C. KERR (PLAINTIFF)..... APPELLANT; 1942

*May 12, 13.
*Oct. 6.

AND

SUPERINTENDENT OF INCOME TAX AND ATTORNEY-GENERAL FOR ALBERTA (DEFENDANTS).... } RESPONDENTS.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA

Constitutional law—Taxation—Income tax—Provincial powers—Whether tax imposed on income or on person found in province—Income from sources outside province—Dividend cheques of foreign company—The Income Tax Act, 1932, c. 5 (Alberta).

The tax imposed by *The Income Tax Act* of Alberta, 1932, is not a tax on the income itself, but as a tax on the person receiving the income who is found within the province. Therefore, under the Act, the taxable income of such person includes also income derived from sources outside the province: *per* Rinfret and Hudson JJ.

On its proper construction, *The Income Tax Act* of Alberta, 1932, imposes a tax on a person found in the province with respect to his income, including that derived from sources outside the province, and is *intra vires* the Alberta legislature: *per* Kerwin and Taschereau JJ. and Gillanders J. *ad hoc*.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta (1), reversing the judgment of the trial judge, Ewing J. (2) and dismissing the appellant's action for declaratory judgment that dividends earned outside of province are not subject to tax under Alberta *Income Tax Act*.

Aimé Geoffrion K.C. for the appellant.

W. S. Gray K.C. for the respondent.

RINFRET J.—For the purposes of this case the parties have agreed upon the following statement of facts:

1. That Weyerhaeuser Timber Company, the corporation mentioned in the statement of claim herein, is incorporated under the laws of the state of Washington, and has its head office at the city of Tacoma, in the said state, and that it has no office in the province of Alberta, and does not carry on any part of its business in the said province.

2. That the plaintiff is now and has been for many years the owner of 600 shares in the capital of the said Weyerhaeuser Timber Company

* PRESENT:—Rinfret, Kerwin, Hudson and Taschereau JJ. and Gillanders J. *ad hoc*.

(1) [1938] 3 W.W.R. 740; [1939] 1 D.L.R. 149.

(2) [1938] 2 W.W.R. 144; [1938] 3 D.L.R. 23

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and that all of the said shares have at all times been registered on the books of the said company in the name of the plaintiff except that on one occasion 210 of the said shares were transferred and shortly thereafter replaced by another 210 shares, but that the plaintiff was at all times the beneficial owner of 600 shares.

3. That during the years 1933 to 1936, both inclusive, the said company declared the following dividends on the said 600 shares:

1933—September	.....	$ 600.00
December	.....	600.00
1934—June	.....	600.00
September	.....	600.00
November	.....	1,800.00
1935—August	.....	1,200.00
October	.....	1,200.00
1936—June	.....	1,200.00
September	.....	1,200.00
December	.....	2,100.00

and that all of the said dividends were declared and payable at Tacoma aforesaid, and the said company paid the said amounts by cheques issued by the said company payable at Tacoma, aforesaid, less, in some cases, small amounts retained on account of the United States Tax Regulations.

4. That the cheque for $1,200 in payment of the dividend declared in October, 1935, was deposited to the credit of the plaintiff in The Canadian Bank of Commerce (California) at Los Angeles in the state of California.

5. That the cheque for $1,228.50 in payment of part of the dividend declared in December, 1936, was deposited to the credit of the plaintiff in The Canadian Bank of Com[illegible]ce (California) at Los Angeles, in the state of California.

6. That the cheque for $[illegible] [illegible]vment of the dividend declared in June, 1936, was received b[illegible] [illegible]f at said city of Calgary and was not cashed or deposited [illegible]rta, but was deposited to the credit of the plaintiff in the branch [illegible]he Canadian Bank of Commerce at Victoria, in the province of Bri[illegible] Columbia.

7. That the cheque for $702 [illegible]in payment of part of the dividend declared in September, 1936, was received by the plaintiff at said city of Calgary and was not cashed or deposited in Alberta but was deposited to the credit of the plaintiff in the branch of The Canadian Bank of Commerce at Victoria, in the province of British Columbia.

8. That payment of the remainder of the dividends declared in September and December, 1936, was received separately owing to the transfer and replacement of the said 210 shares. That the cheques in payment of all the said dividends set forth in paragraph 3 hereof excepting those mentioned in paragraphs 4, 5, 6 and 7 hereof, were deposited to the credit of the plaintiff in the Canadian Bank of Commerce, Calgary, in the province of Alberta.

