

36, 1933

In the Privy Council.

No. 76 of 1932.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER OF THE INCOME WAR TAX ACT

AND

IN THE MATTER of the Appeal of JOHN B. HOLDEN, of the City of Toronto, in the Province of Ontario, sole surviving Executor and Trustee of the Estate of Duncan McMartin deceased, late of the City of Montreal in the Province of Quebec.

BETWEEN

JOHN B. HOLDEN, sole surviving Executor and Trustee of the Estate of Duncan McMartin deceased (Respondent) Appellant,

AND

THE MINISTER OF NATIONAL REVENUE (Appellant) Respondent.

RECORD OF PROCEEDINGS.

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RECORD OF PROCEEDINGS.

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In the Privy Council.

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IN THE MATTER OF THE INCOME WAR TAX ACT

AND

IN THE MATTER of the Appeal of JOHN B. HOLDEN, of the City of Toronto, in the Province of Ontario, sole surviving Executor and Trustee of the Estate of Duncan McMartin deceased, late of the City of Montreal in the Province of Quebec.

BETWEEN

JOHN B. HOLDEN, sole surviving Executor and Trustee of the Estate of Duncan McMartin deceased (Respondent) Appellant,

AND

THE MINISTER OF NATIONAL REVENUE (Appellant) Respondent.

RECORD OF PROCEEDINGS.

No. 1.

Statement of Claim.

In the Exchequer Court of Canada.

In the matter of the Income War Tax Act,
and

In the Matter of the Appeal of John B. Holden, sole surviving Executor and Trustee of the Estate of Duncan McMartin, late of the City of Montreal, in the Province of Quebec, (Appellant),
and

10

The Minister of National Revenue (Respondent.)

Filed the 11th day of April, 1931, pursuant to the Order of Arnold A. Duclos, Deputy Registrar, dated the 14th day of March, 1931.

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*In the
Exchequer
Court of
Canada.*

No. 1.
Statement
of Claim,
11th April.
1931.

A 2

*In the
Exchequer
Court of
Canada.*

No. 1.
Statement
of Claim,
11th April,
1931
—continued.

1. The Appellant is the sole surviving Executor and Trustee of the Last Will and Testament of Duncan McMartin bearing date the 24th day of April, 1914, who died on or about the 2nd day of May, 1914, at the City of Toronto, in the Province of Ontario, domiciled in the City of Montreal, in the Province of Quebec.

2. After sundry bequests which are not involved in this appeal, the said deceased gave directions for the sale and conversion of his residuary estate, the investment of the balance of the proceeds of such sale and conversion, and as to the disposition to be made of the income derived from such investments, or the income or profits from the unrealised 10 portions of the said Estate, which directions are to be found in Paragraph 9 of the said last Will and Testament which is as follows :—

9. I give, devise and bequeath all the rest, residue and remainder of my estate both real and personal to my executors and trustees hereinafter named upon the following trusts, namely: (A) To sell and convert the same into money (except my shares in Canadian Mining and Finance Company Limited) as soon after my death as they in their absolute discretion deem it advisable.

(B) To pay out of the proceeds of such sale and conversion the legacies given by this my Will including the said legacy to my wife 20 of one hundred and fifty thousand dollars (\$150,000) should same become payable.

(C) To invest and keep invested the balance of the proceeds of such sale and conversion in such investments as trustees are by the Laws of the Province of Ontario permitted to invest trust funds.

(D) To pay out of the income derived from such investments or the income or profits from the unrealised portions of my estate, the said annuity of twenty-five thousand dollars (\$25,000) a year to my wife.

(E) To divide the balance of the income from such investments 30 or the income or profits derived from the unrealised portions of my estate, into three equal parts and to pay or apply one of such parts, or so much thereof as my executors and trustees in their discretion deem advisable, in or towards the support, maintenance and education of each of my children until they respectively attain the age of twenty-five years, or until the period fixed for the distribution of the capital of my estate, whichever event shall last happen, provided that any portion of any child's share not required for his or her support, maintenance and education shall be re-invested by my said Executors and Trustees and form part of the residue of my estate given and 40 bequeathed to such child.

(F) After the death or re-marriage of my wife whichever event shall first happen, to divide the residue of my estate equally between such of my three children as shall attain the age of twenty-five years, as and when they respectively attain that age, provided that if any of said children shall have died before the period of distribution arrives, leaving a child or children, such children shall take the share in my estate which his or her parent would have taken had he or she survived the period of distribution, if more than one in equal shares.

3. On the 1st day of January, 1917, the sole beneficiaries interested in the residuary estate and the income or profits therefrom were Iva McMartin, widow of the said Duncan McMartin, deceased, and Allen A. McMartin, Melba McMartin and Duncan McMartin, children of the said deceased, and all said beneficiaries then resided in the City of New York in the State of New York and had so resided for some time prior to said 1st day of January, 1917.

4. The said Iva McMartin, widow of the said Duncan McMartin, deceased, remarried on or about the Fourth day of March, 1925, and received on or about that date the sum to which she became entitled upon such remarriage and thereafter ceased to have any further interest in the residuary estate or in the income or profits therefrom, and from and after the date of the remarriage of the said Iva McMartin, the said three children of the said deceased became and still are the sole beneficiaries and persons interested in the residuary estate or the income or profits derived therefrom.

5. At all times material to the question involved in this Appeal, the said Allen A. McMartin, Melba McMartin and Duncan McMartin, children of the said Duncan McMartin, deceased, have resided in the City of New York or elsewhere in the United States of America with the exception that the said Allen A. McMartin took up his residence in the City of Montreal in the Province of Quebec in the year 1926 and has since continued to reside there.

6. The said Allen A. McMartin attained the age of twenty-five years on the 4th day of November, 1928, the said Melba McMartin (now Melba McMartin Orr) attained the age of twenty-five years on the 3rd day of March, 1930, and the said Duncan McMartin attained the age of twenty-one years on the 17th day of February, 1930.

7. By Notice of Assessment dated the 1st day of March, 1930, the Appellant was assessed for Income Tax upon the undistributed income from said residuary estate as follows :—

Year			Taxable Income	Tax
1917	...	...	\$ 6,508 94	\$ 40 18
1918	...	...	45,378 57	3,469 16
1919	...	...	57,766 57	8,152 87
1920	...	...	90,167 28	20,394 78
1921	...	...	166,896 28	62,508 50
1922	...	...	205,433 09	85,438 34
1923	...	...	173,036 85	66,119 16
40 1924	...	...	222,788 25	96,372 10
1925	...	...	271,469 55	97,321 29
1926	...	...	352,884 04	121,063 95
1927	...	...	436,480 86	139,366 65
1928	...	...	392,875 10	122,649 04

8. The Notices of Assessment referred to in the preceding paragraph were the first and only notices served upon the Appellant in respect of the income from the undistributed portion of the residuary estate, although the returns required to be made by the executors and trustees had been

*In the
Exchequer
Court of
Canada.*

No. 1.
Statement
of Claim,
11th April,
1931

—continued.

*In the
Exchequer
Court of
Canada.*

No. 1.
Statement
of Claim,
11th April,
1931
—continued.

regularly filed from year to year in accordance with the provisions of the Income Tax Act.

9. Notices of Appeal dated the 28th day of March, 1930, against the assessment for each of the said years were duly served upon the Minister, which Assessments were affirmed by the Minister by Notice dated the 11th day of November, 1930. Notice of Dissatisfaction dated the 31st day of December, 1930, was given by the Appellant and the Reply of the Minister dated the 7th day of January, 1931, was given denying the facts alleged and confirming the said Assessment.

The Appellant submits that the said Assessments are wrong upon 10 the grounds set out in the Notices of Appeal and Notices of Dissatisfaction, which grounds are as follows:—

(1) There is no authority under the Income War Tax Act for the imposition of such a tax.

(2) The income sought to be taxed is not held for the benefit of unascertained persons or of persons with contingent interests.

(3) No tax is payable in respect of any portion of the undistributed income which is held in trust for non-residents of Canada.

(4) The Executors and Trustees are not persons taxable within the meaning of the Income War Tax Act. 20

(5) The beneficiaries are not persons taxable within the meaning of the Income War Tax Act.

(6) It would be inequitable and unjust at this date to impose a tax even if otherwise payable.

The Appellant further submits that this Appeal be allowed and the said Assessments should be set aside with costs.

JAMES Y. MURDOCH,
603 Royal Bank Building,
2-8, King Street East,
Toronto 2, Ontario, 30
Solicitor for the Appellant.

No. 2.
Statement
of Defence,
18th July,
1931.

No. 2.
Statement of Defence.

Filed the 18th day of July, A.D. 1931.

The Respondent, in reply to the Appellant's Statement of Claim—

1. Admits paragraphs 1, 2, 3, 5, 6, 7 and 9.

2. Admits paragraph 4 but states further the possibility of grandchildren being interested in the residuary estate as well as the three children.

3. Denies paragraph 8 and all submissions following paragraph 9. 40

And the Respondent further states—

1. That John B. Holden, one of His Majesty's Counsel, resident at the City of Toronto, in the Province of Ontario, is the sole surviving trustee named in the last will and testament of the late Duncan McMartin, of the City of Montreal, in the Province of Quebec, the said will bearing date the 24th day of April, 1914, and the said trustee was and is a person within the meaning of the said Act as amended, resident in Canada, and is liable to taxation thereunder.

2. That the said trustee of the estate of the late Duncan McMartin
10 filed returns of the income of the estate for the periods 1917 to 1928 inclusive.

3. That the said trustee was and is liable to tax in respect of such income as if such income (the amount of which is not in dispute) were the income of an unmarried person, in accordance with the provisions of the said Act and particularly subsection six of section three of the Income War Tax Act as enacted by section four of Chapter 49, 10-11 George V, and section sixteen, subsection one thereof (now R.S.C. 1927, section eleven).

4. That in accordance with the provisions of the said Act there was
20 assessed and levied by Notices of Assessment bearing date the 1st March, 1930, taxes upon and in respect of the said incomes for each of the several years mentioned, which said income was and is "accumulating in trust for the benefit of unascertained persons or persons with contingent interests."

5. That the taxes assessed and levied were in the sums set forth in the Appellant's Statement of Claim, paragraph numbered 7.

6. That from the said taxes so assessed and levied the trustee appealed. The Respondent therefore claims—

(A) That John B. Holden, as trustee of the estate of Duncan
30 McMartin, was and is a person, resident in Canada, within the meaning of the said Act;

(B) That the trustee of the said estate is liable under the provisions of the said Act for Income Tax in respect of the income of the estate for the years in question;

(C) That the trustee of the said estate is liable for Income Tax in respect of the income thereof "accumulating in trust for the benefit of unascertained persons or persons with contingent interests . . . as if such income were the income of an unmarried person" in accordance with section 4, Chapter 49, 10-11 George V,
40 and section 16, subsection 1 thereof;

(D) That the appeals of the Appellant be dismissed;

(E) That the assessments be confirmed;

(F) The costs of this appeal;

(G) Such further and other relief as the nature of the case may require.

Dated at Ottawa this 18th day of July, A.D. 1931.

C. F. ELLIOTT,
of Counsel for the Respondent.

*In the
Exchequer
Court of
Canada.*

No. 2.
Statement
of Defence,
18th July,
1931

—continued.

*In the
Exchequer
Court of
Canada.*

No. 3.
Reply,
7th August,
1931.

No. 3.

Reply.

Filed the 7th day of August, 1931, pursuant to the Order of Arnold A. Duclos, Deputy Registrar, dated the 14th day of March, 1931.

1. The Appellant denies all the allegations contained in the Respondent's Statement of Defence except as are herein expressly admitted and puts the Respondent to the strict proof thereof.

2. The Appellant admits the allegations contained in paragraphs 2, 5 and 6 on page 2 of the Respondent's Statement of Defence.

3. In reply and in denial of Paragraph 2, page 1, of the Respondent's 10 Statement of Defence, the Appellant repeats the allegations contained in Paragraph 2 of the Statement of Claim.

4. The Appellant denies that he is a person within the meaning of the said Act as amended resident in Canada and liable to tax in respect of such income or that such income is "accumulating in trust for the benefit of unascertained persons or persons with contingent interests" as is alleged in paragraphs 1, 3, and 4 of second part of the Respondent's defence herein and by way of reply repeats paragraphs 2 to 9 inclusive of the Statement of Claim herein.

JAMES Y. MURDOCH, 20
603, Royal Bank Building,
2 to 8, King Street East,
Toronto 2, Ontario,
Solicitor for the Appellant.

No. 4.
Statement of
facts agreed
upon by
Counsel for
both parties,
14th October,
1931.

No. 4.

Statement of facts agreed upon by Counsel for both parties.

1. The Appellant is the sole surviving Executor and Trustee of the Last Will and Testament of Duncan McMartin bearing date the 24th day of April, 1914.

2. That the said Duncan McMartin died on the 2nd day of May, 1914, 30 at the City of Toronto, in the Province of Ontario, but was domiciled in the City of Montreal, Province of Quebec.

3. After sundry bequests which are not involved in this appeal, the said deceased gave directions by his said Last Will and Testament for the sale and conversion of his residuary estate, the investment of the balance of the proceeds of such sale and conversion and as to the disposition to be made of the income derived from such investments, or the income or profits from the unrealised portions of the said Estate, which directions are to be found in Paragraph 9 of the said last Will and Testament which is as follows :—

9. I give, devise and bequeath all the rest, residue and remainder of my estate both real and personal to my executors and trustees

hereinafter named upon the following trusts, namely: (A) to sell and convert the same into money (except my shares in Canadian Mining and Finance Company Limited) as soon after my death as they in their absolute discretion deem it advisable.

(B) To pay out of the proceeds of such sale and conversion the legacies given by this my Will including the said legacy to my wife of one hundred and fifty thousand dollars (\$150,000) should same become payable.

10 (C) To invest and keep invested the balance of the proceeds of such sale and conversion in such investments as trustees are by the Laws of the Province of Ontario permitted to invest trust funds.

(D) To pay out of the income derived from such investments or the income or profits from the unrealised portions of my estate, the said annuity of twenty-five thousand dollars (\$25,000) a year to my wife.

20 (E) To divide the balance of the income from such investments or the income or profits derived from the unrealised portions of my estate, into three equal parts and to pay or apply one of such parts, or so much thereof as my executors and trustees in their discretion deem advisable, in or towards the support, maintenance and education of each of my children until they respectively attain the age of twenty-five years, or until the period fixed for the distribution of the capital of my estate whichever event shall last happen, provided that any portion of any child's share not required for his or her support, maintenance and education shall be re-invested by my said Executors and Trustees and form part of the residue of my estate given and bequeathed to such child.

30 (F) After the death or remarriage of my wife, whichever event shall first happen, to divide the residue of my estate equally between such of my three children as shall attain the age of twenty-five years, as and when they respectively attain that age, provided that if any of the said children shall have died before the period of distribution arrives, leaving a child or children, such children shall take the share in my estate which his or her parent would have taken had he or she survived the period of distribution, if more than one in equal shares.

4. On the 1st day of January, 1917, there were then living, Iva McMARTIN, Widow of the said Duncan McMARTIN, deceased, and Allen A. McMARTIN, Melba McMARTIN and Duncan McMARTIN, children of the said
40 deceased, all of whom resided in the City of New York and had so resided for some time prior to the 1st day of January, 1917. The said deceased left no other child, or any child or children of any deceased child, him surviving.

5. That Iva McMARTIN, Widow of the said Duncan McMARTIN, deceased, remarried on or about the 4th day of March, 1925, and received on or about that date the sum to which she became entitled on such re-marriage and thereafter ceased to have any further interest in the residuary estate or in the income or profits therefrom.

6. The said Allen McMARTIN continued to reside in the City of New

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*In the
Exchequer
Court of
Canada.*

No. 4.
Statement of
facts agreed
upon by
Counsel for
both parties,
14th October,
1931
—continued.

B

*In the
Exchequer
Court of
Canada.*

No. 4.

Statement of
facts agreed
upon by
Counsel for
both parties,
14th October,
1931

—continued.

York or elsewhere in the United States of America until January, 1926, at which date he took up his residence in the City of Montreal, Province of Quebec, and has since resided there. The said Melba McMartin and Duncan Martin have continued to reside in the City of New York or elsewhere in the United States of America and are still residing there.

7. That the said Allen A. McMartin attained the age of twenty-five years on the 4th day of November, 1928, and that the said Melba McMartin (now Melba McMartin Orr) attained the age of twenty-five years on the 3rd day of March, 1930, and the said Duncan McMartin attained the age of twenty-one years on the 17th day of February, 1930. 10

8. That the said Allen A. McMartin was married on or about the 29th day of August, 1923, and there is no issue of such marriage; the said Melba McMartin was married to Leander Lee on the 20th day of September, 1922, and Melba Lee born 23rd May, 1923, is the only issue of such marriage; the said Melba McMartin and Leander Lee were divorced and the said Melba McMartin was again married to T. W. Orr on the 28th day of October, 1929, and there is no issue of such marriage; the said Duncan McMartin was married on or about the 1st day of July, 1931, and there is no issue of such marriage.

9. By Notice of Assessment dated the 1st day of March, 1930, the 20 Appellant was assessed for Income Tax upon the undistributed income, not used in the maintenance of the children under clause (E) in paragraph 9 of the will, from said residuary estate as follows:—

Year			Taxable Income	Tax
1917	...	...	\$ 6,508 94	\$ 40 18
1918	...	...	45,378 57	3,469 16
1919	...	...	57,766 57	8,152 87
1920	...	...	90,167 28	20,394 78
1921	...	...	166,896 28	62,508 50
1922	...	...	205,433 09	85,438 34
1923	...	...	173,036 85	66,119 16
1924	...	...	222,788 25	96,372 10
1925	...	...	271,469 55	97,321 29
1926	...	...	352,884 04	121,063 95
1927	...	...	436,480 86	139,366 65
1928	...	...	392,875 10	122,649 04

30

10. The Notices of Assessment referred to in the preceding paragraph were the first and only notices served upon the Appellant in respect of the income from the undistributed portion of the residuary estate, although the returns required to be made by executors and trustees had been 40 regularly filed from year to year in accordance with the provisions of the Income Tax Act. Notices of Appeal dated the 28th day of March, 1930, against the assessment for each of the said years were duly served upon the Minister, which assessments were affirmed by the Minister by Notice dated 11th day of December, 1930. Notice of Dissatisfaction dated the 31st day of December, 1930, was given by the Appellant and the Reply of the Minister dated the 7th day of January, 1931, was given denying the facts alleged and confirming the said Assessment. All the said Notices

and/or proceedings being in accordance with the Provision of the Income War Tax Act, 1917, Chapter 28.

11. That attached hereto is a true copy of the Letters Probate of the Last Will and Testament of the said Duncan McMartin deceased.

Dated at Toronto this 14th day of October, A.D. 1931.

JAMES Y. MURDOCH,
Solicitor for the Appellant.

C. F. ELLIOTT,
Solicitor for the Respondent.

*In the
Exchequer
Court of
Canada.*

No. 4.
Statement of
facts agreed
upon by
Counsel for
both parties,
14th October,
1931
—continued.

10 Letters Probate of the Last Will and Testament of Duncan McMartin deceased.

Canada

(Royal Arms)

Province of Ontario

In His Majesty's Surrogate Court of the County of York

No. 31652.

Letters
Probate
of the Last
Will and
Testament of
Duncan
McMartin
deceased,
14th July,
1914.

Be it known that on the Fourteenth day of July, A.D. 1914 the last Will and Testament of Duncan McMartin deceased, who died on or about the Second day of May, A.D. 1914 at Toronto, and who at the time of his death had no fixed place of abode within the Province of Ontario but died leaving property in said Province to be administered was proved 20 and registered by John McMartin, of the Town of Cornwall, in the County of Stormont, Esquire, Louis Henry Timmins, of the City of Montreal, in the Province of Quebec, Esquire, and John Bell Holden, of the City of Toronto, in the County of York, Barrister-at-law, the Executors named in the Will a true copy of which last Will and Testament being hereunder written.

And be it further known that on the twenty-sixth day of May, in the year of our Lord one thousand nine hundred and sixteen the said last Will and Testament of the said Duncan McMartin deceased, was proved and registered in His Majesty's Surrogate Court of the County of York, 30 and that the administration of all and singular the property of the said deceased situate within the Province of Ontario and any way concerning his Will was granted by the aforesaid Surrogate Court to John McMartin, Louis Henry Timmins and John Bell Holden, the executors named in the Will, they having been first sworn well and faithfully to administer the same by paying the just debts of the deceased and the legacies contained in his Will so far as they are thereunto bound by law and by distributing

*In the
Exchequer
Court of
Canada.*

No. 4.

Letters
Probate
of the Last
Will and
Testament of
Duncan
McMartin
deceased,
14th July,
1914
—continued.

the residue (if any) of the property according to law and to render a just and true account of their executorship whenever thereunto lawfully required.

ARTHUR F. WALLIS,
Registrar of the Surrogate Court
of the County of York.

(Seal)

This grant is made upon the condition that no portion of the assets shall be distributed or paid during the war to any beneficiary or creditor who is a German, Austro-Hungarian, Turkish or Bulgarian Subject or 10 other alien enemy wherever resident, or to any one on his behalf, or to or on behalf of any person resident in Germany, Austria-Hungary, Turkey or Bulgaria, or other enemy country of whatever nationality, without the express sanction of the Crown, acting through the Treasury, and if any distribution or payment is made contrary to this condition the grant of Probate or Letters of Administration will be forthwith revoked.

ARTHUR F. WALLIS.

I, Duncan McMartin, of the City of Montreal, in the Province of Quebec, Mine-Owner, hereby make and publish this my Last Will and Testament. 20

1. I revoke all former wills and testamentary dispositions by me at any time heretofore made and declare this to be my last Will and Testament.

2. I direct that all my just debts and my funeral and testamentary expenses be paid by my executors as soon after my death as possible.

3. I give and bequeath a legacy of ten thousand dollars (\$10,000) to each of my sisters Mrs. Crimmins, Mrs. Archambault and Mrs. Phillips.

4. I give and bequeath a legacy of ten thousand dollars (\$10,000) to each of my brothers John (the elder of my two brothers of that name sometimes known as Black Jack, Hugh and Angus.) 30

5. I give and bequeath to my niece Mrs. Sinclair a legacy of ten thousand dollars.

5A. I give and bequeath to Annie Anderson, my wife's youngest sister the sum of ten thousand dollars, upon her attaining the age of twenty-one years or marriage before that date.

6. I also give and bequeath the following legacies : To Allan Phillips brother of Mrs. Sinclair a legacy of ten thousand dollars and to each of the children of my brother Angus the sum of two thousand dollars and to each of the children of Mrs. Crimmins the sum of two thousand dollars.

7. I give and bequeath to my wife all my household goods and 40 furniture wherever the same may be situate at the time of my death and I also give to my said wife the sum of five thousand dollars (\$5,000) in cash to be paid to her as soon after my death as the condition of my estate will permit. I also give, devise and bequeath to my wife an annuity at the rate of twenty-five thousand dollars (\$25,000) a year so long as she remains unmarried and my widow such annuity to be paid in equal sums quarterly commencing in three months from the date of my death. In the event of the remarriage of my wife said annuity shall

cease and I give and bequeath to her the sum of one hundred and fifty thousand dollars (\$150,000) to be paid to her upon her marriage or as soon thereafter as my executors and trustees in their discretion deem wise and the condition of my estate permits. The provisions made by this my will for my said wife are to be in lieu of dower or thirds or *or* whatever other interest she may otherwise by law be entitled to as my widow and she shall elect and notify my executors and trustees in writing within six months after my death whether she accepts the provisions of my will in lieu of dower or thirds or other legal interest in my estate.

10 8. As to my shares in the Canadian Mining and Finance Company Limited, a Corporation Incorporated under the laws of the Province of Ontario, of which Company I am a Director my executors and trustees are not to sell the same until the youngest of my children attains the age of twenty-one years, provided, however, that said shares or any portion thereof may, with the written approval of a majority of the Directors of said Company from time to time, be sold or otherwise disposed of before such date if my executors and trustees in their absolute discretion deem it advisable so to do.

20 9. I give, devise and bequeath all the rest, residue and remainder of my estate both real and personal to my executors and trustees hereinafter named upon the following trusts, namely:—

(A) To sell and convert the same into money (except my shares in Canadian Mining and Finance Company Limited) as soon after my death as they in their absolute discretion deem it advisable.

(B) To pay out of the proceeds of such sale and conversion the legacies given by this my will including the said legacy to my wife of one hundred and fifty thousand dollars (\$150,000) should same become payable.

30 (C) To invest and keep invested the balance of the proceeds of such sale and conversion in such investments as trustees are by the laws of the Province of Ontario permitted to invest trust funds.

(D) To pay out of the income derived for such investments or the income or profits from the unrealised portions of my estate, the said annuity of twenty-five thousand dollars (\$25,000) a year to my wife.

