BETWEEN:

JACOB JOHN MORCH,.....APPELLANT;

1949
Feb. 8
Aug. 18

AND

THE MINISTER OF NATIONAL REVENUE, ... } RESPONDENT.

Revenue—Income tax—Income War Tax Act, R.S.C. 1927, c. 97, ss. 48(3), 71—The Income Tax Act, S. of C. 1948, c. 52, ss. 48(1), 108—Interpretation Act, R.S.C. 1927, c. 1, 21(2), 21(3)—Words not to be read into an Act without clear need or reason—Proceedings under section 71 not prevented by pending appeal against assessment—Use of different words in amending Act not necessarily indicative of change of meaning of amended Act—Doubtful whether an Act may be construed by reference to a subsequent enactment.

The applicant applied for an order setting aside a certificate registered under sec. 71 of the Income War Tax Act and all proceedings taken thereon on the ground that his appeals against the assessments on which the certificate was based were still pending and that sec. 71 did not authorize the registration of a certificate or the issue of a writ in such circumstances. In the alternative, he applied for an order staying further proceedings on the certificate and the writ of *fieri facias* issued thereunder.

Held: That where the words of a section are clear and precise no limitation or proviso should be read into it unless there is clear need or reason for so doing.

2. That proceedings may be taken under section 71 of the Income War Tax Act, notwithstanding the fact that the taxpayer has taken an appeal or objection against the assessment and such appeal or objection is still outstanding.

3. That the unpaid amount which section 48(3) orders the taxpayer governed by it to pay forthwith after the notice of assessment is sent to him may properly be certified under section 71 after two months have elapsed from the date of mailing the notice of assessment, whether an appeal or objection against the assessment has been taken or not.

4. That it does not follow as a matter of course that in every case where Parliament has used different words in an amending Act from those used in the amended one that a difference in meaning was intended; there are many cases where the amending enactment although couched in different terms from the amended one is, without saying so, merely declaratory of its true meaning.

5. That it is doubtful in the case of a statute to which the Interpretation Act applies whether resort may be had in aid of its construction to the terms of a subsequent amendment.

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Application to set aside certificate under section 71 of the Income War Tax Act and proceedings thereon, or to stay proceedings under writ of *fieri facias*.

The application was heard before the Honourable Mr. Justice Thorson, President of the Court, at Ottawa.

G. E. Beament K.C., for applicant.

J. D. C. Boland for respondent.

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

THE PRESIDENT now (August 18, 1949) delivered the following judgment:

This is an application for an order setting aside the certificate of the Deputy Minister of National Revenue for Taxation herein, dated January 18, 1949, and registered in this Court on the same date, and all proceedings taken thereon or, in the alternative, for an order staying all further proceedings on the said certificate and the writ of *fieri facias* issued out of this Court herein on January 18, 1949, until the appeals from the assessments referred to in the said certificate have been finally disposed of.

The certificate was made and registered and the writ of *fieri facias* issued under section 71 of the Income War Tax Act, R.S.C. 1927, chap. 97, which provides as follows:

71. All taxes, interest and penalties payable under this act remaining unpaid, whether in whole or in part after two months from the date of mailing of the notice of assessment, may be certified by the Commissioner of Income Tax.

2. On the production to the Exchequer Court of Canada, the certificate shall be registered in the said Court and shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the said Court for the recovery of a debt of the amount specified in the certificate, including interest to date of payment as provided for in this Act and entered upon the date of such registration.

3. All reasonable costs and charges attendant upon the registration of such certificate shall be recoverable in like manner as if they were part of such judgment.

Under this section the Deputy Minister of National Revenue for Taxation, as the person described in the first subsection thereof as the Commissioner of Income Tax is now known, on January 18, 1949, certified the amounts

of income tax and interest payable by the applicant under the Act and remaining unpaid under the income tax assessments against him for the years 1941 to 1946, of which notice had been mailed to him on July 20, 1948, and September 1, 1948, and on the same date the said certificate was registered in this Court. Thereupon, on the same date a writ of *fieri facias* was issued out of this Court directed to the Sheriff of the County of Hastings, in which the applicant resides, commanding him that of the lands, goods and chattels of the applicant he should cause to be made the sums stated in the certificate.