9. That the dividends set out in paragraph 3 constituted "income" of the plaintiff for the respective years stated in the said paragraph within the meaning of that word as contained in section 3 of the *Income Tax Act*, being chapter 5 of the statutes of Alberta, 1932.

10. That the plaintiff is domiciled and resident at the city of Calgary, in the province of Alberta, and at all times maintains a residence here,

but that the plaintiff has lived during the winter months of each of the years above mentioned at either Los Angeles, in the state of California, or Victoria, in the province of British Columbia, and that the moneys deposited in the said accounts at Los Angeles and Victoria were used principally to pay her living expenses while residing at such places, and that the balance unexpended remains to her credit in the said accounts or one of them, and no part of the moneys so deposited in the said accounts at Los Angeles and Victoria has since such deposit been brought into the province of Alberta.

The appellant in the Alberta courts claimed a declaration that she was not liable for any tax with respect to the dividends in question under the *Income Tax Act 1932*, of Alberta, and that if any tax is payable by her with respect to those dividends under the Act, then the Act, in so far as it imposes such tax, is *ultra vires* of the provincial legislature and null and void.

It is admitted that those dividends constitute "income" of the appellant within the meaning of that word as contained in section 3 of the Act (c. 5 of the statutes of Alberta, 1932); but as such income is derived from sources outside of the province of Alberta, the question which arises is as to the validity of that portion of the statute which imposes a tax on income originating elsewhere than in the province (*Swift Canadian Co. Ltd.* v. *City of Edmonton*) (1).

The answer to that question will depend upon the identification of the subject matter of the tax; and, in turn, the identification of the subject matter of the tax must be found in the charging section of the statute, and it will only be in the case of some ambiguity in the terms of the charging section that recourse to the other sections is necessary.

This was the language of Lord Thankerton delivering the judgment of their Lordships of the Privy Council in *Provincial Treasurer of Alberta* v. *Kerr* (2), and the Earl of Halsbury, L.C., in *Gresham Life Society Limited* v. *Bishop* (3) expressed a similar view:

> The question in this case seems to me to depend upon the actual words used by the Legislature, and I deprecate a construction which passes by the actual words and seeks to limit the words by what is supposed to be something equivalent to the language used by the Legislature.

(1) [1921] 3 W.W.R. 196. (2) [1933] A.C. 710, at 720, 721.
(3) [1902] A.C. 287, at 290, 291.

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In the statute under consideration (1932) the charging section read originally as follows:

8. (1) There shall be assessed, levied and paid upon the income during the preceding year of every person—

(*a*) residing or ordinarily resident in the Province of Alberta during such year; or

(*b*) who sojourns in Alberta for a period or periods amounting to one hundred and eighty-three days during such year; or

(*c*) who is employed in Alberta during such year; or

(*d*) who, not being resident in Alberta, is carrying on business in Alberta during such year; or

(*e*) who, not being resident in Alberta, derives income for services rendered in Alberta during such year, otherwise than in the course of regular or continuous employment, for any person resident or carrying on business in Alberta—

a tax at the rates applicable to persons other than corporations and joint stock companies set forth in the first schedule of this Act upon the amount of income in excess of the exemptions provided in this Act, and every person in respect of whose income any tax has been so assessed and levied shall pay the amount of the tax so assessed and levied together with an additional sum of three dollars:

In 1934, this section was amended (ch. 68 of the statutes of Alberta of 1934, s. 2) by striking out the words

and every person in respect of whose income any tax has been so assessed and levied shall pay the amount of the tax so assessed and levied together with an additional sum of $3.

Of course, general definitions or expressions of opinion relating to statutes framed differently or emanating from legislative bodies endowed with unlimited power and authority are not helpful in enabling the courts to determine the specific nature of the tax imposed by the particular statute under consideration.

The legislature of Alberta is that of a province which, under the Constitution (Head 92-2), can make laws in relation to: "Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes".

In the present case, the material words in the clause just quoted are: "within the Province". They are words of limitation; and it cannot be useful, from the legal or constitutional point of view, to attempt to ascertain the validity of legislation adopted under such limited powers by making a comparison with legislation passed by a parliament enjoying sovereign powers such as, for example, the Imperial Parliament or the Dominion of Canada, whose authority to raise money may be exercised "by any mode or system of taxation" (B.N.A. Act, Head 91 (3)).