40 (E) To divide the balance of the income from such investments or the income or profits derived from the unrealised portions of my estate, into three equal parts and to pay or apply one of such parts, or so much thereof as my executors and trustees in their discretion deem advisable, in or towards the support, maintenance and education of each of my children until they have respectively attained the age of twenty-five years, or until the period fixed for the distribution of the capital of my estate which ever event shall last happen, provided that any portion of any child's share not required for his or her support, maintenance and education shall be re-invested by my said Executors and trustees and form part of the residue of my estate given and bequeathed to such child.

(F) After the death or re-marriage of my wife, whichever event shall first happen, to divide the residue of my estate equally between such of my three children as shall attain the age of twenty-five years, as and when they respectively attain that age, provided that if any of the said children shall have died before the period of distribution arrives, leaving a child or

*In the
Exchequer
Court of
Canada.*

No. 4.

Letters
Probate
of the Last
Will and
Testament of
Duncan
McMartin
deceased,
14th July,
1914

—continued.

*In the
Exchequer
Court of
Canada.*

No. 4.
Letters
Probate
of the Last
Will and
Testament of
Duncan
McMartin
deceased,
14th July,
1914
—continued.

children, such children shall take the share in my estate which his or her parent would have taken had he or she survived the period of distribution, if more than one in equal shares.

10. I hereby authorise and empower my executors and trustees, except as otherwise directed, to postpone the payment of any legacies given by this my will until such period exceeding one year as they in their absolute discretion deem advisable having regard to the condition of my estate.

11. I hereby authorise and empower my executors and trustees to retain any existing investments I may have at the time of my death for 10 so long a period as they in their absolute discretion deem advisable, and I also authorise and empower my executors and trustees to postpone for as long a period as they deem expedient the sale and conversion of any of my real or personal estate, and to vary any investments which may from time to time be made by them. Until the sale and conversion of my estate the profits or income from the unsold portions are to go in the same manner as the income thereof would go if realised. My executors and trustees shall not incur any responsibility by reason of the postponement of the sale and conversion of any portion of my estate in accordance with the directions herein contained. I also authorise and empower my 20 executors and trustees to sell any real or personal estate either for cash or upon terms of credit and upon such terms and conditions as they in their absolute discretion deem prudent.

I hereby appoint the following persons as the executors and trustees of this my Will, namely: John McMartin, my brother and co-director in the Finance Company, Louis Henry Timmins of Montreal, and John B. Holden of Toronto, Solicitor.

Dated at Toronto, Ontario, the 24th day of April, 1914.

(Signed) D. McMARTIN.

Signed, published and declared by the above named Testator, Duncan 30 McMartin, as and for his last Will and Testament in the presence of us all being present at the same time, who at his request, and in his presence and in the presence of each other have hereunto subscribed our names as witnesses:—The following words have been written in on page are named “ 5 ” “ A ”* I give and bequeath to Annie Alderson, my wife’s youngest sister the sum of ten thousand dollars upon her attaining the age of twenty-one years or marriage before that date. “ To Allen Phillips, brother of Mrs. Sinclair, a legacy of ten thousand dollars and to each of the children of my brother Angus the sum of two thousand dollars and to each of the children of Mrs. Crimmins the sum of two thousand dollars and the 40 following words on page five, “ John McMartin, my brother and co-director, in the Finance Company, Louis Henry Timmins of Montreal, and John B. Holden of Toronto, Solicitor.

(Signed) J. E. ELLIOT, of Toronto, Physician and Surgeon.
K. C. MULLEN, of Toronto, Nurse.

* Sic

No. 5.

FORMAL JUDGMENT.

IN THE EXCHEQUER COURT OF CANADA.

Tuesday, the 20th day of October, A.D. 1931.

Present

The Honourable Mr. Justice Audette.

In the Matter of the Income War Tax Act,
and

In the Matter of the Appeal of John B. Holden, of the City of Toronto,
10 in the Province of Ontario, sole surviving Executor and Trustee of
the Estate of Duncan McMartin, late of the City of Montreal, in the
Province of Quebec,

Appellant,

and

No. 12958

The Minister of National Revenue,

Respondent.

This Appeal having come on to be heard before this Court at its sittings at
Ottawa on the 14th day of October, 1931, in the presence of counsel for
20 both parties, upon hearing read the pleadings and the Statement of Facts
agreed upon by the Appellant and Respondent and what was alleged by
counsel aforesaid, and this Court having been pleased to direct that the
said appeal should stand over for judgment, and the same coming on this
day for judgment.

This Court doth order and adjudge that the appeal of the Appellant
herein be and the same is hereby allowed save as to the interest of Allen A.
McMartin which is to be assessed from the date he became a resident of
Canada, and the amount in this respect to be adjusted between the
parties, but failing the parties to so agree, leave is hereby reserved to
30 either party, upon notice, to apply to the Court for settlement thereof.

And this Court doth further order and adjudge that the Appellant
is entitled to recover from the Respondent the general costs of and
incidental to this appeal and that the question of costs with respect to the
issue regarding Allan A. McMartin be reserved.

By the Court,

(Signed) ARNOLD W. DUCLOS,

Certified a true copy

Deputy Registrar.

(Sgd.) ARNOLD W. DUCLOS,
Deputy Registrar.

*In the
Exchequer
Court of
Canada.*

No. 5.
Formal
Judgment,
20th October,
1931.

No. 6.

*In the
Exchequer
Court of
Canada.*

Reasons for judgment of Mr. Justice Audette.

Coram,

AUDETTE, J.

No. 6.
Reasons for
judgment of
Mr. Justice
Audette,
20th October,
1931.

Judgment rendered 20th October, 1931.

This is an appeal, under the provisions of The Income War Tax Act, 1917, and Amendments thereto, from the assessment of the Appellant, for the years 1917 to 1928, both inclusive, on the income, received by the Trustee of the above mentioned estate, undistributed and not used in the maintenance of the children under Clause (E) in paragraph (9) of the Admission of Facts filed herein. 10

At the opening of the hearing of this Appeal both parties, by their respective counsel, filed the following Admission of Facts which reads as follows, viz. :—

STATEMENT OF FACTS AGREED UPON BY THE APPELLANT AND
RESPONDENT FOR THE PURPOSES OF THE TRIAL OF THIS ACTION.

1. The Appellant is the sole surviving Executor and Trustee of the Last Will and Testament of Duncan McMartin bearing date the 24th day of April, 1914.

2. That the said Duncan McMartin died on the 2nd day of May, 1914 20 at the City of Toronto, in the Province of Ontario, but was domiciled in the City of Montreal, Province of Quebec.

3. After sundry bequests which are not involved in this appeal, the said deceased gave directions by his said Last Will and Testament for the sale and conversion of his residuary estate, the investment of the balance of the proceeds of such sale and conversion and as to the disposition to be made of the income derived from such investments, or the income or profits from the unrealised portions of the said estate, which directions are to be found in paragraph 9 of the said Last Will and Testament which is as follows :— 30

9. I give, devise and bequeath all the rest, residue and remainder of my estate both real and personal to my executors and trustees hereinafter named upon the following trusts, namely—

(A) to sell and convert the same into money (except my shares in Canadian Mining and Finance Company Limited) as soon after my death as they in their absolute discretion deem it advisable.

(B) to pay out of the proceeds of such sale and conversion the legacies given by this my will, including the said legacy to my wife of one hundred and fifty thousand dollars (\$150,000) should same become payable. 40

(C) to invest and keep invested the balance of the proceeds of such sale and conversion in such investments as trustees are by the Laws of the Province of Ontario permitted to invest trust funds.

(D) to pay out of the income derived from such investments or the income or profits from the unrealised portions of my estate,

the said annuity of twenty-five thousand dollars (\$25,000) a year to my wife.

(E) to divide the balance of the income from such investments or the income or profits derived from the unrealised portions of my estate, into three equal parts and to pay or apply one of such parts, or so much thereof as my executors and trustees in their discretion deem advisable, in or towards the support, maintenance and education of each of my children until they respectively attain the age of twenty-five years, or until the period fixed for the distribution of the capital of my estate whichever event shall last happen, provided that any portion of any child's share not required for his or her support, maintenance and education shall be re-invested by my said executors and trustees and form part of the residue of my estate given and bequeathed to such child.

(F) After the death or re-marriage of my wife, whichever event shall first happen, to divide the residue of my estate equally between such of my three children as shall attain the age of twenty-five years, as and when they respectively attain that age, provided that if any of said children shall have died before the period of distribution arrives, leaving a child or children, such children shall take the share in my estate which his or her parent would have taken had he or she survived the period of distribution, if more than one in equal shares.

4. On the 1st day of January, 1917, there were then living Iva McMartin, widow of the said Duncan McMartin, deceased, and Allan A. McMartin, Melba McMartin and Duncan McMartin, children of the said deceased, all of whom resided in the City of New York, and had so resided for some time prior to the 1st day of January, 1917. The said deceased left no other child, or any child or children of any deceased child, him surviving.

5. That Iva McMartin, widow of the said Duncan McMartin, deceased, re-married on or about the 4th day of March, 1925, and received on or about that date the sum to which she became entitled on such re-marriage and thereafter ceased to have any further interest in the residuary estate or in the income or profits therefrom.

6. The said Allen McMartin continued to reside in the City of New York or elsewhere in the United States of America until January, 1926, at which date he took up his residence in the City of Montreal, Province of Quebec, and has since resided there. The said Melba McMartin and Duncan McMartin have continued to reside in the City of New York or elsewhere in the United States of America and are still residing there.

7. That the said Allen A. McMartin attained the age of twenty-five years on the 4th day of November, 1928, and that the said Melba McMartin (now Melba McMartin Orr) attained the age of twenty-five years on the 3rd day of March, 1930, and the said Duncan McMartin attained the age of twenty-one years on the 17th day of February, 1930.

8. That the said Allen A. McMartin was married on or about the 29th day of August, 1923, and there is no issue of such marriage; the said Melba McMartin was married to Leander Lee on the 20th day of September, 1922, and Melba Lee, born 23rd May, 1923, is the only issue

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No. 6.

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—continued.

of such marriage; the said Melba McMartin and Leander Lee were divorced and the said Melba McMartin was again married to T. W. Orr on the 28th day of October, 1929, and there is no issue of such marriage; the said Duncan McMartin was married on or about the 1st day of July, 1931, and there is no issue of such marriage.

9. By Notice of Assessment dated the 1st day of March, 1930, the Appellant was assessed for Income Tax upon the undistributed income not used in the maintenance of the children under clause (E) in paragraph 9 of the Will, from said residuary estate as follows :

Year	Taxable Income	Tax	
1917	6,508 94	40 18	10
1918	45,378 57	3,469 16	
1919	57,766 57	8,152 87	
1920	90,167 28	20,394 78	
1921	166,896 28	62,508 50	
1922	205,433 09	85,438 34	
1923	173,036 85	66,119 16	
1924	222,788 25	96,372 10	
1925	271,469 55	97,321 29	
1926	352,884 04	121,063 95	20
1927	436,480 86	139,366 65	
1928	392,875 10	122,649 04	

10. The Notices of Assessment referred to in the preceding paragraph were the first and only notices served upon the Appellant in respect of the income from the undistributed portion of the residuary estate, although the returns required to be made by executors and trustees had been regularly filed from year to year in accordance with the provisions of the Income Tax Act. Notices of Appeal dated the 28th day of March, 1930, against the assessment for each of the said years were duly served upon the Minister which assessments were affirmed by the Minister by notice dated the 11th day of November, 1930. Notice of Dissatisfaction dated the 31st day of December, 1930, was given by the Appellant and the Reply of the Minister dated the 7th day of January, 1931, was given denying the facts alleged and confirming the said assessment. All of the said Notices and/or proceedings being in accordance with the provisions of the Income War Tax Act, 1917, Chapter 28, Section 1.

11. That attached hereto is a true copy of the letters probate of the last will and testament of the said Duncan McMartin deceased.

The Respondent, by his statement in defence, avers and claims, among other things (A) that the Trustee Holden is a person and resides in Canada; (B) that the trustee under the provisions of the Act, is liable in respect of the income in question; and (C) that the trustee is liable for Income Tax in respect of the income thereof "accumulating in trust for the benefit of unascertained persons or persons with contingent interests . . . as if such income were the income of an unmarried person" in accordance with section 4, chapter 49, 10-11 Geo. V, and section 16, subsection 1 thereof. This section is now section 11, chapter 97, R.S.C. 1927.

As I had already occasion to say in the case of *The Royal Trust Company v. the Minister of National Revenue*, (1930) Ex. C.R. 172, reversed on appeal to the Supreme Court of Canada, (1931) 3 D.L.R. 474, the respondent, in his contention, seems to overlook the provision of section 4 which enacts as a condition precedent to any taxation being levied, that the person so taxed must be a resident of Canada (see now sections 9 and 11 R.S.C., 1927, which came into force on the 1st February, 1928).

The definition of the word "person" in the Act of 1917 (see now subsection (H) of section 2, R.S.C. 1927, Ch. 97) reads as follows:—

"Person" means any individual or person and any syndicate, trust, association or other body and any body corporate.

While, in the view I take of the case, the interpretation of the word "trust" has no practical bearing, although raised by counsel, I wish to say that this word "trust" used as it is in that section does not mean a trust such as that constituted by the will in question.

The word "trust" defined in that section must be read under the rule of interpretation, generally known as *ejusdem generis* rule or the rule *noscitur a sociis*. That is, when several words are followed, as here, by a general expression (such as "or other body and any corporate body") that expression is not limited to the last particular unit of the group; but applies to them all. *Great Western Railway Company v. Swindon*, (1884) 9 A.C. 608, Craies on Statute Law, 3rd Ed. 162.

This rule of construction was thus enumerated by Lord Campbell, in *R. v. Edmundson* (1859) 28 L.J.M.C. 213: "I accede to the principle laid down in all the cases which have been cited, that, when there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified."

The word "Trust" used in section 2 should be interpreted to mean a corporate or other body, a trust association or merger, combination of companies or interest created for the purpose of carrying on Trust business.

In a trust created by a will, the trustee is bound to hold the property for the benefit of another, the *cestui que* trust.

Now the respondent further contends that the tax in question in this case is leviable under subsection 6 of section 3 of the Income War Tax Act, 1917, as amended by section 4 of 10-11 Geo. V, Chapter 49, which reads as follows (see now section 11 R.S.C. 1927):—

11. The income, for any taxation period, of a *beneficiary* of any estate or trust of whatsoever nature shall be deemed to include all income accruing to the credit of the taxpayer whether received by him or not during such taxation period.

2. Income accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests shall be taxable in the hands of the trustee or other like person acting in a fiduciary capacity as if such income were the income of an unmarried person.

What is sought to be subjected to taxation in this case is not the actual property of the trustee, but is the income of the beneficiary of a trust. While if such income were liable to taxation, it would be payable

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—continued.

in the hands of the trustee, yet, on the other hand, the trustee cannot be made liable therefor if the beneficiary, for any reason, is not taxable under the Act.

In the present case—with the exception of one beneficiary who resides in Canada since 1926—it may be said that they are not resident in Canada, a condition which, as I read the Act, is made a condition precedent to any taxation thereunder.

Section 4 of the Act, as amended, provides that the taxation shall be levied only upon persons residing in Canada. Section 9, Chapter 97, R.S.C. 1927, re-enacts the same provision in a more comprehensive manner and may be referred to for the present purpose. This legislation would seem to have been inspired by the well-known doctrine that movable property, under the Civil Law, is governed by the laws of the domicile of the owner. *Mobilia sequuntur personam* and that Parliament has no extra-territorial power of taxation. See also *London and South American Investment Trust v. British Tobacco Company (Australia) Ltd.*, (1927) Ch. D. 107.

The corpus of the trust in this case, as well as the income derived therefrom, are not the property of a resident in Canada. A foreigner who is a shareholder of a Canadian company receives his dividend, but is not subject to taxation of the same if he does not reside in Canada. It is admitted by paragraph 4 of the above recited admission that all the beneficiaries reside in the City of New York, U.S. excepting Allen McMartin who resides in Montreal since 1926 and who would be subject to the taxation from that date.

Under section 11, the trustee, who acts in a fiduciary capacity, is merely the channel through which the income of a beneficiary residing in Canada is duly taxed. This section does not purport to establish a taxation against any new person. The subject matter mentioned in sections 9 and 11 does not come into operation unless a person residing in Canada has first been found. There cannot be taxation unless this imperative provision of residence in Canada is first ascertained.

Before a condemnation to pay a tax is made, a clear and unambiguous enactment must first be found. The onus is upon the Crown to show that the defendant comes clearly within the taxing provision, and that the Court should not go beyond the literal meaning of the words used in their plain and ordinary sense. *Can. Ency. Digest, Vol. 10, pp. 267-268.*

There are in this Taxing Act (sec. 9) words amounting to negative words prohibiting the taxation of the income of persons who do not reside in Canada. This enactment therefore makes it inconsistent with any contention that a non-resident's income may be taxed under sec. 11. This section 9 determines and defines where the incident of taxation rests or falls.

If in one section of a statute imposing taxation there are express words which in their plain or literal meaning disclose an exemption from taxation of the income of non-residents in Canada, and there are also words of ambiguous import in another section of the same statute which might be construed as displacing the exemption—these latter words are

not sufficient to rebut the intention to exempt non-residents as expressed in the former section.

If a charge is imposed upon a person it must be so imposed in clear and express terms and not left to implication.

In the present case the general clause of the Act (section 9) makes it a condition precedent to taxation to be a resident in Canada. There cannot be taxation unless this imperative provision of residence in Canada is first ascertained. The test of liability is residence in Canada, that prevails all through the Act.

10 The case of *Williams v. Singer*, 7 Rep. of T.C. 399 is not apposite in that there is special legislation in England covering a case like the present one which does not exist in Canada. That case is decided upon a statute which reads as follows: "For and in respect of the annual profits or gains arising or accruing to any person whatever, whether a subject of Her Majesty or not, although not resident within the United Kingdom, etc. . ."

This legislation is possible in England because the tax is there payable at the source. Failing the Parliament of Canada passing such legislation, such tax is not payable by a non-resident of Canada.

In the case of *Kent v. The King* (1924), S.C.R. 389, it was held that—

20 Section 155 of the Taxation Act R.S.B.C. (1911) c. 222, as re-enacted by sec. 25 of c. 89 (1918) has not the effect of making taxable an income of non-residents, as well as the income of residents derived from the working of mines. The words therein as provided in Part I have reference not only to the manner and machinery of taxation of income, but also as to the persons to be taxed; and by Part I, the non-residents are expressly not assessable to Income Tax."

Now, coming to the consideration of the case under section 11 of the taxing Act, it will be necessary to ascertain the actual position, under the will, of the parties sought to be taxed.

30 The income under clause (E) after being used for the payment of a certain amount, is divided into three equal parts, such part being assigned and earmarked to each individual, A. B. and C. individually. Then out of such respective amount—after having set apart and used what was thought adequate for the support, maintenance and education of each child, respectively—the portion or balance (which is the amount sought to be taxed in the present case) of such income so divided in three parts respectively and which are not required for the support, maintenance and education, is re-invested by the Trustee and in the language of the will, is given and bequeathed to such child, an individual gift and bequeath to
40 each individual child, in whom such amount becomes vested.

Therefore, such fund or revenue cannot be called, under section 11, an income accumulating for the benefit of unascertained persons or persons with contingent interest; because each participant is named, the fund is earmarked and is given and bequeathed to such individual by the deceased testator.

There remains no uncertainty as to the ownership of such income. It is the absolute property of each individual named in the will and thereby left to him. It is not the case of an unascertained beneficiary.

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—continued.

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Court of
Canada.*

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Audette,
20th October,
1931
—*continued.*

The intention of the testator is quite manifest and unambiguous. Now clause (F) of the will deals with the division of the capital which is now sought to be here taxed. That clause (F) only deals with the distribution to be approached as a matter of law under clause (E) whereby the income in question has been vested in the children. For proper interpretation of the will, the whole of it must be considered and looked at, before passing upon any segregated clause.

Where the income is by the will given for the maintenance, etc., the presumption is obviously in favour of vesting. There is in this respect no gift over of such income in case the children died. And the postponement of the distribution by clause (F) is for the benefit of the estate and in the present case it is obviously done for the benefit of the wife until her death or remarriage. And that again is a presumption in favour of vesting, since it was to let in the wife's interest. The postponement until the children attain the age of 25 is simply a postponement of the time of payment and does not interfere with the question of vesting.

Furthermore, there is the provision that the child or children of a deceased child should take the parent's share and that again supports the contention for vesting, since it becomes a divesting of that share in favour of the issue.

Moreover, one must not overlook the fact that this maintenance is not out of the general fund or residue, it is not a general maintenance; but an individual one out of an amount set aside and bequeathed to each child. After a certain amount is paid from the general revenues, the children get their three-partite share, use a certain amount for maintenance and the balance thereof is invested and given and bequeathed to each child respectively.

The facts of this case are different from that of the *McLeod Case* (1925), Ex. C.R. 105; (1926) S.C.R. 457, and also different from those in the case of *The Royal Trust Case* (1930), Ex. C.R. 172; (1931) 3 D.L.R. 474.

The following authorities may be referred to in support of the question of "vesting" as above mentioned:—

Williams, on Executors, 12th Ed., pp. 795 to 797, 800. *Halsbury*, 28 pp. 797 et seq. At page 798 it is said "in cases of doubt, the presumption is in favour of the early vesting of the gift at the testator's death . . . and it is presumed that the testator intended the gift to be vested, *subject to being divested, rather than remain in suspense.*"

Then there is a very apposite case to the one in question, *Phipps v. Ackers*, 9 Clark and Finnelly 583, a case wherein the House of Lords requested the opinion of the Common Law judges, wherein it was held that an equitable estate in fee in lands vested immediately on the testator's death, liable to be divested in the event of the heir dying under 21 without leaving issue of his body.

In *re Bartholomew*, 1, *McNaughton & Gordon* R. 354, it was held the words "to whom I give and bequeath" constituted a direct gift.

See also *Williams v. Williams*, (1907) 1 Ch. Div. 180, at 183; *re Gosselin*, (1903) 1 Ch. Div. 448; *Harts trusts de G. & J.* 195; in *re Usher*, (1922) 2 Ch. Div. 321; *Fox v. Fox*, L.R. 19 Eq. 286; *Booth v.*

Booth, 4 Vesey Jr. 399; in re *Wrey*, 30 Ch. Div. 507; Jarman, on Wills, 7th Ed., Vol. 2, 1402 at 1403; *Davies v. Fisher*, 5 Bevan, 201.

A just appreciation of the circumstances and facts of the case fails to bring the Appellant within the scope of the statute for imposing a tax upon them. There is no equitable construction of a taxing statute in favour of the Crown, the exact meaning of the words used in the Act must be adhered to. *Partington v. Attorney-General*, (1869) L.R. 4 H.L. 100 at 122.

The word "income" must not be regarded loosely, the words as used in the taxing Act must be read in conjunction with the meaning of the words used in the context. See per Halsbury, I.C., in *Y. and P. Main Sewerage Board v. Bensled*, (1907) A.C. 264.

There will be judgment allowing the appeal and with general costs—declaring and adjudging that the fund sought to be taxed herein is absolutely vested in well known beneficiaries without any contingent interest and that such beneficiaries being admitted not to be residents in Canada are not liable to be taxed; with, however, this qualification that as Allen McMartin resided in New York until January, 1926, when from that date he took up his residence in the City of Montreal, Canada, he will from such date be liable to the present taxation, the amount of which can be adjusted between the parties; failing, however, such adjustment, leave is hereby reserved to either party, upon notice, to apply to the Court for the settlement of the same. The question of costs as between this issue of the respondent and Allen McMartin from January, 1926, is hereby reserved.

*In the
Exchequer
Court of
Canada.*

No. 6.
Reasons for
judgment of
Mr. Justice
Audette,
20th October,
1931

—continued.

No. 7.

Notice of Appeal.

In the Supreme Court of Canada.

In the Matter of the Income War Tax Act
and

In the Matter of the Appeal of John B. Holden, of the City of Toronto, in the Province of Ontario, sole surviving trustee of the estate of Duncan McMartin, late of the City of Montreal, in the Province of Quebec.

Between

The Minister of National Revenue ... (Respondent) Appellant,
and

John B. Holden, sole surviving executor and trustee of the estate of
Duncan McMartin ... (Appellant) Respondent.

Take notice that the Minister of National Revenue, the above-named Appellant, is dissatisfied with the Judgment in this cause pronounced by the Honourable Mr. Justice Audette in the Exchequer Court of Canada on the 20th day of October, A.D. 1931, wherein the appeal of the said

*In the
Supreme
Court of
Canada.*

No. 7.
Notice of
Appeal,
24th October,
1931.

