1944

Sept. 25

1947

May 20

BETWEEN:

HENRIETTA A. R. ANDERSON ..... APPELLANT;

AND

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

Revenue—Income Tax—Income War Tax Act, R.S.C. 1927, c. 97, ss. 2(f), 5(c)—Adoption—Householder—Self-contained domestic establishment maintained by appellant who supported therein two persons connected with her by adoption by verbal agreement with parents—Appeal allowed.

Appellant, an unmarried person, during the years material to this appeal maintained a self-contained domestic establishment as defined by the Income War Tax Act and supported therein two minor children who retained their original surname. These children were adopted by appellant by a verbal agreement with their parents and during these years were dependent upon and connected with the appellant by such adoption.

The Commissioner of Income Tax assessed appellant for the years 1935 to 1939 inclusive and refused to allow exemption claimed by appellant for her support of these children on the grounds that the adoption was not an adoption within the meaning of the relevant provisions of the Income War Tax Act. The appellant appealed to this Court.

Held: That the position of appellant with respect to the two children meets all the exigencies of clause (iii) of paragraph (*c*) of sub-section (i) of section 5 of the Income War Tax Act, R.S.C. 1927, c. 97 as amended by 23-24 Geo. V, c. 41, s. 4, since she was at all times an individual who maintained a self-contained domestic establishment and who actually supported therein two persons connected with her by adoption, and the appeal must be allowed.

APPEAL under the provisions of the Income War Tax Act.

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

N. W. Whittaker, K.C. for appellant.

H. A. Beckwith and *A. A. McGrory* for respondent.

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

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ANGERS J. now (May 20, 1947) delivered the following judgment:

This is an appeal under section 58 and following of the Income War Tax Act by Henrietta A. R. Anderson, of the city of Victoria, province of British Columbia, against the decision of the Minister of National Revenue affirming the assessments for the years 1935, 1936, 1937, 1938 and 1939, which appear from copies of the notices of assessment included in the record of the Department of National Revenue to have been mailed on June 3, 1942.

In her notice of appeal, dated June 23, 1942, a copy whereof also forms part of the record of the Department, the appellant states in substance that:

she is and was at all times material a Normal School teacher;

in 1932 she adopted Beverley Price, then aged 7 years, and Helen Price, then aged 4 years, by verbal agreement with their parents, Charles Price and Margaret Grace Price, now of Vancouver, B.C.; by this agreement said parents voluntarily surrendered the said Beverley and Helen Price into the appellant's sole custody and the appellant agreed to be solely responsible for the custody, education, care and maintenance of the said children;

from 1932 until 1940 the said Beverley and Helen Price resided with the appellant and were maintained, educated and cared for solely by and at the expense of the appellant; during 1940 the appellant voluntarily surrendered the said Beverley Price to her parents at their request, but the said Helen Price continued to reside and to be maintained, educated and cared for solely and at the expense of the appellant;

from 1932 up to the present time (June 23, 1942) the appellant was an unmarried person and maintained a self-contained domestic establishment as defined by the Income War Tax Act and supported therein the said Beverley Price until 1940 and the said Helen Price up to the present time (June 23, 1942), the said Beverley and Helen Price being dependent upon and connected with the appellant by said adoption;

during the taxation years 1935 to 1939 inclusive, the appellant claimed and was allowed exemption from taxation as provided by said Act on the grounds set out in paragraph 4;

the Commissioner of Income Tax now claims that the said adoption was not an adoption within the meaning of the relevant provisions of the Income War Tax Act and has re-assessed the appellant for the taxation years 1935 to 1939 inclusive;

the appellant appeals from the assessments for the years 1935 to 1939 inclusive and claims exemption from payment of the amounts included in the said assessments.

The decision of the Minister, dated November 5, 1942, signed by the Minister of National Revenue per the Commissioner of Income Tax, also part of the record of the Department, sets forth, *inter alia*:

WHEREAS the taxpayer duly filed Income Tax Returns showing her income for the years ending 31st December, 1935, 1936, 1937, 1938 and 1939.

AND WHEREAS in filing her said Returns the taxpayer, a single person, purporting to have adopted two children, claimed exemption as a single person maintaining a self-contained domestic establishment supporting therein two dependent relatives.

AND WHEREAS in assessing the taxpayer, she was treated as a single person without dependents and taxes were assessed by Notices of Assessment dated the 3rd June, 1942.

The decision of the Minister then refers to the notice of appeal, summing up its averments, and concludes:

The Honourable the Minister of National Revenue having duly considered the facts as set forth in the Notice of Appeal and matters thereto relating, hereby affirms the said Assessments on the ground that for Income Tax purposes adoption means the legal adoption of a child or children; that while the taxpayer has, with the consent of the parents, had the temporary guardianship and support of the said children in her own domestic establishment, she did not in fact legally adopt them; and therefore by reason of the provisions of Section 5 and other provisions of the Income War Tax Act in that respect made and provided, the Assessments are affirmed as being properly levied.

