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BETWEEN:

C. P. FULLERTON ..... APPELLANT;

AND

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

1938

Jan. 31.
Feb. 1.

Nov. 2.

*Revenue—Income tax—Income War Tax Act, R.S.C., 1927, c. 97, s. 3—Evidence—"Income"—Payment made on cessation of office—"Gratuity"—No liability for tax.*

Appellant, in December, 1933, was appointed Chairman of the Trustees of the Canadian National Railways for a term of five years at a salary of $30,000 per annum. By 1 Edward VIII, Chapter 25 the

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appellant's office was abolished, and his employment as Chairman of the Trustees terminated on October 1, 1936. Appellant was advised by the Minister of Railways that he would be granted a gratuity of $30,000 and later, on the recommendation of the Minister of Railways, an Order in Council was passed approving of the payment of such sum by the Canadian National Railways to appellant "in relation to his services as Chairman, to be paid to and accepted by him as a remunerative payment subject to income tax." The Board of Directors of the Canadian National Railways passed a resolution in substantially the same terms as the Order in Council and a cheque for $30,000 was delivered to appellant accompanied by a voucher, embodying the language of the resolution, for his signature, the latter portion of which stated that the money was being paid to and accepted by the appellant "as a remunerative payment subject to income tax." The voucher was signed by the appellant concurrently with the receipt of the cheque. Immediately after receipt of the cheque the appellant wrote to the President of the Canadian National Railways and also to the Minister of Railways in protest against the form of the voucher and the manner in which the payment was therein described.

Appellant was assessed for income tax purposes on this sum of $30,000. The assessment was affirmed by the Minister of National Revenue from whose decision the appellant appealed.

*Held:* That the payment was personal to appellant, made because of the cessation of his office, and not for past services rendered in office and therefore not subject to income tax.

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

The appeal was heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

*G. Monette, K.C.* for appellant.

*F. P. Varcoe, K.C.* and *W. S. Fisher* for respondent.

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

THE PRESIDENT, now (November 2, 1938) delivered the following judgment:

This is an appeal from the decision of the Minister of National Revenue affirming an assessment for income tax levied under the Income War Tax Act, for the 1936 taxation period, against the appellant, formerly Chairman of the Trustees in whom was vested the direction and control of the Canadian National Railways. The assessment here in dispute had its origin in a payment of $30,000 made to the appellant, by the Canadian National Railways, in October, 1936, in the circumstances which I shall relate

presently. The result of the inclusion of the said sum in the income of the appellant for the taxation period in question was the levy of an additional tax against the appellant, in the sum of $9,711.92. The appellant contends that the said payment does not constitute "income" within the meaning of the Income War Tax Act. Before stating the facts immediately material to the issue it will be desirable first to refer to certain legislation respecting the Canadian National Railways, its management and direction.

The Canadian National Railways Act, Chap. 172, R.S.C., 1927, provided for the nomination, by the Governor in Council, of a Board of Directors, and their incorporation as a company under the name of "Canadian National Railway Company," to whom was to be entrusted the management and operation of the several lines of railway, and other works and properties, owned or controlled by the Government of Canada, and now collectively designated and known as the Canadian National Railways, hereafter to be referred to as "the Company." All the capital stock of the Company, amounting now, I understand, to 180 million dollars, is vested in the Minister of Finance on behalf of the Crown. In pursuance of this statutory authorization a Board of Directors was named and appointed by the Governor in Council and in due course the said Directors entered upon their duties.

In 1933 there was enacted The Canadian National-Canadian Pacific Act, 1933, Chap. 33 of the Statutes of Canada, 1932-33, which empowered the Governor in Council to vacate all nominations made to the Board of Directors of the Company, pursuant to the Canadian National Railways Act, and to appoint in their place and stead three Trustees, one of whom was to be Chairman of the Trustees, and who was required to devote his whole time to the performance of the duties of his office. The other Trustees were to devote to the performance of the duties of their office their whole or part time as might be determined from time to time by the Governor in Council. The tenure of office of the Chairman was to be for the term of five years from the date of his appointment, and his salary, and that of the other Trustees as well, was to be fixed by the Governor in Council. The Chairman

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of the Trustees apparently was prohibited from becoming a director of any company, other than a company comprised in the Canadian National Railways. In December, 1933, three Trustees were appointed by the Governor in Council in succession to the Board of Directors, the appellant being appointed as Chairman for the period of five years from the date of his appointment, at an annual salary of $30,000. The salary of one of the other Trustees was fixed at $6,000 per annum, the third Trustee agreeing to serve without salary. The Act provided that no Trustee should be entitled upon any ground to any "recompense or emolument," that is, in addition to his salary.

