
1946
June 20
1948
May 27

BETWEEN:

ROBERT F. ACORN.....APPELLANT;

AND

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

Revenue—Income Tax—Income War Tax Act, R.S.C. 1927, c. 97, sub paras. (I), (II), (III), para. (t) s. 4—Member of the reserve army Canadian Military Forces not entitled to exemption—Appeal dismissed.

Held: That a member of the reserve army of the Canadian Military Forces is not entitled to the exemption provided for in the Income War Tax Act, R.S.C., 1927, c. 97, paras. (I), (II), (III) para. (t) s. 4.

2. That sub paragraphs (I), (II), (III) of paragraph (t) of s. 4 of the Income War Tax Act, R.S.C., 1927, c. 97, as amended apply to members of the Canadian Naval, Military and Air Forces on active service.

APPEAL under the Income War Tax Act.

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

H. F. MacPhee, K.C. and *N. W. Lowther, K.C.* for appellant.

J. O. C. Campbell and *G. R. Holmes* for respondent.

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

ANGERS J. now (May 27, 1948) delivered the following judgment:

This is an appeal under sections 58 and following of the Income War Tax Act by Robert F. Acorn, of the City of Charlottetown, Province of Prince Edward Island, against the assessment concerning the income for the year 1943, which from the copy of notice of assessment included in the file of the Department of National Revenue transmitted by the Minister to the Registrar of the Exchequer Court, appears to have been mailed on January 31, 1945.

The notice of assessment says that the taxable income has been determined in the sum of $2,201.89 and notifies the taxpayer that he is assessed at $98 and that the amount payable after deduction at the source and application of other payments on the assessment is $29.40, payable on February 28, 1945, made up as follows:

amount of tax levied		$98.00
paid by deduction at source	$54.15	
other payments applied on assessment	14.45	
		68.60
		$29.40

In his notice of appeal dated February 28, 1945, a copy whereof forms part of the record of the Department, the appellant alleges (*inter alia*):

1948

ACORN
v.
MINISTER OF NATIONAL REVENUE

Angers J.

whereas attached statement to income tax return filed by me for the taxation year 1943 in relation to Army Pay received, and declared as non-taxable income reads as follows:

annual training, 1943	$ 78.00
balance received, 1943	56.80
declared in 1942	87.20
	$222.00
less declared in 1942	87.20
balance	$134.80

and whereas having been assessed on the balance shown of $134.80, amounting to a tax of $29.40.

and whereas The Income Tax Act, Chapter 97, R.S.C. 1927, and amendments, July, 1943, Part II, Section 4T (1) (iii) reads as follows:

"Exemptions & Deductions
Excepted Incomes

4. The following incomes shall not be liable to taxation hereunder.

T The service pay and allowances of:

(i) Members of the Canadian Naval Military and Air Forces, etc. while in the Canadian Active Service Forces.

(iii) Members of the said Forces whose income from such service pay and allowances is at the rate of less than $1,600 per annum."

I therefore appeal this assessment on the grounds that I was paid at less than the yearly rate of $1,600 and am therefore not liable to the assessed sum of $29.40.

On April 30, 1945, the Minister of National Revenue, per C. F. Elliott, deputy minister of National Revenue for Taxation, affirmed the assessment on the ground that "the service pay and allowances received by the taxpayer while in the reserve army are not within the exemption provided by paragraph (*t*) of section 4 of the Act and

therefore on these and related grounds and by reason of other provisions of the Income War Tax Act the said Assessment is affirmed."

In accordance with Section 60 of the Act the appellant sent to the Minister a notice that he was dissatisfied with his decision and that he desired his appeal to be set down for trial. With his notice of dissatisfaction the appellant forwarded a recapitulation of the facts, statutory provisions and reasons which he intended to submit to the Court in support of his appeal.

In his recapitulation of the facts, statutory provisions and reasons for appeal the appellant states in substance that during the year 1943 he was a member of the Canadian Military Forces holding the rank of Lieutenant from January 1 to June 1, 1943, and the rank of Captain from June 1, 1943, to the end of the year, that his unit was the 17th (R) Armoured Regt. with headquarters at Charlottetown, P.E.I., that as such member of the Canadian Military Forces he received service pay and duly reported it on an appendix to his income tax return.

The appellant adds that, since on this appeal a distinction will be made between the service pay received while attending the regular annual camp training and that received while attending the regular training parades at unit headquarters, he reported in his return the following amounts:

service pay for attending annual camp	$ 78.00
service pay for attending regular training parades at headquarters local	56.80
	$134.80

The appellant alleges that under sub-paragraph (iii) of paragraph (*t*) of Section 4 of the Act, the relevant portion of which is quoted in the notice of appeal and reproduced in these notes, the service pay of members of the Canadian Military Forces is exempt from taxation where the income for service pay is paid at the rate of less than $1,600 per annum. He declared that under the policy of training laid down for the 17th (R) Armoured Regt. by the Military

1948

ACORN v. MINISTER OF NATIONAL REVENUE

Angers J.