*In the
Supreme
Court of
Canada.*

John B. Holden, sole surviving trustee of the estate of Duncan McMartin, from the Income Tax assessments levied against the estate for the years 1917 to 1928, both inclusive, was allowed, and hereby appeals to the Supreme Court of Canada from the said Judgment.

No. 7.
Notice of
Appeal,
24th October,
1931
—continued.

Dated at Ottawa this 24th day of October, A.D. 1931.

W. S. FISHER,
Solicitor for the Minister of National Revenue.

To the Registrar of
The Supreme Court of Canada,
And to the Registrar of
The Exchequer Court of Canada,
And to Messrs. HOLDEN & MURDOCH,
Barristers, etc.,
Toronto, Ontario,
Solicitors for the Respondent.
And to S. R. BROADFOOT, Esq.,
Barrister, etc.,
Ottawa, Ontario,
Agent for Respondent's Solicitors.

10

No. 8.
Notice of
Cross-
Appeal,
4th November,
1931.

No. 8.

20

Notice of Cross-Appeal.

Take notice that John B. Holden, sole surviving Executor and Trustee of the Estate of Duncan McMartin, intends, upon the hearing of this appeal from the judgment in this cause pronounced by the Honourable Mr. Justice Audette in the Exchequer Court of Canada on the 20th day of October, 1931, to contend that the decision should be varied by striking out of the said judgment the following words "save as to the interest of Allen A. McMartin which is to be assessed from the date he became a resident of Canada and the amount in this respect to be adjusted between the parties, but failing the parties to so agree leave is hereby reserved 30 to either party upon notice to apply to the Court for the settlement thereof," and hereby cross-appeals with respect thereto to the Supreme Court of Canada from the said judgment.

Dated at Toronto this 4th day of November, A.D. 1931.

(Signed) JAMES Y. MURDOCH,
603, Royal Bank Building,
2-8, King Street East,

To the Registrar of
The Supreme Court of Canada,
And to the Registrar of
The Exchequer Court of Canada,
And to W. S. FISHER,
Barrister, etc., Ottawa, Ontario,
Solicitor for the Appellant.

Toronto 2, Ontario,
Solicitor for the Respondent.

40

No. 9.**Statement of Case.***In the
Supreme
Court of
Canada.*

This is an appeal from the judgment of the Honourable Mr. Justice Audette pronounced on the 20th day of October, A.D. 1931, allowing the appeal of the Respondent (Appellant in the Exchequer Court of Canada) from the decision of the Honourable the Minister of National Revenue given on the 11th day of December, A.D. 1930, and setting aside the assessments herein dated the 1st day of March, 1930, for the years 1917 to 1928, both inclusive, save as to the interest of Allen
10 **McMartin** which is to be assessed from the date when the said Allen **McMartin** became a resident of Canada, the amount in this respect to be adjusted between the parties, but failing the parties to so agree reserving the right to either party, upon notice, to apply to the Court for settlement thereof, the whole with general costs against the Minister of National Revenue, but with the costs with respect to the issue regarding Allen **A. McMartin** reserved.

No. 9.
Statement
of Case.**No. 10.****Order dispensing with printing of parts of exhibits.**

Monday the 9th day of November, A.D. 1931.

No. 10.
Order dis-
pensing with
printing of
parts of
exhibits,
9th November,
1931.

20 Upon the application of the Appellant and upon hearing read the affidavit of William Stanley Fisher filed, and the consent of Counsel for both the Appellant and the Respondent;

It is ordered that the printing of the documents hereinafter set forth in the succeeding paragraph hereof, all which documents are included in the certificate filed by the Minister of National Revenue, be and the same is hereby dispensed with.

The following is the list of the documents referred to above—

1. The Income Tax Returns, forms T.1 and T.3, of the estate of Duncan **McMartin** for the years 1917 to 1922, both inclusive, and
30 1924 to 1927, both inclusive;

2. The Notices of Assessment for the years 1917 to 1922, both inclusive, and 1924 to 1927, both inclusive;

3. The Notices of Appeal for the years 1917 to 1922, both inclusive, and 1924 to 1927, both inclusive.

It is further ordered that the printing of the Order of the Deputy Registrar of the Exchequer Court of Canada, dated the 14th day of March, 1931, ordering that formal pleadings be filed, be and the same is hereby dispensed with.

40 And it is further ordered that the costs of and incidental to this application be costs of the appeal.

(Signed) J. F. SMELLIE,
Registrar.

*In the
Supreme
Court of
Canada.*

No. 11.

Agreement as to contents of Appeal Book.

No. 11.
Agreement as
to contents of
Appeal
Book,
13th Novem-
ber, 1931.

The parties agree that the case on appeal to the Supreme Court of Canada shall consist of the following:—

1. Statement of Case.
2. Certificate and the following documents filed by the Commissioner of Income Tax—
 - (A) Income Tax Returns form T.3 (information returns) of the estate for the years 1923 and 1928; Income Tax Returns form T.1 (assessment returns) of the estate for the years 1923 and 1928;
 - (B) The Notices of Assessment for the years 1923 and 1928 appealed against;
 - (C) The Notices of Appeal for the years 1923 and 1928;
 - (D) The Decision of the Minister;
 - (E) The Notice of Dissatisfaction;
 - (F) The Reply of the Minister;
3. Pleadings.
4. Admission of Facts agreed to by both parties and filed at the trial. 20
5. Exhibit produced at the trial (copy of the will of Duncan McMartin deceased).
6. Formal judgment.
7. Reasons for Judgment.
8. Order dispensing with printing of certain exhibits.
9. Notice of Appeal by the Minister of National Revenue.
10. Notice of Cross-Appeal by the Executor of the Estate of Duncan McMartin.
11. Agreement as to contents of case.
12. Certificate of the Registrar. 30
13. Certificate certifying case.

Dated the 13th day of November, A.D. 1931.

W. S. FISHER,
Solicitor for the Appellant.
S. RUPERT BROADFOOT,
Ottawa Agent for Respondent's Solicitors.

No. 12.

No. 12.

**Certificate of Registrar of Exchequer Court of Canada as to Appeal Book.
—November, 1931.**

(Not Printed.)

40

No. 13.

Certificate certifying Appeal Book—November, 1931.

(Not Printed.)

*In the
Supreme
Court of
Canada.*

No. 13.

No. 14.

Factum of the Minister of National Revenue.

No. 14.
Factum of
the Minister
of National
Revenue.

This is an appeal from the judgment of the Honourable Mr. Justice Audette allowing the appeal of John B. Holden of the City of Toronto, in the Province of Ontario, acting in his capacity as trustee under the last will and testament of Duncan McMartin, late of the City of Montreal,
10 in the Province of Quebec.

The case came before the Exchequer Court by way of appeal from the decision of the Minister of National Revenue affirming the assessments (1917 to 1928 inclusive) levied against the trustee, as trustee under the said will, upon the income received and accumulating in the hands of the trustee.

The trust was formed at the death of the said Duncan McMartin in 1914 under and by virtue of his last will and testament (Record p. 10) and in particular paragraph 9 (see (E) and (F)). (Record pp. 11-12.)

The trustee, John B. Holden, of the City of Toronto, Province of
20 Ontario (the respondent), sole surviving executor and trustee, was and is a resident of Canada. The trustee was and is required to invest and keep invested the corpus of the trust fund in such investments as trustees are by the laws of the Province of Ontario permitted to invest trust funds. (Agreed statement of facts, Record p. 6, line 33, to p. 7, line 11.)

The income therefrom not actually used in the maintenance of the children under clause (E) of the Will was and is accumulating in the hands of the trustee and is reinvested in like securities for the period of the trust, i.e., "to invest and keep invested in such investments as trustees are by the laws of the Province of Ontario permitted to invest trust funds."
30 (Record p. 7, line 9.)

The pertinent parts of the will are contained in the statement of facts agreed upon (Record p. 6, line 41, to p. 7, line 36), particularly paragraphs (c), (E) and (F) of paragraph 9 of the will.

The children are not specifically or individually named in the will but reference is made to the class, namely:—

"(F) To divide the residue of my estate equally between such of my three children as shall attain the age of twenty-five years."
(Record p. 7, lines 29-30.)

In the meantime there was "income" accumulating in the hands of
40 the trustee.

*In the
Supreme
Court of
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the Minister
of National
Revenue
—continued.

In all taxation periods in question all of the children were under the age of twenty-five years.

The oldest child attained the age of twenty-five years on the 4th November, 1928.

The second oldest child attained the age of twenty-five years on the 3rd March, 1930.

The youngest child attained the age of twenty-one years on the 17th February, 1930.

The Income Tax Act provides, in Chapter 28, Statutes of 1917, section 2 :—

“(D) ‘person’ means any individual or person and any syndicate, trust, association or other body and any body corporate, and the heirs, executors, administrators, curators, and assigns or other legal representatives of such person, according to the law of that part of Canada to which the context extends.”

Section 4 of Chapter 28 of the Statutes of 1917 reads :—

“(1) There shall be assessed, levied and paid, upon the income during the preceding year of every person residing or ordinarily resident in Canada or carrying on any business in Canada, the following taxes :—” (rates of tax are then set out).

The Income Tax Act was amended in 1920 (retroactively to and including the 1917 taxation period) by Chapter 49. Section 4 (now Section 11 of Chapter 97, R.S.C. 1927) reads as follows :—

“11. The income for any taxation period, of a beneficiary of any estate or trust of whatsoever nature shall be deemed to include all income accruing to the credit of the taxpayer, whether received by him or not during such taxation period.

“2. Income accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests shall be taxable in the hands of the trustee or other like person acting in a fiduciary capacity, as if such income were the income of an unmarried person.”

Section 16 (1) of the said 1920 amendment provided that the above amendment “shall be deemed to have come into force at the commencement of the nineteen hundred and seventeen taxation periods.”

There is no dispute that the “income” of the estate is “income” within the meaning of the Act, nor is there any dispute as to the computation of the tax if it be that the tax is properly exigible.

PART II.

1. The trustee contends that in his capacity as trustee under the testamentary document he is not a “person” within the meaning of the 40 Act.

The Minister of National Revenue contends that the trustee, in whose hands the income is accumulating in trust for the benefit of unascertained persons or persons with contingent interests, is liable to tax as a “person” within the meaning of the Act, resident in Canada.

2. The trustee contends that though the income (over actual maintenance outlays) be accumulating in the hands of the trustee, the children

have a vested interest and therefore the income accumulating should be divided into three parts and taxed accordingly against the children, if they be taxable, but not against the trustee.

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The Minister of National Revenue contends that :—

(A) even though the children may have a vested interest the imposition of tax and collection of revenue has no relation to vesting. The tax is exigible when the income is received and from the person receiving it at the end of each taxation period. Though the interest or abstract right be a vested one, none can say who of the children shall live to receive the income; it is contingent on who will be alive at the time of distribution ;

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—continued.

(B) if the interest be vested it is subject to be divested by death in favour of others, but inquiry as to the character of an interest—whether vested or contingent—is not conclusive for the determination as to whether the persons possessing the interest are ascertained or not ;

(C) the persons to receive the income as at the end of each taxation period are unascertained as individuals, therefore unascertained within the meaning of the statute. The class (as children) may be known, but the children as individuals or taxpayers in fact are unknown—unascertained ;

(D) the accumulating income in the hands of the trustee is taxable against the trustee.

ARGUMENT.

The question in controversy depends upon the interpretation, in its application to the facts of this case, of Section 11, R.S.C., Chapter 97, as enacted in the Statutes of 1920 and made retroactive to 1917.

“ Income accumulating in trust for the benefit of unascertained persons or of persons with contingent interests shall be taxable in the hands of the trustee or other like person acting in a fiduciary capacity.”

This section has recently been before the courts on two prior occasions. In *re McLeod v. Minister of Customs and Excise*, 1925, Ex. Ct. 105 ; 1926, S.C.R. 457 and the *Minister of National Revenue v. The Royal Trust Company*, 1930, Ex. Ct. 172 ; 1931, S.C.R. 485.

The judgment of the Honourable Mr. Justice Maclean of the Exchequer Court of Canada in the *McLeod* case was undisturbed by the Supreme Court, due to an even division of its members.

The judgment of the Honourable Mr. Justice Audette in the *Royal Trust* case was reversed by this Court by unanimous judgment.

The facts of these two cases will be referred to hereinafter, but the reasoning contained in them should be referred to at once.

Every person ordinarily resident in Canada is liable to Income Tax. “ Person,” according to the interpretation clause of the Act (Statutes of 1917, Chapter 28, Section 2 (D)), includes “ trusts.” As the Honourable Mr. Justice Maclean said in the *McLeod* case, 1925, Ex. Ct. 105-109 :—

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—continued.

“ It is clear therefore that a trust, such as is here in question, is a ‘ person ’ within the statute. Disregarding altogether Section 3, subsection 6 (now Section 11, R.S.C. Chapter 97) the Act would seem to cover the income of a trust such as is found in this case. There would not appear, as a matter of policy, any reason why it should be excepted, and there is no statutory provision excepting it. . . . Where income accrues to the credit of a beneficiary of a trust, an ascertained person, he or she is clearly taxable. The first part of Section 3, subsection 6 (now Sec. 11 R.S.C. Chap. 97) was enacted so as to make it clear that the beneficiary was liable even if the income 10 was not received by the beneficiary during the taxation period. It was necessary, however, to provide for the case where the income did not presently accrue to the credit of a beneficiary of a trust, or where it was accumulating for unascertained persons. It seems to me that the latter part of this section (above quoted) was designed to designate where in such cases the income should be taxed. This section does not, I think, purport to initiate or impose fresh taxation upon a new class of income. A reading of the section would indicate a presumption that this had already been done elsewhere in the Act. The Act prior to this amendment was defective in that it did not 20 provide where the income should be taxed in such cases as the one at bar, and in order to make a valid assessment it was necessary to designate by statute where the income in such cases should be taxed. This section was meant to make clear where income should be taxed when it was accumulating for unascertained persons, or persons with contingent interests, or in other words, where it was not accruing annually to the credit of known beneficiaries. I think the words ‘ contingent interests ’ were intended to cover the case where no person had a present and ascertained interest in the income of any taxation periods. . . . 30

“ If there are circumstances in the Act showing that the phraseology is used in a larger sense than its ordinary meaning, that sense may even be given to it. In dealing with matters relating to the general public, statutes are presumed to use words in their popular sense. If the object of an enactment has reference to the subjects of wills, or the distribution of property, the word ‘ contingent ’ might possibly be construed to have a different meaning than the same word would have in a general statute such as is under consideration, where it should, I think, be construed in a popular and not a technical sense.” 40

The only incomes exempt from taxation are those provided for in Section 4, while the income taxed is not only that specifically defined but “also the annual profit or gain from any other source” (Section 3), and this income was to be taxed against every person residing or ordinarily resident in Canada.

Comprehensive as this was there yet remained a doubt as to just how the income should be taxed which was accumulating in the hands of trustees, hence the amendment of 1920.

VESTED INTEREST.

VESTED INTEREST SUBJECT TO BE DIVESTED.

A probable beneficiary may have a vested interest. Nevertheless this vesting should not be confused with the specific direction contained in the amendment of 1920 taxing "income accumulating in the hands of the trustee."

As Mr. Justice Newcombe states—

10 "Now I think it could have added nothing to the solution of the question in hand if the will had expressly declared what is said to be its effect, that the testator's children *shall each take a vested interest in the accumulated fund in the interval*. . . . The persons who are to enjoy the income would nevertheless, at every moment of the period, be uncertain and unknown, and therefore unascertained in the only sense in which it is reasonable to suppose that the word is used in the statute."

Or as the Honourable Mr. Justice Duff states—

20 "The fund was to accumulate for the benefit of persons among whom it was to be distributed when the time of distribution arrived. It is impossible to affirm that these must include any of the children, nor is it possible to say with regard to the fund or with regard to any *ascertained or ascertainable part of the fund*, that the persons who were ultimately to share in it—the ultimate beneficiaries in a word—are now ascertained or ascertainable. The fund, in other words, is to accumulate for the benefit of persons who, for the relative period, are not ascertained, and such a fund is, within the ordinary meaning of the words, it seems abundantly clear to me, a fund held for the benefit of 'unascertained persons.'"

30 Under the will of Mr. Duncan McMartin *as at the end of any taxation period* it is quite impossible to say with certainty which, if any, of the children or the children of the testator's children may be alive until one or any of the testator's children reach twenty-five years of age or how many more grandchildren may be born in the interval.

The will, by paragraph 9 (E) states :—

"Provided that any portion of any child's share not required for his or her support, maintenance and education shall be re-invested by my said executors and trustees and *form part of the residue* of my estate given and bequeathed to such child."

and by paragraph (F) directs the trustee—

40 "to divide the residue of my estate equally between such of my three children *as shall attain* the age of twenty-five years of age *as and when* they respectively attain that age (one or any of them may not attain that age) provided that if any of the several children shall have died before the period of distribution arrives leaving a child or children (one or all of them may die without children or the grandchildren may increase before the death of any child) such children shall take the share in my estate which his or her parent would have taken *had he or she survived* the period of distribution."

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If all had died before the period of distribution and without children then the estate would have been divided in accordance with the provisions of the general law relating to the devolution of estates in that respect provided.

As at the end of any taxation period it was impossible to say that there were any ascertained persons within the meaning of Section 11, and this would be so even though the children had at the end of any taxation period a vested interest.

The greatest interest of the children under the terms of the will would be a vested interest subject to be divested. From an Income Tax 10 point of view, the "income" is received by one person, the trustee, by him held and accumulated. Who, of several probable beneficiaries, might receive the income ultimately cannot be said. "Inquiry as to the character of the interest, whether vested or contingent, is not conclusive for the determination of a question as to whether the persons possessing the interest are ascertained or not," per Newcombe J. in *re McLeod v. Minister of National Revenue* (1926), S.C.R., at p. 471. The receipt, the ultimate receipt, as opposed to the present interest or estate of beneficiaries, is contingent on who is alive at the time of distribution, which is another way of saying the beneficiaries presently are unascertained. 20

As Lord Sands states in the *Commissioners of Inland Revenue v. Henderson's Executors* (1931) Sc. L.T. 496 at 499.

"But the collection of Income Tax *has no relation to vesting*. The tax is exigible when the income is received and from the person receiving it."

Duff J. (at p. 460, 1926, S.C.R.) said:—

"I desire merely to *emphasise* the fact that no opinion is expressed upon the question whether or not the children took a vested interest. Upon that question it is quite unnecessary to pass. . . . The fund is to accumulate for the benefit of persons who, 30 for the relevant period, are not ascertained, and such a fund is, within the ordinary meaning of the words, it seems abundantly clear to me, a fund held for the benefit of unascertained persons."

Newcombe J. (p. 470) clearly stated that even if the testator's children had specifically been given a vested interest in the accumulated fund in the interval, subject to be divested as to any of them who died during the period—

"the persons who are to enjoy the income would nevertheless at every moment of the period be uncertain and unknown and therefore unascertained in the only sense that it is reasonable to suppose that 40 the word is used in the statute"—

concluding that the accumulated income is taxable against the trustee even if "it be assumed that the interests of the children are vested."

"Rights" within the law are not to be confused with "income" received by a person resident in Canada through whom those rights may or may not be ultimately realised.

The collection of Income Tax has no relation to vesting. "Vesting" is a conclusion of law in determining a "right." "Income" received and accumulated is a fact on which a tax is to be levied as against the recipient.

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"TRUST" A PERSON.

BENEFICIARIES UNASCERTAINED.

In reversing the Exchequer Court decision in the *Royal Trust* case, Anglin C.J.C. states (1931) S.C.R. 485 at 489 :—

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of National
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—continued.

10 "Whether the word 'trust' means a person or body holdin
the property, or distributing the trust estate, or means the property
itself, or means the trust upon which such property is held, is quite
immaterial."

"The income is made 'taxable in the hands of the trustee or
other like person acting in a fiduciary capacity.'"

20 "Those who are at the present time probable beneficiaries of
the trust, or some of them, it is true, reside in the United States
But that fact does not prevent this case coming within subsection 6
of Section 3 nor render exempt from taxation in the hands of the
trustee income accumulating in a trust for unascertained beneficiaries
or beneficiaries having contingent interests. On the contrary, in our
opinion such income accumulating in trust is distinctly a subject of
taxation under the subsection referred to, regardless of residence, if
ascertainable, of probable beneficiaries."

If, for Income Tax purposes, at relevant periods the probable beneficiaries are unascertained, it follows their residence is likewise unascertained.

STARE DECISIS.

Without further reference, though inviting close attention to, the similarities of this case with the McLeod case, it is confidently asserted that there is nothing more to decide in this case than has already been
30 decided in the McLeod case. The trustees are within Canada, the corpus of the fund is within Canada, the income is accumulating in Canada and being re-invested subject to the same trusts as the corpus, the beneficiaries are for each of the respective periods of the two cases, unascertained as at the end of each period; in each case some of the probable future beneficiaries as at the end of the taxation periods under consideration reside outside of Canada (although the residence of these probable beneficiaries is immaterial in each case); each case arises by testamentary document and each trustee contended that the beneficiaries' interest is vested. Therefore, if the McLeod decision be correct, and it was confirmed by
40 the *Royal Trust* decision, then also should the accumulated income in the present case be likewise taxed and the decision of the lower court accordingly reversed.

The facts and provisions of the will in the two prior cases are conveniently compared in the following, together with those in the present case—

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<p><i>In the Supreme Court of Canada.</i> — No. 14. Factum of the Minister of National Revenue —continued.</p>	MCLEOD CASE.	ROYAL TRUST CASE.	THIS CASE.
	1. Created by testamentary document. Testator died 1912—Windsor.	Created by document inter vivos. Created trust 1918—Montreal.	Created by testamentary document. Testator died 1914—Toronto.
	2. Trustee resident of Canada.	Trustee resident of Canada.	Trustee resident of Canada.
	3. Corpus of fund in Canada, except certain small portion being real estate in United States.	Corpus of fund in Canada.	Corpus of fund in Canada.
	4. Income arising in Canada (real estate excepted).	Income arising in Canada.	Income arising in Canada.
	5. Income accumulating in hands of trustee.	Income accumulating in hands of trustee.	Income accumulating in hands of trustee.
	6. Income being re-invested subject to the same trusts as corpus.	Income being re-invested subject to same trusts as corpus.	Income being re-invested subject to same trusts as corpus.
	7. Probable beneficiaries, some resident in Canada and some in the United States.	Probable beneficiaries resident in the United States.	Probable beneficiaries resident in the United States until 1926, when one resided thereafter in Canada.
	8. Probable beneficiaries in question all children of the creator of the trust.	Probable beneficiaries in question all children of the creator of the trust.	Probable beneficiaries in question all children of the creator of the trust.
	9. There are living, grandchildren.		There is living a grandchild, born in 1923.
	10. The beneficiaries for the relevant periods are unascertained persons.	The beneficiaries for the relevant periods are unascertained persons.	The beneficiaries for the relevant periods are unascertained persons.

Differences arise in the wording of the trusts though the effect for Income Tax purposes is the same—namely, the income is accumulating in the hands of the trustee for the benefit of unascertained persons.

(2) "I devise and bequeath all the real and personal property . . . to (three named executors) . . . in trust for sale and to convert into money and to hold, invest, *accumulate* and dispose of the same upon the trusts and subject to the provisions hereinafter set out."

The trustee . . . agrees to hold the trust estate upon trust as follows :

"3. (a) for the benefit of the surviving children of the donor until five years after the death of the donor."

(Donor is still alive) . . .

together with all *accumulations* and additions thereto,

"9. I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, to my executors upon the following trusts, namely :— 40

(A) To sell and convert the same into money ;

(B) To invest and keep invested the balance of the

“ (5) I direct that all the rents, issues and profits thereof . . . and all other the income of my estate over and above the necessary expenses . . . and also all the proceeds of sales from time to time received . . . be invested by my trustees
 10 in (naming the kind of investments) . . . and I further direct that all the surplus income shall be invested and added to the principal fund and follow the designation thereof . . . and I direct that the accumulations aforesaid shall be made for and during the period of
 20 twenty-one years from my death.”

“ (6) At the expiration (thereof) I direct my trustees . . . to divide the balance of my estate into three parts and I direct that each of the said shares shall be conveyed or transferred to my children ”
 30 (naming them).

“ At the expiration of twenty-one years after my death . . . I direct that in case any of my children shall have died in the meantime that the one-third share of each or any of my children that shall die before the
 40 expiration of said twenty-one years shall vest in my trustees to divide the same amongst my grandchildren, if any, as they think best.”

when the entire trust estate is to be equally divided amongst his surviving children, and in the event of any or all of his said children predeceasing the donor or being unable to take, the division shall be made to the survivor or survivors, and the issue of such predeceased child or children as representing their parent per stirpes.

profits of such sale and conversion in such investments as trustees are . . . permitted to invest trust funds.

(E) . . . any portion of any child's share not required for his or her support, maintenance or education shall be re-invested by my said executors and trustees and form part of the residue of my estate given and bequeathed to such child.