On the return of the motion it was shown that the applicant had paid the whole amount due under the assessment for 1941 on January 31, 1949, but that in respect of the other assessments he had duly served the Minister with notices of appeal against the assessments for 1942 to 1945 within one month from September 1, 1948, and a notice of objection against the assessment for 1946 within two months from the said date, that being the date of mailing of the notices of assessment for the years 1942 to 1946, and that the Minister had not yet made any decision with respect to the said notices of appeal or notice of objection.

On these facts counsel for the applicant sought to have the certificate and writ set aside on the ground that section 71 did not authorize the registration of a certificate or the issue of a writ in a case such as this.

Counsel's basic contention was that section 71 provided a summary method for the recovery of taxes, interest and penalties payable under the Act that were not in dispute but was not applicable in the case of assessments where an appeal against the assessment had been taken and had not been finally disposed of. He thus read into the section a proviso or limitation, which he contended was implicit in its words, that its applicability was confined to cases where no appeal had been taken against the assessment involved or the appeal against it had been finally dismissed or, in other words, that the section applied only in cases where taxes, interest and penalty were payable under the Act as the result of a valid and binding assessment and that the unusual, if not extraordinary, procedure permitted

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by it could not be resorted to in the case of an assessment that was not final or binding by reason of being still *sub judice*.

Related to this contention was the submission that section 71 is ambiguous and that two interpretations of its words are possible; that in such cases the Court should take the same view as that of Lord Loreburn L.C., in *Attorney General* v. *Till* (1) where he said, at page 51:

> where various interpretations of a section are admissible, it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive.

and avoid an interpretation of the section that would lead to an unreasonable or oppressive result; that Parliament could not have intended that proceedings should be taken in this Court that would be tantamount to a judgment of it in respect of an assessment the correctness of which has been challenged and might have to be passed upon by it; and that, under the circumstances, the Court should choose an interpretation consistent with the Act as a whole rather than one that would produce such an unreasonable or oppressive result.

There are, I think, several reasons for refusing to accept such a limited view of the scope of the section and preferring the submission made by counsel for the respondent that the words of the section are clear and precise and that under it the Deputy Minister of National Revenue for Taxation could, after an assessment had been made and two months had elapsed from the date of mailing of the notice of assessment, certify the taxes, interest and penalties payable under the Act and remaining unpaid under the assessment, notwithstanding the fact that an appeal from the assessment had been taken and was still pending, have the said certificate registered in this Court and obtain the issue of a writ of execution thereunder.

In the first place, I agree with counsel for the respondent that the words of the section are clear and precise and plainly lend themselves to the construction which he placed on them. I find no ambiguity in them. There is, therefore, no justification for cutting down their meaning or reading into the section the proviso or limitation that it has no application in cases of an assessment against

(1) (1910) A.C. 50.

which there is an appeal still outstanding. No such limitation or proviso is expressed and none should be inserted unless there is clear need or reason for it. Maxwell on Interpretation of Statutes, 9th edition, at page 14, states it as a rule that nothing is to be added to or taken from a statute, unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. The same rule was put by Lord Mersey in *Thompson* v. *Goold & Co.* (1) in these words:

> It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do.

and by Lord Loreburn L.C. in *Vickers* v. *Evans* (2) as follows:

> we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

I find no need or reason for limiting the scope of the applicability of the section as counsel for the appellant sought to do and cannot see anything to justify the inference that Parliament intended such a restriction of it. Nor would any such limitation follow from the application of what has been called the "golden rule" laid down by Lord Wensleydale in *Grey* v. *Pearson* (3) where he said:

> in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further.

I am unable to find anything in the construction advanced for the respondent that would lead to any absurdity or repugnancy or inconsistency with the rest of the Act or any need or reason for modifying the grammatical or ordinary sense of the words of the section.

Moreover, even if the words of the section were capable of the restricted meaning ascribed to them by counsel for the applicant I see no reason for preferring his interpretation to that put forward on behalf of the respondent. I find nothing unusual or extraordinary, and certainly nothing unreasonable or oppressive, about the summary procedure which Parliament has provided by section 71 or in the view that a certificate can be registered and a writ

(1) (1910) 79 L.J.K.B. 905 at 911.
(2) (1910) 79 L.J.K.B. 954 at 955.
(3) (1857) 6 H.L.Cas. 61 at 106.