On November 30, 1942, in compliance with section 60 of the Income War Tax Act, the appellant sent to the Minister a notice of dissatisfaction with a statement of further facts, statutory provisions and reasons.

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The statement in question sets forth in substance:

the exemption claimed by the appellant is under section 5 (c) (iii) of the Income War Tax Act, R.S.C. 1927, chap. 97, as amended by 1940, chap. 34, section 11;

the adoption of Beverley and Helen Price is an adoption within the meaning of said section 5 (c) (iii).

The reply of the Minister, as usual, denies the allegations contained in the notice of appeal and the notice of dissatisfaction in so far as incompatible with the allegations of his decision and affirms the assessments as levied.

The claim for exemption made by the appellant with regard to the years 1935 to 1939 is based upon the fact that she had in her home and under her care two minor children, Beverley Campbell Price and Helen Rae Price during that period.

The appellant was examined for discovery. Questions and answers 11 to 13, 19 to 23, 25 to 28, all inclusive, and 30 and 31 were used in evidence. A brief summary thereof seems apposite.

The examination discloses that up to 1934 (1932 by error), when the appellant was moved from Vancouver to the Normal School at Victoria, the children were living with her at the home of an aunt of their mother in North Vancouver and that both went to Victoria with the appellant. The appellant said that up to that time she had not exercised parental control over them to any great extent and had not made any claim for keeping them. According to her the aunt was keeping house and feeding the children. The appellant paid for Beverley's music lessons and probably, part of the time, for her clothing.

Speaking about the agreement with the children's parents with reference to their adoption, the appellant declared that she went to see the parents and asked them if she could get the children. An extract from the deposition seems convenient (p. 4):

A. * * * I went to see the parents and I said can I have the children because if I can't I doubt whether I would go to Victoria and they said there was no question whatsoever about my taking the children with me.

* * * *

A. I don't think there was any more than that. I doubt if the question of maintenance was ever even mentioned. It was simply taken for granted that if I took them I would do for them.

Further on the witness added (p. 5):

I wanted to know even before I accepted the position, I wanted to know if I could take the two girls with me. I went as far as to say I wanted to know quickly because I would not take the position if I could not take them and the mother and father just looked at me and agreed. There was no question about having the girls.

The appellant stated that there was no discussion between the parents and herself about a written agreement or an adoption by Court order. According to her there was no understanding about the continuation of contact between the children and their parents; the matter was taken for granted. The appellant said she took the children home at Christmas time to see their parents and also sometimes during the summer. According to her the children never corresponded with their parents except when the father was at the Kamloops Sanatorium. The appellant corresponded with the mother from time to time, telling her how the children were getting along.

The appellant admitted that the children retained their original surname Price and that she had no wish to change that.

Testifying at the trial, the appellant declared that she is Instructor in and Vice-Principal of the Victoria Normal School.

She said that she filed her income tax returns for the years 1935 to 1939 inclusive and claimed exemption for two children, Beverley Campbell Price and Helen Rae Price. She paid her income tax for that period on the basis that she was entitled to this exemption.

In 1942 she received revised assessments for the years 1935 to 1939 inclusive, totalling $192.89. Copies of these assessments form part of the record of the Department of National Revenue transmitted to the Registrar of the Court by the Deputy Minister for Taxation.

She declared that during the years 1935 to 1939 she lived in a house rented on Foul Bay Road for a year and nine months and subsequently in her own house on Richmond Road. She stated that in the first house she had four bedrooms, that she slept and had her meals

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there, that the two children were living with her and that she maintained the house entirely at her own expense. She said that in her house on Richmond Road there were three bedrooms, that she slept and ate there and that she maintained that home entirely at her own expense.

She declared that, before taking the children to Victoria, she was living with a woman who was on her school staff and who was related to the children.

She asserted that she was very interested in the children, that they spent most of their holidays with her and that she rented a camp in the summer and took them along with her for two months.

She said that, when she took the girls with her to Victoria in 1934, Beverley was nine years old and Helen six.

Asked what took place between Mr. and Mrs. Price and herself with regard to her having the children, Miss Anderson replied that she told them that she had received notice that she was going to be moved to Victoria and that she wanted to know how they felt about her taking the children. She said to them, that, if she could not bring the children, she was not quite sure whether she would take the position. She declared that the reasons why she wanted to bring the children with her were in the first place that she had always been fond of children and secondly that the home conditions were not good for them. She specified that at the time Mr. Price was unemployed and had very little money, that he was threatened with tuberculosis and that in fact he later went to the sanatorium at Kamloops. She added that "due to the conditions in the home the relations between the parents were not at all good" and she "thought that it was no place for children to be brought up". She thought she "could do more for the children than the parents could". She asserted that the parents never expressed a wish that the children should be returned to them.

To the question as to what happened in 1940 with regard to Beverley, the appellant answered thus (p. 8):

A. We went home for the Christmas holidays and Beverley I think became very attracted with Vancouver and thought it would be a better

and much more exciting place to live. She knew then that her father was going to Kamloops and I think that she just conceived the idea that if she went home she would have a wonderful time. Her mother had little or no control over her and I think she was just attracted and thought it would be better to go home.