In June, 1936, there was enacted The Canadian National-Canadian Pacific Act, 1936, which repealed that part of the Act of 1933 which provided for the appointment of three Trustees in succession to the Board of Directors and empowered the Governor in Council to appoint a Board of Directors in the place and stead of the Trustees. This power was in due course exercised by the Governor in Council with the consequence that the Trustees were succeeded by a Board of Directors, on October 1, 1936. The Chairman was therefore deprived of serving the full tenure of his office by more than two years. It was later agreed by the Company that the Chairman of the Trustees, the appellant, should be paid, and he was paid, the sum of $30,000, in the circumstances I am about to relate.

It will be necessary now to review at some length certain of the evidence given at the trial practically all of which was directed to showing the character or quality of the payment made to the appellant; that is, whether the payment was received by the appellant as an annual net profit or gain or gratuity from his office or employment as Chairman of the Trustees, or whether it was paid to and received by the appellant by way of compensation for the cessation of his office. My review of the evidence will embrace a great deal that was received subject to objection but I propose to refer to the same, leaving to a later stage a discussion of the admissibility of that evidence received subject to objection. I think this may be done without prejudice to either party, and at the same time it will clearly reveal the issue as to the admissibility of that evidence. When the Act of 1936, authorizing the

termination of the services of the Trustees and replacing them by a Board of Directors was being enacted by Parliament, questions were asked certain Ministers of the Crown as to whether some allowance would be made to the Chairman of the Trustees. What was there stated in answer to such questions was in substance restated by such Ministers at the trial, but as the substance of that oral evidence is to be found in certain documentary evidence, to which I am about to refer, I need not pause to discuss it.

The Minister of Railways, on June 16, 1936, wrote a letter to one of his colleagues, the Honourable Mr. Dandurand, which letter was, through another, transmitted to the appellant. The letter is as follows:

> With reference to our conversation about a retiring allowance for Judge Fullerton, I feel disposed to recommend that he be given one year's salary in compensation for the repeal of the Act under which he is employed. This can be paid to him in cash on his retirement, over a period of one year, over a period of two and a half years, which is the balance of his term as Chairman, or at the rate of $6,000 per annum for five years. In this connection I may point out that upon the date of his retirement he becomes eligible for his retiring allowance as judge, which amounts to $6,000 per annum.
>
> Any moneys that become payable to him will be payable by the Canadian National Railways and he must be satisfied with my letter to the effect that I will ask the new Board of Directors of the Canadian National Railways to grant him the allowance along the lines for which he may express preference.

On June 20 following Mr. Fullerton wrote the Minister of Railways as follows:

> In view of your letter of June 16th addressed to Senator Dandurand and the coming into effect of the Canadian National-Canadian Pacific Act, 1936, you will doubtless wish to have an expression of my desires as to how the compensation of $30,000 agreed to be paid me should be made.
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> It would be a great convenience to me if this were paid in cash, and, as I am contemplating taking a trip abroad around the 7th of October, I shall be obliged if you will kindly facilitate the payment by the Canadian National Railways as soon as possible after the directors take office.

The receipt of this letter was acknowledged by the Minister of Railways on September 14, the relevant portion being as follows:

> I have your letter of September 12th, and note that you prefer to receive your retiring allowance in one lump sum. I shall endeavour to arrange accordingly.

On September 21, the Minister of Railways wrote Mr. Fullerton in the terms following:

> Referring to the question of a gratuity of $30,000, this is to assure you that upon the Directors assuming office I shall duly bring the matter to their attention.

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The next letter of importance is one from the Minister of Railways, dated September 28, written to the appellant, and it is as follows:

Referring to our conversation at your office last week, our legal officers state that it is very necessary that the wording of the resolution shall be definite in its description of the purpose for which any money is paid to you.

Our Legal Department also states that there can be no doubt that any money paid to you is in fact a gratuity, as no contractual relation exists beyond October 1st. when amendments to the Canadian National-Canadian Pacific Act become effective.

