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BETWEEN:

DOMINION TAXICAB ASSOCIATION .. APPELLANT;

AND

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

*Revenue—Income tax—The Income Tax Act, S. of C. 1948, c. 52—Contracts between a taxicab association and taxi owners—Moneys received as admission fees income under provisions of ss. 3 and 4 of the Act—Contract of simple deposit—Civil Code of the Province of Quebec, arts. 1795 and 1804—Money paid under contract neither a “security”, “earnest” nor a “pledge”—Appeal from decision of Income Tax Appeal Board dismissed.*

The appellant which was incorporated under Part III of the Quebec Companies Act without share capital entered into contracts with various taxi owners during 1949, under the terms of which it received from each the sum of \$500 or a total amount of \$40,500. The contracts read as follows:

CONTRAT

Contrat intervenu entre DOMINION TAXICAB ASSOCIATION et M..... demeurant à Montréal, au numéro..... de la rue..... le .....19 .

Par les présentes, il est entendu et convenu ce qui suit: Le membre dépose la somme de \$500 comme droit d'entrée pour obtenir le privilège de mettre un taxi en service dans ladite Association.

Le membre Consent à ce que ledit droit d'entrée devienne la propriété absolue de la Dominion Taxicab Association lors de son départ, à moins que les deux signataires des présentes consentent mutuellement au transfert dudit dépôt à un nouvel acquéreur.

La Dominion Taxicab Association s'engage à considérer ce droit d'entrée comme un dépôt sur lequel un intérêt pourra être payé quand le Bureau de Direction le jugera à propos. Je, soussigné, déclare avoir lu et bien compris les termes des présentes.

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\_\_\_\_\_  
Membre

In its income tax return for 1949 the appellant did not report the total amount as income but described it in its balance sheet attached to the return as "Deferred Liabilities, Members' Deposits". In determining the appellant's taxable income the Minister took into account the amount so received and assessed the appellant accordingly. An appeal from the assessment was dismissed by the Income Tax Appeal Board and from that decision the appellant appealed to the Court.

*Held:* That the use in the contracts of the words "look upon the admission fee as a deposit" would, in the circumstances fail to make the admission fee "a deposit" if it, in fact, did not have the other qualities and incidence of a "deposit".

2. That the assessment was properly made because in the contract the moneys received as admission fees are nowhere stated to continue to be the property of the taxi owners.
3. That the money was not handed over to the appellant as either "security", "earnest" or a "pledge". *Robertson v. Minister of National Revenue* [1944] Ex. C.R. 170 referred to.

APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Archibald at Ottawa.

*E. B. Fairbanks* for appellant.

*Raymond G. Decary* and *J. C. Couture* for respondent.

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

ARCHIBALD J. now (March 6, 1953) delivered the following judgment:

This is an appeal from the decision of the Income Tax Appeal Board dated the 15th day of May, 1952, in which decision the said Income Tax Appeal Board dismissed an appeal by the said Dominion Taxicab Association from the decision of the Minister of National Revenue dated the 18th day of October, 1951, in which he confirmed the assessment made on the 21st day of February, 1951, against the said Dominion Taxicab Association for the taxation year, 1952.

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The appellant was incorporated without share capital on the 5th day of July, 1949, pursuant to part 3 of the Quebec Companies Act (R.S.Q. ch. 279).

In the Income Tax Appeal Board's decision there appears the following statement, namely:

Pursuant to the purposes of its charter, the association entered into contracts with 81 taxi owners during the year 1949. Under the terms of these contracts, the appellant received from each of the 81 taxi owners the sum of \$500, or a total of \$40,500. The provisions of the contracts entered into between the appellant and the taxi owners read as follows:

CONTRAT

Contrat intervenu entre DOMINION TAXICAB ASSOCIATION et M.....demeurant à Montréal, au numéro .....de la rue.....le.....19 .

Par les présentes, il est entendu et convenu ce qui suit: Le membre dépose la somme de \$500 comme droit d'entrée pour obtenir le privilège de mettre un taxi en service dans ladite Association.

Le membre Consent à ce que ledit droit d'entrée devienne la propriété absolue de la Dominion Taxicab Association lors de son départ, à moins que les deux signataires des présentes consentent mutuellement au transfert dudit dépôt à un nouvel acquéreur.

La Dominion Taxicab Association s'engage à considérer ce droit d'entrée comme un dépôt sur lequel un intérêt pourra être payé quand le Bureau de Direction le jugera à propos. Je, soussigné, déclare avoir lu et bien compris les termes des présentes.

Membre

On the hearing of the appeal before me, counsel for the appellant and counsel for the respondent were unable to agree on the translation of this contract.