Q. Did the parents make any request that Beverley go back to them?

A. Oh no, they were very angry when she went.

Q. And Helen remained with you?

A. Yes.

The witness testified that she paid for the children's maintenance during the period from 1934 to 1940 and for their education. She added that since 1940 she has paid for Helen's maintenance. She said she provided for them the ordinary school education, Beverley going to the end of grade 10, which is the first year of high school, and Helen to grade 12, to wit, the last year of high school. She stated that both girls had ten years of piano instruction, and that Helen, in addition, had two years of violin instruction. She declared categorically that the parents never offered to pay any costs of the maintenance and education of the children. She said she regarded the children just as if they were her own.

In cross-examination Miss Anderson specified that the relative with whom the children and she were living in Vancouver was an aunt of their mother. She admitted that during the period when she lived in Vancouver with the children she was not providing for them entirely.

She repeated that the children corresponded with their father while he was in Kamloops and said they did so at her request, as she "thought it would be a nice gesture on their part". She added that they acknowledged receipt of the gifts which they received on various anniversaries and appropriate times for gifts, such as Christmas.

No evidence was adduced on behalf of respondent.

The provisions of the Income War Tax Act, R.S.C. 1927, chap. 97, as amended by 22-23 George V, chap. 43, section 4, assented to on May 26, 1932, and made applicable by section 11 to income of the 1931 taxable period and periods ending therein and of all subsequent periods, in virtue

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whereof the appellant claims exemption are contained in paragraph (*c*) of subsection (1) of section 5. The relevant part of said subsection reads as follows:

> 5. "Income" as hereinbefore defined shall for the purposes of this Act be subject to the following exemptions and deductions:
>
> (*c*) Twenty-four hundred dollars in the case of a married person or householder or any other person who has dependent upon him any of the following persons:
>
> (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;

The definition of "householder" is given in subsection (*f*) of section 2 of the Income War Tax Act as set out in chapter 97 of the Revised Statutes of Canada 1927, which in part, after countless amendments and a much laboured reshaping of the Act, became clause (iii) of paragraph (*c*) of subsection (1) of section 5; it is in the following terms:

> (*f*) "householder" means
>
> (i) an individual who at his own and sole expense maintains a self-contained domestic establishment employing therein on full time a housekeeper or servant, or
>
> (ii) an individual who maintains a self-contained domestic establishment and who actually supports and maintains therein one or more individuals connected with him by blood relationship, marriage or adoption;

Does the word "adoption", inserted in paragraph (*f*) of subsection 1 of section 2 of the Income War Tax Act by 16-17 George V, chap. 10, and constantly kept in the numerous statutes which followed, apply only to adoptions made in compliance with the requirements of an adoption Act of one of the provinces or does it include a *bona fide de facto* adoption? This is the question arising for solution.

It was argued on behalf of appellant that if Parliament had intended to restrict the exemptions in the case of adoption to adoptions carried out pursuant to an agreement in writing it would have said so. In support of this argument reliance was placed on *Maxwell, The Interpretation of Statutes*. Counsel quoted a passage on page 2 of the eighth edition, which is reproduced in the ninth edition at page 3 under the caption "Literal Construction". It reads thus:

> The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and, otherwise, in their ordinary meaning;

The author refers to the case of *The Queen on the Prosecution of J. F. Pemsel* v. *The Commissioners of Income Tax* (1). At page 309 we find the following observations by Fry, L.J.:

> There are some rules of construction to which it is convenient to refer. The words of a statute are to be taken in their primary, and not in their secondary, signification. If, therefore, the words are popular ones they should be taken in a popular sense, but if they are words of art they should be *prima facie* taken in their technical sense. That was laid down by Lord Wensleydale in *Burton* v. *Reevell* (16 M. & W. 307), where he says: "When the legislature uses technical language in its statutes, it is supposed to attach to it its technical meaning, unless the contrary manifestly appears." That rule is not, in my opinion, the less applicable when the words have a distinct technical meaning and a vague popular one.

The judgment of the Court of Appeal was affirmed by the House of Lords, the decision whereof is reported under the name *The Commissioners for Special Purposes of The Income Tax and John Frederick Pemsel* (2). We find in the reasons of Lord Halsbury, L.C., dissenting on the main point at issue, the following observations which, although not absolutely to the point, are interesting (p. 542):

> Whether these dispositions, or any of them, are charitable purposes, within the meaning of the exemption I have quoted above, must be determined upon a consideration of what those words "charitable purposes" mean in the exemption in question.
>
> Now, before proceeding to discuss the words themselves, I somewhat protest against the assumption that the alternative is to be between a popular and what is called a technical meaning, unless the word "technical" itself receives a construction different from that which is its ordinary use. There are, doubtless, some words to which the law had attached in the stricter sense a technical meaning; but the word "charitable" is not one of those words, though I do not deny that the old Court of Chancery, in enforcing the performance of charitable trusts, included in that phrase a number of subjects which undoubtedly no one outside the Court of Chancery would have supposed to be comprehended within that term. The alternative, therefore, to my mind may be more accurately stated as lying between the popular and ordinary interpretation of the word "charitable," and the interpretation given by the Court of Chancery to the use of those words in the statute of 43 Elizabeth.

