BETWEEN:

ROBERT B. CURRAN ..... APPELLANT;

AND

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

1957
Mar. 28
Nov. 5

Revenue—Income—Income tax—The Income Tax Act, 1948, S. of C. 1948, c. 52, ss. 2(1), 3, 5, 24A, 125(2)(3), 127(1)—Appellant severing connection with his employer on receipt of a payment of money—Loss of pension rights and opportunity for promotion—Income or capital—Appeal dismissed.

Appellant, an employee of Imperial Oil Limited for eighteen years entered into an agreement with R. A. Brown whereby the latter as agent of Calta Assets Limited by making his personal cheque paid appellant the sum of $250,000, in consideration for which the appellant severed his connection with Imperial Oil Limited and entered the service of a company designated by Brown. The appellant was assessed income tax on the said sum of $250,000 which assessment was affirmed by a decision of the Income Tax Appeal Board from which he now appeals to this Court.

Held: That the payment to appellant was a benefit received by him and therefore constituted income within the meaning of the Income Tax Act.

2. That any beneficial gains to Brown eventually resulting from the transaction between him and appellant would enhance the income character of such payment.

3. That the loss of pension rights in Imperial Oil by appellant does not change the character of the payment, it remains income.

APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Dumoulin at Calgary.

J. V. H. Milvain, Q.C. and *H. H. Stikeman, Q.C.* for appellant.

H. J. MacDonald, F. J. Cross and *B. R. Cheeseman* for respondent.

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

DUMOULIN J. now (November 5, 1957) delivered the following judgment:

This is an appeal from a decision of the Income Tax Appeal Board, dated the 9th day of May, 1956 (1), in respect of the income tax assessment of the appellant for the year 1951.

It was heard at Calgary, Alberta, on March 28, 1957.

At the turn of the year 1948-1949, the appellant, Robert B. Curran, at Calgary, Alberta, assumed the managership of Imperial Oil's Producing Department, Western Division, with a yearly salary of $25,000.

An American by birth, this man, for the preceding eighteen years had continued in the employ of Imperial Oil Limited, affiliated with Standard Oil of New Jersey.

He enjoyed a reputation as a progressive, skilled and efficient executive, or, so the saying goes, a top-notch oil man.

Company assignments of still greater importance and emolument seemed a reasonable expectation such as, for instance, a lucrative directorship in Imperial Oil.

The superannuation age, barring premature invalidity, was sixty-five. On the minimum basis of his $25,000 annual remuneration, appellant would become the recipient of a $12,500 pension, but could legitimately anticipate more, at the rate of one-half the average wages earned during a five-year period prior to retirement from Imperial Oil's staff. In the spring of 1951, Curran and one Robert A. Brown, of Calgary, initiated business talks that culminated in the several agreements of which more will be heard as this case unfolds.

Robert Arthur Brown, Jr., then thirty-seven years of age, had manifold interests in the oil business. He apparently possessed in a high degree, the optimism of youth, which the surrounding mineral wealth nowise abated.

(1) 15 Tax A.B.C. 73.

At the time, Mr. Brown was president, managing director, majority shareholder of Federated Petroleums Limited, and a most substantial albeit not a controlling one in Home Oil Limited. With his brother and sister he also constituted one of three participants "in a small private company", with a capital of $20,000, called Calta Assets Ltd. An interlocking pattern developed through which Calta Assets held a large block of Federated Petroleums shares, this latter concern also merging in a sizable share ownership of Home Oil with the Brown group, i.e., Brown personally, Calta Assets and United Oils Ltd. It is of record that Brown's mind was set upon obtaining full control of Home Oil, in which company he "represented the largest single ownership".

Certain difficulties hampered the attainment of this goal, one being Major Lowery's reluctance to forsake the Home Oil chairmanship, unless assured of a suitable successor, and there is no evidence whether or not Major Lowery looked upon Mr. Brown as an eligible candidate.

This and possibly some ancillary projects, all concerned with oil trade promotion, motivated the ensuing business negotiations between these two parties, which can best be accounted for in Brown's own words.