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of execution issued under it even in the case of an assessment against which an appeal has been taken and is still pending. Indeed, it might be considered surprising if Parliament, in the interests of effective and speedy tax collection, had not made some such provision. Certainly, the restricted view of the applicability of the section taken by counsel for the applicant is not free from objection. It would follow from it that, as a matter of law, an appeal against an assessment would operate automatically as a stay of proceedings under section 71 as long as the same is pending. If that were so, a taxpayer could, by his own act in appealing against his assessment, postpone proceedings against him under the section and thereby, in certain circumstances, delay and possibly defeat the collection of the income tax payable by him. What need or reason can there be for substituting an interpretation permitting such a result for that put forward for the respondent? I cannot see any. There is nothing unusual or extraordinary, or unreasonable or oppressive, in the interpretation of section 71 that it does not permit a taxpayer to stay proceedings under it by the simple expedient of appealing against the assessment. Nor can it be soundly contended that Parliament could not have intended that proceedings should be taken under section 71 in the case of an assessment against which there is a pending appeal. I find some help in disposing of this contention in the manner in which the appropriate legislative bodies in the provinces have dealt with the somewhat analogous subject of the effect of an appeal from a judgment as a stay of execution of it or proceedings under it. In Ontario under Rule 500 of the Supreme Court of Ontario Rules of Practice, 1928, an appeal from a judgment generally operates as a stay of execution of it unless otherwise ordered by a judge of the Court of Appeal. But in all but one of the other provinces the rule is otherwise. For example, in Manitoba Rule 659 of The King's Bench Rules, 1939, provides that an appeal to the Court of Appeal shall not operate as a stay of execution or of proceedings under the judgment appealed from, but a judge may order a stay either unconditionally or on terms. There are similar provisions in other provinces: *vide* Nova Scotia, Order 57, Rule 13 of The Rules of the

Supreme Court, 1920; New Brunswick, Order 58, Rule 16 of The Rules of the Supreme Court, 1927; Saskatchewan, Rule 15 of the Rules of the Court of Appeal, 1942; Alberta, Rule 610 of The Consolidated Rules of the Supreme Court, 1944. Nor does an appeal operate automatically as a stay of execution of the judgment appealed from in Quebec; *vide* Article 1248 of The Code of Civil Procedure. And in British Columbia the stay of execution is made subject to specified conditions; *vide* section 30 of the Court of Appeal Act, R.S.B.C. 1943, chap. 10. Only in Prince Edward Island does an appeal seem to operate automatically as a stay of proceedings: *vide* Order 57, Rule 7 of The Rules of the Supreme Court, 1929. The great majority of the legislative bodies in the provinces charged with the making of rules of procedure have thus found nothing unreasonable or oppressive in providing that an appeal should not operate automatically as a stay of execution of the judgment appealed from. There cannot, therefore, be much force in the argument that Parliament could not have intended a similar effect in the case of section 71. Moreover, there is a complete answer to the argument that Parliament could not have intended proceedings under section 71 in the case of an assessment subject to a pending appeal in the fact that it clearly showed that such was its intention when the Act was revised in 1948: *vide* section 48(1) and section 108 of The Income Tax Act, Statutes of Canada, 1948, chap. 52, to which I shall later refer. I find no reason for assuming that Parliament intended otherwise when it enacted section 71.

Not only has the applicant thus failed to show any need or reason for the restricted view of the applicability of the section taken by counsel on his behalf, but there is also, I think, sound ground for the opinion that his interpretation of it is open to more serious objection than the wider view taken on behalf of the respondent. Under the latter the interests of both the taxpayer and the public can be adequately protected. The taxing authorities are not prevented from taking what seem to be necessary steps to collect the tax that may be payable by the mere act of the taxpayer himself in appealing against the assessment. The onus is on him to show that the assessment appealed against

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is erroneous either in law or in fact and until it is so found it remains valid. At any rate, its invalidity is not to be assumed from the mere fact that an appeal has been taken against it. There can thus be no serious objection to proceedings under section 71 if they should be deemed necessary in the interests of the public to collect the tax if the appeal from the assessment should be dismissed, provided that the position of the taxpayer is not thereby unjustly prejudiced. Just as in the case of the provincial rules to which I have referred the provincial legislative bodies have felt that there was adequate protection for the appellant in the power of a judge or the court to order a stay of execution of the judgment appealed from in a proper case so, I think, the taxpayer against whom proceedings have been taken under section 71 can be adequately protected from injury by the Court's power to order a stay of further proceedings under the section and thus preserve as far as possible the rights of both the public and the taxpayer. There is no similar safeguard in the public interest in the result that might follow if the applicant's restricted view of the applicability of the section were adopted. Under such view the taxpayer could, by appealing against the assessment, prevent the taxing authorities from taking any steps under section 71 even where the taking of such steps might be necessary to collect the tax that is payable and so deal with his assets during the pendency of the appeal as to put them out of the reach of the taxing authorities. Thus even if the matter were to be determined on the basis of which interpretation is the more reasonable one I would be of the opinion that the respondent's interpretation is to be preferred.