After commenting briefly on the judgment of the Court of Session in re *Baird's Trustees* v. *Lord Advocate* (3), in which the judges were of opinion that the words "charitable

(1) (1888) 22 Q.B.D. 296
(2) (1891) A.C. 531.
(3) (1888) 15 Sess. Cas. 4th Series, 682.

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purposes" must be read in their popular signification and could not have the comprehensive meaning attached to them in the English law, Lord Herschell made the following remarks (p. 571):

> I am unable to agree with the view that the sense in which "charities" and "charitable purpose" are popularly used is so restricted as this. I certainly cannot think that they are limited to the relief of wants occasioned by lack of pecuniary means.
>
> * * * *
>
> I think, then, that the popular conception of a charitable purpose covers the relief of any form of necessity, destitution, or helplessness which excites the compassion or sympathy of men, and so appeals to their benevolence for relief.
>
> Nor am I prepared to say that the relief of what is often termed spiritual destitution or need is excluded from this conception of charity. On the contrary, no insignificant portion of the community consider what are termed spiritual necessities as not less imperatively calling for relief, and regard the relief of them not less as a charitable purpose than the ministering to physical needs; and I do not believe that the application of the word "charity" to the former of these purposes is confined to those who entertain the view which I have just indicated. It is, I think, constantly and generally used in the same sense quite irrespective of any belief or disbelief in the advantage or expediency of the expenditure of money on these objects.

The author's next reference is to *Corporation of the City of Victoria and Bishop of Vancouver Island* (1). Lord Atkinson, who delivered the judgment of the Judicial Committee of the Privy Council, expressed the following opinion (p. 387):

> In the construction of statutes their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense. In *Grey* v. *Pearson.* (1857) 6 H.L.C. 61, 106, Lord Wensleydale said: "I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills, and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther." Lord Blackburn quoted this passage with approval in *Caledonian Ry. Co.* v. *North British Ry. Co.*, (1881) 6 App. Cas. 114, 131, as did also Jessel M.R. in *Ex parte Walton*, (1881) 17 Ch. D. 746, 751.

(1) (1921) 2 A.C. 384.

Further on Maxwell makes these comments (p. 14):

It is but a corollary to the general rule in question, that nothing is to be added to or to be taken from a statute, unless there are similar adequate grounds to justify the inference that the Legislature intended something which it omitted to express.

In support of this proposition Maxwell relies on the dicta of Tindal, C.J., in *Everett* v. *Wells* (1); of Lord Eldon, L.C., in *Davis* v. *Marlborough* (2); of Lord Westbury, L.C., in *Ex parte The Vicar and Churchwardens of St. Sepulchre's* (3); of Lord Westbury, L.C., in *Re Cherry's Settled Estate* (4).

The author then quotes the following extract from the reasons of Lord Mersey in *Thompson* v. *Goold & Co.* (5):

It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do.

Referring to the decision of the House of Lords in *Vickers, Son, & Maxim* v. *Evans* (6), Maxwell cites these remarks of Lord Loreburn, L.C. (p. 955):

The appellants' contention involves reading words into this clause. The clause does not contain them; and we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

Craies in his *Treatise on Statute Law,* fourth edition, dealing with the construction of statutes, also upholds the doctrine that, if the words used are unambiguous, they must be construed in their natural and ordinary sense. At page 68 we find the following statement:

1. The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention of the Parliament which passed them. "The tribunal that has to construe an Act of a Legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand these words it is natural to inquire what is the subject-matter with respect to which they are used and the object in view. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver.

"Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature" (*Warburton* v. *Loveland* (1831), 2 D. & Cl. (H. L.) 480, 489).

(*a*) The rule now under review is expressed in various terms by different Judges. The epithets "natural," "ordinary," "literal," "gram-

(1) (1841) 2 M. & Gr. 269, 277.
(2) (1819) 1 Swan. 74, 83.
(3) (1863) 33 L.J. Ch. 372, 375.
(4) (1862) 31 L.J. Ch. 351, 353.
(5) (1910) 79 L.J.K.B. 905, 911.
(6) (1910) 79 L.J.K.B. 954.

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matical," and "popular" are employed almost interchangeably, but their indiscriminate use leads to some confusion, and probably the term "primary" is preferable to any of them, if it be remembered that the primary meaning of a word varies with its setting or context, and with the subject-matter to which it is applied; for reference to the abstract meaning of words, if there be any such thing, is of little value in interpreting statutes.

See decisions mentioned in note (*h*) at the foot of page 68.