I therefore see no alternative but to follow the advice of my Legal Department and ask the new Board of Directors to pass a resolution in the following form:

"Moved by

Seconded by

That a gratuity of Thirty Thousand Dollars ($30,000) be paid to the Honourable C. P. Fullerton, formerly Chairman of the Trustees of the Canadian National Railway Company."

In view of the above, you may wish to vary the manner in which payments shall be effected. If so, please advise me.

The form of the resolution, suggested in the above letter, it seems required further consideration and the appellant was so advised by the Minister of Railways, on October 3. The next step taken in the matter was the passage of an Order in Council on October 7, the important terms of which are as follows:

The Committee of the Privy Council have had before them a report, dated October 5th, 1936, from the Minister of Railways and Canals, recommending approval of a sum of $30,000 being paid by the Canadian National Railway Company to the Honourable C. P. Fullerton, formerly Chairman of the Trustees of the said Company, in relation to his services as Chairman, to be paid to and accepted by him as a remunerative payment subject to income tax.

The Committee concur in the foregoing recommendation and submit the same for approval accordingly.

It will be observed that the Order in Council is an approval of the recommendation of the Minister of Railways that the sum of $30,000 be paid Mr. Fullerton by the Canadian National Railways. On the following day, October 8, the new Board of Directors passed a resolution in substantially the same terms as the Order in Council, and on October 14, a cheque for $30,000 was forwarded to the appellant accompanied by a voucher for his signature. The voucher, as signed by the appellant, contained the following matter:

In payment of an amount authorized to be paid by the Board of Directors at meeting held October 8th, 1936, in the following terms:

"That a sum of $30,000 be paid to the Honourable C. P. Fullerton, formerly Chairman of the Trustees of the Canadian National Railway

Company, in relation to his services as Chairman, to be paid to and accepted by him as a remunerative payment subject to income tax."
and as per Order in Council P.C. 2589, copy of which is attached hereto.

Received THIRTY THOUSAND DOLLARS ($30,000) under the above terms which I hereby accept.

C. P. Fullerton.

On receipt of the cheque Mr. Fullerton immediately wrote Mr. Hungerford of the Canadian National Railways as follows:

With reference to the cheque for $30,000 which was handed to me this morning by Mr. Hobbs, I feel that I should point out that, while I have signed the voucher in the form in which it was presented, it does not set out in clear terms the arrangement which was made by the Minister of Railways regarding this payment. I recognize that your Directors are not likely to alter the wording of the voucher without the approval of the Minister and I am, therefore, taking the matter up with him.

Mr. Fullerton on the same day wrote the Minister of Railways and though this letter is quite lengthy it should perhaps be fully quoted. After a reference to the receipt of the cheque for $30,000, and the terms of the voucher, the letter proceeds to say:

As I am satisfied the Railway Board of Directors would not vary the terms of the voucher without prior approval from you, and as you will not be back in Ottawa until after I have left Montreal, I have signed the voucher, rather than have my refusal to do so cause delay and perhaps subject my attitude to misunderstanding while I am no longer present in Canada. I have, however, to point out that the wording of the voucher while correct as to amount, and because of that enabling me to accept the cheque, does not clearly state the arrangement made with me when the matter of compensation was under consideration by both of us. This arrangement, in my view, is solely one of fact and should present no difficulty in stating.

There seems, however, to be some concern lest the payment made to me should be free from income tax, but personally I do not share this concern. I have always paid income tax to the full extent of my obligations, and I hope to continue to do so. I am not interested in any device to avoid tax where it is due, and if the circumstances of this payment to me are such that the payment is subject to tax, the tax will be promptly and cheerfully paid. It seems to me completely unnecessary to invoke the machinery of the Privy Council to declare this, or any other payment by Canadian National Railways to be subject to tax. Settlement of liability to taxation by this method would very quickly render our courts of law unnecessary and leave the construction of our taxing statutes entirely a matter for the Governor General in Council.

I think, therefore, that questions of law should be omitted from the resolution, the voucher, and the Order in Council, and that if it is considered necessary to detail the circumstances giving rise to the payment this should be done simply and in clear language setting out the facts. If no agreement can be reached as to these—and I am unable to understand why—then nothing should be said, my view being that no information is better than indefinite information which might easily give rise to misunderstanding.