The learned chairman of the Income Tax Appeal Board has the following observation respecting this contract:

Counsel for the appellant submitted that the contract between the appellant and the taxi owner constituted a contract of *deposit* only; that the taxi owner remained the sole owner of the money deposited which never became the property of the Association, and that, at all events, the amount of \$40,500 received by the appellant represents merely the contribution made by the members of the Association for the purpose of raising capital for capital expenditures and, as such, constitutes for the appellant a capital receipt and not an income receipt. I cannot agree with the learned counsel's submissions.

Sections 1795 and 1804 of the Civil Code of the Province of Quebec, where the contracts between the appellant and its members originated, read as follows:

1795. It is of the essence of simple deposit that it be gratuitous.

1804. The depositary is bound to restore the identical thing which he has received in deposit.

If the things have been taken from him by irresistible force and something given in exchange for it, he is bound to restore whatever he has received in exchange.

It is therefore of the essence of the contract of deposit that the deposit be gratuitous and that the thing which had been deposited be restored by the depositary to its owner. It is clear from the terms of the contract under consideration in this case that the necessary elements to a contract of deposit are missing: (a) the amount of \$500 is not given by the taxi owner to the Association gratuitously, for in return for his contribution the member is to be given by the Association all the privileges which, according to its charter, it is entitled to give to its members, and (b) the Association is not obligated and never will be obligated to restore to the taxi owner the amount of \$500 he has paid. The contract taken as a whole clearly indicates that the taxi owner is never to get back the amount of \$500 paid by him to the Association.

I also fail to see how it could successfully be argued that the taxi owner remains the owner of the amount paid to the appellant when he loses absolutely all control over the said amount which is never to be returned to him. This amount must belong to someone and it seems that it would be concluding to absurdity to hold that the amount in question *would belong* to one who does not possess it, has no control whatsoever over it and is never to get it back, and that it *would* not belong to the one who has possession of it, can dispose of it at his will and is never bound to return it.

Having made the foregoing observation, the learned chairman of the Income Tax Appeal Board dismissed the appeal.

On the hearing before me, counsel for the appellant contended that the contract did not contemplate the "dépôt" as indicated in the relevant sections of the Civil Code of the province of Quebec, and that, because the provisions of the Civil Code of the province of Quebec relate to "simple deposits" only, obviously the deposit contemplated by the contract was much wider in its scope. In support of this argument, counsel for the appellant emphasized the provision in the so-called contract that the moneys deposited by a taxicab owner or by taxicab owners would become the *absolute* property of the Association in certain circumstances. Moreover, it is also provided as follows:

That the Dominion Taxicab Association agrees to look upon the admission fee as a deposit.

It must be observed, however, that the use of the words "look upon the admission fee as a deposit" would, in the circumstances, fail to make the admission fee "a deposit" if it, in fact, did not have the other qualities and incidence of a "deposit."

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I also conclude that the assessment was properly made because in the so-called contract, the moneys received as admission fees or deposits are nowhere stated to continue to be the property of the taxicab owners, in fact, the statement as to the ownership of the moneys so deposited is quite contrary to any such contention.

It must be remembered that the Dominion Taxicab Association had been in operation for a period of two months only before filing its income tax return for the taxable year of 1949. In the statement made by the appellant in support of its income tax return, the total moneys received by it from taxicab owners, namely, \$40,500, is described as "deferred members deposits," but I am not of opinion that it could be considered as a liability merely by the insertion of the phrase "deferred liability" in its income tax return.

Counsel for the appellant endeavoured to support his argument by offering evidence that the Dominion Taxicab Association is now in the process of reorganization and, that the moneys paid by the taxicab owners may now either be refunded to them or converted into shares of capital stock in the reorganization.

I rejected evidence in this regard because my enquiry is as to the money that was paid to the appellant in 1949, not what is being done or proposed to be done in its reorganization. Neither is assistance to be received from this provision in the Articles of Association, namely:

1. To purchase, assume, take over or otherwise acquire, all or part of the assets, rights, franchises, concessions, privileges, and to succeed to the business known under the name "*Dominion Taxicab Association*" by acquiring all or any part of the assets, with the goodwill and all rights and contracts passed with the said "*Dominion Taxicab Association*."

In the absence of any provision in the contract to incorporate the foregoing provision as one of the terms of the contract, it cannot be said that this money should be treated as a "deferred liability." In the case of *Robertson v. Minister of National Revenue* (1), there is a discussion by the learned President of the Exchequer Court of Canada as to the meaning of the word "deposit." It cannot however in the instant case be argued that the money was handed over to the Association as either "security," "earnest" or a "pledge."

(1) [1944] Ex. C.R. 140.

In *Diamond Taxicab Association Limited v. The Minister of National Revenue* (1), the facts in which bore much similarity to those in the instant case, the deputy judge of the Exchequer Court of Canada, held that the moneys received by that Association were taxable as revenue. The decision so rendered was appealed to the Supreme Court of Canada and by that Court was dismissed on the 4th day of February, 1953.

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This appeal will be dismissed with costs.

*Judgment accordingly.*