Speaking of the latter clause of the statutes, Lord Phillimore in *Caron* v. *The King* (1), on behalf of their Lordships of the Privy Council could say (p. 1006):

> They are statutes for imposing on all citizens contributions according to their annual means, regardless of, or it may be said, not having regard to the source from which their annual means are derived.

In the abstract, we may assume that a tax upon a man's entire income or entire property, intangible as well as tangible, is a personal tax (see Seligman, vol. 58, Annals of the American Academy of Political and Social Science). But the author of the article just referred to immediately adds:

> A tax upon a particular piece of property or upon a particular business which affords a revenue is a real tax or a specific tax or a tax on the thing apart from the person.

In the exercise of its powers under the Constitution of Canada "in order to the raising of a revenue" for provincial purposes, a province may no doubt directly tax a person in respect of his income. In that case, the income is used merely as a just standard or a yard-stick (to use the expression of counsel for the Attorney-General of Alberta) for computing the amount of the tax. In such a case the person is validly charged because he is a resident within the province; and it must be conceded that the legislature in such a case may use the foreign property together with the local property as the standard by which the person resident within the province is to be charged.

The legality of the tax, under those circumstances, results from the fact that the person is found within the province.

Assuming that some ambiguity is to be found in the charging section of the Alberta Act—and perhaps a little more so since the amendment of 1934 already referred to —I must come to the conclusion that, taking the statute as a whole and reading sec. 8 (1) in the light of the other sections and of the general tenor of the statute, the basis and subject-matter in respect to which the taxation here in question is imposed is the person who receives the income, and that it is not a specific tax upon the property, a tax on the thing apart from the person; and, therefore, it is a personal tax.

(1) [1924] A.C. 999.

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Although I may not agree with the argument that by its very nature an income tax is a personal tax and that its nature cannot be changed by the particular language of the statute imposing the tax, or that income tax cannot lose its character of being a personal tax by the wording of the statute, I have come to the conclusion that the effect of the Alberta Act, generally speaking, is to impose the tax, not on the income itself, but on the person receiving the income, for the following reasons:

1. The tax is to be paid in respect of the income earned during the preceding year; and it is based upon the aggregate amount of that income, irrespective of the source from which it was derived: income as such; income envisaged as a whole, as a mere figure representing the total revenue enjoyed by the ratepayer during the preceding year, without individualizing any of the moneys comprised in such revenue;

2. It is a tax imposed upon the income of the ratepayer, not upon the income derived from any specified property;

3. It is not a tax levied on property. In the words of McLennan J., in *Abbott* v. *City of St. John* (1),

> It is not a part of the income * * * No attempt is made to seize or appropriate the income itself.

The assessment entirely disregards the source of the annual means (*Caron* v. *The King* (2); it creates no lien on the moneys or on any particular part thereof. Indeed, when the tax is assessed and when it comes due, the moneys which went to make up the income might have completely disappeared. The person alone is called upon to make good the payment of the tax, which is recoverable by action against that person and, if not paid then, is levied by distress, not against the particular property from which the income was derived but against that person's property generally and indiscriminately.

The appeal should be dismissed with costs.

The judgment of Kerwin and Taschereau JJ. and of Gillanders J. *ad hoc* was delivered by

KERWIN J.—In this action the appellant seeks a declaration that he is not liable to income tax in the province of Alberta with respect to certain dividends received by him.

(1) [1908] 40 S.C.R. 597, at 616. (2) [1924] A.C. 999, at 1006.

The case came on for trial before Ewing J., in the Supreme Court of Alberta, on an agreed statement of facts. This statement is summarized by the learned trial judge in a succinct but comprehensive manner and I can do no better than quote his summary.

