

1942
 * Feb. 20.
 * March 3.

IN THE MATTER OF THE ESTATE OF GEORGE MATTHEW
 SNOWBALL, DECEASED

ELIZABETH LILLIAN STEWARTAPPELLANT;

AND

THE TORONTO GENERAL TRUSTS	} RESPONDENTS.
CORPORATION, EXECUTORS AND	
TRUSTEES OF THE LAST WILL AND	
TESTAMENT OF GEORGE MATTHEW	
SNOWBALL, DECEASED; AND OTHERS..	

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Succession duties—Direction in will for payment of succession duties out of residuary estate—Question as to succession duties payable on gifts inter vivos—Construction of the words in said direction in will—Succession Duty Act, 1934, Ont., 24 Geo. V, c. 55, ss. 6 (1) (2), 10 (1).

The deceased, whose home was in the province of Ontario, declared in his will "that all estate and succession duties payable upon or in respect of my estate or property shall be paid out of my residuary estate, and that all legacies or gifts bequeathed shall be free from inheritance tax". He had in his lifetime made gifts to certain persons, and after his death the question arose whether the succession duties payable in respect of such gifts should be paid out of his residuary estate. The Act applicable was *The Succession Duty Act, 1934, Ont., 24 Geo. V, c. 55*; and particularly ss. 6 (1), 6 (2) and 10 (1) thereof.

Held, affirming the judgment of the Court of Appeal for Ontario, [1941] O.R. 269, that the donees of the gifts *inter vivos* were not entitled to have the succession duties payable in respect thereof paid out of the deceased's residuary estate.

APPEAL from the judgment of the Court of Appeal for Ontario (1) which reversed the judgment of McFarland J. on a motion on behalf of the present appellant, to whom, and to others, George M. Snowball, late of the city of Toronto, Ontario, deceased, had made gifts in his lifetime, for the determination of the question whether the succession duties in respect of such gifts should be paid out of the deceased's residuary estate.

* PRESENT:—Rinfret, Kerwin, Hudson, Taschereau and Masten.
 (ad hoc) JJ.

Clause 9 of paragraph 4 of the deceased's will was as follows:

I declare that all estate and succession duties payable upon or in respect of my estate or property shall be paid out of my residuary estate, and that all legacies or gifts bequeathed shall be free from inheritance tax.

By s. 6 (1) of *The Succession Duty Act, 1934* (Ont., 24 Geo. V, c. 55, the Act that applies), "all property situate in Ontario and any income therefrom passing on the death of any person" is made subject to duty. By s. 6 (2):

Property passing on the death of the deceased shall be deemed to include for all purposes of this Act the following property,—

* * *

Any property taken under a disposition operating or purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust or otherwise, made since the 1st day of July, 1892.

* * *

By s. 10 (1):

Every heir, legatee, devisee or donee, and every person to whom property passes for any beneficial interest in possession or in expectancy shall be liable for the duty upon so much of the property as so passes to him and which is dutiable in Ontario according to the provisions of this Act, * * *

The Court of Appeal for Ontario (1) held that the succession duties payable in respect of the gifts *inter vivos* are not payable out of the residuary estate of the deceased. The reasons for judgment of that Court were delivered by Robertson C.J.O., and these reasons are adopted *infra* in the reasons for judgment in this Court now reported. Robertson C.J.O. held that the donor of a gift *inter vivos*, by making the gift, assumes no obligation whatsoever to the donee to make any provision for payment of succession duties that may become payable in respect of the gift, upon his death; that if, in this case, the residuary estate of the deceased is to bear the burden of the succession duties claimed from the donees, it is because the testator has said so in clause 9 (above quoted) of his will; that the succession duties now claimed are not within clause 9 as "succession duties payable upon or in respect of my estate or property"; the meaning of said words "my

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estate or property", which are perfectly plain. should not be extended to include whatever, by the Act, is included within the term "property passing on the death", to which s. 6 (2) gives a very extended and artificial meaning; that the gifts *inter vivos* did not come within the expression "gifts bequeathed" which said clause 9 in the will declared to be "free from inheritance tax"; said words "gifts bequeathed" must be construed as meaning "gifts by will", according to their present ordinary meaning and common usage; that there are no words in said clause 9 disclosing any intention of the testator to make to the persons to whom he made gifts *inter vivos* a further gift of the amount of the succession duties.

D. L. McCarthy, K.C., for the appellant.

P. E. F. Smily, K.C., for the respondent Isobel McArthur (of the same interest as appellant).

P. D. Wilson, K.C., Official Guardian, representing infant respondents (of the same interest as appellant).

G. R. Munnoch, K.C., for residuary beneficiaries, respondents.

J. F. Boland, K.C., for respondent The Toronto General Trusts Corporation (Executor and Trustee of the last will and testament and codicil of George Matthew Snowball, deceased).

The judgment of the Court was delivered by

KERWIN J.—The appeal should be dismissed for the reasons given by the Chief Justice of Ontario. The appellant succeeded in her claim before the judge of first instance, who directed that the costs of all parties be paid out of the estate, those of the executor as between solicitor and client. In the reasons for judgment of the Court of Appeal, the appellant was ordered to pay "the costs of the executor both of the motion and of this appeal, and also the residuary legatees' costs of the appeal, they having been brought in on the appeal only". Upon motion this direction was varied, and the formal judgment of the Court of Appeal orders that the costs of the original motion of the executor and trustee as between solicitor and client and of the

Official Guardian be paid out of the estate. It also orders that the costs of the appeal to the Court of Appeal of the executor and trustee as between solicitor and client and of the residuary beneficiaries and of the Official Guardian be paid out of the estate. The costs of all parties of the appeal to this Court, except those of the respondent, Isobel McArthur, and of the Official Guardian, both of whom supported the appeal, should be paid by the appellant. The costs of the Official Guardian may be paid out of the estate. This will not prejudice any claim of the executor and trustee to the proper tribunal to have its solicitor and client costs paid out of the estate.

Appeal dismissed with costs (except costs of those respondents supporting the appeal).

Solicitors for the appellant and the respondent Isobel McArthur: *Smily, Shaver, Adams, DeRoche & Fraser.*

Solicitors for the respondent The Toronto General Trusts Corporation: *Macdonell & Boland.*

The Official Guardian on behalf of the infant respondents.
Solicitors for the other respondents: *Blake, Lash, Anglin & Cassels.*

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