(F) After the death or remarriage of my wife (re-married 4th March, 1925), whichever event shall first happen, to divide the residue of my estate equally between such of my three children as shall attain the age of twenty-five years, as and when they respectively attain that age, provided that if any of said children shall have died before the period of distribution arrives leaving a child or children, such children shall take the share in my estate which his or her parent would have taken had he or she survived the period of distribution, if more than one in equal shares.

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Newcombe J., at page 471, said :—

“ The trustees shall pay the tax so long as it is uncertain who the persons are or may be who will then (at the time of distribution) be entitled to receive the accumulated income.”

SUBSECTION 6 OF SECTION 3.

50 (Now Section 11, R.S.C. 1927, Chapter 97.)

This amendment of 1920, retroactive to 1917, not only removed the doubt that the income of a trustee was taxable but it became a complete taxing measure within itself. It designates the “ person ” as defined by

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the Act; the income as defined by the Act; and provides for the exemption to be afforded the trustee as that of "an unmarried person"—namely, \$1,500. It declares that such accumulated income "shall be taxable in the hands of the trustee" and thereby adopts the rates of tax as provided in the Act, so that in the result we have within this amendment specific mention and a mandatory direction for assessing the person, the income, the statutory exemption and the rates of tax applicable. It is a complete taxing schedule within the larger taxing measure itself. The trustee is *persona designata* within the amendment itself. The remaining requirement is that the trustee be a resident of Canada, and on this there is no dispute. 10

As the Honourable Mr. Justice Anglin states, (1931) S.C.R. 485 at 489 :—

"The Income War Tax Act provides expressly for the taxation of accumulating income held in trust."

"Whether the word 'trust' means a person or body holding the property, or distributing the trust estate, or means the property itself, or means the trust upon which such property is held, is quite immaterial in view of what is said above."

"The income is made 'taxable in the hands of the trustee or 20 other like person acting in a fiduciary capacity as if such income were the income of an unmarried person'."

The amendment is a complete taxing measure within itself.

CONCLUSION.

In the result, therefore, the tax assessed as against the trustee in respect of the income accumulating in his hands should be affirmed and the judgment of the Court below be set aside on the grounds—

First, that the Income Tax Act as originally enacted might reasonably have been construed as rendering subject to tax a trustee accumulating income on behalf of unascertained persons— 30

- 1st, that the definition of income includes such income as here exists ;
- 2nd, that such income is not specifically exempted ;
- 3rd, that the definition of "person" includes a trustee ;
- 4th, that the statutory exemption is provided for ;
- 5th, that the trust and the trustee are resident in Canada.

Second, that the purpose of the Act was rendered clear and specific by the declaratory enactment of 1920 in that accumulating income was made by specific language subject to tax in the hands of the trustee as if such income were the income of an unmarried person. The amendment was a complete taxing measure within itself. 40

Third, that the interest of the beneficiaries under the will are contingent, or at best, vested, subject to be divested, that the will refers to a class of persons and not to named individuals; that the residue is treated as a whole until the time of division.

Fourth, that the beneficiaries are unascertained persons within the meaning of the amendment of 1920.

Fifth, that the trustee is a person within the meaning of the Act.

Sixth, that the case falls within the principle of stare decisis.

Seventh, that the beneficiaries being unascertained persons, their residence, it follows, is likewise unascertained at all material times and is in fact immaterial to the issue.

It is submitted that the assessments made in the present case should be affirmed and the judgment of the Court below reversed because "income accumulating in trust for the benefit of unascertained persons shall be taxable in the hands of the trustee. . . ."

JAMES McG. STEWART,

C. FRASER ELLIOTT,

Counsel for the Appellant herein.

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No. 15.

Factum of John B. Holden.

No. 15.
Factum of
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PART I.—STATEMENT OF FACTS.

1. This is an appeal by the Minister of National Revenue from the judgment of the Honourable Mr. Justice Audette, Judge of the Exchequer Court of Canada, dated the 20th day of October, 1931, allowing the appeal of the said John B. Holden, the Respondent herein, from the assessments dated March 1st, 1930, assessing the Estate of Duncan McMartin for income tax under the provisions of The Income War Tax Act (1917) and amendments thereto, with respect to the undistributed income of the residuary estate not used under clause (E) of paragraph 9 of the will for support, maintenance and education of the three children of the deceased—namely, Melba McMartin, Duncan McMartin and Allen A. McMartin, save as to the interest of Allen A. McMartin which under the said judgment is directed to be assessed from January, 1926, the date he became a resident of Canada. The Respondent cross-appeals from that part of the judgment which directs that the interest of Allen A. McMartin is to be assessed from the date he became a resident of Canada.

2. The Respondent is the sole surviving executor and trustee of the last will and testament of Duncan McMartin, bearing date the 24th day of April, 1914.

3. The said Duncan McMartin died on the 2nd day of May, 1914, at the City of Toronto, in the Province of Ontario, but was domiciled in the City of Montreal, Province of Quebec.

4. The will of the said Duncan McMartin is set out at pages 10–12 of the Record. Paragraph 9 of the will is as follows:—

" 9. I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, to my executors and trustees hereinafter named upon the following trusts, namely:—
" (A) to sell and convert the same into money (except my shares in Canadian Mining and Finance Company Limited)

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“ as soon after my death as they in their absolute discretion
“ deem it advisable.

“ (B) to pay out of the proceeds of such sale and conversion
“ the legacies given by this my will, including the said legacy
“ to my wife of one hundred and fifty thousand dollars (\$150,000)
“ should same become payable.

“ (c) to invest and keep invested the balance of the proceeds
“ of such sale and conversion in such investments as trustees
“ are by the laws of the Province of Ontario permitted to invest
“ trust funds.

“ (D) to pay out of the income derived from such invest- 10
“ ments or the income or profits from the unrealised portions of
“ my estate, the said annuity of twenty-five thousand dollars
“ (\$25,000) a year to my wife.

“ (E) to divide the balance of the income from such invest-
“ ments or the income or profits derived from the unrealised
“ portions of my estate, into three equal parts and to pay or
“ apply one of such parts, or so much thereof as my executors
“ and trustees in their discretion deem advisable, in or towards
“ the support, maintenance and education of each of my children 20
“ until they have respectively attained the age of twenty-five
“ years, or until the period fixed for the distribution of the
“ capital of my estate, whichever event shall last happen,
“ provided that any portion of any child's share not required
“ for his or her support, maintenance and education shall be re-
“ invested by my said executors and trustees and form part of
“ the residue of my estate given and bequeathed to such child.

“ (F) after the death or re-marriage of my wife, whichever
“ event shall first happen, to divide the residue of my estate
“ equally between such of my three children as shall attain the 30
“ age of twenty-five years, as and when they respectively attain
“ that age, provided that if any of said children shall have died
“ before the period of distribution arrives, leaving a child or
“ children, such children shall take the share in my estate which
“ his or her parent would have taken had he or she survived
“ the period of distribution, if more than one, in equal shares.”

5. On the 1st day of January, 1917, from which date The Income War Tax Act became operative, there were then living Iva McMARTIN, widow of the said Duncan McMARTIN, deceased, and Allan A. McMARTIN, Melba McMARTIN and Duncan McMARTIN, children of the said deceased, 40 all of whom resided in the City of New York, and had so resided for some time prior to the 1st day of January, 1917. The said deceased left no other child, or any child or children of any deceased child, him surviving.

6. Iva McMARTIN, widow of the said Duncan McMARTIN, deceased, re-married on or about the 4th day of March, 1925, and received on or about that date the sum to which she became entitled on such re-marriage, and thereafter ceased to have any further interest in the residuary estate or in the income or profits therefrom.

7. The said Melba McMartin and Duncan McMartin have continued to reside in the City of New York or elsewhere in the United States of America, and are still residing there. The said Allen A. McMartin continued to reside in the City of New York or elsewhere in the United States of America until January, 1926, at which date he took up his residence in the City of Montreal, Province of Quebec, and has since resided there.

8. The said Allen A. McMartin attained the age of twenty-five years on the 4th day of November, 1928; the said Melba McMartin (now Melba 10 McMartin Orr) attained the age of twenty-five years on the 3rd day of March, 1930, and the said Duncan McMartin attained the age of twenty-one years on the 17th day of February, 1930.

9. The said Allen A. McMartin was married on or about the 29th day of August, 1923, and there is no issue of such marriage; the said Melba McMartin was married to Leander Lee on the 20th day of September, 1922, and Melba Lee, born May 23rd, 1923, is the only issue of such marriage; the said Melba McMartin and Leander Lee were divorced, and the said Melba McMartin was again married to T. W. Orr, on the 28th day of October, 1929, and there is no issue of such marriage; the said Duncan 20 McMartin was married on or about the 1st day of July, 1931, and there is no issue of such marriage.

10. The relevant sections of The Income War Tax Act (1917) and amendments thereto are set out in the appendix of Statutes.

11. By Notice of Assessment dated the 1st day of March, 1930, the Estate of Duncan McMartin was assessed for income tax upon the undistributed income not used for the support, maintenance and education of the three children of the deceased under clause (E) of paragraph 9 of the will from said residuary estate as follows:—

	Year			Taxable Income	Tax
30	1917	...	...	\$ 6,508 94	\$ 40 18
	1918	...	...	45,378 57	3,469 16
	1919	...	...	57,766 57	8,152 87
	1920	...	...	90,167 28	20,394 78
	1921	...	...	166,896 28	62,508 50
	1922	...	...	205,433 09	85,438 34
	1923	...	...	173,036 85	66,119 16
	1924	...	...	222,788 25	96,372 10
	1925	...	...	271,469 55	97,321 29
	1926	...	...	352,884 04	121,063 95
40	1927	...	...	436,480 86	139,336 65
	1928	...	...	392,875 10	122,649 04

12. The Notices of Assessment referred to in the preceding paragraph were the first and only notices served upon the Respondent in respect of the undistributed income under said clause (E) of paragraph 9 of the will, although the returns required to be made by the executors and trustees had been regularly filed from year to year in accordance with the provisions of The Income War Tax Act. Notices of Appeal, dated the 28th day of March, 1930, against the assessment for each of the said years were duly served upon the Minister, and the Minister, by notice dated the

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11th day of December, 1930, affirmed the said assessments. Notice of Dissatisfaction, dated the 31st day of December, 1930, was given by the Respondent, and the Minister, by his reply dated the 7th day of January, 1931, denied the facts alleged, and confirmed the said assessment. All of the said notices and/or proceedings were in accordance with the provisions of The Income War Tax Act (1917), Chapter 28.

13. The Respondent herein in his Statement of Claim filed in the Exchequer Court on the 11th day of April, 1931, submitted that the assessments were wrong upon the following grounds :

1. There is no authority under The Income War Tax Act for 10 the imposition of such a tax.
2. The income sought to be taxed is not held for the benefit of unascertained persons or persons with contingent interests.
3. No tax is payable in respect of any portion of the undistributed income which is held in trust for non-residents of Canada.
4. The Executors and Trustees are not persons taxable within the meaning of The Income War Tax Act.
5. The beneficiaries are not persons taxable within the meaning of The Income War Tax Act.
6. It would be unequitable and unjust at this date to impose 20 a tax even if otherwise payable.

14. The Appellant herein in his Statement of Defence filed in the Exchequer Court on the 18th day of July, 1931, claimed :

1. That John B. Holden as Trustee of the estate of Duncan McMartin was and is a person resident in Canada within the meaning of the said Act.

2. That the Trustee of the said estate is liable under the provisions of the said Act for income tax in respect of the income of the estate for the years in question.

3. That the trustee of the said estate is liable for income tax in 30 respect of the income thereon " accumulating in trust for the benefit of unascertained persons or persons with contingent interests . . . as if such income were the income of an unmarried person " in accordance with section 4, Chap. 49, 10 and 11 Geo. V. and section 16, ss. (1) thereof.

15. The Honourable Mr. Justice Audette, in his judgment (Record, pages 14-21) held that this Respondent is not liable to be assessed or taxed in respect of the income of beneficiaries who are non-residents of Canada, and that the corpus of the trust, as well as the income, are the property of non-residents. He further held that the funds in question 40 are not income accumulating in trust for the benefit of unascertained persons, or of persons with contingent interest and are not taxable in the hands of the Respondent under section 11 (2) of the Act. The learned Judge allowed this Respondent's appeal from the said assessments, but he directed that the interest of Allen A. McMartin be assessed from the date he became a resident of Canada, and directed a reference to determine the amount of the interest so to be assessed.

PART II.

The point in issue on the appeal is :

Is the Estate of Duncan McMartin or the Respondent assessable or taxable under the provisions of The Income War Tax Act (1917) and amendments thereto, in respect of the portion of the balance of the income of the residuary estate which has not been paid or applied under clause (E) of paragraph 9 of the said will, in or towards the support maintenance, and education of Allen A. McMartin, Melba McMartin and Duncan McMartin ?

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10 The Respondent's position is that the Estate of Duncan McMartin is not, nor is the Respondent, assessable or taxable under the provisions of the said Act in respect of the undistributed funds in question, for the following reasons :

1. Non-residents of Canada are not assessable or liable to taxation under the said Act, and the persons entitled to the undistributed funds in question are non-residents of Canada.

20 2. Under the provisions of the said will, the undistributed funds in question pass to and are vested in definitely ascertained persons, namely : Allen A. McMartin, Melba McMartin and Duncan McMartin, and are not taxable in the hands of the Respondent.

3. The Respondent is not a person liable to assessment and taxation in respect of the funds in question, within the meaning of the Statute.

The point in issue on the cross-appeal is :

Is the Estate of Duncan McMartin or the Respondent assessable or taxable under the provisions of The Income War Tax Act (1917) and amendments thereto, in respect of the portion of the balance of the income of the residuary estate which has not been paid or applied under clause (E) of paragraph 9 of the said will in or towards the support, main-
30 tenance and education of Allen A. McMartin since January, 1926, the date on which he took up his residence in Canada ?

The Respondent's position is that the Estate of Duncan McMartin is not, nor is the Respondent, assessable or taxable with respect thereof.

PART III.—ARGUMENT ON MAIN APPEAL.

1. Non-residents of Canada are not assessable or liable to taxation under the said Act, and the persons entitled to the undistributed funds in question are non-residents of Canada.

The taxing section of The Income War Tax Act R.S.C. (1927), Chap. 97, is Section 9, which is as follows :

40 " Persons Taxable

" 9. There shall be assessed, levied and paid upon the income
" during the preceding year of every person

" (A) residing or ordinarily resident in Canada during such
" year ; or

" (B) who sojourns in Canada for a period or periods
" amounting to one hundred and eighty-three days during such
" year ; or

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“ (c) who is employed in Canada during such year ; or
“ (D) who, not being resident in Canada, is carrying on
“ business in Canada during such year ; or
“ (E) who, not being resident in Canada, derives income
“ for services rendered in Canada during such year, otherwise
“ than in the course of regular or continuous employment, for
“ any person resident or carrying on business in Canada ;
“ 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 10
“ in this Act : Provided that the said rates shall not apply to corpora-
“ tions and joint stock companies.

“ 2. Save as herein otherwise provided, corporations and joint
“ stock companies, no matter how created or organised, shall pay a
“ tax, at the rate applicable thereto set forth in the First Schedule of
“ this Act, upon income exceeding two thousand dollars. 1919, c. 55,
“ s. 3 ; 1920, c. 49, s. 6 ; 1926, c. 10, ss. 4 and 5 ; 1927, c. 31, s. 1.”

Save as in this section provided, the Statute imposes no tax on persons residing outside of Canada. The tax is imposed on persons and not on property (Mignault J., *McLeod v. The King* (1926) S.C.R. at page 20 464), and the persons on whom the tax is imposed are resident persons and not non-residents.

The Respondent's submission is that, subject to certain exceptions which are not relevant to the facts in this case, residence in Canada is a condition precedent to liability to taxation under the Act, and that this is clearly shown by an examination of the sections of the Act dealing with (1) the persons to be taxed (section 2 (c), section 2 (H), section 2 (I), section 4 (M), section 9, section 22) ; (2) the basis of taxation in the case of persons who come within the exceptions to section 9, and are treated for the purposes of the Act as being residents of Canada (section 24, section 25, 30 section 25 (A) (as amended by 1930, Chap. 24, section 6), section 26, section 27, section 29) ; (3) the enforcement of the Act in the case of such last mentioned persons (section 38, section 52, section 74).

The Appellant in this action seeks to assess and tax the Respondent in respect of the income of Allen A. McMartin, Melba McMartin and Duncan McMartin. Allen A. McMartin, Melba McMartin and Duncan McMartin are (subject to the exception hereinafter referred to) non-residents of Canada, and are not liable to assessment and taxation under the said Act, and it is submitted therefore, that the Respondent is not liable in respect of their income, and the learned Trial Judge has so held. 40

Allen A. McMartin, who was a non-resident of Canada continuously until January, 1926, took up his residence in Canada in January, 1926, and has since resided here.

2. Under the provisions of the said will, the undistributed funds in question pass to and are vested in definitely ascertained persons, namely, Allen A. McMartin, Melba McMartin and Duncan McMartin, and are not taxable in the hands of the Respondent.

(1) Paragraph 9 of the will of the late Duncan McMartin devises and bequeaths the residue of the testator's estate to his executors and trustees

upon the trusts therein set out. After providing for the payment out of the income from such residue of an annuity of \$25,000 a year to his wife, paragraph 9 provides :—

“ 9 (E) To divide the balance of the income from such investments
 “ or the income or profits derived from the unrealised portions of my
 “ estate, into three equal parts, and to pay or apply one of such parts,
 “ or so much thereof as my executors and trustees in their discretion
 “ deem advisable, in or towards the support, maintenance and educa-
 10 “ tion of each of my children until they have respectively attained the
 “ age of twenty-five years, or until the period fixed for the distribution
 “ of the capital of my estate, whichever event shall last happen,
 “ provided that any portion of any child’s share not required for his
 “ or her support, maintenance and education shall be re-invested
 “ by my said executors and trustees and form part of the residue of
 “ my estate given and bequeathed to such child.”

Under this clause of the will (1) the income is to be divided into three equal parts ; (2) one of these parts is set aside for each of the testator’s three children ; (3) the whole of each part so set aside is (subject to the discretion of the trustees as to the amount to be used) to be applied
 20 towards the support, maintenance and education of such child for whom that part has been set aside, until that child attains the age of twenty-five years, or until the period fixed for the distribution of the capital of the residue, whichever event shall last happen ; and (4) the portion (if any) of any child’s share which, in the discretion of the trustee, is not so used for his or her support, maintenance and education is to be re-invested and form part of the residue “ given and bequeathed to such child.”

The respective balances of the three parts into which the income was divided, not used for the support, maintenance and education of the child for whom each of such parts was set aside, form the funds in respect of
 30 which the Appellant seeks in this action to assess and tax the Respondent.

The Appellant contends that the undistributed funds in question are taxable under the provisions of the Act which are now contained in section 11 (2) of the Revised Statutes of Canada, Chap. 97, which is as follows :

“ Section 11 (2). Income accumulating in trust for the benefit
 “ of unascertained persons, or of persons with contingent interests,
 “ shall be taxable in the hands of the trustee or other like person
 “ acting in a fiduciary capacity as if such income were the income of
 “ an unmarried person.”

35 The Respondent submits :

(1) That the persons entitled to the said funds are non-residents of Canada, and that no income tax is payable for the reasons above set out.

(2) That the funds in question are bequeathed to definitely ascertained persons who have vested interests therein, and do not come within the provisions of section 11 (2).

It is submitted that clause (E) of paragraph 9 completely disposes of each of the three parts into which the balance of the income is directed

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to be divided. Each of these parts is separated from the rest of the estate, and is given to a definitely ascertained person. Each of the children is entitled, subject to the discretion of the trustees as to the amount required for his or her proper support, maintenance and education, to the whole of the part so set aside. Any portion of a child's share not so required is to be re-invested, and it is submitted any such portion reinvested is by clause (E) given and bequeathed to that child.

The only reference that has to be made to any other portion of the will for the purpose of carrying out the provisions of the above clause is to determine the period fixed for the distribution of the capital, and that is fixed by clause (F) of paragraph 9 as being the death or re-marriage of the testator's wife, whichever event shall first happen. The testator's widow was re-married on the 4th day of March, 1925, so that the period for the distribution of the funds not used for the maintenance of the respective children can be definitely fixed by reference to that date.

It is submitted that the funds in question are completely disposed of by clause (E) of paragraph 9 of the will; that under clause (E) Allen A. McMartin, Melba McMartin and Duncan McMartin each had vested in them as from the testator's death a one-third part of the income, and that section 11 (2) of the Act does not apply. The respective balances not used for the maintenance of each child were not accumulating in trust for the benefit of unascertained persons, but were the property of the three named children of the testator, whose interests were not contingent, but were vested absolutely as from the date of the testator's death. Such funds, therefore, do not come within section 11 (2) of the Act, and are not taxable in the hands of the Respondent under that section.

Assuming, however, that clause (E) is not to be construed as entirely disposing of the funds in question, the Respondent's submission is that the same conclusion is arrived at on a consideration of the whole will. Clause (F) of paragraph 9 of the will provides as follows :

“(F) After the death or re-marriage of my wife, whichever event shall first happen, to divide the residue of my estate equally between such of my three children as shall attain the age of twenty-five years, as and when they respectively attain that age, provided that if any of said children shall have died before the period of distribution arrives, leaving a child or children, such children shall take the share in my estate which his or her parent would have taken had he or she survived the period of distribution, if more than one, in equal shares.”

It is submitted :

(A) The intention of the testator is to be gathered from the will as a whole, and if clause (F) is to be read as applying to clause (E) (which the Respondent does not admit) clause (F) must be read in the light of the other sections of the will. Clause (E) cannot be ignored and clause (F) must be given a construction consistent with clause (E), and the other provisions of the will.

(B) There is nothing in the will to rebut the presumption in favour of the vesting of the income under clause (E), particularly as on any construction other than one under which the funds in question

are vested in each of the named children, an intestacy as to the income might result ; Halsbury's Laws of England, Vol. 28, page 797, Art. 1446.

(c) There is no gift over of the income set aside for each child in the event of that child not attaining the age of twenty-five years, and this raises a strong presumption in favour of vesting ; *In re Wrey, Stuart v. Wrey*, 30 Ch. D. 507.

10 (d) The postponement of the distribution of the capital of the residue under clause (F) until the death or re-marriage of the testator's wife was clearly a postponement for the convenience of the estate, in order to let in the interest of the wife. In such case, the presumption is that each of the children has a vested interest as from the testator's death, and that on the death of any of them prior to such time for distribution, the share of the income of the one so dying passes to his or her personal representatives ; Williams on Executors, 12th Ed., pp. 800, 802 ; *Davies v. Fisher* (5 Beav., 201 ; Jarman, 7th Ed., pp. 1402, 1403.

20 (e) The postponement of the time of payment until the children respectively attain the age of twenty-five years, is a postponement only of the time of payment and does not prevent vesting ; *In re Couturier, Couturier v. Shea* (1907) 1 Ch. D. 470 ; *In re Ussher, Foster v. Ussher*, (1922) 2 Ch. 321.

30 (f) Under clause (E) the maintenance of the children is not provided for out of the general funds, but the maintenance of each child is to be paid from that child's share of the income. The gift to the respective children of the income on their respective shares, and the provision for the maintenance of each child out of that child's share of the income raises a presumption in favour of vesting. Williams on Executors, 12 Ed. 796 ; *Re Gosling*, (1903) 1 Ch., 448, 450 ; *Williams v. Williams*, (1907) 1 Ch. 180, 183 ; *Fox v. Fox*, L.R. 19 Eq. 286, 288, 289 ; *Re Hart's Trusts*, 3 De G. and J. 196.

40 (g) The concluding words of paragraph (E) " given and bequeathed to such child " must be given effect to, and any construction placed on the will must be consistent with the clear intention expressed by these words to make a gift and bequest to each of the children ; *Re Bartholomew* (1849) 1 Mac. and G. 354. The use of the words, " such child " in the clause above quoted clearly indicates that the gift and bequest is to the particular child for whose benefit one of the three equal parts of the balance of the income has been set aside under clause (E).

On the whole will, and particularly on the reading of clauses (E) and (F) together, it is submitted that there is a clear indication of the testator's intention to make a gift to each of his three children, both of income and of capital ; that such gift was vested in each of the children at the date of his death, and that clause (F) is to be read as directing the division of the residue of the estate equally between them as and when they respectively attain the age of twenty-five years.

The Respondent therefore submits that the funds in question were vested in Allen A. McMartin, Melba McMartin and Duncan McMartin

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respectively, definitely ascertained persons, as at the date of the testator's death, and that the Respondent is not assessable or taxable in respect thereof, and the learned Trial Judge has so held.