Headquarters the maximum service pay which could be paid to a member of his unit in 1943 was 15 days at the annual camp and 40 days training at local headquarters and training for officers and non-commissioned officers, making a total of 55 days.

The appellant then explains how his pay and allowances were made up and sets out his family relations; I think I had better quote this part of the notice of dissatisfaction:

3. As a Lieutenant in the Canadian Military Forces I was paid $3.60 per day.

AND a day is made up by three nights attendance at regular training periods at local headquarters. The utmost pay I could receive as a Lieutenant for forty days training at local headquarters would be $144 and even if I were fully employed by the year I would receive only $1,314.

4. During the taxation year under review I was a married man and had three dependent children. Attached hereto is T1 Armed Forces (Supplemental) a form prescribed and authorized by the Minister of National Revenue. This form sets forth a table showing, according to the marital status of the member, the basic income of such member of the forces and reference to this table will show that the basic income for a married man with three dependent children is $2,520.

The appellant concludes the said notice with the contention that Section 4 (t) (iii) is clear and that the words "members of the said Forces" appearing in the first line of sub-paragraph (iii) of paragraph (t) can only have reference to "members of the Canadian Naval, Military and Air Forces", which are the governing words in the first line of sub-paragraph (i).

In his reply to the notice of dissatisfaction the Minister denies the allegations in the notice of appeal and the notice of dissatisfaction, in so far as incompatible with the statements contained in his decision, and affirms the assessment as levied.

A statement of facts agreed on by counsel for appellant and counsel for respondent was filed at the hearing; it reads thus:

1. There are no facts in dispute.

2. During all of the year 1943 the appelalnt was a member of the Canadian Military Forces, being an officer in the 17th (R) Armoured Regiment, a Unit of the Reserve Army, with headquarters at Charlottetown, in Prince Edward Island. From January 1 to June 1 of that year he held the rank of Lieutenant, and as such, was entitled to pay at the rate of $3.60 per day. From June 1 to December 31 of that year, he held the rank of Captain, and as such, was entitled to pay at the rate of $5.20 per day.

1948

ACORN
v.
MINISTER OF NATIONAL REVENUE

Angers J.

3. Under the policy of training laid down for the said regiment by Canadian Military Headquarters, the maximum service pay which could be earned by an officer of that unit during the year 1943 was as follows:

15 days at annual Camp

40 days training at local headquarters (each day being made up by three nights attendance at regular training periods)

55 days total

4. The appellant received pay as such officer for the said year as follows:

16 days training at local headquarters at Lieutenant's pay, being $3.60 per day, less tax deducted of 80c	$ 56.80
15 days at annual Camp at Captain's pay, being $5.20 per day	78.00
	$134.80

5. The marital status of the appellant during the year 1943 was that of a married man with three dependents.

6. The question at issue is whether or not the military pay of the appellant as above mentioned is exempt from taxation under the provisions of the Income War Tax Act.

It was submitted on behalf of the appellant that the words "members of the said Forces" in sub-paragraph (iii) of paragraph (*t*) of section 4 can refer only to Canadian Military Forces and that in doing so the appellant is merely following the ordinary and grammatical sense of the words. In connection with the rule that words must be construed according to their ordinary and grammatical sense reliance was placed on Beal's Cardinal Rules of Legal Interpretation, 3rd edition, p. 343, where, under the heading "The Golden Rules", the author states:

> 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 statute, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, repugnance and inconsistency, but no further.

Maxwell in "The Interpretation of Statutes", 9th edition, dealing with the literal construction, says at page 3:

> 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; and, secondly, that the phrases and sentences are to be construed according to the rules of grammar. From these presumptions it is not allowable to depart where the language admits of no other meaning. Nor should there be any departure from them where the language under consideration is susceptible of another meaning, unless adequate grounds are found, either in the history or cause of the enactment or in the context or in the consequences which would result from the literal interpretation, for concluding that that interpretation does not give the real intention of the Legislature. If there is nothing to modify,

1948

ACORN
v.
MINISTER OF NATIONAL REVENUE

Angers J.

nothing to alter, nothing to qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences.

Craies, in his "Treatise on Statute Law", 4th edition, at page 68, makes the following observations:

> 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.

See also Sedgwick, Interpretation and Construction of Statutory and Constitutional Law, 2nd edition, p. 219.

Maxwell in his work refers to, among others, the case of *The Queen on the Prosecution of J. F. Pemsel* v. *The Commissioners of Income Tax* (1), in which Fry L.J. expressed the following opinion (p. 309):

> 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 sub-nom. *The Commissioners for Special Purposes of the Income Tax and John Frederick Pemsel* (2).

