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Dec. 7.
Dec. 27.

WILLIAM KENNEDYAPPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE } RESPONDENT.

Revenue—Government Annuities—Income—7-8 Ed. VII, c. 5—Income War Tax Act, 1917—Exemptions—Burden of proof—“ Issued exempt.”

Held, that the annuity paid to a person by virtue of a Dominion Government annuity contract, issued under the provisions of 7-8 Ed. VII, c. 5, is “income” within the meaning of the Income War Tax Act, 1917, and is not issued free of taxation.

- 2. That any representation made to the contrary by any officer of the Crown, cannot alter the law nor bind the Crown in any way.
- 3. That the onus of proving that an income is exempt from taxation under the Taxing Act, is upon the one claiming such exemption.

- (1) (1896) 27 S.C.R. 68.
- (2) (1883) L.C.J. 214.
- (3) (1889) 17 R.L. 315.

- (4) (1890) 35 L.C.J. 29.
- (5) (1895) R.J.Q. 8, C.S. 308.
- (6) (1877) 1 S.C.R. 360.

4. That the annuity in question not having been "issued exempt" from taxation, and, in any event, not being in the nature of a "bond" or "security" mentioned in sec. 5, subsec. i of the Taxing Act (now sec. 4, subsec. j, R.S.C., 1927, ch. 97) is not exempt from taxation, and was properly taxed.

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APPEAL by the appellant herein from the decision of the Minister refusing to grant him the full exemption of \$3,000.

Audette J.

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

Romeo LeBlanc for the appellant.

C. F. Elliott for respondent.

The facts are stated in the reasons for judgment.

AUDETTE J., now this 27th December, 1928, delivered judgment.

This is an appeal, under the provisions of sec. 15 *et seq.* (now 58 *et seq.*, c. 97, R.S.C., 1927), of The Income War Tax Act, 1917, and amendments thereto, from the assessment of the appellant's income for the year ending 31st December, 1926.

Briefly stated the appeal arises from the decision of the Minister granting the appellant only \$1,500 exemption as a married man. He claims he should receive \$3,000 exemption, because \$1,500 of his wife's income amounting to \$1,720 is derived from a Dominion Government Annuity which he claims to be tax free. Hence the present controversy.

The following admission of fact agreed upon by the parties was duly filed to be used on this appeal, viz:—

1. The appellant, William Kennedy, Jr., was a resident of Canada during the year 1926.
2. He was in receipt of a net income during 1926 of \$24,914.50.
3. He filed a return of his income on the 29th April, 1927.
4. There was assessed and levied a tax thereon in the sum of \$2,544.30.
5. In determining the tax payable there was allowed a statutory exemption of \$1,500 and not an exemption of \$3,000.
6. The wife of William Kennedy, Jr., was and is Elizabeth Ann Kennedy, who resided with him in Canada in 1926.
7. The income of the wife of William Kennedy, Jr., for the year 1926, was \$1,720 made up as follows:

Dominion Government Annuity.....	\$1,500
Industrial bond interest.....	220

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8. A copy of the annuity contract between the said Elizabeth Ann Kennedy and the Dominion Government, certified by the Superintendent of Annuities, is attached hereto.

Approved and agreed to.

The contention that the wife's annuity contract issued under the provisions of 7-8 Edward VII, ch. 5, was issued from from taxation, may be first considered.

There is no provision in that Act which makes such annuity free from taxation, and moreover the annuity was not "*issued free*" of taxation. Any representation made to the contrary by any officer of the respondent or on behalf of the Crown is without any force or effect as no one had the power to change the law as enacted.

The Crown is not bound by the laches of its officers and an erroneous construction of a statute by the officers of the Crown affords no ground to recover from such construction. *DeGalindez v. The King* (1), confirmed on appeal to the Supreme Court of Canada (2).

Section 3 of the Taxing Act defining the meaning of income, includes in its first paragraph (the Act then in force) the payments made under an annuity contract. It therefore becomes, in its very nature, liable to taxation, as forming part of the wife's income.

This is a case arising in the province of Quebec and which is accordingly to be governed as to property and civil rights by the laws of that province. However, it will not be necessary for this Court, in the consideration of the case, to pass upon the validity of this annuity contract as coming within the ambit of Art. 1265 C.C.P.Q. which prohibits consorts to in any manner confer benefits *inter vivos* upon each other.

The proceeds of this annuity contract paid to the appellant's wife is the income from the capital invested by the husband's capital which he has wholly expended to procure the annuity. For commentaries, observation and definition of *annuity contract* and the reasons for the taxation of the same, reference may be had to the following decisions:

(1) (1906) Q.O.R. 15 K.B. 320.

(2) (1907) 39 S.C.R. 682.

*Scoble et al v. Secretary of State for India* (1); *Coltness Iron Co. v. Black* (2); *Jones v. Commissioners of Inland Revenue* (3); Internal Revenue Bulletin—July-Dec., 1924, p. 60; Report of Royal Commission (England) on Income Tax, par. 184, 185; *Gresham Life Ass'n. Soc. v. Styles* (4).

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Now, having found that revenue derived from the annuity contract forms part of the income of the beneficiary thereof, there remains to be found as to whether such income is exempted from taxation under the language of the Taxing Act. The *onus* is upon the appellant to prove such exemption if any and I find he has failed to do so. He relies upon sec. 5 of the Taxing Act, subsec. i (now sec. 4, subsec. j, R.S.C., 1927), which reads as follows:

(j) The income derived from any bond or other securities of the Dominion of Canada *issued exempt* from any income tax imposed in pursuance of any legislation enacted by the Parliament of Canada.

First, this annuity contract was not *issued exempt from taxation*, and secondly it is not in the nature of a bond or the security mentioned in that section. It is not a bond and the word security following the word bond must be read as meaning bonds, debentures, *ejusdem generis*, and not such annuity contract now under consideration.

Taxing is the rule and the relief from taxation is the exception. As said by Lord Cairn in re *Partington v. Attorney-General* (5):

If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such construction is not admissible in a taxing statute, when you can simply adhere to the words of the statute.

For consideration of public policy, the court cannot, unless for very clear reason, frustrate the object of the Tax-

(1) (1903) 4 T.C. 618, at pp. 621, 622.

(2) (1880) 1 T.C. 287 at pp. 307, 308, 321.

(3) (1919) 7 T.C. 310 at p. 314.

(4) (1892) 3 T.C. 185, 196.

(5) (1869) L.R. 4 E. and I. App. (H.L.) 100 at p. 122.

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ing Act. *Wylie v. City of Montreal* (1). There is no such thing as presumption of exemption, if anything, the presumption would be in favour of the taxing power. 37 Encly. Law and Prac. 891. Immunity from taxation by statute will not be recognized unless granted in terms too plain to be mistaken. *Chicago, Burlington and Kansas City R.R. v. Guffey* (2).

Having found that the annuity is part of income and that it is not exempted from taxation, I must also find that, under sec. 4, subsec. (a) of 1a and 1b of 16-17 Geo. V, ch. 10 the Act in force at the time, the husband and wife in the present case have “*a separate income in excess of fifteen hundred dollars*” and that each must receive an exemption of \$1,500 in lieu of \$3,000.

Therefore there will be judgment dismissing the appeal with costs.

*Judgment accordingly.*