In my judgment, proceedings may be taken under section 71, notwithstanding the fact that the taxpayer has taken an appeal or objection against the assessment and such appeal or objection is still outstanding.

I shall now deal with the argument which counsel for the applicant based on section 48(3) of the Act. He pointed out that the applicant was governed by it and had to pay his income tax by instalments and referred to the provision in the section that if after examination of the taxpayer's returns it is established that the instalments

paid by him amount, in the aggregate, to less than the tax payable "he shall forthwith after notice of assessment is sent to him under section fifty-four of this Act pay the unpaid amount thereof together with interest thereon." He argued that until such notice is sent the amount payable by the taxpayer is payable purely on his own estimate of his income but that after the notice is sent and prior to the assessment becoming final and binding his liability under the section is to pay forthwith an amount which is the difference between his own estimate and that of the Minister and that such amount is not a tax payable under the Act within the meaning of "taxes, interest and penalties payable under the Act" as used in section 71. There is no merit in this argument. The amount which section 48(3) orders the taxpayer to pay forthwith is the difference between the amount paid by him by instalments according to his own estimate of his income and the amount of the assessment made by the Minister after the taxpayer's returns have been examined. It is thus the amount remaining unpaid under such assessment. There is no difference between the character or nature of such assessment and that of any other assessment made by the Minister, or between the character or nature of the amount payable under it and that payable under any other assessment. The fact that section 48(3) orders the taxpayer governed by it to pay the amount remaining unpaid under the assessment forthwith after the notice of assessment is sent to him does not affect the nature or character of the amount so ordered to be paid. All that is done is to alter the time of its payment and make it forthwith after notice of the assessment is sent to him instead of within the usual month from such date as provided under section 54(2). It is well to keep in mind that the notice of assessment is not the same thing as the assessment. The former is merely a piece of paper whereas the latter is an important administrative Act within the exclusive function of the Minister, the character of which was discussed fully in *Pure Springs Company Limited* v. *Minister of National Revenue* (1). It is not the sending of the notice of assessment that makes

(1) (1946) Ex. C.R. 471 at 498.

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the amount referred to in section 48(3) payable. It merely fixes the time for its payment. The amount itself is payable under the assessment made by the Minister, as the words "unpaid amount thereof" indicate. It is thus a tax payable under the Act like any other tax payable under it, and clearly within the meaning of "taxes, interest and penalties payable under the Act" as used in section 71. I am quite unable to see how an appeal or objection against the assessment can affect the matter. Even if there were some substance generally in the argument that proceedings cannot be taken under section 71 in the case of an assessment against which an appeal or objection has been taken and is still pending on the ground that the amount payable thereunder cannot be certified until the appeal or objection has been disposed of and the correctness of the assessment has ceased to be in dispute, no such argument is tenable in the case of an unpaid amount under an assessment made under section 48(3). There can be no dispute about its payability. The section makes it payable forthwith after the notice of assessment is sent to the taxpayer governed by it. It is thus made payable even before an appeal or objection against the assessment can be taken at all. The time of its payability is fixed and there is nothing in the Act to alter it. It therefore remains payable forthwith after the notice of assessment is sent, whether an appeal or objection against the assessment is taken or not. In my view, it is beyond dispute that the unpaid amount which section 48(3) orders the taxpayer governed by it to pay forthwith after the notice of assessment is sent to him may properly be certified under section 71 after two months have elapsed from the date of mailing the notice of assessment, whether an appeal or objection against the assessment has been taken or not.

Counsel for the applicant submitted that there was support for his contention that the amount ordered to be paid by section 48(3) was not included in the term "taxes, interest and penalties payable under the Act" as used in section 71 in the fact that when section 71 was revised in 1948 and replaced by section 108 of The Income Tax Act Parliament deemed it necessary to use different language

from that which it had used previously and that a change of meaning was thereby intended. Section 108(1) of The Income Tax Act reads as follows:

108(1) An amount payable under this Act that has not been paid or such part of an amount payable under this Act as has not been paid may, upon the expiration of 30 days after the default, be certified by the Minister.

