

BETWEEN :

COLIN JOHN GRASSET MOLSON }
 AND THE NATIONAL TRUST }
 COMPANY LIMITED, EXECUTORS }
 OF THE WILL OF KENNETH MOLSON, }
 DECEASED

APPELLANTS;

1936
 June 29.
 1937
 Jan. 9.

AND

THE MINISTER OF NATIONAL }
 REVENUE

RESPONDENT.

Revenue—Income tax—Quebec Civil Code—Transfer of property in fulfilment of marriage contract is not a transfer to evade taxation—Income War Tax Act.

By his marriage contract entered into on March 28, 1913, wherein separation as to property was stipulated, Kenneth Molson, resident in Montreal, P.Q., made to his future wife a donation *inter vivos* of the sum of \$20,000. By a deed made on March 23, 1925, the said Kenneth Molson in fulfilment of the conditions of his marriage contract with respect to the said donation, transferred and conveyed to his wife certain shares of the capital stock of various corporations, the wife accepting such shares in full payment of the sum of \$20,000. The returns of income he made for the years 1925 to 1931 inclusive omitted the income derived from these shares. He died on April 9, 1932.

On April 11, 1933, the Commissioner of Income Tax sent notices of assessment to one of the executors of the will of the said Kenneth Molson, assessing the dividends paid on such shares between March 23, 1925, and December 31, 1931.

Held: That the conveyance made by Kenneth Molson to his wife was not a transfer to evade taxation; it was made in fulfilment of his marriage contract and from the date of transfer he had no further interest in the shares transferred to his wife and was no longer liable to taxation on the income derived therefrom.

APPEAL under the provisions of the Income War Tax Act from the decision of the Minister of National Revenue.

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

H. G. Lafleur for appellant.

W. S. Fisher for respondent.

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

ANGERS J., now (January 9, 1937) delivered the following judgment:

This is an appeal by the executors of the will of the late Kenneth Molson, in his lifetime of the city of Montreal, Province of Quebec, against the assessments bearing date

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the 11th of April, 1933, whereby additional taxes were levied against the said estate for the years ending the 31st of December, 1925, 1926, 1927, 1928, 1929, 1930 and 1931, the said assessments having been affirmed by the Minister of National Revenue, represented and acting by the Commissioner of Income Tax, on February 12, 1934.

By his marriage contract with Isabel Graves Meredith, passed before Charles Delagrave, N.P., at the city of Quebec, Province of Quebec, on March 28, 1913, a copy whereof was registered in the registry office for the registration division of Montreal West on May 28, 1913, under No. 155,397, wherein separation as to property was stipulated, Kenneth Molson made to his future wife a donation *inter vivos* of the sum of \$20,000; the part of the seventh clause of the contract relating thereto reads as follows:

In view of there being no Community and no Dower and of the love and affection of said future husband for his said future wife, he the said future husband, doth by these presents give and grant by way of Donation *inter vivos* and irrevocably unto his said future wife, thereof accepting:

1. The sum of Twenty Thousand Dollars, which the said future husband promises and obliges himself to pay to the said future wife at any time he may elect after the solemnization of said intended marriage, either in one sum or by instalments or by investments or investment in the name of the said future wife, and in such securities as he may see fit. Any investment so made shall operate as payment, however, only in so far as the same may be accepted by the future wife,—and any payment made by the said future husband to the said future wife on account of the said sum of Twenty Thousand Dollars, or any investment made by the said future husband in the name of the said future wife on account of the said sum of Twenty Thousand Dollars, shall be evidenced by a Declaration to that effect made and signed by the said future husband and the said future wife before a Notary Public and recorded in the office of such Notary. Should the death of the future husband occur before said sum has been fully paid, the unpaid balance shall become due and exigible at his death, should the said future wife be then living, and it is also further agreed between the parties that should the said future husband during the existence of said intended marriage become Insolvent, without having first paid the said sum of Twenty Thousand Dollars, in its entirety, then in such case the said future wife shall have the right to claim and demand the same or any part thereof then unpaid.

To have and to hold the said sum of Twenty Thousand Dollars unto the said future wife as her absolute property, but it is specially stipulated and agreed that in the event of her predeceasing her said future husband without having received payment in full of the said sum, the balance of the said sum of Twenty Thousand Dollars which shall not have been paid by the said future husband to the said future wife during her lifetime shall belong to the child or children issue of the said intended marriage, and in default of such child or children the said unpaid balance of the said sum of Twenty Thousand shall revert to the said future husband or his heirs.

By a deed made before L. A. Marchessault, N.P., on March 23, 1925, Kenneth Molson, desirous of fulfilling the conditions of his marriage contract with respect to the donation of the sum of \$20,000, transferred and conveyed to his wife, the said Isabel Graves Meredith, shares of the capital stock of various corporations, as follows:

Twenty-five shares of the capital stock of the Bank of Montreal, of the par value of one hundred dollars each but of the present market value of approximately two hundred and forty-eight dollars per share.