> A. I had three purposes. [In approaching Curran]
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> .....
>
> A. Firstly, I had worked out in my mind, and I think, in fact, with Major Lowery, who was then the president and managing-director of Home Oil Company, if I were able to get a suitable individual, a man of reputation in the oil industry, I was quite confident that I would be able to get Major Lowery to resign from the active management of Home Oil, of which company I represented the largest single ownership, although it was not actual control, so that was the first purpose in wanting to get Curran to apply, to have him become identified with the Home Oil Company. The second purpose was that I was negotiating with the bank a loan of some $5,000,000, as I remember, and because of the heavy investment we had in the Home Oil Company they [*i.e.* the Bank] were concerned about the management of the company, and a person of Curran's calibre would have satisfied their worries insofar as they might have affected my bank loan. The third reason was that my opinion was that in making arrangements with a man of Curran's standing in the industry we would definitely be buying a positive asset of experience in the oil industry, so those were the three.
> (Cf. Transcript of Proceedings, at pages 61-62-63)

Previously, throughout his evidence, R. B. Curran repeatedly assigned identical considerations to Brown's overtures that he sever his connections with Imperial Oil

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and enter the service of either Federated Petroleums or Home Oil. A few excerpts from the transcript clearly bear out this point.

On page 33, the appellant says:

A. . . . through my resignation from Imperial Oil thereafter Mr. Brown felt I could be of service to one of his companies.

.....

. . . For a consideration I leave the service of Imperial Oil, which was number one; number two was my being employed by one of Mr. Brown's companies thereafter.

.....

Q. [By counsel for Respondent] There was no doubt that Mr. Brown was very interested in acquiring your services for one of these companies? (Vide p. 34)

A. That is correct, sir.

Q. And you knew that Mr. Brown considered that would be of benefit to these companies?

A. Yes, sir.

.....

Q. It was pretty commonly known that Mr. Brown was interested in obtaining control of Home Oil Company?

A. That was a very much known fact, sir.

Q. Not only you but a good number of other people knew that?

A. Yes.

Q. Mr. Brown made no secret of it?

A. No sir.

Q. And the one problem he had was that Major Lowery was the dominant factor in the company, you knew that?

A. Major Lowery was president of Home Oil at the time you refer to.

Q. And Mr. Brown indicated to you, did he not, that he wanted to persuade Major Lowery to step down?

A. Well, Major Lowery was an elderly man and I think that perhaps Mr. Brown had in mind Major Lowery becoming what he did, chairman of the board.

Q. Yes, and that someone else would take Major Lowery's place as president and general manager who would be, let us say, more sympathetic to Mr. Brown's interests?

A. That is possibly true, sir.

Asking Curran to give up the management of Imperial Oil, an undisputed leader in the industry, was one thing, but quite a different one to have him do so. A twofold obstacle barred the way to compliance. Firstly, the appellant's accruing benefits after eighteen years with Imperial, for instance a retirement pension of no less than $12,500 per annum; secondly, various alluring prospects of preferment which, doubtless, the sanguine Mr. Curran dangled before Mr. Brown's eyes.

Moreover the business importance of Federated Petroleums or Home Oil, their foreseeable range of expansion could not compare with Imperial's bulk and far-reaching spread.

Hence, after some bargaining, Brown finally accepted Curran's demand for $250,000 by way of compensation, should he give up his employ and join forces with one or another of the former's companies.

We have now fingered the sore point, whence the ensuing complications flow.

One all-pervasive care visibly shows through the transactions entered into, that of avoiding the reach of income tax, as will be seen later on.

On August 15, 1951, the negotiations, reaching a concluding phase, materialized in the form of two contracts, the first of which duly recorded R. B. Curran's resignation as an executive officer of Imperial Oil Limited (Exhibit 1), carefully describing the several advantages thereby surrendered against an indemnity of $250,000, purporting to be paid by R. A. Brown Jr.

By the second and simultaneous deed, Federated Petroleums Limited (Exhibit 2) engaged Robert B. Curran as its general manager from October 1, 1951, "for a period of five (5) years (art. 2)", with "a fixed salary at the rate of $25,000 per year (art. 4)", but without any reference to a superannuation fund.