Maxwell also refers to *Corporation of the City of Victoria and Bishop of Vancouver Island* (3), where Lord Atkinson, who delivered the judgment of the Judicial Committee of the Privy Council, made these comments, which are very much to the point (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

(1) (1888) 22 Q.B.D. 296.
(2) (1891) A.C. 531.
(3) (1921) 2 A.C. 384.

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).

Reference may also be had to the following decisions: *Warburton* v. *Loveland* (1), *Perry* v. *Skinner* (2), *Attorney General* v. *Lockwood* (3), *Richards* v. *McBride* (4), *Christopherson* v. *Lotinga* (5), *Vacher & Sons Ltd.* v. *London Society of Compositors* (6), *New Plymouth Borough Council* v. *Taranaki Electric Power Board* (7).

This is trite law and it seems to me elementary.

It was argued on behalf of appellant that there is no inconsistency in the contention that the word "Forces" only has reference to the word as it appears in sub-paragraph (i) of paragraph (*t*) and that the statement that it can only refer to the Canadian Active Service Forces is not arrived at by following the ordinary and grammatical rules. Counsel contended that sub-paragraph (i) deals with the members of the Canadian Military Forces while in the Canadian Active Service Forces, that sub-section (ii), when mentioning the "said Forces", means the Canadian Military Forces, notwithstanding respondent's claim that the reference in sub-paragraph (ii) is to the Canadian Active Service Forces, and that the ordinary and grammatical sense of the words and the manner in which they are used tend to the conclusion that the word "Forces" as used in sub-paragraphs (ii) and (iii) refers to Canadian Military Forces, being the large class of "Forces" mentioned in sub-paragraph (i). I am unable to accept this proposition.

(1) (1832) 2 D. & C. 480, 489; (1832) 6 Bligh 1, 21.
(2) (1837) 2 M. & W. 471, 475.
(3) (1842) 9 M. & W. 378, 398.
(4) (1881) L.R. 8 Q.B.D. 119, 122.
(5) (1864) 15 C.B.R. n.s. 809, 813.
(6) (1913) A.C. 107, 113.
(7) (1933) 149 L.T.R. 594.

1948

ACORN v. MINISTER OF NATIONAL REVENUE

Angers J.

Counsel for respondent agreed that the grammatical construction must be used in the interpretation of statutes.

Sub-paragraph (i) of paragraph (*t*) deals with members of the Canadian Naval, Military and Air Forces *while in the Canadian Active Service Forces and overseas on the strength of an Overseas Unit outside of the Western Hemisphere.*

Sub-paragraph (ii) relates to members of the said Forces to wit the Canadian Naval, Military and Air Forces, *while on active service in Canada or anywhere in the Western Hemisphere,* whose duties are of such a character as are required to be performed afloat or in aircraft.

It seems clear to me that both sub-paragraphs (i) and (ii) apply to members of the Canadian Naval, Military and Air Forces on active service. The same remark applies to members of the said Forces mentioned in sub-paragraph (iii).

It was urged on behalf of appellant that the words "said forces" in sub-paragraph (iii) refer to Canadian Naval, Military and Air Forces in sub-paragraph (i) but not to Canadian Active Service Forces.

I cannot see any foundation in this contention.

"Relative words", as stated in Broom's Legal Maxims, 8th edition, p. 528, must generally be referred to the last antecedent, the last antecedent being the last word (or words) which can be made an antecedent so as to have a meaning:

> Relative words must ordinarily be referred to the last antecedent, where the intent upon the whole deed or instrument does not appear to the contrary, and where the matter itself does not hinder it: the "last antecedent" being the last word which can be made an antecedent so as to have a meaning.

The last antecedent in the present case is "Canadian Active Service Forces". Those are the forces to which, as I think, the words "said forces" in sub-paragraphs (ii) and (iii) apply.

In support of this opinion reference may be had to the following cases: *King* v. *Wright* (1), *Esdaile* v. *Maclean* (2), *The Eastern Counties and The London & Blackwall Railway Companies* v. *Marriage* (3), *Re Hinton Avenue Ottawa* (4).

(1) (1834) 1 A. & E. 434.
(2) (1846) 15 M. & W. 277.
(3) (1860) 9 H.L.C. 32, 68.
(4) (1920) 47 O.L.R. 556, 563.

I may perhaps note incidentally that the same words used in different sections, or subsections, of an act must be interpreted as having the same meaning: *The Wolfe Company* v. *The King* (1); *Blackwood* v. *The Queen* (2).

After reading carefully paragraph (*t*) of section 4 of the Act, perusing attentively the able and exhaustive argument of counsel and reviewing as elaborately as possible the doctrine and the jurisprudence, I have reached the conclusion that the appellant is not entitled to the exemption claimed by him, seeing that he was not in the year 1943 a member of the Canadian Military Forces on active service within the scope of paragraph (*t*) of section 4 but that he was then in the reserve army. His appeal must accordingly be dismissed and the assessment in question as well as the decision of the Minister affirming the same maintained.

The respondent will have his costs against the appellant, if he deems fit to claim them.

Judgment accordingly.