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What then are the facts? I think it will be conceded that but for the passing of the Canadian National-Canadian Pacific Act of this year, no payment of this nature would have been made. If this is so, then the payment is made because of the effect this Act has had on me and my livelihood. The payment obviously is not made by virtue of the old Act which expressly prohibits interference with the terms on which Trustees were appointed, and so it cannot be considered as a bonus made in the ordinary course of the Company's business. Further, it is difficult to see its relationship to my services as Chairman when the fixed emoluments had already been paid to me for such services, and at the time of this payment I was no longer in the service of the Railway Company. The best definition of the reason for making the payment is to be found in a letter by yourself to Senator Dandurand and afterwards relayed to me. In this letter you say that it is "in compensation for the repeal of the Act under which he is employed." That this was no inadvertent remark is clear from the letter and also Senator Dandurand's letter transmitting your intention and letter to Senator Meighen in which he uses the words "touching the compensation which the Minister of Railways expressed himself as disposed to allow Judge Fullerton." Senator Meighen understood the payment to be a compensatory one for in a letter to me dated June 17, he refers to "the compensation to be allowed by reason of the passage of a measure abolishing the Board of Trustees." I submit very respectfully that where you yourself, Senator Dandurand, Senator Meighen and myself find ourselves in such complete unanimity as to the reason for paying me $30,000, there should be no hesitancy in disclosing it and certainly no resort should be had to words whose apparent meaning indicates something different.

As you were in the West at the time the Order in Council was passed, I am strongly of the view that your instructions have not been strictly complied with, but I have formally to request that the Order in Council be amended to show clearly the compensatory nature of the payment because of the passage of the Canadian National-Canadian Pacific Act, 1936, or, if for any reason you do not wish to do this, then, that the payment be described simply as a gratuity to me as ex-Chairman of the Board of Directors.

It is presently unnecessary to comment on the foregoing documentary evidence, which is fairly plain, but I might point out that the proposed payment is therein variously described. It was designated as "compensation for the repeal of the Act under which he is employed," as "an allowance," as "compensation," as "a retiring allowance," as a "gratuity," and finally, at the time of payment, as "a remunerative payment subject to income tax."

It was contended on behalf of the respondent that it is the terms of the resolution passed by the Board of Directors and embodied in the voucher signed by Mr. Fullerton, on the day of payment, that alone may be looked at in order to ascertain the nature of the payment, because, it was said, it expressed the understanding of the payer and the recipient at the time of payment; and objection was taken

to the reception of any other evidence, particularly that portion of the documentary evidence to which I have just referred and which is anterior in point of date to the voucher and the payment. At the trial I received this evidence subject to objection, reserving the right to rule later as to its admissibility. Now, in my opinion, this is hardly a case where it is sought to vary the terms of a contract expressed in writing. It was agreed by counsel that there was not at any stage a contract to make the payment in question, but a payment was made, and now the only issue is as to the true nature of the payment, in order to determine whether or not the same was received as "income" under the Income War Tax Act. The issue is whether the payment was a personal one, or whether it came to the recipient by virtue of his office or employment. The evidence received subject to objection was introduced on the ground that the true nature of the payment was not clearly or accurately expressed in the resolution of the Board of Directors and so it was sought, on behalf of the appellant, to show the reason for making the payment at all, the circumstances leading up to the decision to make the payment, and what quality or nature the parties concerned were attributing to the proposed payment, up to the time of the actual payment. It seems to me that in all the circumstances of the situation here such evidence is admissible. In reported cases of the very kind now under consideration I find that it is usual to have before the court evidence of all the circumstances attending such payments for the purpose of ascertaining their true character, in order to determine whether the same was received as "income," or otherwise. I do not think therefore that the evidence in question should be excluded.

It has been frequently remarked by the courts that cases of this kind are in their nature difficult because they all turn upon nice questions of fact, because it is difficult to draw a line between questions of fact and questions of law, and because it is frequently difficult to fix upon any clearly defined line of division between payments which fall within the scope of the taxing statute, and those which do not. The leading authorities upon the point in debate here are to be found mentioned at one stage or another in the case

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of *The Commissioners* v. *Foster, Foster and Dewhurst* (1).