(2) The Respondent further submits, in the alternative, that in any event under the said will, the funds in question were completely vested in Allen A. McMartin, Melba McMartin and Duncan McMartin on the date of the re-marriage of the testator's widow, namely, 4th March, 1925. At that date none of the three children were of the age of twenty-five years, the period fixed for the time of payment. It is submitted that the postponement of the time of payment of the funds in question beyond the 10 date of such remarriage did not prevent the vesting as at that date, and was only a postponement of the time of payment of the particular share of each child; *In re Ussher, Foster v. Ussher*, (1922) 2 Ch. 321; *In re Couturier, Couturier v. Shea*, (1907) 1 Ch. D. 470. In any event there could be no assessment on the Respondent in respect of the funds in question subsequent to March 4th, 1925.

(3) The Respondent submits, in the further alternative, that if the share of any of the said children dying before the period of distribution arrived, leaving a child or children, is divested in favour of such child or children under the terms of the will, the share of the child so dying 20 was not income accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests, within the meaning of section 11 (2) of the Act. The provision in the will that in such case the child or children of the child so dying should take the share which his or her parent would have taken had he or she survived the period of distribution, does not prevent the vesting; *Re Ludwig, Ludwig v. Evans*, (1916) 2 Ch. 26; judgment of Mignault J., *McLeod v. Minister of Customs and Excise*, (1926) S.C.R. 457 at page 466; Jarman on Wills, 7th Ed. 1402, 1403; *Davies v. Fisher*, 5 Beav. 201; *Turney v. Turney*, (1899) 2 Ch. 739; *Perman v. Perman*, 33 Beav. 394. 30.

(4) It is submitted that under the will of the late Duncan McMartin persons for whose benefit the income was accumulating were definitely ascertained persons, and the interests of such persons were not contingent or unascertained, but were ascertained, vested and fixed under the will.

It is submitted that the judgment in *McLeod v. The Minister of Customs and Excise*, (1926) S.C.R. 457, is clearly distinguishable on its facts from the present case. In the *McLeod case*, the will in question provided that after certain legacies and annuities were paid the surplus income was to be accumulated for a period of twenty-one years from the date of the testator's death, and that at the expiration of that period the 40 accumulated fund was to be divided among his three children, and there was an express provision that in the event of the death of any of them during such period, the share of the one so dying was to be distributed among the testator's grandchildren, as the trustees should think best; *McLeod v. The Minister of Customs and Excise*, (1925) Exchequer Court Reports, page 106. There was no division of the income pending the time for distribution, and there was no specific bequest to any particular child. Notwithstanding this, Mr. Justice Mignault (with whom the Chief Justice of Canada and Mr. Justice Idington concurred) held that the

vesting of the shares in the children was not deferred to the time of payment or distribution of the shares, but took place at the death of the testator, and held that the shares of the children who were then living were not taxable in the hands of the trustee of the Estate. Mr. Justice Newcombe (with whom Mr. Justice Duff and Mr. Justice Rinfret concurred) was of the opinion, however, on the terms of the particular will in question that the ascertainment of the beneficiaries was subject to events which might happen in the interval between the date of the will and the date of distribution, and that the beneficiaries were, for the purposes of the Statute, unascertained.

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It is submitted that clause (E) of the will of Duncan McMartin clearly distinguishes the facts in this case from the McLeod case. Under clause (E) the income is to be divided into three equal parts, which are given and bequeathed to the children respectively.

It is submitted that there is no uncertainty or contingency as to the fund in question under the will of the late Duncan McMartin.

(5) The Respondent further submits that this case is clearly distinguishable from the facts in the *Minister of National Revenue v. The Royal Trust Co.*, (1931) S.C.R. 485, where it was held that the income accumulating in trust under the deed in question was taxable in the hands of the trustees. In that case the trust was for the benefit of the surviving child of the donor until five years after the donor's death, but there was no gift and no income given, except for the benefit of the surviving children of the donor, and this five years after the death of the donor.

3. The Respondent is not a person liable to assessment and taxation in respect of the funds in question, within the meaning of the Statute.

Section 2 (D) of 7-8 Geo. V, Chap. 28, provided :

“ 2. (D) ‘ person ’ means any individual or person and any
“ syndicate, trust, association or other body and any body corporate,
30 “ and the heirs executors, administrators, curators and assigns or other
“ legal representatives of such person, according to the law of that
“ part of Canada to which the context extends ” ;

In the revision of 1927, R.S.C. (1927) Chap. 97, Section 2 (H) provides :

“ 2 (H) ‘ person ’ includes any body corporate and politic and
“ any association or other body, and the heirs, executors, adminis-
“ trators and curators or other legal representatives of such person,
“ according to the law of that part of Canada to which the context
“ extends.”

40 It is submitted that the word “ trust,” as used in Section 2 (D) of the 1917 Statute, does not apply to a trust such as that constituted by the will of the late Duncan McMartin, but must be read with the words which follow, namely, “ or other body and any body corporate ” Craies, 3rd Ed., page 162 : *Great Western Railway v. Swindon*, [1884] 9 A.C. 787. The Respondent is not a trust within the meaning of the section, and is not a person liable to be assessed or taxed in respect of the funds in question, and the learned Trial Judge has so held.

*In the
Supreme
Court of
Canada.*

No. 15.
Factum of
John B.
Holden
—continued.

For the reasons given by Mr. Justice Audette in his judgment, and for the reasons herein set forth, the Respondent submits that the judgment appealed from, except as to the point raised by the Respondent's cross-appeal, should be affirmed and that the Appellant's appeal herein should be dismissed with costs.

ARGUMENT ON CROSS-APPEAL.

The Respondent's submission is that the Estate of Duncan McMartin is not, nor is the Respondent, assessable or taxable in respect of the portion of the balance of the income of the residuary estate which has not been paid or applied under clause (E) of paragraph 9 of the said will 10 in or towards the support, maintenance and education of Allen A. McMartin since January, 1926, on which date he took up his residence in Canada.

The learned Trial Judge, in his reasons for judgment, held (Record pages 14-21) that "As Allen A. McMartin resided in New York until January, 1926, when, from that date, he took up his residence in the City of Montreal, Canada, he will from such date be liable to the present taxation, the amount of which can be adjusted between the parties," and he directed that, failing such adjustment, leave be reserved to either party, upon notice, to apply to the Court for the settlement of the amount. The formal judgment (Record page 13) provides that the appeal of this 20 Respondent be allowed "save as to the interest of Allen A. McMartin, which is to be assessed from the date he became a resident of Canada, and the amount in this respect to be adjusted between the parties, but failing the parties to so agree, leave is hereby reserved to either party, upon notice, to apply to the Court for settlement thereof."

It is submitted that the portion of the income set aside for Allen A. McMartin which was not used for his support, maintenance and education since January, 1926, is not income accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests, within the meaning of Section 11 (2) of The Income War Tax Act, and liable to 30 have assessed, levied and paid thereon by the estate of Duncan McMartin, or by the Respondent, a tax under the provisions of The Income War Tax Act, for the reasons given above.

It is further submitted that there is no Section of the said Act other than Section 11 (2) under which the Respondent could be assessed or made liable to taxation in respect of the income of Allen A. McMartin since January, 1926, and that the cross-appeal should be allowed with costs.

N. W. ROWELL,

P. C. FINLAY,

Of Counsel for the Respondent. 40

No. 16.

Formal Judgment.

In the Supreme Court of Canada.

Wednesday, the Fifteenth day of June, A.D. 1932.

Present :

The Right Honourable Mr. Justice Duff, P.C.,
 The Honourable Mr. Justice Rinfret,
 The Honourable Mr. Justice Lamont,
 The Honourable Mr. Justice Smith,
 The Honourable Mr. Justice Cannon.

10

In the Matter of The Income War Tax Act,
 and

In the Matter of the Appeal of John B. Holden, of the City of Toronto,
 in the Province of Ontario, sole surviving executor and trustee
 of the estate of Duncan McMartin, late of the City of Montreal, in
 the Province of Quebec.

Between

The Minister of National Revenue ... (Respondent) Appellant,
 and

20 John B. Holden, sole surviving executor and
 trustee of the estate of Duncan McMartin,
 deceased ... (Appellant) Respondent.

The appeal of the above-named Appellant from the judgment of the
 Exchequer Court of Canada, pronounced in the above cause on the 20th
 day of October in the year of Our Lord One thousand nine hundred and
 thirty-one, setting aside the assessments for the years 1917 to 1928, both
 inclusive, levied by the Appellant on the income received by the Respon-
 dent as Executor and trustee of the estate of Duncan McMartin and accu-
 mulating in the said Executor's hands, having come on to be heard before
 30 this Court on the 9th day of February in the year of Our Lord One thousand
 nine hundred and thirty-two, in the presence of counsel as well for the
 Appellant as the Respondent, whereupon and upon hearing what was
 alleged by counsel aforesaid this Court was pleased to direct that the said
 appeal should stand over for judgment and the same coming on this day
 for judgment this Court did order and adjudge that the said appeal
 should be and the same was allowed, that the said judgment of the
 Exchequer Court of Canada should be and the same was reversed and set
 aside and that the assessments for the years 1917 to 1928, both inclusive,
 levied by the Appellant on the income received by the Respondent as
 40 Executor and Trustee of the estate of Duncan McMartin and accumulating
 in the said Respondent's hands should be and the same were confirmed.

And this Court did further order and adjudge that the said Respondent
 should and do pay to the said Appellant the costs incurred by the said
 Appellant as well in the said Exchequer Court of Canada as in this Court.

(Sgd.) J. F. SMELLIE,

Registrar.

*In the
 Supreme
 Court of
 Canada.*

No. 16.
 Formal
 Judgment,
 15th June,
 1932.

Reasons for Judgment.

No. 17.
Reasons for
Judgment.
(A) Duff J.
(concurring in
by Rinfret,
Lamont and
Smith JJ.)

(A) DUFF J. (Concurred in by RINFRET, LAMONT and SMITH JJ.)

It is quite plain, I think, that a child does not take, under paragraph 9, sub-paragraph (F), unless it attains the age of twenty-five years. It is true that the gift over is limited to the case where the child dies before the "period of distribution." But that cannot affect the plain language which makes the gift of the share contingent upon attaining the age of twenty-five years.

This, it seems to me, in itself leads to one necessary conclusion with 10 regard to all points in controversy. Until a child has attained twenty-five years, the destination of the share is uncertain, and the beneficiary is unascertained and unascertainable. That is sufficient to dispose of the main point. It is also sufficient to dispose of the subsidiary point, because up to that time the accumulated income accumulates as an integer; and the result is that the appeal should be allowed, the judgment of the Court below reversed and the assessments confirmed, with costs throughout.

(B) Cannon J. (B) CANNON J.

The following facts were agreed upon by the Appellant and the 20 Respondent for the purposes of this action :

1. The Appellant is the sole surviving Executor and Trustee of the last Will and Testament of Duncan McMartin bearing date the 24th day of April, 1914.

2. That the said Duncan McMartin died on the 2nd day of May, 1914, at the City of Toronto, in the Province of Ontario, but was domiciled in the City of Montreal, Province of Quebec.

3. After sundry bequests which are not involved in this appeal, the said deceased gave directions by his said last Will and Testament for the sale and conversion of his residuary estate, the investment of the balance 30 of the proceeds of such sale and conversion and as to the disposition to be made of the income derived from such investments, or the income or profits from the unrealised portions of the said Estate, which directions are to be found in paragraph 9 of the said last Will and Testament which is as follows :—

9. I give, devise and bequeath all the rest, residue and remainder of my estate both real and personal to my Executors and Trustees hereinafter named upon the following trusts—namely :

(A) to sell and convert the same into money (except my shares in Canadian Mining and Finance Company Limited) as soon after 40 my death as they in their absolute discretion deem it advisable.

(B) to pay out of the proceeds of such sale and conversion the legacies given by this my Will including the said legacy to my wife of One hundred and fifty thousand dollars (\$150,000) should same become payable.

(c) to invest and keep invested the balance of the proceeds of

such sale and conversion in such investments as trustees are by the Laws of the Province of Ontario permitted to invest trust funds.

(D) To pay out of the income derived from such investments or the income or profits from the unrealised portions of my estate, the said annuity of Twenty-five thousand dollars (\$25,000) a year to my wife.

10 (E) To divide the balance of the income from such investments, or the income or profits derived from the unrealised portions of my estate, into three equal parts and to pay or apply one of such parts, or so much thereof as my Executors and Trustees in their discretion deem advisable, in or towards the support, maintenance and education of each of my children until they respectively attain the age of twenty-five years, or until the period fixed for the distribution of the capital of my estate whichever event shall last happen, provided that any portion of any child's share not required for his or her support, maintenance and education shall be re-invested by my said Executors and Trustees and form part of the residue of my estate given and bequeathed to such child.

20 (F) After the death or remarriage of my wife, whichever event shall first happen, to divide the residue of my estate equally between such of my three children as shall attain the age of twenty-five years, as and when they respectively attain that age, provided that if any of the said children shall have died before the period of distribution arrives, leaving a child or children, such children shall take the share in my estate which his or her parent would have taken had he or she survived the period of distribution, if more than one in equal shares.

4. On the 1st day of January, 1917, there were living : Iva McMartin, Widow of the said Duncan McMartin, deceased, and Allen A. McMartin, Melba McMartin and Duncan McMartin, children of the said deceased, all of whom resided in the City of New York and had so resided for some time prior to the 1st of January, 1917. The said deceased left no other child, or any child or children of any deceased child, him surviving.

5. That Iva McMartin, Widow of the said Duncan McMartin, deceased, remarried on or about the 4th day of March, 1925, and received on or about that date the sum to which she became entitled on such remarriage and thereafter ceased to have any further interest in the residuary estate or in the income or profits therefrom.

40 6. The said Allen McMartin continued to reside in the City of New York or elsewhere in the United States of America until January, 1926, at which date he took up his residence in the City of Montreal, Province of Quebec, and has since resided there. The said Melba McMartin and Duncan McMartin have continued to reside in the City of New York or elsewhere in the United States of America, and are still residing there.

7. That the said Allen A. McMartin attained the age of twenty-five years on the 4th day of November, 1928, and that the said Melba McMartin (now Melba McMartin Orr) attained the age of twenty-five years on the 3rd day of March, 1930, and the said Duncan McMartin attained the age of twenty-one years on the 17th day of February, 1930.

a

*In the
Supreme
Court of
Canada.*

No. 17.
Reasons for
Judgment.
(B) Cannon J.
—continued.

*In the
Supreme
Court of
Canada.*

No. 17.
Reasons for
Judgment.
(B) Cannon J.
—continued.

8. That the said Allen A. McMartin was married on or about the 29th day of August, 1923, and there is no issue of such marriage; the said Melba McMartin was married to Leander Lee on the 20th day of September, 1922, and Melba Lee, born 23rd May, 1923, is the only issue of such marriage; the said Melba McMartin and Leander Lee were divorced and the said Melba McMartin was again married to T. W. Orr on the 28th day of October, 1929, and there is no issue of such marriage; the said Duncan McMartin was married on or about the 1st day of July, 1931, and there is no issue of such marriage.

9. By Notice of Assessment dated the 1st day of March, 1930, the ¹⁰ Appellant was assessed for Income Tax upon the undistributed income, not used in the maintenance of the children under clause (E) in paragraph 9 of the Will, from said residuary estate, as follows:—

Year				Taxable Income	Tax	
				\$	\$	
1917	...	...	...	6,508.94	40.18
1918	...	...	...	45,378.57	3,469.16
1919	...	...	...	57,766.57	8,152.87
1920	...	...	...	90,167.28	20,394.78
1921	166,896.28	62,508.50	20
1922	...	...	...	205,433.09	85,438.34
1923	...	...	...	173,036.85	66,119.16
1924	...	...	...	222,788.25	96,372.10
1925	...	...	...	271,469.55	97,321.29
1926	...	...	...	352,884.04	121,063.95
1927	...	...	...	436,480.86	139,366.65
1928	...	...	...	392,875.10	122,649.04

The question of residence or non-residence in Canada does not and cannot arise when the ultimate beneficiary in the accumulating trust fund is not definitely known and determined during the taxation period. ³⁰ The probable beneficiaries could not be definitely ascertained before the contingency—*i.e.*, their survival until they reached twenty-five years of age—actually took place.

We therefore have to deal exclusively with the 1920 amendment (ch. 20, sec. 4) which covers the present case and, in my view, is a complete taxing provision devised to tax in the hands of a trustee resident in Canada income accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests, without, for obvious reasons, distinguishing between residents and non-residents. I feel bound by our decision in the *Royal Trust Case* (S.C.R. 1931, p. 485) and would allow the ⁴⁰ appeal with costs.

No. 18.

Order in Council granting special leave to appeal to His Majesty in Council.

At the Court at Buckingham Palace.

The 8th day of August, 1932.

Present :

THE KING'S MOST EXCELLENT MAJESTY.

Earl of Athlone.

Lord Southborough.

Secretary Sir Herbert Samuel.

Sir Howard Kingsley Wood.

10

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council, dated the 26th day of July, 1932, in the words following, viz. :—

20

30

40

“ Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October, 1909, there was referred unto this Committee a humble Petition of John B. Holden, sole surviving Executor and Trustee of the estate of Duncan McMartin, deceased, in the matter of an Appeal from the Supreme Court of Canada between the Petitioner Appellant and the Minister of National Revenue Respondent, setting forth (amongst other matters) that the Petitioner desires to obtain special leave to appeal from a Judgment of the Supreme Court, dated the 15th June, 1932, allowing the Respondent's Appeal from a Judgment of the Exchequer Court of Canada, dated the 20th October, 1931, and confirming the Respondent's assessment of the Petitioner under the Income War Tax Act (1917) and Amending Acts for Income Tax for the years 1917 to 1928 inclusive upon the undistributed income of the residuary estate under the will of Duncan McMartin, deceased : that under the Judgment of the Supreme Court the tax payable by the Petitioner exclusive of penalties amounts to \$822,866 : that the principal questions in dispute are : (1) Whether under the provisions of the Income War Tax Act, 1917, and amendments thereto, so much of the income of the deceased's residuary estate bequeathed for the benefit of his three children as had not been applied for their support, maintenance and education is subject to tax in the hands of the Executor for the years 1917 to 1928 inclusive, notwithstanding that such children were not resident in Canada ; (2) whether in any event such income is taxable subsequent to the 4th March, 1925 ' the period fixed for the distribution ' by the will of the Testator ; and (3) whether in any case such income being by the terms of the will divisible into three equal parts ought not to have been taxed as three distinct incomes instead of as the income of a single person : that the Petitioner's submission is that the deceased's estate is not nor is the Petitioner assessable or taxable under the provisions of the Act in respect of the undistributed funds in question for the following reasons :

*In the
Privy
Council.*

No. 18.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
8th August,
1932.

*In the
Privy
Council.*

No. 18.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
8th August,
1932

—continued.

“(A) Non-residents of Canada are not taxable under the Act (except
“ in certain special cases not now material) and the persons for
“ whom the undistributed funds in question were received were
“ not resident in Canada : (B) under the provisions of the deceased’s
“ will the undistributed funds in question passed to and were vested
“ in definitely ascertained persons—namely, the testator’s three
“ children, Allen A. McMartin, Melba McMartin and Duncan McMartin,
“ and were not taxable in the hands of the Petitioner ; (c) if the
“ undistributed funds in question were not vested they were gifts
“ and bequests and therefore not within the definition of ‘taxable 10
“ income’ contained in section 3 of the Act ; (D) the Petitioner is
“ not a person liable to assessment and taxation in respect to the funds
“ in question within the meaning of the Act ; (E) in any event such
“ income is not taxable after the 4th March, 1925, the period fixed
“ for the distribution by the Testator’s will ; (F) in any event the
“ incomes of the three separate funds ought to have been taxed
“ separately and not treated for taxation purposes as a single income :
“ and reciting the relevant facts as agreed upon between the Peti-
“ tioner and the Respondent : And humbly praying Your Majesty 20
“ in Council to order that the Petitioner shall have special leave
“ to appeal from the Judgment of the Supreme Court dated the
“ 15th June, 1932, and that Your Majesty may be pleased to make
“ such further or other Order as to Your Majesty in Council may
“ appear fit :

“ The Lords of the Committee in obedience to His late Majesty’s
“ said Order in Council have taken the humble Petition into con-
“ sideration and having heard Counsel in support thereof and in
“ opposition thereto Their Lordships do this day agree humbly to
“ report to Your Majesty as their opinion that leave ought to be
“ granted to the Petitioner to enter and prosecute his Appeal against 30
“ the Judgment of the Supreme Court of Canada dated the 15th day
“ of June 1932 upon depositing in the Registry of the Privy Council
“ the sum of £400 as security for costs :

“ And Their Lordships do further report to Your Majesty that
“ the proper officer of the said Supreme Court ought to be directed
“ to transmit to the Registrar of the Privy Council without delay
“ an authenticated copy under seal of the Record proper to be laid
“ before Your Majesty on the hearing of the Appeal upon payment
“ by the Petitioner of the usual fees for the same.”

His Majesty having taken the said Report into consideration was 40
pleased by and with the advice of His Privy Council to approve thereof and
to order as it is hereby ordered that the same be punctually observed
obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Govern-
ment of the Dominion of Canada for the time being and all other persons
whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

DOCUMENTS.

Documents.

A.—T3 Information Return for 1923.

A.
T3 In-formation Return for 1923, 29th March, 1923.

Page 1

Form T. 3.
1923

AMENDED RETURN

DOMINION OF CANADA
INCOME TAX

RETURNS OF INCOME REQUIRED FROM TRUSTEES, EXECUTORS, ADMINISTRATORS, ASSIGNEES, RECEIVERS OR PERSONS ACTING IN FIDUCIARY CAPACITY FOR THE YEAR ENDED 31ST DECEMBER, 1923.

All Returns should be prepared in triplicate. One copy should be retained by the person filing this Return, and two must be delivered to the on or before the 31st March, 1924.

PRINT NAMES AND ADDRESS PLAINLY BELOW

Return of the Estate or Trust of.....Duncan McMartin, deceased.....
State name by which Estate or Trust is known
Return made by.....John B. Holden.....
Give names of Trustees, Executors, or others representing the Estate or Trust
Address in full.....255 Bay Street, Toronto, Ontario.....
Street and number Place Province
Acting in capacity of.....Executor and Trustee for himself and his coExecutor and Trustee Louis Henry
Timmins of Montreal, Que.....
Trustees, Executors, etc.

Was a return of this nature made for 1922?.....Yes.....Date Trust or Estate originated?.....May 2nd, 1914.
Total amount of Net Income of the Estate or Trust for the calendar year 1923, as detailed on pages 2 and 3 of this form.....\$248,608.18.....

If the Estate has been wound up and the Executors discharged, please give date.....
Trust Trustees

I We hereby certify that the return embodied herein, the supplementary statements and additional schedules attached (if any) contain a true and complete statement of all income received by me us for or on behalf of the above named Estate Trust during the year for which this return is made.

Telephone Number.....Main 6010.....(Signature).....JOHN B. HOLDEN.....
Date.....March 29th, 1923.....Executor Estate Duncan McMartin, deceased.

INSTRUCTIONS:—The Income War Tax Act provides that "Income of a Beneficiary of an Estate shall be deemed to include the amount accruing during each taxation year to which he, his heirs or assigns are entitled from the income of the Estate whether distributed or not."

"Income accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests shall be taxable in the hands of the trustees or other like persons acting in a fiduciary capacity as if such income were the income of an unmarried person." In every case of this kind the Trustee or other like person must file Returns on Form T. 1 in addition to the returns on Form T. 3.

In cases where an estate is carrying on a business, Trustees, Executors, etc., are required to attach financial statements in duplicate including statements of Assets and Liabilities, Trading and Profit and Loss. In determining the net income under item 1, page 2, the fiscal year ended within the calendar year may be used. For all other items the calendar year only must be used. The spaces provided on pages 2, 3 and 4 of this form are to be filled in with full particulars of the different amounts under each head. Where the space provided is not sufficient supplemental sheets properly identified containing full information must be attached to this return.

"In cases wherein trustees in bankruptcy, assignees, liquidators, curators, receivers, administrators, heirs, executors and such other like persons or legal representatives are administering, managing, winding up, controlling, or otherwise dealing with the property, business or estate of any person who has not made a return for any taxable period, or for any portion of a taxable period for which such person was required to make a return in accordance with the provisions of the act, they shall make such return and shall pay any tax and surtax and interest and penalties assessed and levied with respect thereto before making any distribution of the said property, business or estate."

"Trustees in bankruptcy, assignees, administrators, executors and other like persons, before distributing any assets under their control, shall obtain a certificate from the Minister certifying that no unpaid assessment of Income Tax, surtax, interest and penalties properly chargeable against the person, property, business or estate, as the case may be, remains outstanding. Distribution without such certificate shall render the trustees in bankruptcy, assignees, administrators, executors and other like persons personally liable for the tax, surtax, interest and penalties."