> The plaintiff is the owner of 600 shares in the Weyerhaueser Timber Company, which corporation declared and paid the dividend in question. This company was incorporated under the laws of the state of Washington and has its head office at Tacoma in the said state. It has no office in the province of Alberta and does not carry on any part of its business in the said province. From time to time during the years 1933 to 1936 inclusive, this company declared and paid dividends in respect of the plaintiff's 600 shares, which dividends amounted during these years to about $11,100. The plaintiff is domiciled in Calgary but spent the winter months during the said years either at Los Angeles in California or at Victoria in British Columbia. The dividends in question were declared and were payable at Tacoma. Cheques were issued for the dividends, which cheques were payable at Tacoma.
>
> Having regard to the use made by the plaintiff of her dividend cheques, these cheques fall into three classes, viz:
>
> 1. Those cheques which never came into Alberta but were deposited by the plaintiff in banks either in British Columbia or in California and no part of the moneys represented by these cheques was ever brought by the plaintiffs into Alberta.
>
> 2. Those cheques which were received by the plaintiff in Alberta and either cashed in Alberta or deposited in banks in Alberta.
>
> 3. Those cheques which were received by the plaintiff in Alberta and endorsed by her and then forwarded to British Columbia or California for deposit in banks there.
>
> It is admitted that these dividends constitute "income" of the plaintiff for the said years within the meaning of that word as contained in section 3 of the *Income Tax Act*, being chapter 5 of the statutes of Alberta, 1932.

Mr. Justice Ewing continues:

> As this section defines "income" as including "profit, gain or gratuity, whether derived from sources within Alberta or elsewhere," it is clear that in terms it includes the dividends in question and the only question arising in this action is the validity of that portion of the statute which imposes a tax on income originating elsewhere than in the province.

As to this last statement, it would appear that the first question must be the construction of the Act since the appellant's contention is that the statute imposes a tax on property only, while the respondent contends that, so far as this appeal is concerned, it imposes a tax on persons with respect to income.

Turning then to the Act, we find that section 3 provides in part:

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3. Without limiting the meaning of "income", for the purposes of this Act, "income" includes the annual net profit or gain or gratuity, whether ascertained and capable or computation as being wages, salary, or other fixed amount, or unascertained as being fees or emoluments, or as being profits from a trade, or commercial, or financial, or other business or calling, directly or indirectly received by a person from any office or employment, or from any profession or calling, or from any trade, manufacture or business, as the case may be, whether derived from sources within Alberta or elsewhere; and shall include the interest, dividends or profits directly or indirectly received from money at interest upon any security or without security, or from stocks, or from any other investment, and, whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source.

The legislature here includes "net profit or gain * * * whether derived from sources in Alberta or elsewhere." By section 4, certain incomes are not liable to taxation, that is the incomes of named individuals, bodies corporate, etc. By section 5, "income" as defined in section 3 is subject to specified exemptions and deductions. By section 6,

in computing the amount of the profits or gains to be assessed a deduction shall not be allowed in respect of

certain enumerated matters. By subsection 1 of section 7 a deduction from the tax otherwise payable is allowed in certain cases for income tax paid elsewhere in respect of income derived from sources therein:

7.—(1) A taxpayer shall be entitled to deduct from the tax that would otherwise be payable by him under this Act the amount paid to any other province of Canada or to Great Britain or any of its self-governing dominions, colonies or dependencies other than the Dominion of Canada for income tax in respect of the income of the taxpayer derived from sources therein if such province or Great Britain or such self-governing dominion, colony or dependency imposing such tax allows a similar credit to persons in receipt of income derived from sources within Alberta.

Subsection 1 of section 8 provides:

8.—(1) There shall be assessed, levied and paid upon the income during the preceding year of every person—

(*a*) residing or ordinarily resident in the Province of Alberta during such year; or

(*b*) who sojourns in Alberta for a period or periods amounting to one hundred and eighty-three days during such year; or

(*c*) who is employed in Alberta during such year; or

(*d*) who, not being resident in Alberta, is carrying on business in Alberta during such year; or

(*e*) who, not being resident in Alberta, derives income for services rendered in Alberta during such year, otherwise than in the course of regular or continuous employment, for any person resident or carrying on business in Alberta—

a tax at the rates applicable to persons other than corporations and joint stock companies set forth in the first schedule of this Act upon the amount of income in excess of the exemptions provided in this Act, and every person in respect of whose income any tax has been so assessed and levied shall pay the amount of the tax so assessed and levied together with an additional sum of three dollars:

Provided that the said rates shall not apply to corporations and joint stock companies.