After completion of the deeds, R. A. Brown then and there handed a personal cheque (Exhibit 3), for $250,000, dated "16th August, 1951", drawn on the Canadian Bank of Commerce, Calgary Branch, payable to R. B. Curran, who deposited it on or about August 22.

A better understanding of the matter warrants the insertion, according to their textual wording, of the most revealing stipulations in both contracts.

The heading of Exhibit 1 reads: "R. A. Brown Jr., of Calgary, Alberta (hereinafter called 'the grantor') of the First Part—and—Robert B. Curran (hereinafter called 'the grantee') of the Second Part". It continues thus, after mentioning Curran's connection with Imperial Oil:

And whereas the grantee has acquired the right to a pension on retirement from Imperial Oil Limited or any of its affiliates, which if his present salary scale remains the same until his retirement will yield to

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him the sum of $12,500 per year, and the probabilities are that if he remains with his present employers his salary will increase substantially over the years with corresponding increases in the pension payable to him.

And whereas his pension rights will cease entirely if he voluntarily severs his connection with the said Company and its affiliates.

Page (2) And whereas Federated Petroleums Limited, a comparatively small oil company . . . has recently intimated its willingness to offer the grantee a position as manager at a salary equivalent to that which he draws from Imperial Oil Limited, which proposed offer the grantee has intimated that he would refuse solely by reason of the fact that he would be obliged to give up his chances of advancement with his present employers and their affiliates . . . and would lose all accumulated and future rights to pension.

And whereas the grantor holds a substantial interest in Federated Petroleums Limited, is of the opinion that the grantee's experience, capabilities and connections would be valuable to that Company, and is very desirous of persuading the grantee to resign from his present position in order that he may then be free to accept an offer of employment from Federated Petroleums Limited.

And then, on page 3, the two last paragraphs:

Now Therefore This Indenture Witnesseth

1. The grantor hereby agrees to pay to the grantee the sum of $250,000 in consideration of the loss of pension rights, chances for advancement, and opportunities for re-employment in the oil industry, consequently upon the resignation of the grantee from his present position with Imperial Oil Limited, the said sum to be paid forthwith upon the grantee informing his present employers that he is leaving their employ and whether or not employment has been offered to him by Federated Petroleums Limited or accepted by him, prior to that time.
2. In consideration of the agreement of the grantor to pay the said sum, the grantee hereby agrees to resign his position with Imperial Oil Limited, such resignation to take effect not later than the 15th day of September, A.D. 1951.

The first signature on this contract is that of R. A. Brown Jr. Also dated the 15th day of August, 1951, the other indenture (Exhibit 2) is between: "Federated Petroleums Limited (hereinafter called 'the Company')—and—Robert B. Curran (hereinafter called 'the Manager')". It partially reads:

1. Employment:

The Company shall employ the Manager as General Manager of the Company at and upon and subject to the terms and conditions following.

We are acquainted with the stipulations concerning duration and salary, respectively five years at $25,000 per year.

The only noteworthy provision and which received an immediate application was clause 8:

> The Manager shall as the directors may determine from time to time, serve as Manager of any other company or companies in which the Company has a financial interest, either in addition to or in lieu of serving as Manager of the Company and if he is paid a salary by such other company or companies any such salary when received shall to the extent thereof be deemed satisfaction of the salary which under the terms hereof the Company is obligated to pay.

This covenant bears the signature of Federated Petroleums Limited, per R. A. Brown Jr. (the Company's president), Robert B. Curran and that of J. W. Moyer, an officer of Federated. Pursuant to article 8 of the "employment" contract, appellant, on or about October 1, 1951, became president and general manager of Home Oil Limited, and never held any office whatever with Federated Petroleums. It goes without saying that Home Oil also attended to paying the agreed salary. No written document evidences Curran's period of service with this latter company.

Conflicting opinions soon arose and since the gap kept ever widening, the parties resolved to end their erstwhile convenant (Exhibit 2), and achieved this by means of a "release", on December 1, 1952 (Exhibit "B"). Again the signatories to this parting indenture were identically those who had signed the "employment" covenant (Exhibit 2) some fourteen months previously, namely: "Federated Petroleums Limited, per R. A. Brown" and "R. B. Curran", who remained in undisturbed ownership of the "compensation incentive" paid him a year before.