PENALTIES:—Every person who is required to make this return who fails to do so on or before the 31st March, 1924, shall be liable to a penalty of ten dollars (\$10.00) for each day of default, provided, however, that such penalty shall not in any case exceed fifty dollars (\$50.00).

For use in Office of Inspector only.
Date received.....
Examined by.....
Listed by.....
Date forwarded to Commissioner.....

For use in Office of Commissioner only.
Date filed.....
Days late.....
Penalty \$.....Abstracted by.....
Assessed by.....Date forwarded.....
Date assessed.....Forwarded to.....

Documents.

A.
T3 In-
formation
Return
for 1923,
29th March,
1923
—continued.

Page 2
GROSS INCOME
For Calendar Year 1923

		\$	c.
1. NET INCOME FROM BUSINESS, as per statement herewith..... NOTE:—See instructions on Page 1.			
2. GROSS INCOME FROM RENTALS.....			
.....1653 St. James Street, Montreal, Que.....	1,020	00	
.....Stuart property, Montreal.....	150	00	
.....Kindersley Elevator, one-half.....	96	10	
		1,266	10
NOTE:—Give name and address of tenant and location of property.			
3. NET INCOME FROM FARM LANDS OPERATED as per return on Form T. 1a attached.....			
NOTE:—Give address or location of property.			
4. GROSS INCOME FROM COMMISSIONS..... NOTE:—Give name of person from whom received.			
5. INCOME FROM DIVIDENDS—			
(i) From Canadian Corporations—			
.....Hollinger Consolidated Gold Mines Ltd.....	8,770	45	
.....less 50% for exhaustion.....	4,385	22	
		4,385	23
.....Canadian Ming. & Finance Co. Ltd. Dividends from Hol- linger Consolidated Gold Mines.....	379,591	96	
.....less allowance 50% for exhaustion.....	189,795	98	
		189,795	98
NOTE:—If shares were purchased during taxation year please give date.			
		Total.....	
		Less Carrying Charges (if any).....	
		Net.....	
(ii) From British and Foreign Corporations—			
		Total.....	
		Less Carrying Charges (if any).....	
		Net.....	
NOTE:—Give name of corporation in each case stating number of shares and if common or preferred.			
6. INCOME FROM DOMINION OF CANADA BONDS			
(a) issued Exempt from Income Tax.....	2,640	00	
.....less carrying charges.....			
		2,640	00
(b) issued liable to taxation arising from Dominion of Canada Bonds issued in 1919 and 1922.....	4,675	00	
.....less carrying charges.....			
		4,675	00
7. INCOME FROM INTEREST on Mortgages, Notes, Bank Deposits, Bonds and Deben- tures, Debenture Stock and Securities other than reported in Item No. 5.....			
.....From Mortgages \$41,685.18 from Bank Deposits \$416.89 from Bonds Deben- tures and Debenture Stock \$47,038.43.....			
		89,140	50
8. INCOME FROM FIDUCIARIES (Trustees, Executors, Administrators, Guardians or Financial Agents).....			
NOTE:—Give name of Estate and name and address of Trustee.			
9. INCOME FROM OTHER SOURCES not elsewhere enumerated (Specify).....			
.....Sale of Hay on Stuart property.....		125	00
		\$ 292,027	81
10. TOTAL INCOME.....			

Where the space provided in the schedules above is not sufficient, supplemental sheets properly identified containing full information must be attached to this Return.

EXPENSES CLAIMED AS DEDUCTIONS FROM INCOME
For Calendar Year 1923

Documents.

A.
T. 3 In-formation
Return
for 1923,
29th March,
1923
—continued.

		\$	c.
11. INTEREST PAID ON BORROWED MONEY (Exclusive of any amount included in Items No. 4 or No. 5)—			
(i) Mortgages on Rented Property.....			
(ii) Other Interest (Specify).....			
.....Exchange on New York Drafts Mrs. McMartin & Children.....		1,360	54
NOTE:—Give name and address of person to whom interest is paid.			
12. TAXES. Provincial and Municipal Taxes on property (Exclusive of Income Tax, Local Improvement Tax or any amount reported elsewhere).....			
.....(See Schedule).....			
		14,177	04
NOTE:—Give address or location of property.			
13. GENERAL EXPENSES of the Administration not included in Statement herewith.....			
.....Legal.....		3,566	33
.....Accounting.....		1,850	00
.....Office Expenses.....		115	00
.....Executors Compensation.....			
.....J. Bell Holden, Esq. Toronto..... 7,500 00			
.....Louis H. Timmins Esq., Montreal, Que..... 7,500 00		15,000	00
(Full details must be given)			
14. BAD DEBTS actually written off within the year, contracted since first January, 1917			
NOTE:—Only accounts relating to the business are to be included here and no amount already charged before arriving at total opposite item 1 page 2 of this return is to be included.			
15. DEPRECIATION—			
Nature of Article.	Year Acquired	Cost Value (not including land value.)	Rate per cent Per An.
If Building state material and date of construction.			
If Machinery give description and date of purchase.			
		\$ c.	
			Wear and Tear Charged Off.
			Amount in Amount this
			previous years. year.
			\$ c. \$ c.
			Total depreciation
NOTE:—Do not include depreciation on stock in trade, land or securities or any other asset not subject to exhaustion through wear and tear. This schedule must not include any amount already charged before arriving at total opposite item 1 page 2 of this Return.			
16. OTHER DEDUCTIONS not elsewhere enumerated. (Specify).....			
.....Insurance premium in respect of 1653 St. James St.....		114	00
.....Loss on Saskatchewan operations as per schedule attached No. 16.....		4,768	05
.....Normal Tax on Canadian Dividends.....			
Dividends and Income from Dominion of Canada Bonds or Stock issued exempt from taxation included in schedules 4 and 5 must not be shown as a deduction, insofar as this Return is concerned—see schedule 20.			
17. TOTAL DEDUCTIONS.....		\$ 40,950	96

Where the space provided in the above schedules is not sufficient supplemental sheets properly identified containing full information must be attached to this Return.

Documents.

A.
T. 3 In-
formation
Return
for 1923,
29th March,
1923
—continued.

21. Name and address of Beneficiary		Total Amount of Income accruing to Beneficiary.		Apportionment of Accrued Income of each Beneficiary.					
NOTE:—Give surname first, then initials, number, street and place. (1)		(2)		Dividends from Stocks of Canadian Corporations. (3)		Interest from Dom. of Canada Bonds or Stock issued exempt from Income Tax. (4)		Other Revenue. (5)	
		\$		\$		\$		\$	
Mrs. Duncan McMartin 490 Riverside Drive New York City		28,000	00	7,582	96			20,417	04
McMartin, Allen 490 Riverside Drive New York City		16,600	00	4,482	22			12,117	78
McMartin, Duncan 490 Riverside Drive New York City		17,400	00	4,717	78			12,682	22
Lee Melba McMartin 490 Riverside Drive New York City		12,400	00	3,361	40			9,038	60
Duncan McMartin Estate c/o J. B. Holden, Est. Toronto		176,676	85	174,036	85	2,640	00		
Rentals insufficient to render bene- ficiaries assessable									
Total		251,076	85	194,181	21	2,640	00	54,255	64

NOTE:—The difference between the amount shown under Item "20" and the total of column 2, Item "21" is taxable in the hands of the Trustees who should file a return therefor on Form T. 1.

(Copy)

SCHEDULE ATTACHED TO INCOME TAX RETURN, FOR
ESTATE DUNCAN McMARTIN, DECEASED.

Pointe aux Trembles	194 60
City Toronto, Income 1922	1,252 07
British Columbia Lands	80 84
City Toronto, Income 1923	2,330 17
1653 St. James St. Montreal	401 00
Town of Longueuil (one half)	1,720 65
Amherst Park	92 80
Town of Laval de Montreal	1,322 60
Town of Montreal South (one half)	3,048 16
Saskatchewan lands, one half	3,734 15

\$14,177 04

(Copy)

No. 16. SCHEDULE ATTACHED TO RETURN OF DUNCAN McMARTIN ESTATE

Operating Account	Saskatchewan Lands
Loss & GAIN—	
To Supplies	1,582 92
Interest & Exchange	153 46
Hardware	166 55
Wages	781 75
Sundries	1,260 59
Repairs & Oil	456 10
O. G. Alderson	1,012 00
Balance due O. G. Alderson	788 00
By Sales Grain	1,243 32
Collections—pasture	190 00
Balance	4,768 05
	6,201 37
	6,201 37

A.—T. 1 Assessment Return for 1923.

Documents.

For use of individuals other than farmers
and ranchers

Page 1

Form T-1

1923DOMINION OF CANADA
INCOME TAXReceived
April 30, 1924
For use of Inspector of Taxation
onlyA.
T. 1 Assess-
ment
Return
for 1923,
16th April,
1924.

RETURN OF INCOME FOR THE YEAR ENDED 31st DECEMBER, 1923

All returns should be prepared in triplicate. One copy should be retained by the taxpayer and two copies must be delivered to the.....Inspector of Taxation, 21 Lombard St., Toronto, Ont.....on or before 30th April, 1924.

PRINT NAME AND ADDRESS PLAINLY BELOW

Name.....Duncan McMartin, deceased, Estate of.....
(Surname) (Christian names in full)
 P.O. Address of present residence.....255 Bay Street, Toronto,.....York.....Ontario.....
(Street and Number) (City or Town) (County) (Province)
 Occupation or nature of business of Taxpayer.....
 Under what name business carried on?.....
 Names of partners in business (if any).....
 Name in full and address of Employer or Firm or trading name for year 1923.....
 Place of residence during 1922.....
 Did you make a Dominion Income Tax Return for 1921?.....Yes.....Have you been assessed for Dominion
 Income Tax for 1921?.....No.....
 Did you make a Dominion Income Tax Return for 1922?.....Yes.....Have you been assessed for Dominion
 Income Tax for 1922?.....No.....
 State whether married or unmarried, widow or widower.....
(If status was changed during the year, state date of change)
 State number and ages of children under the age of 18 years dependent on you for support. Number.....
 ages.....
 If any taxpayer, not otherwise entitled to the \$2,000 exemption, claims to have dependent on him:—
 (1) a parent or grandparent,
 (2) a daughter or sister,
 (3) a son or brother under 21 years of age or incapable of self-support on account of mental or physical
 infirmity,
 full particulars must be given on Form T. 242 which may be had on application to the Inspector's Office.
 If a widow or widower state number and ages of dependent children, if any, } Number.....Ages.....
 under the age of 21 years or over 21 years of age and dependent on you }
 for support on account of physical or mental incapacity.

I hereby certify that the return embodied herein, the supplementary statements and additional schedules attached, if any, contain a true and complete statement of my Gross Income and Deductions claimed for the year 1923.

Date.....April 16/24.....Telephone Number.....Main 6010.....Signature.....John B. Holden.....
 Executor Estate Duncan McMartin

N.B.—It is essential that taxpayers notify the Inspector of Taxation to whom return has been made, of any change in address.

INSTRUCTIONS:—Fill in carefully the answers to the above questions and the particulars required on pages 2, 3 and 4 of this form. All persons engaged in business, including members of trading partnerships, should attach to this return a certified financial statement of the business including Assets and Liabilities, Trading and Profit and Loss Statements for the accounting period ended in 1923, showing how the amount of Item No. 4 on page 2 is ascertained. Every other person having investments of any kind should complete the statement of Assets and Liabilities on Page 4.

In the case of a taxpayer carrying on a farming business in addition to his regular occupation, he should give full details of his farming operations on Form T1-a.

Every taxpayer must estimate the tax payable by him. The tax is due on the 30th April, 1924. Every taxpayer shall send on or before the 30th April, 1924, with his return, not less than one-quarter of the amount of his estimated tax, and may pay the balance, if any, in not more than three equal bi-monthly instalments thereafter, together with interest, at the rate of six per centum per annum upon each instalment from the 30th April, 1924, to the time payment is made.

If any taxpayer pays less than one-quarter of his estimated tax, or should he fail to make any payment on or before the 30th April, 1924, or at the time when any instalment should be paid, he shall pay additional interest at the rate of four per centum per annum upon the deficiency from the date of default to the date of payment.

Any additional tax found due over the estimated amount shall be paid within one month from the date of mailing of the Notice of Assessment together with interest at the rate of six per centum per annum from the 30th April, 1924. If payment of the additional amount of tax is not made within the said one month, additional interest at the rate of four per centum per annum shall be payable from the date of default until payment is made.

PENALTIES:—For failure to file return on or before 30th April, 1924.

Five per centum of the tax payable with a maximum penalty of Five Hundred Dollars.

For False Return—Upon summary conviction a fine not exceeding Ten Thousand Dollars or six months' imprisonment or both fine and imprisonment.

Documents.

T. 1 Assessment
Return
for 1923,
16th April,
1924

—continued.

Page 2
GROSS INCOME
FOR CALENDAR YEAR 1923

DO NOT STATE YOUR INCOME TO BE LESS THAN THE TRUE AMOUNT. AVOID PENALTIES.

		\$	c.
1. SALARIES OR WAGES Received from..... (Employers' Name).....			
Bonus or Gratuities received from.....			
Pensions received from.....			
Directors' Fees received from.....			
Board, living, house or subsistence allowance received from.....			
2. GROSS INCOME FROM PROFESSIONAL FEES..... (State whether Cash Receipts and Accounts charged or Cash Receipts only) NOTE.—If Financial Statement in duplicate is attached showing Gross Income and Deductions, only Net Income need be shown here.			
3. GROSS INCOME FROM COMMISSIONS..... NOTE.—Give names and addresses of persons from whom received and attach statement showing how amount is reached.			
4. NET INCOME FROM BUSINESS as per statement herewith or Schedule, Page 4..... Value of merchandise, food, clothing, etc., taken from stock for personal or family use.....			
5. GROSS INCOME FROM RENTALS.....			
1653 St. James St., Montreal.....		\$1,020	00
Stuart Property, Montreal.....		150	00
..... Included in Duncan McMartin Estate T 3 return.....		1,170	00
NOTE.—Give address or location of property.			
6. INCOME FROM DIVIDENDS—			
(i) From Canadian Corporations		\$	c.
Duncan McMartin Estate, see T.3.....		174,036	85
Total.....			
Less Carrying Charges (if any).....			
Net.....			
(ii) From British and Foreign Corporations—		\$	c.
Total.....			
Less Carrying Charges (if any).....			
Net.....			
NOTE.—Give name of corporation in each case, stating number of shares and if Common or Preferred.			
7. INCOME FROM INTEREST on Mortgages, Notes, Bank Deposits, Bonds and Debentures, Debenture Stock and Securities other than reported in Item No. 9 (as per schedule attached).....			
8. INCOME FROM FIDUCIARIES (Trustees, Executors, Administrators, Guardians or Financial Agents)..... NOTE.—Give name of Estate and name and address of Trustee.			
9. INCOME FROM DOMINION OF CANADA BONDS—			
(a) Issued exempt from Income Tax..... Duncan McMartin		\$	c.
Less Carrying Charges..... Estate T.3.....		2,640	00
Net.....			
(b) Issued liable to Income Tax. (Arising from Dominion of Canada Bonds issued in 1919, and subsequent years).....			
Less Carrying Charges.....			
Net.....			
NOTE.—Give name of Estate and name and address of Trustee.			
10. INCOME FROM OTHER SOURCES not elsewhere enumerated (specify).....			
Saskatchewan Farm Pasture 190.....			
Sale of grain \$1,243.32, Kindersley Elevator \$96.10.....			
Included in Duncan McMartin Estate T.3 Return.....		1,520	43
		2,600	43
11. TOTAL INCOME.....		176,676	85

Where the space provided in the Schedules above is not sufficient, supplemental sheets identified properly containing full information, must be attached to this Return.

Page 3
EXPENSES CLAIMED AS DEDUCTIONS FROM INCOME
FOR CALENDAR YEAR 1923
Do NOT CLAIM DEDUCTIONS THAT CANNOT BE ALLOWED. AVOID PENALTIES.

Documents.

A.
 T. I. Assessment Return
 for 1923,
 16th April,
 1924
 —continued.

		\$	c.		
12. GENERAL EXPENSES applicable to business, trade or profession not included in Statement herewith or in Schedule, Page 4.....					
.....					
.....					
13. INTEREST PAID ON BORROWED MONEY (exclusive of any amount in Item No. 6 or No. 9)—					
(i) Mortgages on Rented Property.....					
(ii) Other interest (specify).....					
NOTE:—Give name and address of person to whom interest is paid. Do not include interest on mortgage on residence or on moneys borrowed for personal and living expenses.					
14. TAXES. Provincial and Municipal Taxes on Property other than taxpayer's residence (exclusive of Income Tax, Local Improvement Tax or any amount reported elsewhere).....					
..... Stuart Property, Point Aux Trembles.....		194	60		
..... 1653 St. James St., Montreal.....		401	00		
..... Premium paid for Fire Insurance on rented property					
..... 1653 St. James St., Montreal.....		114	00		
..... Repairs to rented property.....					
NOTE:—Under each heading where an amount is claimed give address or location of property.					
15. BAD DEBTS actually written off within the year which have been contracted since 1st January, 1917.....					
NOTE:—Only accounts relating to taxpayer's business or profession are to be included here and no amount already charged before arriving at total opposite Item 4, Page 2, of this Return, is to be included.					
16. Depreciation—					
	Year	Cost	Rate	Wear and Tear Charged Off.	
Nature of Article. If Building state material and date of construction. If Machinery give description and date of purchase.	Acquired	(not including land.)	per cent Per An.	Amount in previous years.	Amount this year.
		\$ c.		\$ c.	\$ c.
				Total depreciation...	
NOTE:—Do not include depreciation on stock in trade, land or securities or any other asset not subject to exhaustion through wear and tear. This schedule must not include any amount already charged before arriving at total opposite item 1 page 2 of this Return.					
17. NET INCOME FROM DOMINION OF CANADA BONDS issued exempt from Income Tax (to offset Item No. 9a and proper proportion Item No. 8).....					
..... Duncan McMartin Estate, see T.3.....		2,640	00		
18. OTHER DEDUCTIONS not elsewhere enumerated. (Specify).....					
..... Operating Expenses, Saskatchewan Farm.....					
..... Supplies \$1,582.92, Interest & Exchange \$153.46, Hardware \$166.55.....					
..... Wages \$781.75, Sundries \$1,260.59, Repairs & Oil \$466.10.....					
..... Manager's salary \$1,800. Taxes \$3,734.15. Included in Duncan McMartin Estate, T.3 Return.....		9,025	59		
19. TOTAL DEDUCTIONS					
		10,645	12		
		2,640	00		

Where the space provided in the above Schedules is not sufficient, supplemental sheets properly identified containing full information must be attached to this Return.

Documents.

FINANCIAL STATEMENT (See Instructions on Page 1)
STATEMENT OF PROFIT AND LOSS for year ending.....1923

A.
T. 1 Assessment Return for 1923, 16th April, 1924

—continued.

Merchandise sold during the year.....		\$	
Inventory of Merchandise at commencement of year at cost price \$ (If inventory is not taken at cost, state basis of valuation)			
Add cost of Merchandise bought for sale (Including Freight and Duty)			
Less Inventory of Merchandise at end of year at cost price (If inventory is not taken at cost, state basis of valuation)			
Gross Trading Profit for Year.....		\$	
Add other Income derived from Business.....			
Less Expenses—			
TOTAL GROSS PROFIT		\$	
Salaries and Wages (Not including Proprietor or Partner).....	\$		
Rents..... (Important: Give name and address of person to whom paid)			
Taxes on Property used in Business.....			
Other Taxes. (Specify).....			
Interest paid on money borrowed and used in business apart from Capital.....			
Fire Insurance Premiums.....			
Repairs.....			
Bad debts actually written off within the year arising from sales contracted since 1st January, 1917.....			
Sundry. (Specify).....			
TOTAL NET PROFIT		\$	

Where profits are divided amongst partners the amount paid or credited to each must be clearly shown.

STATEMENT OF ASSETS AND LIABILITIES—As at the end of Business Year

ASSETS—		LIABILITIES—	
Stock of Merchandise on hand at cost price.....	\$	Accounts Payable.....	\$
Cash on hand and in Bank.....		Bills Payable.....	
Accounts Receivable.....		Loans.....	
Bills Receivable.....		Accrued Interest.....	
Real Estate, Buildings.....		Sundry (Specify).....	
Real Estate, Land.....			
Machinery and Tools.....			
Furniture and Fixtures.....			
Other Investments.....			
Sundry (Specify).....			

TO THE INSPECTOR OF TAXATION:

I enclose herewith my cheque in favour of the Receiver General of Canada for the sum of dollars in payment of the total amount or not less than 25% of the amount of my Income Tax for the year 1923, estimated as follows:

Date.....192.....

Date	Tax	Int.	Pen.	Initials
1st payment				
2nd payment				
3rd payment				
4th payment				

Gross Income {See Item No. 11}.....	\$176,676 85
Deductions { " No. 19 }.....	\$ 2,640 00
Net Income.....	\$174,036 85
Less Statutory exemption (\$1,000 or \$2,000, as the case may be).....	\$ 1,000 00
Total Normal Tax (4% on first \$6,000, less statutory exemption and 8% on balance).....	\$173,036 85
Less Allowance for Normal Tax on Can- adian Dividends.....	\$
Less Allowance for Normal Tax in respect of Dependent children under 18 years of age (See note below).....	\$
Normal Tax Payable.....	\$
Surtax Payable (on income in excess of \$5,000).....	\$
Total Normal and Surtax Payable.....	\$
Additional 5% Payable (on total Normal and Surtax on incomes of \$5,000 or over).....	\$
Total Tax.....	\$

In case where the full amount has not been paid, further instalments plus Interest at the rate of 6 per centum per annum will be forwarded on or before the 30th June, 31st August, and 31st October, 1924, together with an additional 4 per centum per annum upon the deficiency from date of default to date of payment.

Signature.....

N.B.—The allowance for each dependent child under eighteen years of age is the amount of the normal tax on \$500.

Form T-1-B.
1923

DOMINION OF CANADA
INCOME TAX ASSESSMENT FORM

Number.....
Code No.....

Documents.

.....McMARTIN, DUNCAN Est. of.....603-4 Royal Bank Bldg.,.....Single.....

Name P.O. Address Classification of Taxpayer for exemption purposes
No. 30. Dividends on which Normal Tax has been paid (vide item No. 6 (i)) \$..... Allowance for Normal Tax on dividends, \$.....

No. 31. Number of dependents under 18 years of age..... Allowance for Normal Tax on basis of \$300 for each dependent under 18 years of age as provided for by the Income War Tax Act, 1917, as amended, \$.....

No. 32. GROSS INCOME (vide item No. 11)..... 176,676 85
No. 33. DEDUCTIONS (vide item No. 19)..... 2,640 00
No. 34. NET INCOME..... 174,036 85

A.
T. 1 Assessment Return for 1923, 16th April, 1924

—continued.

No. 35 Income Class	Rate per Cent		Normal Tax	Totals	Income Class	Rate per Cent		Surtax	Totals
\$1,000—6,000	4	Exempt			Amount Surtax Forward				
\$2,000—6,000	8	Exempt			\$ 48,000—50,000	23	460	\$5,510	
Corp. Tax	10				50,000—52,000	24	480	5,990	
No. 35 (i) Total Normal Tax					52,000—54,000	25	500	6,490	
					54,000—56,000	26	520	7,010	
					56,000—58,000	27	540	7,550	
					58,000—60,000	28	560	8,110	
					60,000—62,000	29	580	8,690	
					62,000—64,000	30	600	9,290	
					64,000—66,000	31	620	9,910	
					66,000—68,000	32	640	10,550	
					68,000—70,000	33	660	11,210	
					70,000—72,000	34	680	11,890	
					72,000—74,000	35	700	12,590	
					74,000—76,000	36	720	13,310	
					76,000—78,000	37	740	14,050	
					78,000—80,000	38	760	14,810	
					80,000—82,000	39	780	15,590	
					82,000—84,000	40	800	16,390	
					84,000—86,000	41	820	17,210	
					86,000—88,000	42	840	18,050	
					88,000—90,000	43	860	18,910	
					90,000—92,000	44	880	19,790	
					92,000—94,000	45	900	20,690	
					94,000—96,000	46	920	21,610	
					96,000—98,000	47	940	22,550	
					98,000—100,000	48	960	23,510	
					100,000—150,000	52	26,000	49,510	49,510
					150,000—200,000	56	28,000	77,510	13,460 63
					200,000—300,000	60	60,000	137,510	
					300,000—500,000	63	126,000	263,510	
					500,000—1,000,000	64	320,000	583,510	
					Over -1,000,000	65			
Amount Surtax Forward.....					No. 35 (ii): Total Surtax..... 62,970 63				

No. 36. Amount of Normal Tax Forward from No. 35 (i).....	\$ Nil
No. 37. Less Allowance for Normal Tax on dividends (from item No. 30).....	\$.....
No. 38. Less Allowance for Normal Tax for dependents (from item No. 31).....	\$.....
No. 39. Amount of Total Normal Tax payable.....	Nil
No. 40. Amount of Surtax Forward from No. 35(ii).....	62,970 63
No. 41. Amount of Normal and Surtax.....	
No. 42. Amount of Additional 5% Tax.....	3,148 53
No. 43. Amount of Total Tax.....	
No. 44. Less allowances for British or other Taxes for 1923 period, as provided by Sec. 3, Sub-sec. 3 (5) b of 1919 amendment to Income War Tax Act 1917.....	
No. 45. Less amount paid under Part I, Special War Revenue Act, 1915, for 1923 period.....	
No. 46. Total Tax Payable.....	
No. 47. Penalty of 5% for default in filing return.....	
No. 48. Total amount to be paid.....	66,119 16

REMARKS:—
T-6-1 No. 837..... Date Feb. 19, 1930..... Assessor P. C. McGoven..... Auditor.....
Inspector's Office Commissioner's Office
Inspector of Taxation

Documents.

