, or whose salary was increased by chapter fifty-nine of the statutes of 1919, and who accepts or has accepted such increase, and the salaries and retiring allowances and annuities of judges appointed after the seventh day of July, 1919, and of all judges accepting any increase of salary under this Act, or accepting or having accepted any increase of salary under chapter fifty-nine of the statutes of 1919, shall be taxable and subject to the taxes imposed by The Income War Tax Act, 1917, and the amendments thereto.

This section 11 of the Act of 1920 provides clearly that the provisions of section 27 of the Judges' Act which exempt their salaries from taxation shall not apply to judges whose salaries have been increased by ch. 56 of the statute, 1919, and who accepted the increase given by the Act of 1920. Then the section proceeds to declare that the salaries of all judges accepting any such increase of salary under this Act, etc., shall be taxable and subject to the taxes imposed by the Taxing Act.

There was no increase enacted in the salaries of the Admiralty Judges. Therefore as section 27 of the Judges Act, which exempts the salary of a judge from taxation, has never been repealed and remains in full force and effect with respect to a salary which has not been increased, as qualified by section 11 of the Act of 1920,—it must apply to the case of a judge whose salary has not been increased and who becomes in the same position as that of a judge who would have refused to take the increase provided by the Act of 1920. This special Act overrides the general Taxing Act.

It is perhaps trite to add that the two offices of Admiralty judge and judge of a supreme provincial court are distinct and separate. One is a federal judge and the other a provincial judge. The office of the former is created by the Dominion Parliament and that of the latter by the Provincial Legislature. Both courts function under separate and distinct power and jurisdiction with a special salary attached to each office as specified by the Judges' Act.

The salary belongs to the officer as an incident to his office and he is entitled to it because the law attaches it to the office. The right to the salary grows out of the rendition of the services.

The Supreme Court Judge,—who has accepted increase in his salary as such, may resign and still hold the office of Admiralty Judge. The governing intention of the Act, as is hereafter shewn, is to increase the judge's salary and make it liable to income tax; it is not its intention to reduce a salary. Were the Admiralty salary declared subject to taxation, it would be materially decreased and it is not either within the intention or the text of the law to do so.

The incumbent may be a person already a judge of a High Court or may be a person of the legal profession and the subtle and specious distinction set up in refusing the exemption on account of the incumbent in office being already a judge of the Supreme Court who has accepted increase in his salary as such, is mere sophistry. There is no difference between the salary attached to the office when it is earned either by a judge of another court or by a member of the legal profession.

I have therefore come to the conclusion that the salary of the appellant as Local Judge in Admiralty is

free and clear of all income taxes imposed under any Act of the Parliament of Canada.

Coming now to the second branch of the case, that is the appellant's salary as a judge of a supreme provincial court which has been increased by 10-11 Geo. V, ch. 56, an Act to amend the Judges' Act, assented to on the 1st July, 1920, it must be borne in mind that the increase in such salary is made subject to the provisions of section 11 of that Act and which section is recited above.

The appellant was appointed a judge of a provincial supreme court on the 1st November, 1912, and has accepted the increase in salary as provided by section 11 and his salary has thereunder from that time become

taxable and subject to the taxes imposed by the Income War Tax Act, 1917, and its amendments.

The acceptance of the increase estops him from claiming exemption, since section 11 of the Act of 1920 which provides for this increase in salary also provides for a commutation of the benefits enjoyed under section 27 thereof.

1924

IN RE TAXATION OF JUDGES' SALARIES.

Audette J.

The exempting provision of subsection 3 of section 27 of the Judges' Act has no force and effect in respect of a judge who has taken the increase provided by the Act of 1920, as is the case in the present instance.

The appellant cannot seek any help in that respect from either the Judges' Act or from the Taxing Act.

Under section 4 of the Taxing Act the assessment is made upon the income of every person residing in Canada and for that purpose it becomes necessary to find what constitutes the "income" of a person residing in Canada. Section 3 of the Act defines it as

> the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary or other fixed amount, etc.

