

BETWEEN:

NATIONAL TRUST COMPANY, LIMITED, BESSIE P. D. WESTON, HELEN SMITH and SADIE WESTON } APPELLANTS,

1954
Feb. 2
June 2

AND

MINISTER OF NATIONAL REVENUE. .RESPONDENT.

Revenue—Succession Duty—Bequest duty free—No duty on duty.

Held: That a gift free of duty is two gifts and that duty is assessable on the sum of the two as one succession but the act does not authorize further calculation of duty upon duty.

APPEAL under the Dominion Succession Duty Act.

The appeal was heard before the Honourable Mr. Justice Potter at Toronto.

R. T. Payton, Q.C. for appellants.

Russell Whiteley, Q.C. and *A. L. DeWolfe* for respondent.

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

POTTER J. now (June 2, 1954) delivered the following judgment:

This is an appeal from a decision of the Minister of National Revenue under section 38 of the Dominion Succession Duty Act, Chapter 89, R.S.C. 1952, whereby he, following a notice of appeal from his assessment of the amounts of duties upon or in respect to successions to property under the last will and testament of James Francis Weston, deceased, affirmed the said assessment.

James Francis Weston, late of the City of Toronto, in the County of York and Province of Ontario, died on or about the 3rd day of August, 1950, having duly made his last will and testament, of which letters probate were issued to the executors therein named, out of the Surrogate Court of the said County of York on the 4th day of October, 1950.

At the date of his death the aggregate net value of the estate of the deceased, as determined by the respondent, was \$302,521.57.

1954

NATIONAL
TRUST
COMPANY
LIMITED
et al.
v.
MINISTER
OF
NATIONAL
REVENUE
Potter J.

The will of the deceased contained the following relevant provisions:—

II. I appoint National Trust Company, Limited to be the executor of my will and trustee of my estate, and I hereinafter refer to them as my trustees.

IV. I give, devise and bequeath all of my property, both real and personal and wheresoever situate, including any property over which I may have any power of appointment, to my trustees to hold upon the following trusts:

- (a) To deliver to my wife, Bessie P. D. Weston, for her own use absolutely all articles of personal, domestic and household use or ornament belonging to me, all my furniture, books, plate, pictures, provisions, consumable stores and household effects of every kind, and any or all automobiles and accessories thereto which at the time of my death shall belong to me and be in or about or belonging to or used in connection with my home.

Then followed directions with reference to the provision of a home for his wife as in their absolute and uncontrolled discretion his trustees might consider advisable from time to time and directions with reference to the realization of his estate, with power to his trustees to sell, call in, and convert into money in their discretion any part or parts thereof, or to postpone such conversion, etc., and clauses IV (d) and (e) were as follows:—

- (d) Out of my general estate to pay all my just debts, funeral and testamentary expenses, and all succession duties and inheritance and death taxes that may be payable in connection with any insurance or any gift or benefit given by me to any person either in my lifetime or by survivorship, or by this my will or any codicil thereto, to the intent that the respective beneficiaries of any such gift or benefit shall receive, hold and enjoy the same free from payment of any succession duties or death taxes, except to the extent that payment of succession duties or inheritance or death taxes as aforesaid will reduce the residue of my estate to be dealt with as hereinafter set forth. I authorize and empower my trustees to commute any duties or taxes which may be payable in respect of any interest in expectancy.
- (e) To pay to Helen Smith the sum of twenty-five hundred dollars (\$2,500.00) if at the time of my death she is employed as a member of my household staff.

Clause IV (f) directed his trustees to invest the residue of his estate in investments permitted for trust funds and to pay the income from all of the said residue to his wife during her natural life with power to apply in their discretion such part of the capital of the estate as they might

deem advisable for the maintenance or general benefit of his wife. Then followed:—

Upon the death of my wife or upon my death if my wife shall have predeceased me to divide the residue of my estate then remaining into ten (10) equal shares and to deal with the said shares as follows:

- (i) Five of such equal shares to be held for Claire Weston Clark, daughter of his deceased niece Marion Clark.
- (ii) One of such equal shares to be held for Mary Weston, daughter of Lottie and the late J. Francis Weston.
- (iii) One of such equal shares to be paid to his nephew Bruce V. Weston.
- (iv) One of such equal shares to be paid to his nephew Charles Weston.
- (v) One of such equal shares to be paid to his niece Ethel Hamilton.
- (vi) One of such equal shares to be paid to Lottie Weston, widow of his nephew J. Francis Weston.

In the cases of Claire Weston Clark and Mary Weston provision was made for the investment of their shares and the payment of the income therefrom to them in monthly or periodic instalments until they attain the age of thirty years, when the capital of such shares is to be paid over to them with power to make advances from the corpus in each case. Provisions were also made to take effect in the event of the deaths of the beneficiaries if they should predecease the testator or his wife, leaving issue, etc.

On October 3, 1950, the executors filed succession duty returns as follows:—

- (1) Statement of Value and Relationship; Form SD 1 and attached schedules;
- (2) Statement of Debts; Form SD 14;
- (3) Last Will and Testament of James Francis Weston, dated the 22nd day of December, A.D. 1949.

An estimate or tentative assessment, form SD 1-C, mailed by the respondent September 19, 1951, was marked Exhibit 2 and showed in its heading the following:—

Aggregate Net Value \$302,521.57 District of Toronto.