A.—T. 3 Information Return for 1928.

A.
T. 3 In-
formation
Return
for 1928,
27th March,
1929.

AMENDED

COPY

Form T. 3

1928

DOMINION OF CANADA
INCOME TAX

RETURN OF INCOME REQUIRED FROM TRUSTEES, EXECUTORS, ADMINISTRATORS, ASSIGNEES, RECEIVERS OR PERSONS ACTING IN A FIDUCIARY CAPACITY FOR THE YEAR ENDED 31ST DECEMBER, 1928.

This return is to be prepared in triplicate. One copy is to be retained by the person filing this Return, and two must be delivered or mailed post paid to the INSPECTOR OF INCOME TAX, 21 Lombard Street, Toronto 2, Ont. on or before the 31st March, 1929.

PRINT NAME AND ADDRESS PLAINLY BELOW

Return of the Estate or Trust of.....DUNCAN McMARTIN, Deceased.....
State name by which Estate or Trust is known
Return made by.....JOHN BELL HOLDEN.....
Give names of Trustees, Executors, or others representing the Estate or Trust
Address in full.....603-4 Royal Bank Building, Toronto, Ontario.....
Street and number Place Province
Acting in capacity of.....Executor & Trustee for himself and Co-Executor and Trustee.....
Trustees, Executors, etc. LOUIS HENRY TIMMINS.
Was a return of this nature made for 1927?.....Yes..... Date Trust or Estate originated.....May 2nd, 1914....
Total amount of Net Income of the Estate or Trust for the calendar year 1928, as detailed on pages 2 and 3 of this form, \$.....
If the Estate Trust has been wound up and the Executors Trustees discharged, please give date.....

I We hereby certify that the return embodied herein, the supplementary statements and additional schedules attached (if any) contain a true and complete statement of all income received by me us for or on behalf of the above named Estate Trust during the year for which this return is made.
Telephone Number.....Elgin 9111..... Signature.....John B. Holden (sgd.).....
Date.....March 27th, 1929.....

INSTRUCTIONS:—The Income War Tax Act provides that "The Income for any taxation period of a Beneficiary of any Estate or Trust of whatsoever nature shall be deemed to include all income accruing to the credit of the taxpayer whether received by him or not during such taxation period."

"Income accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests shall be taxable in the hands of the trustee or other like person acting in a fiduciary capacity as if such income were the income of an unmarried person." In every case of this kind the Trustee or other like person must file Returns on form T. 1 in addition to the returns on Form T. 3.

In cases where an Estate is carrying on a business, Trustees, Executors, etc., are required to attach financial statements in duplicate, including statements of Assets and Liabilities, Trading and Profit and Loss. In determining the net income under item 1, page 2, the fiscal year ended within the calendar year may be used. For all other items the calendar year only must be used. The spaces provided on pages 2, 3 and 4 of this Form are to be filled in with full particulars of the different amounts under each head. Where the space provided is not sufficient, supplemental sheets properly identified containing full information must be attached to this return.

Sec. 37. "Every trustee in bankruptcy, assignee, liquidator, curator, receiver, administrator, heir, executor and such other like person or legal representative administering, managing, winding-up, controlling, or otherwise dealing with the property, business or estate of any person who has not made a return for any taxable period or for any portion of a taxable period for which such person was required to make a return in accordance with the provisions of this Act shall make such return."

Sec. 50. "Every person who is required by section thirty-seven of this Act to make a return of income shall pay any tax and interest and penalties assessed and levied with respect to such income before making any distribution of the property, business or estate which he is administering, managing, winding-up or otherwise controlling or dealing with."

Sec. 51. "Every trustee in bankruptcy, assignee, administrator, executor and other like person, before distributing any assets under his control shall obtain a certificate from the Minister certifying that no unpaid assessment of income tax, interest and penalties properly chargeable against the person, property, business or estate, as the case may be, remains outstanding. Distribution without such certificate shall render the trustee in bankruptcy, assignee, administrator, executor and other like person personally liable for the tax, interest and penalties."

PENALTIES:—Every person who is required to make this return who fails to do so on or before the 31st March, 1929, shall be liable to a penalty of ten dollars (\$10.00) for each day of default, provided, however, that such penalty shall not in any case exceed fifty dollars (\$50.00).

For use in Office of Inspector only.

Date received.....
Examined by.....
Listed by.....
Date forwarded to Commissioner.....

For use in Office of Commissioner only.

Date filed.....
Days late.....
Penalty \$..... Abstracted by.....
Assessed by..... Date forwarded.....
Date assessed..... Forwarded to.....

GROSS INCOME—For Calendar Year 1928

Documents.

	\$	c.
1. NET INCOME FROM BUSINESS, as per statement herewith..... NOTE:—See instructions on Page 1.		
2. GROSS INCOME FROM RENTALS..... NOTE:—Give name and address of tenant and location of property.		
3. NET INCOME FROM FARM LANDS OPERATED, as per return on Form T. 1a attached..... NOTE:—Give address or location of property.		
4. GROSS INCOME FROM COMMISSIONS..... NOTE:—Give name of person from whom received.		
5. INCOME FROM DIVIDENDS—	\$	c.
(i) From Canadian Corporations—		
Hollinger Consolidated Gold Mines Limited.....	702,858	20
Less allowance of 50% for exhaustion.....	351,429	10
NOTE:—If shares were purchased during taxation year please give date.		
Total.....		
Less Carrying Charges (if any).....		
Net.....	351,429	10
(ii) From British and Foreign Corporations—		
Total.....		
Less Carrying Charges (if any).....		
Net.....		
NOTE:—Give name of corporation in each case stating number of shares and if common or preferred.		
6. INCOME FROM DOMINION OF CANADA BONDS—	\$	c.
(a) Issued exempt from Income Tax (state Year of Issue)....	1,265	00
Less Carrying Charges.....		
(b) Issued liable to taxation arising from Dominion of Canada Bonds issued in 1919 and subsequent years.....	35,540	00
Less Carrying Charges.....		
Net.....	36,805	00
7. INCOME FROM INTEREST on Mortgages, Notes, Bank Deposits, Bonds and Debentures, Debenture Stock and Securities other than reported in item No. 5..... Mortgage Interest \$118,040.35, Bonds & Debentures \$102,626.82, Bank Interest \$2,518.43.....		
NOTE:—Income from Provincial, Municipal and Corporation Bonds and Debentures is taxable and must be reported.	223,185	60
8. INCOME FROM FIDUCIARIES (Trustees, Executors, Administrators, Guardians or Financial Agents)..... NOTE:—Give name of Estate and name and address of Trustee, etc.		
9. INCOME FROM OTHER SOURCES not elsewhere enumerated (Specify).....		
10. TOTAL INCOME.....	611,419	70

A.
T. 3 In-formation Return for 1928, 27th March, 1929
—continued.

Where the space provided in the schedules above is not sufficient, supplementary sheets properly identified containing full information must be attached to this Return.

IMPORTANT:—The responsible official must make full disclosure of the Estate's income.

	\$	c.
18. TOTAL INCOME brought forward from page 2.....	611,419	70
19. TOTAL DEDUCTIONS brought forward from page 3.....	44,758	39
20. NET INCOME.....	566,661	31

A.
T. 3 In-
formation
Return
for 1928,
27th March,
1929
—continued.

21. Name and address of Beneficiary— NOTE:—Give surname first, then initials, number, street and place. (1)	Total Amount of Income accruing to Beneficiary (2)		Apportionment of Accrued Income of each Beneficiary			
			Interest from Dom. of Canada Bonds or Stock issued exempt from Income Tax (3)		Other Revenue (4)	
	\$	c.	\$	c.	\$	c.
Allen McMartin..... Room 7084 Mount Royal Hotel..... Montreal, Que.....	39,490	23			39,490	23
Lee, Mrs. Melba McMartin..... 941 Park Avenue..... New York City, N.Y.....	111,830	98			111,830	98
McMartin, Duncan..... 45 Gramercy Park..... New York City, N.Y.....	19,700	00			19,700	00
Duncan McMartin Estate..... c/o John Bell Holden, Fsq..... 603 Royal Bank Building, Toronto-2.....	395,640	10	1,265	00	394,375	10
Under the terms of the Will all Income not disbursed for the support, maintenance and education of the three children of the deceased is capitalized and its later distribution is contingent upon each child attaining the age of twenty-five years, subject to which the Income is to be equally divided among the three children.....						
Total.....	566,661	31	1,265	00	565,396	31

NOTE:—The difference between the amount shown under Item "20" and the total of column 2, Item "21" is taxable in the hands of the Trustees, who should file a return therefor on Form T. 1.

Documents.

A.
T. 1 Assessment
Return
for 1928,
8th June,
1929.

A.—T.1 Assessment Return for 1928.

For use of individuals other
than farmers and ranchers

Form T. 1

1928

Key No.
For use of Inspector of Income Tax only

DOMINION OF CANADA
INCOME TAX

Received June 12, 1929 For use of Inspector of Income Tax only

RETURN OF INCOME FOR THE YEAR ENDED 31ST DECEMBER, 1928

This return is to be prepared in triplicate. One copy is to be retained by the taxpayer and two copies must be delivered or mailed post paid to the INSPECTOR OF INCOME TAX, Toronto 2, Ont. on or before 30th April, 1929.

PRINT NAME AND ADDRESS PLAINLY BELOW

Name.....DUNCAN McMARTIN, Estate of, deceased.....
(Surname) (Christian names in full)

P.O. address of present residence.....603 Royal Bank Bldg., Toronto 2, York, Ontario.....
(Street and Number) (City or Town) (County) (Province)

Occupation or nature of business of Taxpayer.....

If employed state name and address of employer during 1928.....

If owner of business or professional practice during 1928, state
(a) Business name..... Business Address.....
(b) Names of partners (if any).....

Place of residence during 1927.....Same as above.....

Did you make a Dominion Income Tax Return for 1927?.....Yes..... Have you paid your Dominion Income Tax for 1927?.....None payable.....

State whether married or unmarried, widow or widower.....
(If status was changed during 1928, state date of change)

State number and ages of children under the age of 21 years dependent on you for support. Number.....
Ages.....

If you have a child over 21 years of age incapable of self support on account of mental or physical infirmity give particulars.....

If the statutory exemption of \$3,000 is claimed by an unmarried person, widow or widower, state whether claim is made by reason of
(a) Being a householder as defined by paragraph (f), section 2 of the Income War Tax Act (See footnote)
(Answer yes or no)
or (b) Being the support of dependent relatives as provided by sub-section 1 (c), section 5 of the Act (See footnote)
(Answer yes or no)

If this return is made by a married man, state
(a) Name of wife (in full).....
(b) Has wife filed an Income Tax Return for 1928?..... Was income of wife in excess of \$1,500 for 1928?.....
(Yes or no)

If this return is made by a married woman, state
(a) Name of husband (in full).....
(b) Has husband filed an Income Tax Return for 1928?..... Was income of husband in excess of \$1,500 for 1928?.....

Did you transfer any property or securities to your wife or children during 1928?.....
husband (Yes or no)

If so, give particulars.....

I hereby certify that the return embodied herein, the supplementary statements and additional schedules attached, if any, contain a true and complete statement of my Gross Income and Deductions claimed for the year 1928.

Date.....June 8th..... Telephone Number (Business.....El. 9111.....) Signature.....JOHN B. HOLDEN,
(Residence.....) (Executor)

N.B.—It is essential that taxpayers notify the Inspector of Income Tax to whom return has been made, of any subsequent change in address.

A "householder" within the meaning of Section 2, of the Income War Tax Act, is an individual who at his own and sole expense maintains a self-contained domestic establishment (i.e., a dwelling house, apartment, or similar place of residence containing at least two bedrooms, in which residence amongst other things the taxpayer as a general rule sleeps and has his meals prepared and served) employing therein on full time a housekeeper or servant, or who actually supports and maintains therein one or more individuals connected with him by blood relationship, marriage, or adoption.

A claim for the maximum exemption of \$3,000 by reason of dependents can only be admitted where the taxpayer has dependent upon him any of the following persons:

Dependents (i) a parent or grandparent;
(ii) a daughter or sister;
(iii) a son or brother under twenty-one years of age or incapable of self support on account of mental or physical infirmity.

INSTRUCTIONS.—Fill in carefully the answers to the above questions and the particulars required on pages 2, 3 and 4 of this form. All persons engaged in business, including members of trading partnerships, must attach to this return two copies of certified financial statement of the business including Assets and Liabilities, Trading and Profit and Loss Statements for the accounting period ended in 1928, showing how the amount of Item No. 4, on page 2, is ascertained. Every other person having investments of any kind should complete the statement of Assets and Liabilities on page 4.

Every taxpayer must estimate the tax payable by him. The tax is due on the 30th April, 1929. Every taxpayer shall send on or before the 30th April, 1929, with his return, not less than one-quarter of the amount of his estimated tax, and may pay the balance, if any, in not more than three equal bi-monthly instalments thereafter, together with interest, at the rate of six per centum per annum upon each instalment from the 30th April, 1929, to the time payment is made. If default is made in any of these payments additional interest at the rate of four per centum is payable thereon from the date of default to date of payment.

Any additional tax found due over the estimated amount shall be paid within one month from the date of mailing of the Notice of Assessment together with interest at the rate of six per centum per annum from the 30th April, 1929. Additional interest at the rate of four per centum per annum is payable if default is made.

PENALTY.—For failure to file return on or before 30th April, 1929, five per centum of the tax payable with a maximum penalty of five hundred dollars.

GROSS INCOME
FOR CALENDAR YEAR 1928

Documents.

A.
T. 1 Assess-
ment
Return
for 1928,
8th June,
1929

—continued.

DO NOT STATE YOUR INCOME TO BE LESS THAN THE TRUE AMOUNT. AVOID PENALTIES

		\$	c.
1. SALARIES OR WAGES received from..... (Employer's Name)			
(a) Bonus or Gratuities received from.....			
(b) Pensions received from.....			
(c) Directors' Fees received from.....			
(d) Board, living, house or subsistence allowance received from.....			
2. GROSS INCOME FROM PROFESSIONAL FEES..... (State whether Cash Receipts and Accounts charged or Cash Receipts only)			
NOTE.—If Financial Statement in duplicate is attached showing Gross Income and Deductions, only Net Income need be shown here.			
3. GROSS INCOME FROM COMMISSIONS.....			
NOTE.—Give names and addresses of persons from whom received and attach statement showing how amount is reached.			
4. NET INCOME FROM BUSINESS as per statement attached or Schedule Page 4..... Value of merchandise, food, clothing, etc., taken from stock for personal or family use.....			
5. GROSS INCOME FROM RENTALS.....			
NOTE.—Give address or location of property.			
6. INCOME FROM DIVIDENDS—			
(i) From Canadian Corporations		\$	c.
.....			
Total.....			
Less Carrying Charges (if any).....			
Net.....			
(ii) From British and Foreign Corporations—		\$	c.
.....			
Total.....			
Less Carrying Charges (if any).....			
Net.....			
NOTE.—Give name of corporation in each case, stating number of shares and if Common or Preferred.			
7. INCOME FROM INTEREST on Mortgages, Notes, Bank Deposit, Bonds and Debentures, Debenture Stock and Securities other than reported in Item No. 9 (as per schedule attached).....			
NOTE.—Income from Provincial, Municipal and Corporation bonds and debentures is taxable and must be reported.			
8. INCOME FROM FIDUCIARIES (Trustees, Executors, Administrators, Guardians or Financial Agents)..... DUNCAN McMARTIN, Estate T. 3.....		394,375	10HR.
NOTE.—Give name of Estate and name and address of Trustee, etc.			
9. INCOME FROM DOMINION OF CANADA BONDS—			
(a) Issued exempt from Income Tax (State year of issue)		\$	c.
..... DUNCAN McMARTIN, Estate T. 3.....		1,265	00
Less Carrying Charges.....			
Net.....		1,265	00HR.
(b) Issued liable to Income Tax. (Arising from Dominion of Canada Bonds issued in 1919, and subsequent years).....			
10. INCOME FROM OTHER SOURCES not elsewhere enumerated (specify)			
..... Saskatchewan Lands—Estate's share on crop and interest on			
..... Sale agreements, rents, etc., included in Estate T. 3.....		1,509	08
		1,509	08
11. TOTAL INCOME.....		395,640	10

Where the space provided in the Schedules above is not sufficient, supplementary sheets properly identified containing full information, must be attached to this Return.

IMPORTANT.—The taxpayer must make full disclosure of his or her income. The maximum penalty for giving false information is \$10,000 or six months' imprisonment or both fine and imprisonment.

Persons engaged in business will complete this page in all cases where financial statements cannot be filed.

Documents.

FINANCIAL STATEMENT (See Instructions on Page 1)

STATEMENT OF PROFIT AND LOSS For fiscal year ending.....1928

	\$	c.	\$	c.
Merchandise sold during the year.....				
Inventory of Merchandise at end of year at cost price..... (If inventory is not taken at cost, state basis of valuation)				
Inventory of Merchandise at commencement of year at cost price..... (If inventory is not taken at cost, state basis of valuation)				
Add cost of Merchandise bought for sale..... (Including Freight and Duty)				
Gross Trading Profit for Year.....				
Bad debts collected (written off in previous years).....				
Add other Income derived from Business.....				
TOTAL GROSS PROFIT.....				
Less Expenses—				
Salaries and Wages..... (Not including Proprietor or Partner)	\$			
Rents..... (Important: Give name and address of person to whom paid)				
Taxes on Property used in Business.....				
Other Taxes (Specify).....				
Interest paid on money borrowed and used in business apart from Capital.....				
Fire Insurance Premiums.....				
Repairs.....				
Bad debts actually written off within the year.....				
Sundry (Specify).....				
TOTAL NET PROFIT.....				

A.
T. 1 Assessment
Return
for 1928,
8th June,
1929
—continued.

Where profits are divided amongst partners the amount paid or credited to each must be clearly shown.

STATEMENT OF ASSETS AND LIABILITIES As at the end of Business Year

ASSETS—		LIABILITIES—	
Stock of Merchandise on hand at cost price.....	\$	Accounts Payable.....	\$
Cash on hand and in Bank.....		Bills Payable.....	
Accounts Receivable.....		Loans.....	
Bills Receivable.....		Accrued Interest.....	
Real Estate, Buildings.....		Sundry (Specify).....	
Real Estate, Land.....		Capital account..... (see note below)	
Machinery and Tools.....			
Furniture and Fixtures.....			
Other Investments.....			
Sundry (Specify).....			

Note.—A reconciliation of Capital Account must be shown commencing with the previous year's balance. Attach supplementary statement if necessary.

TO THE INSPECTOR OF INCOME TAX:

Date..... June 8th..... 1929

I enclose herewith my cheque in favour of the Receiver General of Canada for the sum of..... Nil..... dollars in payment of the total amount or not less than 25% of the amount of my Income Tax for the year 1928, estimated as follows:—

Date	Tax	Int.	Pen.	Initials
1st payment				
2nd payment				
3rd payment				
4th payment				

Gross Income (See Item No. 11).....	\$ 395,640 10	\$ 1,500 09
Deductions (See Item No. 19).....	1,265 00	\$ 3,792 09
Net Income.....	394,375 10	\$ Nil
Less Statutory exemption \$1,500 or \$3,000 (as the case may be).....	\$ 1,500 00	
Allowance for..... dependent children under 21 years of age at \$500 each.....	\$	
Allowance for..... children over 21 years of age at \$500 each, dependent on account of mental or physical infirmity.....	\$	
Income subject to tax.....	\$ 392,875 10	\$ Nil
Tax Payable.....		\$ Nil

In case the full amount has not been paid, further instalments plus Interest at the rate of 6 per centum per annum will be forwarded on or before the 30th June, 31st August, and 31st October, 1929, together with an additional 4 per centum per annum upon the deficiency from date of default to date of payment.

Signature.....

Note.—Cheques are to be marked and made payable to the Order of the Receiver-General of Canada. Taxpayers are warned not to send bills or loose change in envelopes. Always use cheques, express orders, Bank money orders, postal notes, etc.

Documents.

Form T-1-B Rev. 1928
Req. 1993-7-31-200M

Number.....

Occupational Code No.....11.....

Income Code No.....18-S.....

A.
T. 1 Assess-
ment
Return
for 1928,
8th June,
1929
—continued.

DOMINION OF CANADA
INCOME TAX ASSESSMENT FORM

.....McMARTIN, DUNCAN EST. of, 603 Royal Bk. Bldg.,..... Single.....
Name P. O. Address Classification of taxpayer for exemption purposes

Total number of dependents under 21 years of age at \$500 for each dependent.....
Total number of dependents (i.e. parent, grandparent, son, daughter, brother or sister) over 21 years of age
mentally or physically incapacitated at \$500 each....

CREDITS:

Exemption..... \$ 1,500
Dependent (s)..... \$
TOTAL CREDITS..... \$ 1,500

Gross Income..... \$ 395,640 10
Deductions..... \$ 1,265 00
Earned Income..... \$
Unearned Income.....
Net Income..... \$ 394,375 10
Less Total Credits..... \$ 1,500 00
NET TAXABLE INCOME..... \$ 392,875 10

INDIVIDUALS

Income in excess of credits	Rate per cent	Tax Payable	Income in excess of credits	Rate per cent	Tax Payable
\$		\$ c.	\$		\$ c.
2,000	2	40 40	50,000	26	1,300 9,160
3,000	3	30 70	55,000	27	1,350 10,510
4,000	4	40 110	60,000	28	1,400 11,910
5,000	5	50 160	65,000	29	1,450 13,360
6,000	6	60 220	70,000	30	1,500 14,860
7,000	7	70 290	75,000	31	1,550 16,410
8,000	8	80 370	80,000	32	1,600 18,010
9,000	9	90 460	85,000	33	1,650 19,660
10,000	10	100 560	90,000	34	1,700 21,360
11,000	11	110 670	95,000	35	1,750 23,110
12,000	12	120 790	100,000	36	1,800 24,910
13,000	13	130 920	110,000	37	3,700 28,610
14,000	14	140 1,060	120,000	38	3,800 32,410
15,000	15	150 1,210	130,000	39	3,900 36,310
16,000	16	160 1,370	140,000	40	4,000 40,310
17,000	17	170 1,540	150,000	41	4,100 44,410
18,000	18	180 1,720	175,000	42	10,500 54,910
19,000	19	190 1,910	200,000	43	10,750 65,660
20,000	20	200 2,110	250,000	44	22,000 87,660
25,000	21	1,050 3,160	300,000	45	22,500 110,160
30,000	22	1,100 4,260	350,000	46	23,000 133,160
35,000	23	1,150 5,410	400,000	47	23,500 156,660
40,000	24	1,200 6,610	450,000	48	24,000 180,660
45,000	25	1,250 7,860	500,000	49	24,500 205,160
			Balance.....	50	

Tax..... \$ 153,311 30
Less 20% as provided by 1928 Amendments..... \$ 30,662 26
\$ 122,649 04

Less: Allowance for Income Tax paid to Great Britain or other Countries for..... period
as provided by Section 8 of the Act..... \$

Add Penalty of 5 per cent for default in filing return..... Maximum..... \$ 500 00

Total amount to be paid..... \$ 123,149 04

CORPORATIONS: Net Income as above..... \$

Exemption..... \$ 2,000 00

Tax at 10% on..... \$

Less: Amount paid under Part III, S.W.R. Act, for..... period..... \$

Allowance for Income Tax paid to Great Britain or other Countries for
..... period as provided for by Section 8 of the Act..... \$

Add Penalty of 5 per cent for default in filing return..... \$

Total amount to be paid..... \$

To be filled in by Inspector.—1924 assessed on T. 6. No.....

1925 assessed on T. 6. No.....

1926 assessed on T. 6. No. Assd.....

1927 assessed on T. 6. No.....

Remarks: 1928 assessed on T. 6. No.....

1929 assessed on T. 6. No.....

