

BETWEEN :

THE MINISTER OF NATIONAL  
REVENUE .....

APPELLANT;

1964  
May 19  
May 20

AND

CROWN TRUST COMPANY, (Mc-  
ARDLE ESTATE) .....

RESPONDENT.

*Revenue—Income tax—Civil Code of Quebec, art. 607, and 905 to 924—  
Whether refund of premiums from company pension plan on death of  
participant taxable as income of his estate.*

The late Kenneth J. McArdle, an employee of Public and Industrial Relations Limited died before reaching pension age under the terms of his employer's contributory pension plan in which he was a participant. The trustees of the plan paid the refund of premiums to the executors of his estate. This payment was assessed by the appellant as income of the estate accruing at the time it was paid while the respondent contended that it should be considered as income due to the deceased personally.

*Held:* That no factual difference or legal distinction can be drawn between the collective expression "Estate" and its physical specification, the heir or heirs, so that it does appear obvious that the expression "Estate" as used in Article XI of the Pension Plan is not only indicative of an entity authorized to receive payment, but acknowledges also an ownership of and absolute right to such payment in the heirs of the late participant and the pension refund is properly taxable as income of the Estate.

2. Appeal allowed.

APPEAL under the *Income Tax Act*.

The appeal was heard before the Honourable Mr. Justice Dumoulin at Montreal.

*Paul Boivin, Q.C.* and *Roger Tassé* for appellant.

*John H. Gomery* for respondent.

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

DUMOULIN J. now (May 20, 1964) delivered the following judgment:

The late Kenneth J. McArdle, an employee of Public and Industrial Relations Limited, died on February 7, 1957, and under a will of October 17, 1955, had bequeathed the usufruct of his estate to his wife, during her lifetime, and the capital of the estate to his three daughters.

McArdle was a participant in a pension plan instituted by his employer firm under which trustees had been appointed to whom premiums were payable in part by the company and in part by the employees, by way of deductions from their salaries. Under McArdle's will, Crown Trust Company and his former legal advisers were appointed executors.

In February of 1958, pursuant, *inter alia*, to art. XI of the Pension Plan, an amount of \$13,844.20 was paid over by the fund's trustees as a refund of premiums to the deceased's Executors, McArdle having died seven years before pension age.

The appellant, for taxation year 1959, assessed this repayment of \$13,844.20 as "income of the estate", accruing at the time it was paid, whilst the respondent's contention is that it should be considered as income due to the deceased personally.

The pecuniary figure, let it be said, separating one viewpoint from the other, does not exceed \$390.75.

Some confusion seems to exist in the respondent's interpretation of the legal nature of Testamentary Executors, the scope and extent of their powers and functions.

We have here, initially, a matter of civil rights constitutionally imparted to the relevant provincial law. This law, stated by art. 607 of the *Civil Code of Quebec*, enacts that:

607. The lawful heirs when they inherit, are seized by law alone of the property, rights and actions of the deceased, subject to the obligation of discharging all the liabilities of the succession.

An old maxim inspiring the above text "Le mort saisit le vif", renders the heirs, testamentary or legal, the living "continuers" of the dead legator.

Therefore, any right possessed by Mr. McArdle at the time of his demise, all sums, chattels, all property real or personal vesting in him, instantly passed on to his heirs of which his Testamentary Executors were merely the representatives for administration purposes. Nothing that had not become the property of those heirs could possibly fall within the ambit of the Executors' powers. Ample evidence of this transitory stewardship is found in arts. 905 to 924 inclusive of the *Civil Code*, s. VI, entitled "Of Testamentary Executors". One instance is conclusive, that found in the third paragraph of C.C. art. 918:

When his duties are at an end, the testamentary executor must render an account to the heir or legatee, who receives the succession, and pay him over the balance remaining in his hands.

Now, art. XI of the Pension Plan, intituled "Death Benefit", provides as follows:

XI. If a Participant should die while in the employ of the Employer, the death benefit payable under any contract then held by the Trustees (Pension fund trustees) in respect to the Participant shall, subject to Section 4 of Article VII hereof, be paid to the Estate of the Participant.

Since no factual difference nor legal distinction can be drawn between the collective expression "Estate" and its physical specification, the heir or heirs, it does appear obvious that the expression "Estate" in Article XI is not only indicative of an entity authorized to receive payment, but acknowledges also an ownership of and absolute right to such payment in the heirs of the late Participant.

For the reasons above, the decision of the Tax Appeal Board in this case is annulled, the Court holding that the pension refund in the sum of \$13,844.20 is taxable as income of the Estate and the Minister's assessment right in fact and law. The appeal is allowed with all taxable costs in favour of appellant.

*Judgment accordingly.*

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