We already know: why, by whom, to what purpose the $250,000 were paid; it now remains to trace their actual source. To that end reference must be had to the record of proceedings at pages 66, 67 and 68. Mr. Milvain, Q.C., one of appellant's counsel is questioning Mr. Brown.

Page 66—

Q. Were the moneys that were paid to Mr. Curran your own personal moneys?

A. No, sir.

Q. Just what was the arrangement there?

A. Calta Assets had approximately, as I remember it, $100,000 in the bank and in order to have the $250,000 available, it was necessary to borrow an additional $150,000 . . . The Bank of Nova Scotia would not loan Calta $150,000. I was able to borrow $150,000 at the Royal Bank personally. Calta [the Brown family's private

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company] was not able to borrow the money at the Royal Bank as a company so I had to borrow it personally. Subsequently, Calta was responsible for the full payment of $250,000.

Page 67—

Q. And eventually the whole debt was brought over to Calta?

A. No. Calta, as I remember it, loaned [me] from the security which I used as collateral to borrow the money at the Royal Bank. When Calta liquidated enough shares to pay off the $150,000 either they paid the money to me and I paid it out to the Royal Bank or they may have paid it directly . . . but they were responsible for paying the loan off.

. . . . . .

Q. . . . So that to summarize the situation, the actual $250,000 represented by a cheque with your signature on it dealt with Calta Assets' moneys?

A. Yes.

Q. And it was Calta Assets that actually paid the $250,000?

A. Through me as their agent.

Page 68—

Q. Now, was the $250,000 paid to Curran by Calta through the medium of your cheque ever repaid to Calta by either Home or Federated?

A. No, sir.

Q. Or by anyone else?

A. By no one.

. . . . . .

Q. . . . Now, how was the $250,000 expenditure treated by Calta Assets?

A. As a capital expenditure.

. . . . . .

Q. You might tell the Court, Mr. Brown, whether or not Mr. Curran ever became an employee of Calta Assets?

A. No, never. Mr. Curran became employed only by Home Oil Company.

Page 69—

Q. Never by you personally?

A. No, sir.

Q. And you say never by Federated?

A. No, sir.

This last negative reply is, I believe, a misconstruction of the facts, but of no bearing on the issue. Appellant, although chief executive of Home Oil, was detailed to such office by Federated Petroleums, in virtue of the "employment" contract, paragraph 8 (cf. Exhibit 2). When conflicting policies came to a head, the "release" (Exhibit B) originated solely from Federated Petroleums as "Party of the First Part".

The record continues with Mr. Brown's testimony.

Page 71—

Q. . . . did you at any time discuss with the directors of Home or Federated as to whether either of those companies repay that sum of money? [*i.e.* the $250,000]

A. I certainly suggested it to the directors of Federated.
Q. With what result?
A. Negative result, they weren't interested, they wouldn't pay it.

Page 72—

Q. Do you know if any approach was made to Home in order to have them pay it?
A. I am quite sure there wasn't.
Q. So that the decision of paying $250,000 was made by whom?
A. I should think it was made by me.

.....

Q. Was that decision made by you on the basis that you were employing Mr. Curran?
A. No, not at all. The decision, when I said "made by me", that was made by Calta Assets because I consulted both with my brother and sister to get their consent that the deal would be entered into.

Despite an exhaustive cross-examination, Mr. Brown's evidence remained unshaken, and no attempt made at otherwise refuting it.

So then, the basic, recorded, set of facts shows that (a) Calta Assets Limited, "through Brown as its agent" paid the incentive sum of $250,000, which it never recuperated; (b) Curran was at no time employed by Calta Ltd. or Brown personally; (c) the original and paramount employer remained throughout Federated Petroleums which, implementing a mandatory prerogative provided for in article 8 of Exhibit 2, assigned R. B. Curran to Home Oil; (d) the parting release "from all covenants . . . and agreements", dated December 1, 1952, issued from Federated Petroleums on the employers' behalf.

Let us now examine the respective legal interpretations adopted by litigants.

