

THE MINISTER OF NATIONAL }  
 REVENUE ..... } PLAINTIFF;

1959  
 Oct. 22  
 Dec. 21

AND

BERTRAND BOLDUC ..... DEFENDANT AND OPPOSANT.

*Revenue—Practice—Income Tax Act—Certificate registered under s. 119(2) not a judgment by default—Opposition to judgment filed under Code of Civil Procedure not applicable—Nature of certificate—Jurisdiction of Exchequer Court—The Income Tax Act, R.S.C. 1952, c. 148, s. 119(1)(2)—Code of Civil Procedure, arts. 1163, 1168, 1172 and 1175—The Exchequer Court Act, R.S.C. 1952, c. 98, s. 29, General Rules and Orders, r. 6(2).*

By s. 119(1) of the *Income Tax Act*, R.S.C. 1952, c. 148, an amount payable under the Act that has not been paid may, subject to the terms of the subsection, be certified by the Minister. By s. 119(2):

“On production to the Exchequer Court of Canada, a certificate made under this section shall be registered in the Court and when registered has the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the said Court for a debt of the amount specified in the certificate plus interest to the day of payment as provided for in this Act.”

A certificate purporting to be made in respect of an amount payable by one B of Rouyn in the Province of Quebec having been registered pursuant to s. 119(2), B filed in the Court an opposition to judgment, alleging various objections to the certificate and its registration and ending with a claim that «le jugement obtenu contre lui par défaut comme susdit» be annulled and other declaratory relief.

To the opposition so filed the Attorney General of Canada subsequently filed a contestation denying all save one of the paragraphs contained in the opposition and objecting that the facts therein contained were illegally and irregularly pleaded and offered no right to the relief claimed.

On a motion by the Attorney-General of Canada to have the points of law raised on the contestation determined and to dismiss the opposition.

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*Held:* That the certificate was not a judgment and, in any case, was not a judgment by default and that it was accordingly not open to attack under the rules contained in the *Code of Civil Procedure* of the Province of Quebec providing for oppositions to judgments by default and that the opposition should be quashed.

2. Observations on the nature of the certificate and the jurisdiction of the Court pertaining thereto.

MOTION by the Attorney General of Canada to have determined the points of law raised on the contestation of an opposition to a certificate registered by the Minister of National Revenue under s. 119(2) of the *Income Tax Act*, R.S.C. 1952, c. 148, and to dismiss the opposition.

The motion was heard before the Honourable Mr. Justice Thurlow at Ottawa.

*P. M. Ollivier* for plaintiff.

*M. Paul Cuddihy, Q.C.* for defendant-opposant.

THURLOW J. now (December 15, 1961) delivered the following judgment:

On August 13, 1959, a certificate, dated the same day and purporting to be signed on behalf of the Minister of National Revenue, was registered in this Court, stating that under the *Income Tax Act*, R.S.C. 1952, c. 148, Bertrand Bolduc of Rouyn in the Province of Quebec was indebted for tax, penalties and interest for the year 1957 in the sum of \$3,609.51 and for tax and interest for the year 1958 in the sum of \$14,920.72, and that 30 days had elapsed after the date of default of payment. Under s. 119 (2) of the *Income Tax Act* such a certificate, when made and registered in accordance with the section, "has the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the said Court for a debt of the amount specified in the certificate, plus interest to the date of payment . . ."

On August 25, 1959, an opposition to judgment was filed on behalf of Mr. Bolduc, setting out a number of objections to the certificate or its registration, some of which raise questions of law, including objections to the constitutional validity of the *Income Tax Act*, and others matters of fact, and ending with a claim that «le jugement obtenu contre lui par défaut comme susdit» be annulled and other declaratory relief. Under Art. 1172 of the *Code of Civil*

*Procedure* of the Province of Quebec, this procedure, when properly taken, operates to stay execution until final judgment on the opposition. It does not appear, however, that Art. 1168, requiring the opposition to be accompanied with an order of the judge allowing it to be filed, was complied with. To the opposition so filed, the Deputy Attorney-General of Canada on October 7, 1959, filed a contestation by which he denied all save one of the paragraphs contained in the opposition and added that the facts therein alleged were illegally and irregularly pleaded and afforded no right to the relief claimed.

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Thereupon, by a notice of motion filed the same day, the Deputy Attorney-General, on behalf of the Crown, launched this application to have the points of law raised upon the contestation of the opposition to judgment determined and to dismiss the opposition. On the application, no evidence was offered on any of the issues of fact nor did counsel for the opposant argue the points of law raised in the opposition. It was submitted on behalf of the Crown that some, if not all, of the matters raised in the opposition were bad in point of law and that the whole proceeding was irregular and not authorized by the rules and practice of the Court.