Sec. 3 of the Income War Tax Act defines "income" as meaning "the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary, or other fixed amount, or unascertained as being fees or emoluments, . . . directly or indirectly received by a person *from any office or employment,* or, . . ." The English authorities to which I was referred seem to decide that if the sum in question is received by the taxpayer in virtue of his office, even if the payment is made voluntarily, the same is taxable, but if it is a gift, a gratuity, a payment personal to the taxpayer and not his office, a payment in respect of the cessation of his office, a payment in the nature of capital and non-recurring, it is not taxable as a profit or gain of the office, because it is not "income" received from the office. On reflection, the reason for such a distinction will, I think, appear quite obvious. The test as to whether payments of the nature in question here are taxable is frequently put in this way: Was the payment made to the subject in virtue of his office? If it were it is taxable, but otherwise it is not taxable as "income." I do not think there is any substantial distinction between the English Income Tax Act, and the corresponding Canadian Act, in respect of the point falling for determination here.

In such a case as this, it will be agreed, I think, that it is to the substance and not the form of matters pertaining to the payment that we must look, in order to ascertain the true facts of the case, or the real character of the payment, before applying the law. It is also, I think, immaterial how the payment was designated or described by any or all of the parties concerned therewith; it is the true nature of the payment that is to be ascertained; and that is but to inquire in this case whether the payment was made in respect of services rendered by the Chairman of the Trustees while in office, or whether in fact it was made because of the cessation of his office. In the case of *The Commissioners* v. *Dewhurst* (2), Lord Dunedin said that the mention of the words "in consideration of loss of office" could not be allowed to make a change in the true nature of the payment which was there in question, and

(1) (1932) 16 Tax Cas. 605. (2) (1932) 16 Tax Cas. 640.

in the same case Lord Macmillan said that the circumstance that a payment was described as "compensation for the loss of office" was immaterial, and did not relieve the taxpayer, if the payment were in truth made as part of the bargain for remuneration on which the services in the office had been rendered. In the case of *Cooper* v. *Blakiston* (1), the payments in question were described as "personal non-official free will gift," and in his discussion of that case Buckley L.J. said: "I suppose that the object of those words was to suggest that the gift was not to the vicar as vicar, but to him personally; but I do not think that those words represent the scheme which was presented to those who were asked to contribute." In the end, in cases of this kind, it is always the real nature of the payment that is to be ascertained. Furthermore, the character which the payer attributes to the payment is not to be accepted, and the viewpoint of the recipient ignored. It was stated by Collins M.R., in *Herbert* v. *McQuade* (2) that the test was whether, from the standpoint of the person who received the payment, the payment accrued to him in virtue of his office, and Buckley L.J., in *Cooper* v. *Blakiston, supra,* stated that the question is not what was the motive of the payment but what was the character in which the recipient received it? Was it received by him by reason of his office? I should think that in principle it is safe to say that, in cases of this kind, the viewpoint of him who makes the payment is not conclusive, and he cannot determine the true character of the payment merely by his understanding of the reason or ground for making the payment.

This case would occasion no serious difficulty were it not that the payment proposed to be made to Mr. Fullerton was described in the resolution of the Board of Directors of the Company as "a remunerative payment subject to income tax," and to be paid "in relation to his services," as the former Chairman of the Trustees; even that perhaps would raise no serious difficulty were it not for the fact that Mr. Fullerton signed a voucher, concurrently with the receipt of the payment, which in effect states that he accepted the payment under the terms of that resolution.

(1) (1907) 2 K.B. 688.

(2) (1902) 4 Tax Cas. 489 at 500.

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The Minister of Railways in his letter of September 28, to Mr. Fullerton, places emphasis on the fact that the proposed payment must be treated as a gratuity, because no contractual relation would exist between the Company and Mr. Fullerton after October 1, and in that letter is contained a form of resolution which the Minister proposed asking the Directors of the Company, the successors to the Trustees, to pass, and therein the proposed payment to Mr. Fullerton is described as a "gratuity." Then the Minister of Railways in his letter of October 21, to Mr. Fullerton, after the payment was made, explaining why a change had been made in the proposed resolution, states that some objection had been raised to the "form" of that draft of the resolution, and one might fairly infer therefrom that the Minister considered that the departure from the resolution originally proposed was one of "form," and not one of substance. I am disposed to think that the view of the Minister of Railways always was that the payment was being made to Mr. Fullerton because of the cessation of his office. But the resolution is so drafted as to make it appear that the payment was to be made on account of the former services of Mr. Fullerton as Chairman of the Trustees. It seems to say: "We are paying you $30,000 but this payment is to be accepted by you as having been made on account of your former services as Chairman of the Trustees." I think it is probable that the words "subject to income tax" were used from an abundance of caution in order to amplify or clarify the words "a remunerative payment," that is to say, the words "subject to income tax" were used with the intention of making it indisputably clear that the payment was to be made as remuneration for services rendered while in office. In fact, the words "remunerative payment," by themselves, would carry no particular meaning. The resolution must mean that the payment was being made for services rendered while in office, and if this were in fact true the payment would, I apprehend, be treated as "income" under the taxing statute. It is difficult to believe that the Directors of the Company, in the use of the words "subject to income tax," would be deliberately concerning themselves about the imposition of the income tax. Whatever construction be placed upon the resolution the question for decision is whether the payment received

by Mr. Fullerton was "income" within the meaning of the Income War Tax Act. The taxing authorities are bound by the provisions of that Act in determining what is assessable income.