T. 6. No.....695..... Date.....Feb. 19.....1930..... Assessor.....P. C. McGover... Assessor.....
Inspector's Office Commissioner's Office

B.—Income Tax Assessment Notice for 1923.

Documents.

TRIPPLICATE
FOR THE OFFICE OF THE
INSPECTOR

FORM T. 7C
~~FORM T. 7~~
Revised 1927

309862
Serial No. 485982

B.
Income Tax
Assessment
Notice
for 1923
1st March,
1930.

DOMINION OF CANADA
INCOME TAX ASSESSMENT NOTICE

FILE NO.
ACCT. NO. McK 3-289
CODE 11-10

To The Estate of DUNCAN McMARTIN,
c/o J. B. Holden, K.C., Barrister,
603-604 Royal Bank Bldg., Toronto.

TORONTO, March 1st, 1930.

Under the provisions of the Income War Tax Act, 1917, as amended, notice is hereby given that for the 1923 taxation period the amount of tax assessed and levied upon your income for that period is as follows:—

INCOME		
Gross		\$176676 85
Deductions		\$ 2640 00
	TAXABLE INCOME	\$174036 85
LESS CREDITS—		
Statutory Exemption		\$1000 00
Dependent Children		\$ 1000 00
	TAXABLE INCOME	\$173036 85
TAX		\$ 66119 16
ALLOWANCES:—		
British and foreign taxes paid on income derived from British and foreign sources		\$
Amount paid under Part 1, Special War Rev. Act		\$
ADD—		\$ 66119 16
Penalty for delay in filing		\$
TAX PAYABLE 30th, APRIL, 1924		\$ 66119 16

SUMMARY OF INDEBTEDNESS

	Tax	Penalty	Interest
Total of assessment	\$ 66119 16	\$	\$ 23444 14
Amount Paid on account	\$	\$	\$
Balance due	\$ 66119 16	\$	\$ 23444 14

BALANCE FOR 19.....PAYABLE AS AT.....		
	Tax	\$ 66119 16
	Penalty	\$
	Interest	\$ 23444 14

TOTAL PAYABLE AS AT April 1st, 1930.....\$ 89563 30

If payment is made before the 1st day of April, Taxpayer may deduct \$10.83 for each day that payment is made in advance of the said date.

In default of payment within one month from the date hereof additional interest at the rate of ten per centum per annum must be added.

INSTRUCTIONS:

1. Cheques must be made payable to the Receiver General of Canada and must have been previously accepted and marked by the Bank on which drawn.

2. All three copies of this form are to be returned with payment to the Inspector of Income Tax.

HUGH D. PATERSON, 21 Lombard St., Toronto 2, Ont.

(Office Copy Only).
(Not Valid Used as a Receipt).

C. S. WALTERS,
Commissioner of Income Tax.

Documents.

B.—Income Tax Assessment Notice for 1928.

B.
Income Tax
Assessment
Notice for
1928,
1st March,
1930.

MVM
TRIPPLICATE
FOR THE OFFICE OF THE
INSPECTOR

FORM T. 7C
~~FORM T. 7~~
Revised 1927

309858
Serial No. 485981

DOMINION OF CANADA
INCOME TAX ASSESSMENT NOTICE

FILE NO.
ACCT. NO. McK. 3-289
CODE 11-18-S

To The Estate of DUNCAN McMARTIN,
c/o J. B. Holden, K.C., Barrister,
603-604 Royal Bank Bldg., Toronto.
TORONTO, March 1st, 1930.

Under the provisions of the Income War Tax Act, 1917, as amended, notice is hereby given that for the 1928 taxation period the amount of tax assessed and levied upon your income for that period is as follows:—

INCOME			
Gross			\$395640 10
Deductions			\$ 1265 00
Net			\$394375 10
LESS CREDITS—			
Statutory Exemption		\$1500 00	
Dependent Children		\$	1500 00
	TAXABLE INCOME		\$392875 10
TAX			\$122649 04
ALLOWANCES:—			
British and foreign taxes paid on income derived from			
	British and foreign sources.....	\$	
	Amount paid under Part 1, Special War Rev. Act.....	\$	
ADD—			\$122649 04
Penalty for delay in filing.....		\$	500 00
TAX PAYABLE 30th APRIL, 1929			\$123149 04
SUMMARY OF INDEBTEDNESS			
Total of assessment.....	Tax	Penalty	Interest
Amount Paid on account	\$122649 04	\$ 500 00	\$ 6693 59
Balance due	\$	\$	\$
	\$122649 04	\$ 500 00	\$ 6693 59
BALANCE FOR 19..... PAYABLE AS AT			
	Tax.....		\$122649 04
	Penalty		\$ 500 00
	Interest		\$ 6693 59

TOTAL PAYABLE AS AT April 1st, 1930..... \$129842 63

If payment is made before the 1st day of April, Taxpayer may deduct \$20.10 for each day that payment is made in advance of the said date.

In default of payment within one month from the date hereof additional interest at the rate of ten per centum per annum must be added.

INSTRUCTIONS:

1. Cheques must be made payable to the Receiver General of Canada and must have been previously accepted and marked by the Bank on which drawn.

2. All three copies of this form are to be returned with payment to the Inspector of Income Tax.

HUGH D. PATERSON, 21 Lombard St., Toronto 2, Ont.

(Office Copy Only).
(Not Valid Used as a Receipt).

C. S. WALTERS,
Commissioner of Income Tax.

C.—Notice of Appeal for 1923.**In re The Income War Tax**

And the Estate of Duncan McMartin, deceased, of the City of Toronto,
in the Province of Ontario, Appellant.

Documents.

C.
Notice of
Appeal for
1923,
28th March,
1930.

Notice of Appeal is hereby given from the assessment bearing date the 1st day of March, 1930, wherein a tax in the sum of \$89,563.30 (including interest \$23,444.14) is sought to be levied in respect of income for the taxation year 1923.

(1) The deceased, Duncan McMartin, died on the 2nd day of May, 10 1914, at Toronto, Ontario, but his domicile was in the City of Montreal, in the Province of Quebec.

(2) By his last Will and Testament bearing date the 24th day of April, 1914, the said Duncan McMartin, deceased, appointed the following persons as executors and trustees of his Will, namely, John McMartin (since deceased), Louis Henry Timmins, of Montreal, and John Bell Holden, of Toronto, and Probate of said last Will and Testament was granted to the Executors therein named.

(3) After certain sundry bequests which are not involved in this appeal, the Will contains certain clauses dealing with the residuary 20 estate and the disposition of the income derived from the investment of the residuary estate or the income or profits from the unrealised portions of the Estate which are to be found in Paragraph 9 of the said last Will and Testament which is as follows:—

9. I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, to my executors and trustees hereinafter named upon the following trusts, namely: (A) To sell and convert the same into money (except my shares in Canadian Mining and Finance Company Limited) as soon after my death as they in their absolute discretion deem it advisable.

30 (B) To pay out of the proceeds of such sale and conversion the legacies given by this my Will including the said legacy to my wife of One hundred and fifty thousand dollars (\$150,000) should same become payable.

(C) To invest and keep invested the balance of the proceeds of such sale and conversion in such investments as trustees are by the laws of the Province of Ontario permitted to invest trust funds.

40 (D) To pay out of the income derived from such investments or the income or profits from the unrealised portions of my estate, the said annuity of Twenty-five thousand dollars (\$25,000) a year to my wife.

(E) To divide the balance of the income from such investments, or the income or profits derived from the unrealised portions of my estate, into three equal parts and to pay or apply one of such parts, or so much thereof as my executors and trustees in their discretion deem advisable, in or towards the support, maintenance and education of each of my children until they respectively attain the

Documents.

C.

Notice of
Appeal for
1923,
28th March,
1930

—continued.

age of twenty-five years, or until the period fixed for the distribution of the capital of my estate whichever event shall last happen, provided that any portion of any child's share not required for his or her support, maintenance and education shall be re-invested by my said executors and trustees and form part of the residue of my estate given and bequeathed to such child.

(F) After the death or re-marriage of my wife, whichever event shall first happen, to divide the residue of my estate equally between such of my three children as shall attain the age of twenty-five years, as and when they respectively attain that age, provided that if any 10 of the said children shall have died before the period of distribution arrives, leaving a child or children, such children shall take the share in my estate which his or her parent would have taken had he or she survived the period of distribution, if more than one in equal shares.

(4) On the 1st day of January, 1917, the sole beneficiaries interested in the residuary estate and the income or profits therefrom were Iva McMartin, widow of the said Duncan McMartin, deceased, and Allen A. McMartin, Melba McMartin and Duncan McMartin, children of the said deceased, and all said beneficiaries then resided in the City of New York, 20 in the State of New York, and had so resided for some time prior to said 1st day of January, 1917.

(5) The said Iva McMartin, widow of the said Duncan McMartin, deceased, remarried on or about the 4th day of March, 1925, and received on or about that date the sum to which she became entitled upon such remarriage and thereafter ceased to have any further interest in the residuary estate or in the income or profits therefrom and from and after the date of the remarriage of the said Iva McMartin, the said three children of the said deceased became and still are the sole beneficiaries and persons interested in the residuary estate or the income or profits derived there- 30 from.

(6) At all times material to the questions involved in this appeal, the said Allen A. McMartin, Melba McMartin and Duncan McMartin, children of the said Duncan McMartin, deceased, have resided in the City of New York or elsewhere in the United States of America with the exception that the said Allen A. McMartin took up his residence in the City of Montreal, in the Province of Quebec, in the year 1926 and has since continued to reside there.

(7) The said Allen A. McMartin attained the age of twenty-five years on the 4th day of November, 1928, the said Melba McMartin (now 40 Melba McMartin Orr) attained the age of twenty-five years on the 3rd day of March, 1930, and the said Duncan McMartin attained the age of twenty-one years on the 17th day of February, 1930.

(8) The said tax of \$89,563.30 is a tax upon the sum of \$176,676.85 being the undistributed income from the residuary estate held by the Appellant subject to subparagraph (E) of Paragraph 9 of the last Will and Testament of the said Duncan McMartin, deceased, for the year 1923

The Appellant appeals against the proposed assessment on the following among other grounds : Documents.

- (1) There is no authority under the Income War Tax Act for the imposition of such a tax.
- (2) The income sought to be taxed is not held for the benefit of unascertained persons or of persons with contingent interests.
- (3) No tax is payable in respect of any portion of the undistributed income which is held in trust for non-residents of Canada.
- 10 (4) The Executors and Trustees are not persons taxable within the meaning of the Income War Tax Act.
- (5) The beneficiaries are not persons taxable within the meaning of the Income War Tax Act.
- (6) It would be inequitable and unjust at this date to impose a tax even if otherwise payable.

C.
Notice of
Appeal for
1923,
28th March,
1930
—continued.

Dated at Toronto, this 28th day of March, 1930.

HOLDEN & MURDOCH,
603 Royal Bank Building,
Toronto, Ontario.

Solicitors for the Appellant.

20 To : THE MINISTER OF NATIONAL REVENUE,
Ottawa, Canada.

Notice of Appeal for 1928.

In re The Income War Tax

Notice of
Appeal for
1928,
28th March,
1930.

And the Estate of Duncan McMartin, deceased, of the City
of Toronto, in the Province of Ontario Appellant.

Notice of Appeal is hereby given from the assessment bearing date the 1st day of March, 1930, wherein a tax in the sum of \$129,842.63 (including penalty \$500 and interest \$6,693.59) is sought to be levied in respect of income for the taxation year 1928.

30 (1) The deceased, Duncan McMartin, died on the 2nd day of May, 1914, at Toronto, Ontario, but his domicile was in the City of Montreal, in the Province of Quebec.

(2) By his last Will and Testament bearing date the 24th day of April, 1914, the said Duncan McMartin, deceased, appointed the following persons as executors and trustees of his Will, namely John McMartin (since deceased), Louis Henry Timmins of Montreal and John Bell Holden of Toronto, and probate of said last Will and Testament was granted to the Executors therein named.

40 Appeal, the Will contains certain clauses dealing with the residuary estate and the disposition of the Income derived from the investment of the residuary estate or the income or profits from the unrealised portions

Documents. of the Estate which are to be found in Paragraph 9 of said last Will and Testament which is as follows :—

C.
Notice of
Appeal for
1928,
28th March,
1930
—continued.

9. I give, devise and bequeath all the rest, residue and remainder of my estate both real and personal to my executors and trustees hereinafter named upon the following trusts, namely: (A) To sell and convert the same into money (except my shares in Canadian Mining and Finance Company Limited) as soon after my death as they in their absolute discretion deem it advisable.

(B) To pay out of the proceeds of such sale and conversion the legacies given by this my Will including the said legacy to my wife 10 of One hundred and fifty thousand dollars (\$150,000) should same become payable.

(C) To invest and keep invested the balance of the proceeds of such sale and conversion in such investments as trustees are by the laws of the Province of Ontario permitted to invest trust funds.

(D) To pay out of the income derived from such investments or the income or profits from the unrealised portions of my estate, the said annuity of Twenty-five thousand dollars (\$25,000) a year to my wife.

(E) To divide the balance of the income from such investments 20 or the income or profits derived from the unrealised portions of my estate, into three equal parts and to pay or apply one of such parts, or so much thereof as my executors and trustees in their discretion deem advisable, in or towards the support, maintenance and education of each of my children until they respectively attain the age of twenty-five years, or until the period fixed for the distribution of the capital of my estate, whichever event shall last happen, provided that any portion of any child's share not required for his or her support, maintenance and education shall be re-invested by my said executors and trustees and form part of the residue of my estate given and 30 bequeathed to such child.

(F) After the death or re-marriage of my wife, whichever event shall first happen, to divide the residue of my estate equally between such of my three children as shall attain the age of twenty-five years, as and when they respectively attain that age, provided that if any of said children shall have died before the period of distribution arrives, leaving a child or children, such children shall take the share in my estate which his or her parent would have taken had he or she survived the period of distribution, if more than one in equal shares.

(4) On the 1st day of January, 1917, the sole beneficiaries interested 40 in the residuary estate and the income or profits therefrom were Iva McMartin, widow of the said Duncan McMartin, deceased, and Allen A. McMartin, Melba McMartin and Duncan McMartin, children of the said deceased, and all said beneficiaries then resided in the City of New York, in the State of New York, and had so resided for some time prior to said 1st day of January, 1917.

(5) The said Iva McMartin, widow of the said Duncan McMartin, deceased, remarried on or about the 4th day of March, 1925, and received

on or about that date the sum to which she became entitled upon such re-marriage and thereafter ceased to have any further interest in the residuary estate or in the income or profits therefrom, and from and after the date of the remarriage of the said Iva McMartin, the said three children of the said deceased became and still are the sole beneficiaries and persons interested in the residuary estate or the income or profits derived therefrom.

(6) At all times material to the questions involved in this appeal, the said Allen A. McMartin, Melba McMartin and Duncan McMartin, children
10 of the said Duncan McMartin, deceased, have resided in the City of New York or elsewhere in the United States of America with the exception that the said Allen A. McMartin took up his residence in the City of Montreal, in the Province of Quebec, in the year 1926, and has since continued to reside there.

(7) The said Allen A. McMartin attained the age of twenty-five years on the 4th day of November, 1928, the said Melba McMartin (now Melba McMartin Orr) attained the age of twenty-five years on the 3rd day of March, 1930, and the said Duncan McMartin attained the age of twenty-one years on the 17th day of February, 1930.

20 (8) The said tax of \$129,842.63 is a tax upon the sum of \$395,640.10 being the undistributed income from the residuary estate held by the Appellant subject to sub-paragraph (E) of Paragraph 9 of the last Will and Testament of the said Duncan McMartin, deceased, for the year 1928.

The Appellants appeal against the proposed assessment on the following among other grounds:—

- (1) There is no authority under the Income War Tax Act for the imposition of such a tax.
- (2) The income sought to be taxed is not held for the benefit of unascertained persons or of persons with contingent interests.
- 30 (3) No tax is payable in respect of any portion of the undistributed income which is held in trust for non-residents of Canada.
- (4) The Executors and Trustees are not persons taxable within the meaning of the Income War Tax Act.
- (5) The beneficiaries are not persons taxable within the meaning of the Income War Tax Act.
- (6) It would be inequitable and unjust at this date to impose a tax even if otherwise payable.

Dated at Toronto, this 28th day of March, 1930.

HOLDEN & MURDOCH,

603 Royal Bank Building,
Toronto, Ontario.

Solicitors for the Appellants.

To the MINISTER OF NATIONAL REVENUE,
Ottawa, Canada.

Documents.

C.
Notice of
Appeal for
1928,
28th March,
1930

—continued.

Documents.

D.
The Decision
of the
Minister,
11th Decem-
ber, 1930.

D.—The Decision of the Minister.

In the matter of the Income War Tax Act,

And in the matter of the Appeal of John B. Holden, sole surviving executor and trustee of the estate of Duncan McMartin, late of the City of Montreal, in the Province of Quebec, hereinafter called the taxpayer Appellant.

Decision of the Minister.

Whereas Income Tax Returns have been filed by the Executors of the above estate for the years 1917 to 1928 inclusive.

And whereas the estate has been taxed for each of the said years on ¹⁰ the income received by the Executors and not disbursed by them but capitalised in accordance with the provisions of the Will of the late Duncan McMartin and the accumulation of such income so capitalised is authorised by paragraphs (E) and (F) of Section 9 of the said Will, which read as follows:—

“(E) To divide the balance of the income from such investments, “or the income or profits derived from the unrealised portions of “my estate, into three equal parts and to pay or apply one of such “parts, or so much thereof as my executors and trustees in their “discretion deem advisable, in or towards the support, maintenance ²⁰ “and education of each of my children until they respectively attain “the age of twenty-five years, or until the period fixed for the distri- “bution of the capital of my estate, whichever event shall last “happen, provided that any portion of any child’s share not required “for his or her support, maintenance and education shall be re- “invested by my said executors and trustees and form part of the “residue of my estate given and bequeathed to such child.

“(F) After the death or re-marriage of my wife, whichever event “shall first happen, to divide the residue of my estate equally between “such of my three children as shall attain the age of twenty-five ³⁰ “years, as and when they respectively attain that age, provided “that if any of said children shall have died before the period of “distribution arrives, leaving a child or children, such children shall “take the share in my estate which his or her parent would have “taken had he or she survived the period of distribution, if more “than one in equal shares.”

And whereas Notices of Assessment for each of the said years were issued on the 1st day of March, 1930.

And whereas Notices of Appeal against the assessments for each of the said years were received from the taxpayer’s solicitor dated the 28th ⁴⁰ day of March, 1930, in which objection was taken to the assessments as levied for the reasons set forth in the various appeals.

And whereas under the provisions of the Will of the said Duncan McMartin the income not actually distributed to the named beneficiaries therein is being accumulated by the executors and trustees in trust for

the benefit of unascertained persons or persons with contingent interests, and it is provided by subsection 2 of Section 11 of the Income War Tax Act that income accumulating in such manner shall be taxable in the hands of the trustee or other like person acting in a fiduciary capacity as if such income were the income of an unmarried person, which provision of the Act was originally enacted by Section 4 of Chapter 49 of the Statutes of 10-11 George V, and made applicable to the 1917 and subsequent periods by subsection 1 of Section 16 of the said Chapter 49.

The Honourable the Minister of National Revenue, having duly considered the facts as set forth in the Notices of Appeal and matters thereto relating, hereby affirms the said assessments appealed against on the ground that the Executor of the estate has been properly assessed upon the income accumulating in his hands in trust for the benefit of unascertained persons or persons with contingent interests, irrespective of whether such unascertained persons or persons with contingent interests are or may be in the future resident in Canada or outside of Canada.

Notice of such decision is hereby given in accordance with Section 59 of Chapter 97, R.S.C. 1927.

Dated at Ottawa this 11th day of December, A.D. 1930.

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E. B. RYCKMAN,
Minister of National Revenue.

Per C. S. WALTERS,
Commissioner of Income Tax.

To J. B. HOLDEN, Esq., K.C.,
Executor of the estate of Duncan McMartin,
603, Royal Bank Building,
Toronto, Ontario.

And to Messrs. HOLDEN MURDOCK,
Barristers, etc.,
603, Royal Bank Building,
Toronto, Ontario.
Solicitors for the Appellant herein.

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E.—The Notice of Dissatisfaction.

In the matter of the Income War Tax Act,

And in the matter of the Appeals of John Bell Holden, sole surviving executor and trustee of the estate of Duncan McMartin, late of the City of Montreal, in the Province of Quebec, hereinafter called the taxpayer Appellant.

NOTICE OF DISSATISFACTION.

The Appellant herein having received the decision of the Minister upon the Appellant's Notices of Appeal for the years 1917 to 1928 inclusive,

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Documents.

D.
The Decision
of the
Minister,
11th Decem-
ber, 1930
—continued.

E.
The Notice
of Dis-
satisfaction,
31st Decem-
ber, 1930.

Documents. hereby gives notice that he is dissatisfied therewith and desires his appeals to be set down for trial.

E.
The Notice
of Dis-
satisfaction,
31st Decem-
ber, 1930
—continued.

(1) The Appellant relies upon the statements of facts and reasons set out in the Notices of Appeal herein and submits the same to the Court in support of his appeals.

This notice is given in accordance with Section 60 of Chapter 97, R.S.C. 1927.

Dated at Toronto this 31st day of December, 1930.

HOLDEN & MURDOCH,
603, Royal Bank Building, 10
Toronto, Ontario,
Solicitors for the Appellant.

To the MINISTER OF NATIONAL REVENUE,
Ottawa, Canada.

F.—Reply of the Minister.

F.
Reply of the
Minister, 7th
January,
1931.

In the matter of the Income War Tax Act,

And in the matter of the Appeal of John B. Holden, sole surviving executor and trustee of the estate of Duncan McMartin, late of the City of Montreal, in the Province of Quebec, hereinafter called the taxpayer Appellant. 20

Reply of the Minister.

A Notice of Dissatisfaction having been received from the above taxpayer's solicitors with respect to the assessments for the years 1917 to 1928 inclusive, and security for costs having been duly furnished, the Honourable the Minister of National Revenue replies to the said Notice of Dissatisfaction as follows:—

(1) Denies the contentions and allegations set forth in the said Notice of Dissatisfaction;

(2) Confirms the taxpayer's assessments for the years 1917 to 1928 inclusive, for the reasons set forth in the Decision of the Minister 30 herein dated 11th December, A.D. 1930.

Notice of such confirmation is hereby given in accordance with Section 62 of the Act.

Dated at Ottawa, this 7th day of January, A.D. 1931.

E. B. RYCKMAN,
Minister of National Revenue.

Per C. S. WALTERS,
Commissioner of Income Tax.

To J. B. HOLDEN, Esq., K.C.,
 Executor of the estate of Duncan McMartin,
 603, Royal Bank Building,
 Toronto, Ontario.

And to Messrs. HOLDEN & MURDOCH,
 Barristers, etc.,
 603, Royal Bank Building,
 Toronto, Ontario.
 Solicitors for the Appellant herein.

Documents.

F.
 Reply of the
 Minister, 7th
 January,
 1931

—continued.

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Certificate accompanying Documents.

In the matter of The Income War Tax Act,

And in the matter of the Appeal of John B. Holden, sole surviving executor and trustee of the estate of Duncan McMartin, late of the City of Montreal, in the Province of Quebec, hereinafter called the taxpayer Appellant.

Certificate
 accompanying
 Documents,
 3rd February
 1931.

Certificate.

The Honourable the Minister of National Revenue in pursuance to Section 63, Chapter 97, Revised Statutes of Canada, 1927, transmits herewith to the Registrar of the Exchequer Court of Canada copy of the 20 following documents :—

- (1) The Income Tax Returns of the Appellant for the years 1917 to 1928, inclusive,
- (2) The Notices of Assessment appealed,
- (3) The Notices of Appeal,
- (4) The Decision of the Minister,
- (5) The Notice of Dissatisfaction,
- (6) The Reply of the Minister,

Dated at Ottawa, this 3rd day of February, A.D. 1931.

(Sgd.) C. S. WALTERS,

Commissioner of Income Tax.

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In the Privy Council.

No. 76 of 1932.

On Appeal from the Supreme Court of Canada.

IN THE MATTER OF THE INCOME TAX ACT

AND

IN THE MATTER of the Appeal of JOHN B. HOLDEN, of the City of Toronto, in the Province of Ontario, sole surviving Executor and Trustee of the Estate of Duncan McMartin deceased, late of the City of Montreal in the Province of Quebec

BETWEEN

JOHN B. HOLDEN, sole surviving Executor
and Trustee of the Estate of Duncan
McMartin deceased (*Respondent*) *Appellant*,

AND

THE MINISTER OF NATIONAL REVENUE
(Appellant) Respondent.

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,

17, Victoria Street,

London, S.W.1,

for the Appellant.

CHARLES RUSSELL & CO.,

37, Norfolk Street,

Strand, W.C.2,

for the Respondent.