Further on the author explains the rule in these terms (p. 80):

2. The rule that the language used by the Legislature must be construed in its natural and ordinary sense requires some explanation. The sense must be that which the words used ordinarily bore at the time when the statute was passed. Said Lord Esher, M.R., in *Clerical, etc., Assurance Co.* v. *Carter,* (1889), 22 Q.B.D. 444, 448. "There has been a long discussion of various puzzling matters in relation to the provisions of the Income Tax Acts, but, after all, we must construe the words of schedule D according to the ordinary canon of construction; that is to say, by giving them their ordinary meaning in the English language as applied to such a subject-matter, unless some gross and manifest absurdity would be thereby produced."

Dealing with the departure from the grammatical meaning, Craies expresses the following opinion (p. 83):

The canon as to departure from the grammatical meaning is thus stated by Lord Blackburn in *Caledonian Ry.* v. *North British Ry.,* (1881), 6 App. Cas. 114, 131: "There is not much doubt about the general principle of construction. Lord Wensleydale used to enunciate (I have heard him many and many a time) that which he called the golden rule for construing all written engagements. I find that he stated it very clearly and accurately in *Grey* v. *Pearson,* (1857), 6 H.L.C. 61, 106, in the following terms: "I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted—at least in the Courts of law in Westminster Hall—that in construing wills, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no further." I agree in that completely, but in the cases in which there is a real difficulty this does not help us much, because the cases in which there is a controversy as to what the grammatical and ordinary sense of the words used with reference to the subject-matter is * * *"

See *Beal's Cardinal Rules of Legal Interpretation,* third edition, p. 343; *Sedgwick, Interpretation and Construction of Statutory and Constitutional Law,* second edition, p. 219; *Christophersen et al* v. *Lotinga* (1); *Abley* v. *Dale* (2).

(1) (1864) 33 L.J.C.P. 121, 123. (2) (1851) 20 L.J.C.P. 233, 235.

I think that it may be advantageous to refer to a few definitions of the word "adoption."

In *Wharton's Law Lexicon,* fourteenth edition, "adoption" is defined as follows:

Adoption, an act by which a person adopts as his own the child of another.

Following this definition the dictionary contains these commentaries:

Until recently there was no law of adoption in this country though it exists in other countries, * * *

By the Adoption of Children Act, 1926 (16 & 17 Geo. 5, c. 29), after the 31st December, 1925, the Court (usually in the Chancery Division) may authorize the adoption of an infant who is under twenty-one years of age, a British subject, and resident in England and Wales, by an applicant who is more than twenty-five years of age, and also twenty-one years older than the infant, unless closely related, and a British subject, resident and domiciled in England or Wales, but a single adopter, only, will be authorized unless two spouses jointly apply * * *

The consents of the parents and guardians (if any) and of any other persons having the custody of, or liable to contribute to, the support of the child, are required, and one of two spouses may not apply without the consent of the other, but the Court may dispense with any of these consents in the special circumstances provided for by the Act.

The *Imperial Dictionary of the English Language* (by John Ogilvie), second edition by Charles Annandale, contains the following definitions:

The act of adopting, or the state of being adopted; the taking and treating of a stranger as one's own child;

The New English Dictionary, edited by James A. H. Murray, volume I, defines "adoption" as follows:

The action of voluntarily taking into any relation; esp. of taking into sonship.

We find in *Webster's New International Dictionary,* second edition, this definition:

Adoption—voluntary acceptance of a child of other parents to be the same as one's own child.

In *Osborn's Concise Law Dictionary,* at the word "adoption", we read the following remarks:

Prior to the Adoption of Children Act, 1926 (16 & 17 Geo. 5, c. 29), the institution of adoption was unknown to English law. By that Act the High Court, the County Court, and a Court of Summary Jurisdiction is empowered on the application of any person desirous of adopting an infant who has never been married, to make an adoption order with the consent of the infant's parents or guardians (if any). Such order extinguishes the rights, duties, obligations and liabilities of parents or

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guardians of an adopted child as to its custody, maintenance and education, including the right to consent or dissent to its marriage, and vests them in the adopter, as though the adopted child had been born in wedlock to the adopter. The adopted child assumes the liability of a lawful child as to maintaining its parents, with regard to its adopted parents, and two spouses stand to an adopted child as its lawful father and mother. An applicant for an adopton order must not be under twenty-five years of age and must not be less than twenty-one years older than the infant, unless they are within the prohibited degrees of consanguinity.

There are material and interesting commentaries on the question of adoption in *Halsbury's Laws of England*, second edition, volume 17, under section 6 entitled "Adoption", particularly n[os] 1406, 1407, 1409, 1410 and 1416. I deem it appropriate to quote n[os] 1407 and 1416:

1407. But under the Adoption of Children Act, 1926, which was the first statutory recognition of the position of adopted children, the court has power, upon an application in the prescribed manner by any person desirous of being authorized to adopt an infant who has never been married, to make an order authorizing the applicant to adopt the infant. Such an order is called an adoption order.

1416. An adoption order extinguishes all rights, duties, obligations and liabilities of the parents or guardians of the child in relation to his future custody, maintenance, and education, including all rights to appoint a guardian or to consent or give notice of dissent to marriage. All such rights, duties, obligations, and liabilities become vested in, exercisable by, and enforceable against the adopter as though the adopted child were a child born to the adopter in lawful wedlock; in respect of these matters and in respect of the liability of a child to maintain its parents, the adopted child stands to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.