So far as I am aware, no precisely similar case has heretofore been considered in this Court. In *Minister of National Revenue v. Tanguay*<sup>1</sup>, a taxpayer endeavoured to invoke Art. 645 of the *Code of Civil Procedure* of the Province of Quebec by filing in this Court an opposition to a seizure made pursuant to an execution issued upon the registration of such a certificate, and the President held the procedure inapplicable since r. 208 of the General Rules and Orders of this Court provides a procedure for obtaining relief of the kind sought and there is no scope for the application of r. 2(1)(b), and thus of the practice and procedure of the Superior Court of the Province of Quebec. Here, however, no execution has issued, but what the opposant attacks is the certificate itself and the right of the Minister to have it registered in this Court, as provided by the *Income Tax Act*. For such an attack r. 208 is, in my opinion, inapplicable, and this, I think, is so even though that rule provides a

<sup>1</sup>[1955] Ex. C.R. 50.

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procedure to obtain relief against a judgment and is somewhat wider in its terms than the corresponding English rule (O. 42, r. 27). For, though s. 119(2) provides that, when registered, the certificate has the same force and effect and all proceedings may be taken thereon as if it were a judgment obtained in this Court, such a certificate is not in fact a judgment, nor does s. 119(2) say that, on registration, it is to be or becomes a judgment of this Court. The effect of the making and registration of the certificate is precisely what the *Income Tax Act* says it is, no more and no less, and as I read the statute that effect is not that the certificate is or is to be deemed to be a judgment but simply to provide that such a certificate may be made and registered in this Court and that, upon this being done, it has the same force and effect and the same proceedings may be taken upon it as if it were a judgment. The certificate, however, in my opinion, remains merely a certificate, albeit one of a unique nature, upon which the proceedings authorized by the statute may be taken. Moreover, even if the certificate is deemed to be a judgment to the extent stated by s. 119(2), the extent there stated is that it is to have the same force and effect and all proceedings may be taken thereon as if it were a judgment, *et cetera*, and I do not think a proceeding the purpose of which is to eliminate the certificate or its registration falls within the purview of the expression "proceedings thereon", nor do I think the right to bring such a proceeding is to be regarded as an "effect" of a judgment.

It does not follow, however, that the making of such a certificate and its registration are not open to attack of any kind. The certificate is a creature of s. 119 of the *Income Tax Act* and that Act is the sole authority for its registration in the records of this Court. The interpretation and enforcement of s. 119 itself is a matter over which this Court has jurisdiction under s. 29 of *The Exchequer Court Act*, if not under any other statutory provision, and a person affected by the registration of such a certificate is entitled to invoke the exercise of the Court's jurisdiction to determine the regularity or otherwise of its making and registration. Moreover, as the registration of the certificate is an act carried out in the Court, I think the Court has jurisdiction to examine both the constitutional validity of the statute authorizing such procedure and the facts upon which

the right of the Minister to make such a certificate and to have it registered in this Court depends, the whole as an incident of its inherent authority to secure and maintain the legality of its records and to correct or avoid abuse of its processes.

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How then may this jurisdiction of the Court be invoked? In my opinion, it is clearly open to a person against whom such a certificate is registered to contest it in an independent proceeding by a petition of right claiming a declaration of the invalidity of the certificate or its registration (*vide* r. 6(2)), and at least in cases where there is no serious dispute about the facts and the matter arises in a part of Canada other than the Province of Quebec, in my opinion, it is also open to the Court to deal with the matter as circumstances may require on a summary application to be made in the original proceeding by any party affected thereby. *Vide Annual Practice 1959*, p. 577, and cases there cited, including *Nixon v. Loundes*<sup>1</sup> and *Harrod v. Benton*<sup>2</sup>.

But I can see no warrant whatever, even where the matter arises in the Province of Quebec, for invoking Art. 1163 of the *Code of Civil Procedure*, upon which counsel for Mr. Bolduc supported the procedure adopted in the present case for, as previously mentioned, the certificate is not a judgment, such a proceeding is not a proceeding upon a judgment within the meaning of s. 119(2) of the *Income Tax Act*, and, even if the certificate can be considered a judgment for this purpose, in my opinion, it is not a judgment "by default to appear or to plead" within the meaning of Art. 1163.

This, in my opinion, is sufficient to dispose of the present application, but I may add that I do not think procedure by petition in revision of judgment under Art. 1175 or by petition in revocation of judgment under Art. 1177 would be any more appropriate, nor was I referred to any other article of the *Code of Civil Procedure*, and I have not found any therein, providing procedure which would, in my opinion, be appropriate to raise in the original proceeding objections to such a certificate or to its registration in this Court.

<sup>1</sup>[1909] 2 Ir. R. 1.  
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<sup>2</sup>8 B. & C. 217.

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I am, accordingly, of the opinion that the procedure adopted by Mr. Bolduc is not applicable or appropriate for an attack upon the registration of such a certificate and that the objection to such procedure should be sustained. No doubt, the proceeding might have been treated as a summary application for the relief sought (*vide Minister of National Revenue v. Tanguay (supra)* at p. 54), but, as previously mentioned, no evidence was given on any of the disputed matters of fact and, when invited to state the points of law upon which objection was taken to the certificate, counsel for the opposant stated that he had not come prepared to state or argue them, as they would be matters to be dealt with on the hearing of the opposition. The opposition will, accordingly, be quashed with costs but without prejudice to the right of Mr. Bolduc to raise any of the matters therein set out in any proper proceeding he may see fit to take.