Fifty shares of the preferred capital stock of Ontario Steel Products, of the par value of one hundred dollars each but of the present market value of approximately ninety-three dollars and fifty cents per share.

Twenty-five shares of the capital stock of Shawinigan Water & Power Company, of the par value of one hundred dollars each but of the present market value of approximately one hundred and thirty-six dollars per share.

Twenty-five shares of the capital stock of The Bell Telephone Company of Canada Limited, of the par value of one hundred dollars each but of the present market value of approximately one hundred and thirty-six dollars per share.

Twenty-five shares of the preferred stock of Canadian Car & Foundry Company Limited, of the par value of one hundred dollars each but of the present market value of approximately ninety dollars per share.

The wife, Isabel Graves Meredith, who was a party to the deed, accepted the shares in full payment of the sum of \$20,000.

The said Kenneth Molson did not include in the returns of income he made for the years 1925 to 1931 inclusive the income derived from these shares but paid in due course the tax on the income disclosed in his said returns. He died on April 9, 1932.

On April 11, 1933, the Commissioner of Income Tax sent notices of assessment to National Trust Company, one of the executors of the will of the late Kenneth Molson, assessing the dividends paid on the said shares between the 23rd of March, 1925, and the 31st of December, 1931.

On or about May 5, 1933, viz., within the delay fixed by section 58 of the Income War Tax Act, the executors of the will of the late Kenneth Molson served a notice of appeal upon the Minister. The notice contains a statement of the additional taxes assessed in respect of income for the years 1925 to 1931 inclusive and then states:

The additional taxes which have been assessed against the above decedent or his estate are in respect of income received between the 23rd day of March, 1925, and the 31st day of December, 1931, by Mrs. Isabel Graves Molson on the following stocks which she received on or before the 23rd day of March, 1925, and accepted in settlement of a Donation *inter vivos* of \$20,000 which the deceased made to her, as

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his future wife, by their Ante-Nuptial Contract of Marriage made before Mtre. Charles Delagrave, Notary, of the City of Quebec, on the 28th day of March, 1913, a certified copy whereof is hereto attached and marked "A."

There follows a list of the stocks mentioned in the deed of conveyance by Kenneth Molson to his wife which I need not repeat, and the notice then sets out the reasons for appeal as follows:

The executors of the estate of the late Kenneth Molson hereby appeal from the above additional assessments and interest thereon for the following reasons:—

- (a) The gift of \$20,000 made by the deceased to his future wife in the said Ante-Nuptial Contract of Marriage, was a valid gift under the Law of the Province of Quebec and was irrevocable.
- (b) It was made before the Income War Tax Act came into force.
- (c) The delivery of the above stocks to Mrs. Molson by the deceased on or before the 23rd day of March, 1925, was in payment and in satisfaction of the obligation he had undertaken in his Ante-Nuptial Contract of Marriage, and the acceptance of the said stocks by Mrs. Molson in satisfaction of the said gift was not a "transfer of property" to evade taxation within the meaning of the Income War Tax Act of 1917 and amendments thereto.

On February 12, 1934, as previously noted, the Minister affirmed the assessment and notified the National Trust Company accordingly.

On or about March 8, 1934, a notice of dissatisfaction, with a statement of the facts and reasons which the taxpayer intended to submit in support of the appeal, was sent to the Minister in compliance with section 60 of the Act.

After referring to the contract of marriage and the deed of conveyance aforesaid and repeating in substance the facts and reasons alleged in the notice of appeal, the notice of dissatisfaction adds (*inter alia*):

(10) The Act to amend The Income War Tax Act, 1917, was assented to on the 15th of June, 1926,—(16-17 George V, Cap. 10) and Section 32 of the said Amending Act is in the following terms:—(R.S.C., 1927, Cap. 97).

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"32. Where a person transfers property to his children such person shall nevertheless be liable to be taxed on the income derived from such property or from property substituted therefor as if such transfer had not been made, unless the Minister is satisfied that such transfer was not made for the purpose of evading the taxes imposed under this Act.

2. Where a husband transfers property to his wife, or vice versa, the husband or the wife, as the case may be, shall nevertheless be liable to be taxed on the income derived from such property or from property substituted therefor as if such transfer had not been made."

(11) The transfer or payment made by the said Molson to his said wife, as evidenced by the Deed of the 23rd of March, 1925, was not intended to be and was not in fact considered as a transfer to evade taxation within the contemplation of the Amending Statutes passed over fifteen months later. On the contrary, the transfer was a legal and proper fulfilment by the said Molson of the contractual obligations undertaken by him in the Marriage Contract of the 28th of March, 1913, and was in all respects legal and proper.

(12) The donation of Twenty thousand dollars (\$20,000) made by the said Molson to his future wife in the Contract of the 28th of March, 1913, was a donation entirely in accordance with the laws of the Province of Quebec. The said donation was accepted by the future wife as being in lieu of her community and dower rights and the agreements in regard thereto were not in fact and could not in any way be affected by The Income War Tax Act, 1917, or any of the amendments thereto.