Reference may also be had beneficially to *Eversley* on Domestic Relations, fifth edition, pp. 415, 416 and 417. The author first deals with the Adoption of Children Act, 1926 (16 & 17 Geo. 5, c. 29) and explains the procedure to be followed for the purpose of obtaining an adoption order. He then sets forth the circumstances in which the adoption order may be granted as well as the restrictions in connection therewith. His observations are substantially similar to those found in Halsbury's Laws of England. Under the caption "Effect of Adoption Order", Eversley says (p. 416):

All the rights, duties, obligations and liabilities of the parent or guardian are extinguished upon an order being made, and these vest in and are exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock, and the adopted child stands in the same position as to the obligation to maintain its parents in regard to the adopter; and where the adopters

are spouses their position is that of lawful father and mother, and the adopted child is in the position towards the adopters of a child born in lawful wedlock to the adopters.

On page 417, dealing with what he calls "Existing De Facto Adoptions", the author writes:

> Where at the commencement of the Act (January 1, 1927) any infant was in the custody of and for two years was being brought up by any person or two spouses jointly, the Court may on the application of such person or spouses, and notwithstanding that the applicant is a male and the infant a female, make an order without requiring consents if satisfied that it is just and equitable and for the infant's welfare that consents should not be required.

See *Words and Phrases,* permanent edition, vol. 2 v° Adoption, p. 476 et seq.

Counsel for appellant referred to section 15 of the Interpretation Act (R.S.C. 1927, chap. 1), intimating that it is remedial; in fact the marginal note thereto is "Every Act remedial"; the section reads thus:

> Every Act and every provision and enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of any thing which Parliament deems to be for the public good, or to prevent or punish the doing of any thing which it deems contrary to the public good; and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment, according to its true intent, meaning and spirit.

The principle expressed in this section applies, as I think, to the provision of the Income War Tax Act dealing with exemptions. The interpretation given to this provision must not be narrow, mean and rigid; on the contrary it should be broad, generous and liberal.

The first Adoption Act in British Columbia, being chapter 2 of the Statutes of 1920 (10 George V), was passed on April 17, 1920.

Section 2 enacts:

> Any adult unmarried person, or any adult husband or wife, or any adult husband and his adult wife together, may adopt an unmarried minor by applying for and obtaining leave pursuant to this Act.

Section 4 provides that application for leave to adopt a minor shall be made by petition to the Court. Section 2 says that the "Court" means the Supreme Court (of the province).

Section 5 stipulates that no order for adoption shall be made without the written consent, verified by affidavit, of the following persons: (*a*) the minor, if over twelve

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years of age; (*b*) the petitioner's husband or wife, unless they are lawfully separated or they jointly adopt the minor; (*c*) the parents, or surviving parent, or the parent having the custody of the minor, if legitimate, and the mother only if the minor is illegitimate; (*d*) the parent by adoption if the minor has been previously adopted; (*e*) the guardian or adult person having lawful custody of the minor, if he can be found, where the minor has no parent living or no parent whose consent is necessary; (*f*) a children's aid society, or the Superintendent of Neglected Children, where the minor has no parent living whose consent is necessary and no guardian having lawful custody of the minor can be found.

Subsection 2 of section 5 deals with the powers of the Court to dispense with the consent of a parent in certain cases which are not pertinent herein.

Section 6 regarding the order of adoption reads thus:

> On the hearing of the petition, if the Court is satisfied of the ability of the petitioner to bring up, maintain, and educate the minor properly, and of the propriety of the adoption, having regard to the welfare of the minor and the interest of the natural parents, if living, the Court may make an order for the adoption of the minor by the petitioner.

Section 7 determines the effect of the adoption as follows:

> Upon the making of the order of adoption:
>
> (*a*) The natural parents of the minor, and any previous parent by adoption, and the guardian or person in whose custody the minor has been shall be divested of all legal rights in respect of the minor, and shall be freed from all legal obligations and duties in respect of the minor as from the date of the order;
>
> (*b*) The minor shall take the surname of the petitioner as his parent by adoption, or such name as the Court on the request of the petitioner may order;
>
> (*c*) The parent by adoption and the minor shall sustain toward each other the legal relation of parent and child, and shall respectively have all the rights and be subject to all the obligations and duties of that relation, including the right of inheritance and succession to real and personal property from each other, except as those rights are affected by the provisions of this Act.

Counsel for respondent submitted that, when the word "adoption" was first introduced in the Income War Tax Act in 1926, there were Adoption Acts in force in all the provinces and that these Acts, with one exception, provided for an application to the Court by means of a petition and for a Court order. This is exact as may be ascertained by reference to the several Acts which are, leaving aside the Act of British Columbia previously referred to, as follows:

Statutes of Alberta, 1913 (second session), chapter 13, The Infants Act, section 27—assented to October 25, 1913—reproduced in chapter 216 of the Revised Statutes of Alberta, 1922.