The words underlined were repealed but in my opinion, as indicated later, such repeal has no effect upon the proper construction of the enactment for the purposes of this appeal. Subsection 2 of section 8 provides that certain corporations and joint stock companies shall pay a tax. By subsection 3, every gas company shall be entitled to deduct certain amounts from the tax payable in any year by such company. By subsection 4, every electric light company and every power company shall be entitled to deduct specified amounts from the tax payable in any year by such company, and by subsection 5, in the case of a public utility corporation, no allowance is to be made by the Board of Public Utility Commissioners in fixing or regulating the company's charges for any tax payable by such corporation pursuant to the Act. It might here be interpolated that with reference to all these corporations and joint stock companies, the tax appears to be imposed upon them with respect to their income.

Sections 23 to 28 deal with non-residents. By section 32, every person liable to taxation must file a return of his total income during the last preceding year, and under section 47, every person liable to pay any tax under the Act shall send with the return of the income " the tax of three dollars and " not less than one-fourth of the amount of such tax. The words in quotation marks were repealed at the same time as the repeal of the words underlined in subsection 1 of section 8 and I take it that the reason for the repeal of the provision last mentioned is the same as that for the repeal of the words mentioned in section 47.

By section 48, if any person liable to pay any tax under the Act pays less than the Act requires at the required times, he is to pay interest. By section 68, all taxes, interest, penalties and costs assessed or imposed or ordered

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to be paid under the provisions of the Act shall be deemed to be a debt due to His Majesty and shall be recoverable as such in a court of competent jurisdiction.

While, therefore, subsection 1 of section 8 states that a tax shall be assessed, levied and paid upon income, it is to be noted that by the same subsection the tax is to be paid in one year upon the income earned during the preceding year. Taken in conjunction with the words used in clauses (*a*), (*b*) and (*c*) of the subsection,—"residing or ordinarily resident", "sojourn", "employed", the reference to income "whether derived from sources within Alberta or elsewhere", in section 3 and the other sections noted above, I am of opinion that the Act, taken as a whole, imposes a tax on a person such as the appellant who is found in the province with respect to his income, including that derived from sources outside the province.

There was for some time in Great Britain considerable divergence of opinion as to what was taxed by the Imperial Income Tax Acts but in *Colquhoun* v. *Brooks* (1), Lord Herschell stated that

> The income tax Acts * * * themselves imposed a territorial limit; either that from which the taxable income is derived must be situate in the United Kingdom or the person whose income is to be taxed must be resident there.

And in *Whitney* v. *Inland Revenue Commissioners* (2), Lord Wrenbury says:

> The policy of the Act is to tax the person resident in the United Kingdom upon all his income whencesoever derived and to tax the person not resident in the United Kingdom upon all income derived from property in the United Kingdom. The former is taxed because (whether he be a British subject or not) he enjoys the benefit of our laws for the protection of his person and his property. The latter is taxed because in respect of his property in the United Kingdom he enjoys the benefit of our laws for the protection of that property.

Lord Wrenbury then refers to the extract from *Colquhoun* v. *Brooks* (1) already set out as stating the matter in the same way.

It is true that in dealing with Imperial taxation Acts, the courts are not troubled with any constitutional difficulties and that no doubt accounts for the various expressions used to describe the tax. However, the quotations from the two judgments of the House of Lords are, I think, of assistance in coming to a conclusion in the present appeal.

(1) (1889) 14 A.C. 493. (2) [1926] A.C. 37, at 54.

In this connection the solution of the problem is not assisted by Lord Macnaghten's famous dictum in *London County Council* v. *Attorney-General* (1) that "income tax, if I may be pardoned for saying so, is a tax on income", because what Lord Macnaghten meant, as appears from what immediately follows, is that it is not, for example, a tax on capital. The Alberta Act is phrased differently from those considered in the two decisions referred to but, upon consideration, I have concluded that the former should, for the purposes of this appeal, be construed in the manner already indicated.

It is said, that this construction is precluded by the judgment of the Privy Council in *Provincial Treasurer of Alberta* v. *Kerr* (2). It is important to notice with what that case was concerned. The Alberta *Succession Duties Act* was there before the courts and one question was whether the tax imposed was a direct tax. The other question was not whether a tax was imposed on a person or a property but whether it was imposed on property or a transmission. It was with reference to that point that Lord Thankerton remarked at page 717:

> There can be no doubt that the Alberta *Succession Duties Act* purports to impose taxation on the basis (*inter alia*) of personal property situate outside the province

and it was on the basis of that construction that it was stated that

> identification of the subject matter of the tax is naturally to be found in the charging section of the statute,

and the conclusion was reached that the subject matter of the taxation was property and not the transmission of property. On the point as to whether the taxation was direct taxation, it was pointed out, at page 722, that the duties in question were imposed on the executors on their application for probate; so that in the same Act the tax was found as to property within the province to be a tax on persons but invalid because it was not direct taxation, and as to personal property outside the province, the Act was invalid both because the taxation was not direct and because it was not within the province. The decision affords no assistance in the determination of this appeal and the remarks of Lord Thankerton must be read with reference to the matters under consideration.