	Initial Rate 9%
Aggregate Net Value	\$297,349.01
Add: Refund on Fishing Licence	180.00
Value of Real Estate in New Brunswick	800.00
	\$298,329.01
Less Cost of Monument	487.44
	\$297,841.57

1954

NATIONAL
TRUST
COMPANY
LIMITED
et al.
v.
MINISTER
OF
NATIONAL
REVENUE
Potter J.

1954	Add: Gifts Inter-Vivos		
NATIONAL TRUST COMPANY LIMITED <i>et al.</i> <i>v.</i> MINISTER OF NATIONAL REVENUE	Bruce V. Weston	\$ 400.00	
	Sadie Weston	3,230.00	
	Mary Weston	650.00	
	Lottie Weston	200.00	
	C. W. Clark	200.00	4,680.00
	Revised Aggregate Net Value		<u>\$302,521.57</u>

Potter J.

Then followed the values of the successions to the widow, Bessie P. D. Weston, of Class "A", totalling \$164,754.53, of which \$20,000.00 was exempt from duty, leaving a dutiable succession to her of \$144,754.53, to which an additional rate of 14.4, or a total rate of 23.4 per cent. was applied, resulting in a duty of \$33,872.56.

In the case of the legacy of \$2,500.00 to the appellant Miss Helen Smith, a stranger in blood shown as Class "D", an additional rate of 5.2 per cent. or a total rate of 14.2 per cent. was applied, resulting in a duty of \$355.00.

Then followed statements of the gifts inter-vivos and the shares of the remainder held in abeyance.

In the case of the gift inter-vivos of \$3,230.00 to the appellant Sadie Weston, sister-in-law, Class "D", an additional rate of 5.4 per cent. or a total rate of 14.4 per cent. was applied, resulting in a duty of \$465.12.

The total duty claimed by this document, as an estimate only, was \$34,692.68.

On January 15, 1952, a second SD 1-C was made and sent by the respondent to the executors, which showed adjustments in the successions to the widow by which the total value of the same was reduced to \$154,850.39, but to which were added the following amounts:—

Ontario Duties	\$ 16,846.37
Dominion Duties	17,454.75
	<u>\$ 34,301.12</u>

This was an increase of \$428.56 over the duty shown on the statement of September 19, 1951, chargeable on the succession to the widow, of \$33,872.56.

By these calculations the value of the successions to the widow was increased from \$164,754.53 to \$189,151.51, of which \$20,000.00 was exempt from duty, leaving a dutiable

amount of \$169,151.51, to which was applied the additional rate of 15·4 per cent. or a total rate of 24·4 per cent., resulting in a duty on the widow's succession of \$41,272.97.

To the succession to Miss Helen Smith, Class "D", were added Ontario duties of \$693.00 and Dominion duties of \$182.94, increasing the value of her succession to \$3,375.94, to which an additional rate of 5·4 per cent, or a total rate of 14·4 per cent. was applied, resulting in a duty of \$486.14.

The values of the shares in the remainder held in abeyance were reduced accordingly.

The gift to Sadie Weston, Class "D", of \$3,230.00 was increased by the addition of Dominion duty amounting to \$239.67, making a dutiable succession of \$3,469.67, to which an additional rate of 5·6 per cent or a total rate of 14·6 per cent was applied, resulting in a duty of \$506.57.

The total duty claimed by this document was \$42,265.63, which is the amount of duty claimed by the Notice of Assessments mailed February 12, 1952.

It was submitted on behalf of the appellants that the amount of money required to pay succession duty on a gift given free of duty is not a succession and that, therefore, the Act does not authorize the respondent to add to a duty-free gift the amount of money required to pay that duty and calculate, at an increased additional rate, duty on the sum of the two.

In the consolidated appeals of *Hospital for Sick Children of the City of Toronto v. Minister of National Revenue* and *Executors and Trustees under the Will of George James Arlow, Deceased, v. Minister of National Revenue* in which judgment was filed on May 28, 1954 (1), it was held that a gift free of duty is two gifts, one, the subject matter of the gift and the other, a legacy of the sum required to pay the duty thereon, and that duty is assessable on the sum of the two as one succession, but that the Act does not authorize further calculations of duty upon duty.

In the case now under consideration the values of the duty-free gifts were determined by the respondent, the amounts of money required to pay the duty thereon calculated and added to the determined values of the successions and duty calculated on the totals, but the respondent

1954
 NATIONAL
 TRUST
 COMPANY
 LIMITED
et al.
 v.
 MINISTER
 OF
 NATIONAL
 REVENUE
 Potter J.

(1) [1954] Ex. C.R. 420.

1954
NATIONAL
TRUST
COMPANY
LIMITED
et al.
v.
MINISTER
OF
NATIONAL
REVENUE
Potter J.

made no further calculations of duty on duty. The assessment is, therefore, in accordance with the judgment in the appeals arising out of the will of the said George James Arlow.

The additional cases cited and the distinctions made between the provisions of the English statutes and the Dominion Succession Duty Act have been considered and the authorities reviewed in the judgment in the appeals arising out of the will of George James Arlow reconsidered in the light of arguments of counsel, but I have been unable to reach different conclusions.

The appeal must therefore be dismissed with costs.

Judgment accordingly.