Statutes of Saskatchewan, 1921-22, chapter 64, The Adoption of Children Act, section 3—assented to January 24, 1922;

Statutes of Manitoba, 12 George V, chapter 2, An Act respecting the Welfare of Children, Part IX, section 120—assented to April 6, 1922;

Statutes of Ontario, 11 George V, chapter 55, The Adoption Act, 1921, section 3—assented to April 8, 1921;

Statutes of Quebec, 14 George V, chapter 75, An Act respecting Adoption, section 1—assented to March 15, 1924;

Consolidated Statutes of New Brunswick, 1903, chapter 112, The Supreme Court in Equity Act, section 240; reproduced in chapter 113 of the Revised Statutes of New Brunswick, 1927, The Judicature Act, Order 56, Special Proceedings in the Chancery Division, section 56;

Revised Statutes of Nova Scotia, 1900, chapter 122, Of the Adoption of Children, section 1; reproduced in the Revised Statutes of Nova Scotia, 1923, chapter 139.

Chapter 6 of the Acts of the General Assembly of Prince Edward Island, 1916, entitled An Act regarding Adoption of Children, 1916, assented to on May 4, 1916, provides for the adoption of children by an agreement in writing. Section 1 enacts:

> An agreement in writing by the parent or next of kin of an infant to assign all rights whatever over such infant to a third person named in such agreement, shall be considered a transfer of guardianship of such infant, and shall be binding in the case of males until they attain the age of twenty-one years, and in the case of females until the age of twenty-one, unless sooner married.

Section 3 stipulates that:

> Any agreement duly executed transferring or purporting or intending to transfer the guardianship of a child shall be valid in law notwithstanding any defect in form or substance to transfer such guardianship and shall impose upon the transferee all such obligations and duties as are imposed by law upon a parent or guardian.

The Act does not provide for any application to the Court to ratify or confirm the agreement.

Neither of these Acts preclude the informal adoption.

It was submitted on behalf of appellant that the word "adoption" has an ordinary, popular meaning, widely used by the public, which has not been destroyed or discarded by the enactment of the various provincial adoption statutes. It was urged that, prior to the passage of these statutes, adoptions were made by written or by oral agreements and that the statutes did not preclude that form of adoption. Even if we conclude that the adoption Acts have not done away with the form of adoption generally

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in use before the provincial legislature thought fit to enact statutes dealing with adoption, the problem with which we are confronted is not solved. We have to determine if the word "adoption" inserted in the Income War Tax Act by 16-17 George V, chapter 10, means an adoption carried out in compliance with the requirements of one of the various adoption Acts or an adoption made in accordance with the ordinary, common and usual sense given to the word by the great majority, nay the quasi-unanimity of the people.

As suggested by counsel for appellant, it would have been a very simple thing for the legislators to add after the word "adoption" the words "in accordance with the provisions of the adoption act in force in the province where the adoption is contracted" or words to the same effect. May we conclude, notwithstanding the omission of this phrase, that Parliament intended to restrict the exemption to adoptions executed in conformity with the provincial laws? No, if we adopt the doctrine laid down by the authors and upheld in the numerous decisions therein cited, in which I am disposed to concur.

A regulation (No. 18), dated December 3, 1942, published in the *Canada Gazette* of December 12, gives the definition of the terms "blood relationship", "marriage" and "adoption" in clause (iii) of paragraph (*c*) of subsection 1 of section 5; the relevant part thereof reads thus:

Whereas the First Schedule to the Income War Tax Act provides for the taxation, in the same manner as a married person, of an unmarried person who maintains a self-contained domestic establishment and actually supports therein a person wholly dependent upon the taxpayer and "connected with him by blood relationship, marriage or adoption";

And whereas, under Section 75, subsection 2, of the Income War Tax Act, regulations may be made for carrying this Act into effect:

Now therefore for the purposes of the said First Schedule, it is hereby declared that:

* * * *

(*c*) "adoption" only extends to children legally adopted.

Section 75 of the Income War Tax Act at the time read as follows:

75. The Minister shall have the administration of this Act and the control and management of the collection of the taxes imposed hereby, and of all matters incident thereto, and of the officers and persons employed in that service.

2. The Minister may make any regulations deemed necessary for carrying this Act into effect, and may thereby authorize the Commis-

sioner of Income Tax to exercise such of the powers conferred by this Act upon the Minister, as may, in the opinion of the Minister, be conveniently exercised by the Commissioner of Income Tax.

I entertain a serious doubt about the legality of this regulation. I do not think that the Governor General in Council can amend an Act of Parliament; much less the Commissioner of Income Tax. This manner of legislating is utterly undemocratic, nay purely and simply autocratic.

I may note incidentally that the Commissioner of Income Tax became Deputy Minister of National Revenue for Taxation by order-in-council P.C. 5867, passed on July 24, 1943, in accordance with section 1 of chapter 24 of 7 George VI, assented to on the same date.