The office of Chairman of the Trustees was abolished by statute and it became illegal for the Company to continue Mr. Fullerton in that office, or to pay him any salary, and it became impossible for Mr. Fullerton to exercise his office, or to demand any compensation for the loss of his office. Consequently, on September 30, 1936, he was no longer entitled to be paid a salary or remuneration, on account of his former office. And s. 5 (2) of the Act of 1933 setting up the Board of Trustees provided that no Trustee was entitled, upon any ground, "to any recompense or emolument," in addition to his salary. If a sum of money is paid to an incumbent of an office, substantially in respect of his services as incumbent, it is received by him by reason of his office, and that probably would be also true if the payment were made after he ceased to occupy his office but in pursuance of a contract or bargain made while he was still in office, in respect of remuneration for services to be performed. Now, it cannot be said, in my opinion, that in point of fact the payment was made to Mr. Fullerton for services rendered in his office, because for such services he had been paid already the salary attaching to his office, up to the time when the office ceased to exist. And there is nothing to suggest that the payment was made in pursuance of any contract or bargain made while he was in office. Neither do I think it can be said that the payment was made in respect of the office, because, just as was said by Lord Dunedin in *Duncan* v. *Farmer* (1), the only possible ground or justification for the payment made to Mr. Fullerton was that he was no longer in office, and because his office had ceased to exist. What then is the true nature of the payment? To that question I have given anxious thought and I find myself utterly unable to see how it can be said that the payment was anything but a gratuity, personal to Mr. Fullerton, paid him because he was no longer in office, and because of the cessation of his office more than two years before the end of the period for which he was appointed. The fact that the office was

(1) (1909) S.C. 1212; 46 Sc. C.L.R. 857; 5 Tax. Cas. 417.

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one of importance and responsibility, that the payment was made on the termination of the office, and that the amount of the payment to the former Chairman of the Trustees was very substantial, are strong indications that the payment was personal to Mr. Fullerton and not on account of past services rendered by him while in office; another indication of this might be mentioned and that is the fact that s. 7 of the Act of 1933 provided that "no Trustee shall be removed from office, nor suffer any reduction in salary, during the term for which he is appointed, unless for assigned cause and on address of the Senate and House of Commons of Canada." Notwithstanding the terms of the resolution and voucher, it is not, in my opinion, in accord with the facts to say that the payment was made to Mr. Fullerton on account of past services rendered by him in his office.

I do not think that the taxing authorities can construe as "income" that which is erroneously described as such, even by the parties concerned, if in fact it is not "income" under the terms of the taxing Act. The words "subject to income tax" cannot be construed as giving a quality to a payment or receipt of money, which in point of fact cannot be attributed to it. The appropriate statute defines what is "income," for income tax purposes, and one cannot give to "income" a meaning contrary to that given by the statute. It is to the real nature of the payment that the taxing authorities, and the courts, in cases of this kind, must look. I have earlier referred to highly regarded authority for the proposition that it is always the true nature of the payment to which the courts must look in determining whether or not a receipt of money is "income" derived from "any office or employment." The resolution of the Directors of the Company, and the voucher, not being truly descriptive of the nature of the payment, they fall and have no meaning or place in the controversy between the revenue authorities and Mr. Fullerton, and they do not afford any basis for the claim that the receipt of the payment was "income" in the sense of the statute. If the voucher is to be construed as an agreement to pay the income tax on the amount received, whether or not it was exigible under the Income War Tax Act, then, it seems to me that any claim to the amount of the tax is one to be enforced like any other contractual obligation.

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My conclusion is that the payment in question was personal to Mr. Fullerton, and was made because of the cessation of his office, and is not therefore taxable income. The appellant must therefore succeed and costs will follow the event.

*Judgment accordingly.*