The appellant's submission, concisely stated by Mr. Stikeman, Q.C., in his opening remarks, is as follows:

> We assert that the payment was personally to Mr. Curran, that it was paid to him to terminate an employment which had no relationship to the payer of the cheque, and that the maker of the cheque, Mr. Brown, or his principal, Calta Assets, never were or became the employers of Mr. Curran.

This impresses me as a rather cursory view of the case, one that leaves a great deal unsaid.

Respondent, on the other hand, initially contends that: (cf. Reply to Notice of Appeal, para. 10)

> The payment of $250,000, . . . was a benefit received by the Appellant in the year 1951 in respect of, or by virtue of, his position in the service of an oil company and was therefore income . . . for the purposes of Part I of the Income Tax Act by virtue of sections 3 and 5 of the said Act.

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Recourse is then had to three subsidiary submissions which I quote:

> Alternatively, the said $250,000 was paid to the Appellant as part of his remuneration for services to be rendered by him as an employee of an oil company and was therefore income of the Appellant for the taxation year 1951 for the purposes of Part I of the Income Tax Act by virtue of sections 3 and 5 of the said Act.
>
> Alternatively, the said $250,000 was an amount received by the Appellant from a person in satisfaction of an obligation arising out of an agreement made by that person with the Appellant immediately prior to a period that the Appellant was in the employment of such person and it is therefore deemed to be remuneration for the Appellant's services rendered during the period of employment, by virtue of section 24A of the said Act.
>
> Alternatively, the said $250,000 was received by the Appellant as a benefit as a result of a transaction or transactions and as such amounts to a payment of income for the purposes of Part I by virtue of Section 125 of the said Act.

The problem easily enough stated but by no means easy to solve, can be thus set forth: Was the profit or gain under review, truly of an income nature as contemplated by sections 2(1), 3, 5, 24A, 125(2) (3), 127(1) of the 1948 *Income Tax Act*, c. 52, on which both parties rely?

Section 2(1) provides that any resident of Canada will pay income tax upon his taxable income for each taxation year.

Section 3 gives the first general rule, reading:

> 3. The income of a taxpayer for a taxation year for the purposes of this Part [Computation of Income] is his income for the year from all sources . . . and without restricting the generality of the foregoing, includes income for the year from all
>
> (*a*) businesses
>
> (*b*) property, and
>
> (*c*) offices and employments.

Section 5 deals further with "income":

> Income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year . . .

The specific point of payments by "employer to employee" is disposed of in section 24A.

> An amount received by one person from another,
>
> (*a*) during a period while the payee was an officer of, or in the employment of, the payer, or
>
> (*b*) on account or in lieu of payment of, or in satisfaction of, an obligation arising out of an agreement made by the payer with the payee immediately prior to, during or immediately after a period that the payee was an officer of, or in the employment of, the payer,

shall be deemed, for the purpose of section 5, to be remuneration for the payee's services rendered as an officer or during the period of employment, unless it is established that, irrespective of when the agreement, if any, under which the amount was received, was made, or the form or legal effect thereof, it cannot reasonably be regarded as having been received.

(i) as consideration or partial consideration for accepting the office or entering into the contract of employment,

.....

Section 125, the opening one of Part V.—Tax Evasion, in its subsections (2) and (3) rules that:

(2) Where the result of one or more sales, exchanges, declarations of trust, or other transactions of any kind whatsoever is that a person confers a benefit on a taxpayer, that person shall be deemed to have made a payment to the taxpayer equal to the amount of the benefit conferred notwithstanding the form or legal effect of the transactions . . . the payment shall, depending upon the circumstances, be

(*a*) included in computing the taxpayer's income for the purpose of Part 1,

.....

Subsection (3) says that no benefit exists when the parties deal at arm's length, *bona fide,* and not pursuant to any other transaction and are not effecting payment "in whole or in part, of an existing or future obligation,".

According to Exhibit 1, appellant contends that Brown personally paid him $250,000 and was at no time his employer, in an obvious attempt to escape the reach of section 24A, and to forestall respondent's allegation that this payment "was a benefit received by the appellant in the year 1951 in respect of, or by virtue of his position in the service of an oil company . . ."

I would insofar agree with appellant and therefore insofar also disagree with respondent.