(13) In like manner, the fulfilment of the contractual obligations assumed by Molson in the said Contract of Marriage, as evidenced by the Deed of Conveyance of the 23rd of March, 1925, was also legal and cannot be considered as, and in fact was not, a transfer to evade taxation within the meaning of the Amending Statutes of June, 1926 (R.S.C., 1927, Cap. 97, Section 32), and the appellant is entitled to have it so declared.

On March 2, 1935, the Minister replied denying the allegations of the notice of dissatisfaction and confirming the assessments.

Pleadings were filed. The statement of claim deals only with the assessment for the year 1930, but contains a declaration that it was agreed between the parties that the decision of the Court with reference to said assessment would apply to the assessments for the years 1925, 1926, 1927, 1928, 1929 and 1931.

Apart from the marriage contract and deed of conveyance, no evidence was adduced at the trial.

The late Kenneth Molson and his wife, Isabel Graves Meredith, were separate as to property in virtue of their marriage contract. The wife separate as to property has the full ownership of her property, retains the entire administration thereof and has the free enjoyment of her revenues: article 1422 C.C. (Quebec).

The donation *inter vivos* of the sum of \$20,000 made by the late Kenneth Molson to his future wife by their marriage contract is legal and valid: see articles 1257 and 819 C.C.:

1257. All kinds of agreements may be lawfully made in contracts of marriage, even those which, in any other act *inter vivos*, would be void; such as the renunciation of successions which have not yet devolved, the gift of future property, the conventional appointment of an heir, and other dispositions in contemplation of death.

819. Subject to the same rules (i.e., the rules concerning gifts *inter vivos*), when particular exceptions do not apply, future consorts may like-

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wise by their contract of marriage give to each other, or one to the other, or to the children to be born of their marriage, property either present or future.

See also articles 755, 757, 777, 778, 788, 804, 807, 821 and 822.

The marriage contract, as previously noted, was duly registered.

The donation with which we are concerned was unquestionably made in good faith, having been made prior to the coming into force of the Income War Tax Act, 1917 (7-8 Geo. V, chap. 28) on September 20, 1917.

The claim of the Crown is based upon subsection 2 of section 32 of the Income War Tax Act (R.S.C., 1927, chap. 97). This subsection 2 was, prior to the revision of the statutes in 1927, paragraph (b) of subsection 4 of section 4, as enacted by 16-17 Geo. V, chap. 10, s. 7.

Subsection 2 of section 32 is literally the same as paragraph (b) of subsection 4 of section 4; both read as follows:

Where a husband transfers property to his wife, or *vice versa*, the husband or the wife, as the case may be, shall nevertheless be liable to be taxed on the income derived from such property or from property substituted therefor as if such transfer had not been made.

Subsection 1 of section 32, prior to its repeal and the substitution of another one therefor by 24-25 Geo. V, chap. 55, s. 16, was word for word the same as paragraph (a) of subsection 4 of section 4; it reads thus:

Where a person transfers property to his children such person shall nevertheless be liable to be taxed on the income derived from such property or from property substituted therefor as if such transfer had not been made, unless the Minister is satisfied that such transfer was not made for the purpose of evading the taxes imposed under this Act.

Section 32 in chapter 97 of the Revised Statutes of Canada, 1927, appears under the heading "Transfer to Evade Taxation."

In 16-17 Geo. V, chap. 10, s. 7, opposite paragraph (a) of subsection 4, in the margin, are the words "Transfer of property."

The marginal note opposite subsection 4 of section 4 of the Income War Tax Act, 1917 (7-8 Geo. V, chap. 28) is "Transfer of property to evade taxation." This subsection 4 which was repealed and replaced as previously noted by 16-17 Geo. V, chap. 10, s. 7, reads as follows:

A person who, after the first day of August, 1917, has reduced his income by the transfer or assignment of any real or personal, movable or immovable property, to such person's wife or husband, as the case may

be, or to any member of the family of such person, shall, nevertheless, be liable to be taxed as if such transfer or assignment had not been made, unless the Minister is satisfied that such transfer or assignment was not made for the purpose of evading the taxes imposed under this Act or any part thereof.

It seems to me obvious that the object of section 32 is, as, prior to the revision of the statutes in 1927, the object of subsection 4 of section 4 was, to tax in the hands of the transferor property transferred for the purpose of evading taxation.

The conveyance made by Kenneth Molson to his wife was not a transfer to evade taxation; it is not, in my opinion, subject to the provisions of section 32 of the Income War Tax Act. This conveyance was effected by said Molson in fulfilment of the donation of \$20,000 which he had made and which he had the right to make to his wife by his marriage contract.

From and after March 23, 1925, date of the deed, exhibit 2, the late Kenneth Molson had no further interest in the shares conveyed to his wife and he was no longer liable to be taxed on the income derived therefrom. From that time Isabel Graves Meredith, his wife, became the sole and absolute owner of the said shares.

For the above reasons I believe that the appeal must be allowed and the assessments in question set aside.

The appellants will be entitled to their costs against the respondent.

Judgment accordingly.

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