This regulation dated December 3, 1942, is posterior to the taxation years involved and has no bearing in the present case. No retroactive effect is given to it and retroactivity is not to be presumed: *Maxwell, Interpretation of Statutes,* ninth edition, p. 221; *Craies,* op. cit., p. 331; *Beal's,* op. cit., p. 468; 31 *Halsbury's Laws of England,* second edition, p. 513; *Winter et al* v. *Trans-Canada Insurance Co.* (1); *Young* v. *Adams* (2); *Midland Railway Co.* v. *Pye* (3); *Snowdown Colliery Co. Ltd., in re South-Eastern Coalfield Extension Co. Ltd.* v. *Snowdown Colliery Co. Ltd.* (4); *Smith* v. *Callander* (5); *West* v. *Gwynne* (6).

The case is governed by the Act as it existed before the above regulation was made by the Commissioner of Income Tax pursuant to the authorization granted to him by the Minister, in virtue of subsection (2) of section 75. It is common knowledge that informal adoption was still largely practised after the various Adoption Acts came into force; many among the adopters were those who were totally unaware of the existence of Adoption Acts.

It is idle to say that the Adoption Acts had no connexity with income tax. Indeed all were enacted before the word "adoption" was put into the Income War Tax Act. In 1926 Parliament added the words "or adoption" after the words "blood relationship" and "marriage" but omitted in the interpretation section a definition of "adoption".

(1) (1934) 1 Ins. L.R. 326.
(2) (1898) A.C. 469.
(3) (1861) 10 C.B. (n.s.) 179, 191.
(4) (1925) 94 L.J. Ch. 305, 307, 308.
(5) (1901) A.C. 297, 305.
(6) (1911) 2 Ch. 1, 15.

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If we take the word "adoption" in its popular sense it means the act by which a person adopts as his own the child of another or, in other terms, the acceptance by a person of a child of other parents to be the same as his own child.

This is precisely what the appellant has done with regard to Beverley Price and Helen Price, minor children of Charles Price and Margaret Grace Price, with the latter's consent and, as the evidence discloses, to their relief and entire satisfaction. Beverley was then seven years old and Helen four. During the Christmas holidays of 1940 the children, accompanied by the appellant, went to Vancouver to see their parents. Beverley, thinking Vancouver was a more lively and exciting place than Victoria, decided not to return to Victoria but to stay with her parents in Vancouver. So from 1932 to 1940, both inclusive, the appellant had the care and custody of the two children. After the Christmas holidays of 1940, when Beverley made up her mind to stay with her parents in Vancouver, Helen continued to remain with the appellant.

The proof shows that from 1934 to 1940 Beverley and Helen Price were kept, maintained, educated and cared for by the appellant at her own expense. The proof also reveals that during the period when the appellant lived at the home of the children's great-aunt in Vancouver she was not providing for the children entirely, but only partially. From 1934 however, when she moved to Victoria, she alone provided for them.

It seems obvious to me that the position of appellant with respect to Beverley and Helen Price meets all the exigencies of clause (iii) of paragraph (*c*) of subsection 1 of section 5 of the Income War Tax Act, as amended by 23-24 George V, chapter 41, section 4, which was previously paragraph (*f*) of section 2 of chapter 97 of the Revised Statutes of Canada, 1927, and originally clause (ii) of paragraph (*n*) of section 2 as enacted by 16-17 George V, chapter 10, section 1. Indeed she was at all material times an individual who maintained a self-contained domestic establishment and who actually supported therein two individuals connected with her by adoption.

From 1934 to 1940 she alone looked after the care, custody, support and education of Beverley and Helen Price and the proof discloses that she did it unsparingly. She treated the two children as well as if they had been her own. I believe that is what the law, as originally drawn, contemplated. I do not think that Parliament intended that the adoption ought to be made in compliance with the requirements of the various adoption acts, the main and most important objects whereof concern civil status and civil rights, which do not fall within the field of the Dominion jurisdiction but form part of the domain of the provinces. After giving full consideration to clause (iii) of paragraph (*c*) of subsection 1 of section 5 and the fact that the word "adoption" was inserted in the section of the statute dealing with deductions and exemptions unreservedly, I am satisfied that the legislators, who are usually accurate and precise, wanted, at a time when the exchequer was not so heavily burdened, to put on the same footing as the natural parents any individual who, maintaining a self-contained domestic establishment (otherwise residence), actually supports therein one or more persons connected with him by blood relationship, marriage or adoption.

After a careful perusal of the appellant's testimony and of the exhaustive argument of counsel, an attentive study of the law and its numerous amendments and a review of the precedents, I have reached the conclusion that the case of the appellant comes within the ambit of clause (iii) of paragraph (*c*) of subsection 1 of section 5 and that she is entitled to the exemption thereby provided for and that consequently her appeal must be maintained.

There will be judgment maintaining the appeal, setting aside the assessments for the year 1935, 1936, 1937, 1938 and 1939 and the decision of the Minister and declaring that the appellant is entitled to the exemptions claimed in her notice of appeal.

The appellant will be entitled to her costs against the respondent.

Judgment accordingly.