All that is necessary for the purpose of this case is to find that the salary of a person resident in Canada is subject to the Taxing Act. It is unnecessary to inquire into the source from which the salary is derived, as the tax is a charge imposed, by the legislature, upon the person,—and judges are persons under the Act. When the salary is paid it mingles with the rest of the income.

It is not necessary for judges to be subject to the Taxing Act that the Act itself should say so in so many words; they are like the rest of the community subject to the Act, unless they are exempted by some enactment.

Then section 3 of the Taxing Act of 1917, which defines the word "income" has been amended by the Act of 1919, by adding after the word contract, in the 22nd line of said section the following words:

> and including the *salaries*, indemnities or other remuneration of . . . any Judge of any Dominion or Provincial court appointed after the passing of this Act.

The appellant seeks help from those last words.

This provision is of no doubtful import. It is quite in harmony with the Judges' Act and its amendments. That Act increases the salaries of all judges subject to the provision of section 11 of 1920, meaning if the judges accept the increase they become subject to the Taxing Act.

This last amendment of section 3 defining the word "income," obviously,—consistent with its legislation upon the subject of *pari materia*—provides that appointees after the passing of the Act of 1920 will receive that high increased salary,—an increased salary—but it will be, as in the case

of all judges who accepted the increase, subject also to the Taxing Act,—as it is the case for all the judges appointed before who took the salary at an increased rate.

To properly understand the amendment, one must scrutinize the intent, meaning and spirit of the Act as a whole and guard against and avoid adhering too narrowly to the words of the statute in a segregate manner; but one must endeavour to breathe the spirit of it, which is clear, unambiguous and admits of no doubt. A statute must be construed in a natural and grammatical manner and the whole Act must be inspected in interpreting any of its parts.

This amendment of 1919 was made, *ex majore cautela* to express how the law necessarily stood after all the amendments and to remove all possible doubt as to the intention of making the person receiving a salary, at increased figure, subject to the Taxing Act.

Moreover, the amendment is introduced by the word "including." That is the amendment does not restrict but enlarges and extends the definition and it is not a case coming within the maxim of *expressio unius exclusio alterius*.

Moreover, if one statute enacts something in general terms—in this case (sec. 11 of ch. 56 of 10-11 Geo. V, 1920) that judges receiving certain increase in their salary shall be taxable and *subject* to income tax—and that afterwards another statute is passed on the same subject exempting one judge, who is taken to be subject to that statute, from taxation for part of his salary—is not such amending Act [11-12 Geo. V, ch. 36, sec. 1 (1921)] declaratory by Parliament of the construction and interpretation of the Act of 1920, as will best ensure the attainment of the object of the Act and of such provision or enactment, according to its true intent, meaning and spirit? (Interpretation Act, ch. 1, sec. 15, R.S.C. 1906). This is a different proposition from that contemplated by section 21 of the Interpretation Act.

This Act of 1921 [11-12 Geo. V, chapter 36, section 1] enacts clearly that the Act of 1920 (10-11 Geo. V, ch. 56, sec. 11) shall not apply to a certain part of the then Chief Justice's increased salary; thereby declaring, by necessary deduction (unless the Act of 1921 is passed for naught) that

1924

IN RE TAXATION OF JUDGES' SALARIES.

Audette J.

before the passing of the Act of 1921, the Chief Justice had to pay income tax upon the whole of his salary. The court finds confirmation of its view in the passing of that Act.

It is conceded that the judge's salary could become liable to taxation only since the 1st July, 1920, the date at which the Act to amend the Judges Act came into force.

On the considerations to which I have adverted above, there will be judgment allowing the appeal in respect of the salary of the Local Judge in Admiralty for the year 1920, declaring it free from income tax. And the appeal will be dismissed in respect of the salary, for the year 1920, as a judge of a provincial supreme court.

*Judgment accordingly.*