(1) [1901] A.C. 26, at 35. (2) [1933] A.C. 710.

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This being the proper construction of the statute, in my opinion the decision in *Bank of Toronto* v. *Lambe* (1) is authority that the Alberta legislature had the power to provide as it has. The question not being before us, it is strictly unnecessary to express any opinion as to whether the legislature also imposed a tax on the income within Alberta of non-residents and, if so, as to the constitutional validity thereof.

The appeal should be dismissed with costs.

HUDSON J.—The appellant, Mrs. Kerr, is domiciled in and a resident of Alberta. She has been assessed for income tax by the taxing authorities of the province in respect of her entire income, including sums received and spent by her while temporarily outside the province. She claims in this action a declaration that she is not liable to pay taxes in respect of sums received by her outside the province and that, if such tax is permitted by the provincial Act, such statute is to that extent *ultra vires* of the provincial legislature and null and void.

The respondent, on the other hand, contends that the assessment is within the Act and that the Act is within the legislative jurisdiction of the province, because the tax is imposed on a person and not on property.

Under section 92 (2) of the *British North America Act* the province has power over "direct taxation within the province in order to the raising of a revenue for provincial purposes".

Income tax is of course a direct tax and there would seem to be no doubt about the power of the legislature to measure the tax by reference to the value of property or assets of the taxpayer beyond, as well as within, the territorial limits of the province. The leading case of *Bank of Toronto* v. *Lambe* (1) is sufficient authority for this view. Lord Hobhouse said at page 584:

> The next question is whether the tax is taxation within the province. It is urged that the bank is a Toronto corporation, having its domicile there, and having its capital placed there; that the tax is on the capital of the bank; that it must therefore fall on a person or persons, or on property, not within Quebec. The answer to this argument is that class 2

(1) (1887) 12 App. Cas. 575.

of sect. 92 does not require that the persons to be taxed by Quebec are to be domiciled or even resident in Quebec. Any person found within the province may legally be taxed there if taxed directly.

* * *

The bank itself is directly ordered to pay a sum of money; but the legislature has not chosen to tax every bank, small or large, alike, nor to leave the amount of tax to be ascertained by variable accounts or any uncertain standard. It has adopted its own measure, either of that which it is just the banks should pay, or of that which they have means to pay, and these things it ascertains by reference to facts which can be verified without doubt or delay.

To the same effect are the succession duty cases, where taxes have been held to be validly imposed on beneficiaries domiciled or resident within the province on the value of property outside the province which they take by succession.

The charging section of the provincial Act, statutes of Alberta, 1932, chapter 5, is section 8 and reads as follows:

8. (1) There shall be assessed, levied and paid upon the income during the preceding year of every person—

(*a*) residing or ordinarily resident in the Province of Alberta during such year;

* * *

a tax at the rates applicable to persons other than corporations and joint stock companies set forth in the first schedule of this Act upon the amount of income in excess of the exemptions provided in this Act * * *

Section 3 defines income:

3. Without limiting the meaning of "income" for the purposes of this Act, "income" includes the annual net profit or gain or gratuity * * * received by a person from any office or employment, or from any profession or calling, or from any trade, manufacture or business, as the case may be, whether derived from sources within Alberta or elsewhere; and shall include the interest, dividends or profits directly or indirectly received from money at interest upon any security or without security, or from stocks, or from any other investment * * *

The tax is imposed on the income of a person, not on the income of property. The section is indifferent as to the source or origin of the income, unless where exceptions are especially mentioned. It would appear then, on reading the section, that where the taxpayer is both domiciled and resident within the province the primary question for the assessor is how much did the taxpayer get, not where or how he did get it.

The language of the provincial Act is almost identical and apparently is taken from the provisions of the

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Dominion *Income Tax Act*. In the latter the charging section is section 9 and it is identical with section 8 of the provincial Act as above.