With this there should also be read section 48(1) of The Income Tax Act, which provides:

48.(1) The taxpayer shall, within 30 days from the day of mailing of the notice of assessment, pay to the Receiver General of Canada any part of the assessed tax, interest and penalties then remaining unpaid, whether or not an objection to or appeal from the assessment is outstanding.

There can be no doubt that such an amount as that ordered to be paid by section 48(3) of the Income War Tax Act would fall within the meaning of the term "an amount payable under this Act" as used in section 108(1) of The Income Tax Act. The submission of counsel for the appellant, as I understand it, was that in section 108(1) of The Income Tax Act, Parliament substituted the words "an amount payable under this Act" for the words "taxes, interest and penalties payable under this Act" which it had used in section 71 of the Income War Tax Act, and that by the use of such different words Parliament intended a different meaning and recognized that there were "amounts" payable under the Act other than "taxes, interest and penalties". The use of the word "amount" in place of the words "taxes, interest and penalties" was relied upon in support of the restrictive interpretation that would exclude from the ambit of the words "taxes, interest and penalties" as used in section 71 such an amount as section 48(3) ordered a taxpayer governed by it to pay.

In support of this restriction of the scope of section 71 counsel relied upon a statement of Lord Hanworth M.R. in *Hamilton* v. *Commissioners of Inland Revenue* (1). There, after pointing out that in an amending Act the same words had not been used as in the amended one, the Master of the Rolls said:

The consequent and resultant effect is that one assumes, when different words are used, that some change must be intended by the choice of those different words.

(1) (1931) 16 T.C. 213 at 228.

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To this may be added a similar statement by Lord Macmillan, in delivering the judgment of the Judicial Committee of the Privy Council in *D. R. Fraser & Co. Ltd.* v. *Minister of National Revenue* (1). There he said:

> When an amending Act alters the language of the principal statute, the alteration must be taken to have been made deliberately. In tax legislation it is far from uncommon to find amendments introduced at the instance of the Revenue Department to obviate judicial decisions which the Department considers to be attended with undesirable results.

These two statements are subject to comment. No exception can be taken to them if they are read in the light of their context and with reference to the enactments being construed. But if they are taken as statements of a rule of general application then, with the utmost respect, I express the opinion that they are too broad. It does not follow as a matter of course that in every case where Parliament has used different words in an amending act from those used in the amended one that a difference in meaning was intended; there are many cases where the amending enactment although couched in different terms from the amended one is, without saying so, merely declaratory of its true meaning. And other qualifications of the broad language of the two statements could be given. It may also be pointed out that in both cases the learned judges were considering the meaning of the amending act, and not as counsel sought to do, construing the amended Act in the light of the amending one and the fact that the language in it was different. There is conflict of judicial opinion in the United Kingdom as to whether or to what extent resort may be had in aid of the construction of a statute to the terms of a subsequent enactment. But whatever may be the situation in the United Kingdom or elsewhere than in Canada, I think it is at least doubtful whether such an aid to construction is permissible in Canada in the case of a statute, such as the Income War Tax Act, to which the Interpretation Act, R.S.C. 1927, chap. 1, applies, in view of section 21 of the said Act which provides in part as follows:

> 21. 2. The amendment of any Act shall not be deemed to be or to involve a declaration that the law under such Act was, or was considered by Parliament to have been, different from the law as it has become under such Act as so amended.

(1) (1948) 4 D.L.R. 776 at 781.

3. The repeal or amendment of any Act shall not be deemed to be or to involve any declaration whatsoever as to the previous state of the law.

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It is not necessary to decide the question in this case for, quite apart from the legal question involved, there is, in my opinion, no substance in the submission. Even if the word "amount", as used in section 108 of The Income Tax Act, is different from the words "taxes, interest and penalties", as used in section 71 of the Income War Tax Act, and wider in its coverage, it does not follow at all that the term used in section 71 is not wide enough to include the amount which section 48(3) orders the taxpayer governed by it to pay. In my view, for the reasons already given it is clearly wide enough to do so.

It follows from what I have said that the application for an order setting aside the registration of the certificate and the issue of the writ of *fieri facias* herein must be dismissed.

As to the alternative application for an order staying all further proceedings on the certificate and the writ of *fieri facias,* on the conclusion of the argument I allowed the same only to the extent that pending the disposition of the appeals the respondent was not to take sale proceedings or such steps as would completely alter the applicant's position in case he should be successful in his appeals. I see no reason for any further or other order in the matter.

Neither party will be entitled to costs.

Judgment accordingly.