This amount never was disbursed by either of the three companies with which Curran had business connections during 1951. Imperial Oil paid him until October 1, when, as an employee of Federated Petroleums, he was assigned to Home Oil, this latter company continuing his annual salary of $25,000 for the last three months. Moreover, Curran's "salary or wages" for 1951 were not $275,000. The answer must be found elsewhere.

What can be the real nature, the most plausible meaning of the bargain entered into by those two businessmen whose names so frequently reappear?

The expressions used in the written document, Exhibit 1, reveal merely one aspect of the bargain.

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In the "resignation contract" Brown adduces a twofold explanation identical with Curran's own views: (a) that he agrees to pay the *grantee* $250,000 in consideration of the loss of pension rights and the chances for advancement; (b) that he, the *grantor* "holds a substantial interest in Federated Petroleums Limited, is of the opinion that the grantee's experience, capabilities and connections would be valuable to that Company, and is very desirous of persuading the grantee to resign from his present position in order that he may then be free to accept an offer of employment from Federated Petroleums Limited." So then two objects are stated for which payment was had.

Both considerations put forward by Curran were of no particular concern to Brown, who would as readily have satisfied any of the latter's demands such as, for instance, purchasing his house in another city and providing him with a residence in Calgary. Brown's only object was the enlistment for his companies of Curran's reputed experience, capabilities and connections. What one wished to obtain exactly corresponded to that which the other delivered: the normal business expectations of experience, capabilities and connections. In his capacity of controlling shareholder of Federated Petroleums and largest single owner of Home Oil shares, Brown stood at the apex of the receiving line if eventually the hoped-for "experience, capabilities and connections" occasioned an increased yield in company gains.

Brown furthermore eagerly sought to achieve paramount influence over Home Oil and, as expected of him, Curran greatly facilitated the fruition of the scheme.

A man's experience, capabilities and connections are intangible assets of a capital nature; but the effects accruing from their fruitful use should be viewed in the light of income.

Regarding those properly called "chances" which the appellant voluntarily surrendered, quite likely some would in time materialize, still they might not, through an unfortunate twist of fortune: sickness, disability, untimely death. At all events, I feel that such a consideration never was the immediate cause or *"causa causans"* of the agreement.

This brings the matter to the pension rights angle; again it must be said that it is completely foreign to our problem, *res inter alios acta,* a matter to be liquidated by the parties concerned, Curran and Imperial Oil.

A glance at page 8 of the transcript reveals that Curran and Imperial Oil effectively settled it between themselves, I quote:

> Q. [by Mr. Milvain, Q.C. to Curran] Now, in the event of the employee voluntarily terminating the employment, what was the position with respect to that superannuation or pension plan?
> A. He would have an option of doing one of two things, either he might take what is termed a deferred annuity [maturing at the age of 65], or he could take entirely cash and he would receive mainly the money that he had put into the plan himself at that time.
> Q. Insofar as the contributions made by the employer, . . . Imperial, would the employee get that part of the contribution?
> A. Not entirely, he would get a small part of that employer's contribution . . .

The appellant predicated his first line of attack on a total lack of employer-employee connection between himself and Brown. It should be borne in mind that pension rights, superannuation funds, especially in cases of a single payment, become taxable in virtue of section 34 of the Act.

Here, a dilemma confronts the appellant with equally unfavourable alternatives.

If Curran obtained payment as a consideration of surrendered pension rights, then section 34 arises with its necessary implications of employer-employee relationships, paving the way, at the minister's option, to section 24A.

On the contrary, objecting to section 34 is tantamount to asserting the nonexistence of a valid or regular pension plan and of all employment dependence between Curran and Brown.

Then, should we conclude that no employment ties, no superannuation fund, can be traced, it irresistibly follows that the pension argument loses its arguable value.

In his written engagements, throughout his examination and Brown's, appellant took a precarious and contradictory position.

In effect, he argued that:

(a) Brown never employed Curran;

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(b) Curran received $250,000 from Brown for two considerations, one of which was the surrender of pension rights with Imperial Oil.

Now, this second claim is admissible only if an assessment under section 34 be equally justified, a consequence giving rise to legal implications destructive of appellant's essential argument (a).