There are several cases where the provisions of the Dominion Act came before the courts for consideration.

Smith v. *Attorney-General of Canada* (1). Mr. Justice Audette held that profits arising from illicit liquor transactions are income within the meaning of the *Income War Tax Act* and taxable. At page 195 he says:

> * * * the appellant comes under section 4 of the Taxing Act, being a person residing in Canada, carrying on business therein and his income is thereunder subject to assessment. * * * It is not necessary to inquire into the source from which the revenue is derived, as the tax is a charge imposed by the legislature upon the person, and all his revenues—from whatever source derived—mingle with the rest of the income.

This decision of Mr. Justice Audette was reversed by this Court (2). But on further appeal to the Judicial Committee of the Privy Council, the decision of this court was reversed (3). Lord Haldane held that Parliament had power to impose this tax if they so chose. The words construed literally include these profits and there was not shown that it was intended to exclude them. The judgment of Mr. Justice Audette was restored.

In the case of *Waterous* v. *Minister of National Revenue* (4), a company declared a dividend payable in Dominion of Canada war loan bonds held by it, at the par value thereof. The bonds each provided that

> the obligation represented by this bond and the annexed interest coupons and all payments in discharge thereof are and shall be exempt from taxes, including any income, imposed in pursuance of any legislation enacted by the Parliament of Canada.

Appellant, a shareholder in the company, received a dividend in bonds as aforesaid, and was assessed upon the amount thereof under the *Income War Tax Act*. It was held by this court that the assessment was valid. In giving judgment of the Court, Mr. Justice Smith says at page 410:

> I think it is clear that this is not a taxation on the obligation represented by the bond or upon payments in discharge thereof, but merely taxation upon the appellant's income, which is in part measured by the amount of the bond which he received as divided, and which constitutes income.

(1) [1924] Ex. C.R. 193.
(2) [1925] S.C.R. 405.
(3) [1927] A.C. 193.
(4) [1933] S.C.R. 408.

Mr. Justice Smith further referred with approval to the decision in the case of *In re McLeod* v. *The Minister of Customs and Excise* (1), at page 464 where Mr. Justice Mignault made the following remark:

> All this is in accord with the general policy of the Act which imposes the income tax on the person and not on the property. In other words, it is the person who is assessed in respect of his income.

In *Abbott* v. *City of Saint John* (2), it was held by this Court that the city of Saint John had authority to assess the appellant, an official of the Dominion Government, on his income as such, he being a resident of the city of Saint John and the city being empowered under provincial legislation to impose an income tax. It was there said by Mr. Justice Maclennan at p. 616:

> From all this it is apparent that the tax to be levied in any year is not a part of the income, as such, of the inhabitant, but a sum of money to be measured by, or in proportion to the amount of his income during the preceding year. It is the inhabitant who is taxed for his fair and reasonable share of the expenses incurred by the municipality on his behalf, and on behalf of all the other inhabitants, and his income for the preceding year is referred to solely for the purpose of ascertaining what is just and reasonable that he should be required to pay. No attempt is made to seize or appropriate the income itself, or to anticipate its payment. He receives it, and applies it as he thinks fit.

This decision was approved of by the Judicial Committee of th ePrivy Council in the case of *Caron* v. *The King* (3). Lord Phillimore says at page 1006

> They are statutes for imposing on all citizens contributions according to their annual means, regardless of, or it may be said not having regard to, the source from which their annual means are derived.

These cases decided in effect that a tax imposed in similar language to that under consideration here was a tax on a person rather than on property or on a source of revenue. There the courts were not called on to decide whether or not the tax was imposed " within the province ". But if the tax is imposed on a person and that person is resident and domiciled in the province, it must, I think, follow that the tax is imposed within the province.

I cannot find that any of the other provisions of the Act conflict with this view, rather do they support it. Under section 32 (1) the taxpayer is bound to make a return in each year before the 31st of March of his income for the

(1) [1926] S.C.R. 457. (2) (1908) 40 S.C.R. 597.
(3) [1924] A.C. 999.

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preceding year. Meanwhile the taxpayer is free to spend his income as he pleases. There is no lien on any of the moneys received and the remedy for non-payment is first, by action under section 68 and, after failure to pay, a distress may be levied.

I think the appeal should be dismissed with costs.

Application dismissed with costs.

Solicitors for the appellant: *McLaws and Company.*

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