The test seems rather self-evident: Had the respondent assessed appellant in virtue of section 34, hereunder partially reproduced, could he then successfully prosecute a claim for recovery?

> 34. (1) In the case of
>
> (*a*) a single payment
>
> (i) out of or pursuant to *a superannuation or pension fund or plan* upon the death, *withdrawal* or *retirement from employment of an employee or former employee* or upon the winding-up of the fund or plan *in full satisfaction of all rights of the payee in or under the fund or plan,* or
>
> .....
>
> the payment or payments made in a taxation year may, at the option of the taxpayer by whom it is or they are received, be deemed not to be income of the taxpayer for the purpose of this Part, in which case the taxpayer shall pay, in addition to any other tax payable for the year, a tax on the payment or aggregate of the payments equal to the proportion thereof that
>
> .....

The present appellant could, and no doubt would counter, that between Brown and himself as payer and payee no such legal superannuation fund or pension plan existed. He would object, and properly so, that the $250,000 were not granted to him "upon withdrawal or retirement from employment [as an] employee or former employee . . ." Possibly one might concede that the compensation story subjectively envisaged, i.e. in appellant's light is true to a degree but, as a matter of fact in the ruling purview of the Act, i.e. objectively, it is untenable.

The amount paid is closely akin to a tangible appraisal, a material appreciation of the beneficial effects consequent upon "experience, capabilities and connections" as well as a pecuniary recognition for future assistance, outside the employment field, rendered to or anticipated by R. A. Brown personally.

For reasons somewhat differing from those propounded by respondent, I agree that the sum of $250,000 constitutes income.

Audette J. in re *Morrison v. Minister of National Revenue* (1) spoke thus:

> Now the controlling and paramount enactment of sec. 3 defining the income is "the annual net profit or gain or gratuity." Having said so much the statute proceeding by way of illustration, but not by way of limiting the foregoing words, mentions seven different classes of subjects which cannot be taken as exhaustive since it provides, by what has been called the omnibus clause, a very material addition reading "and also the annual profit or gain from any other sources." The words "and also" and "other sources" make the above illustration absolutely refractory to any possibility of applying the doctrine of *ejusdem generis* set up at the hearing. The balance of the paragraph is added only *ex majori cautelâ* . . . The net is thrown with all conceivable wideness to include all *bona fide* profits or gain made by the subject.

Despite a lapse of years, this interpretation of section 3 is still true of the amended text as it read in 1951.

In very wide terms, section 3 renders taxable "income for the year from *all sources* and without restricting the generality of the foregoing . . ."

Therefore, this controversial payment meets, I believe, the statutory meaning of income for the year from a source other than those particularized by subsections (*a*), (*b*) and (*c*) and was properly assessed as such.

Lord Halsbury L.C., in re *Alexander Tennant v. Robert Sinclair Smith,* (2) wrote that:

> . . . This is an Income Tax Act, and what is intended to be taxed is income. And when I say "what is intended to be taxed," I mean what is the intention of the Act as expressed in its provisions, because in a taxing Act it is impossible, I believe, to assume any intention, any governing purpose in the Act, to do more than take such tax as the statute imposes. In various cases the principle of construction of a taxing Act has been referred to in various forms, but I believe they may be all reduced to this, that inasmuch as you have no right to assume that there is any governing object which a taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subject for taxation, you must see whether a tax is expressly imposed.
>
> Cases, therefore, under the Taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation. Lord Wensleydale said, in *In re Micklethwait* (3), "It is a well-established rule, that the subject is not to be taxed without clear words for that purpose; and also, that every Act of Parliament must be read according to the natural construction of its words."

(1) [1928] Ex. C.R. 75. (2) [1892] A.C. 150 at 154.
(3) 11 Ex. (U.K.) 456.

1957

CURRAN
v.
MINISTER OF
NATIONAL
REVENUE

Dumoulin J.

As just said above, I would hold that "the words of the Act,—in the appropriate part of section 3, (1948, R.S.C. c. 52),—have reached the alleged subject of taxation".

The assessment claimed from appellant as income for taxation year, 1951, was in accordance with the Act and the appeal must be dismissed with costs.

Judgment accordingly.