THE ROYAL TRUST COMPANY, JAMES REID SARE, JAMES GEMMILL WILSON, (Executors of the Estate of AGNES HENRY WILSON) ..... APPELLANTS;

AND

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

1967
*June 9
1968
Apr. 29

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Estate tax—Competency to dispose of property—Power to dispose of property by will—Whether general power to appoint or dispose —Estate Tax Act, 1958 (Can.), c. 29, ss. 3(1)(a), 3(2)(a), 58(1)(i).

In her will, the deceased disposed of her property which included a share of her father's estate. The father's will, under which she received that property, provided that, during her lifetime, she would receive the income, but that, at her death, if she was survived by children, as was actually the case, the capital of her share could be "disposed of after her death in such manner as she may direct by will". There was also included in the estate of the deceased a life interest in a trust property given to her by a deed of donation *inter vivos* made by her father. That deed stipulated that the deceased "shall have the absolute right to dispose of the said trust property by her will in such manner as she may deem advisable". The Minister assessed the two properties as "property passing on the death" of the deceased. The executors submitted that the deceased was never, within the meaning of ss. 3(1)(*a*), 3(2)(*a*) and 58(1)(*i*) of the *Estate Tax Act*, competent to dispose of this property. The Exchequer Court upheld the Minister's view and ruled that the deceased was vested with a general power to dispose, by

*PRESENT: Fauteux, Abbott, Judson, Hall and Spence JJ.

1968

ROYAL TRUST COMPANY *et al.* *v.* MINISTER OF NATIONAL REVENUE

will, of such property as she saw fit. The executors appealed to this Court and submitted: (1) that s. 3(1)(*a*) contemplates property which a deceased was competent to actually transfer immediately prior to his death, and not property which is only actually effectively transferred after death; (2) that the deceased did not have such a general power as met the definition of s. 58(1)(*i*), because her father did not intend her to have the power to dispose of the property by her will in any way and to any person; (3) that the deceased never had a general power within the meaning of s. 58(1)(*i*), since the property was donated or bequeathed to her for alimentary support and was immune from seizure; (4) that the deceased's father disposed of the property to the persons as the deceased might direct would receive it.

Held: The appeal should be dismissed.

(1) Section 3(1)(*a*) deals with the competency to transfer, and not with the transfer of property. The words "immediately prior to death" in s. 3(1)(*a*) refer to the point at which a person is competent to dispose of property and not to the point at which there is, consequent to the exercise of competency, an actual and effective transfer of property. The executors' interpretation is further conclusively defeated by the provisions of s. 58(1)(*i*) taken together with ss. 3(1)(*a*) and 3(2)(*a*).

(2) The rule stated in art. 1013 of the *Civil Code* is to the effect that common intention must be determined by interpretation rather than by adherence to the literal meaning of the words of the contract only if there is doubt as to what the parties intended. In view of the plain and unmistakable language of the will and the deed of donation, there was no need or justification to resort to interpretation.

(3) A disposition declaring that property donated or bequeathed is for alimentary support and is, for that reason, immune from attachment, has always been interpreted by the Courts as not limiting the right of the beneficiary to dispose of the property as he sees fit.

(4) The plain and unmistakable language of the direction rendered the deceased free to dispose as she saw fit of the property; those who benefitted as a result of her will received from her and not from her father.

Revenu—Impôt successoral—Capacité de disposer d'un bien—Pouvoir de disposer d'un bien par testament—Y a-t-il pouvoir général de distribuer ou de disposer—Loi de l'impôt sur les biens transmis par décès, 1958 (Can.), c. 29, arts. 3(1)(a), 3(2)(a), 58(1)(i).

La défunte a disposé par testament de tous ses biens y compris la part qu'elle avait reçue de la succession de son père. Le testament de son père, en vertu duquel elle avait reçu cette part, stipulait qu'elle aurait droit, durant sa vie, au revenu, mais qu'à sa mort, si elle laissait des enfants, comme ce fut le cas, elle pourrait disposer du capital de telle manière «as she may direct by will». Il y avait aussi dans la succession de la défunte un intérêt, pour la durée de sa vie, dans des biens que par acte de donation entre vifs son père avait donné en fiducie pour elle. Cet acte de donation stipulait que la défunte aurait le droit absolu de disposer de ces biens mis en fiducie par testament de telle manière «as she may deem advisable». Le Ministre a considéré ces biens comme étant «des biens transmis au décès» de la défunte. Les exécuteurs testamentaires ont soutenu que la défunte n'avait jamais été habile à disposer de ces biens, dans le sens des arts. 3(1)(*a*), 3(2)(*a*) et 58(1)(*i*)

de la *Loi de l'impôt sur les biens transmis par décès*. La Cour de l'Échiquier a maintenu le point de vue du Ministre et a statué que la défunte avait un pouvoir général de disposer, par testament, de ces biens selon qu'elle le jugeait opportun. Les exécuteurs testamentaires en appelèrent à cette Cour et ont soutenu: (1) que l'art. 3(1)(*a*) envisage un bien dont la défunte était habile à transmettre actuellement, immédiatement avant son décès, et non pas un bien qui ne pouvait être actuellement et effectivement transmis qu'après le décès; (2) que la défunte n'avait pas un pouvoir général tel que défini à l'art. 58(1)(*i*), parce que son père n'avait pas l'intention qu'elle ait le pouvoir de disposer de ces biens par testament de n'importe quelle manière et à n'importe qui; (3) que la défunte n'a jamais eu un pouvoir général dans le sens de l'art. 58(1)(*i*), puisque ces biens lui ont été donnés ou légués pour support alimentaire et étaient non saisissables; (4) que le père de la défunte a disposé de ces biens aux personnes désignées par la défunte.

Arrêt: L'appel doit être rejeté.

(1) L'article 3(1)(*a*) traite de la capacité de transmettre et non pas de la transmission de la propriété. Les mots «immédiatement avant son décès» dans l'art. 3(1)(*a*) se réfèrent au moment auquel une personne est habile à disposer d'un bien et non pas au moment auquel il y a, à la suite de l'exercice de cette capacité, une transmission actuelle et effective de la propriété. L'interprétation que les exécuteurs testamentaires soutiennent est, de plus, mise en échec par les dispositions de l'art. 58(1)(*i*) considérées avec les arts. 3(1)(*a*) et 3(2)(*a*).

(2) La règle énoncée à l'art. 1013 du *Code civil* est à l'effet que la commune intention des parties doit être déterminée par interprétation plutôt que par le sens littéral des termes du contrat seulement lorsqu'il y a un doute sur ce que les parties avaient l'intention de faire. Vu que le testament et l'acte de donation ont tous deux un langage clair et ne laissant aucun doute, il n'y a aucune nécessité ou justification pour avoir recours à l'interprétation.

(3) Une clause déclarant qu'une propriété donnée ou léguée l'est pour support alimentaire et est, pour cette raison, insaisissable, a toujours été interprétée par les Cours comme ne limitant pas les droits du bénéficiaire de disposer de la propriété selon qu'il le juge opportun.

(4) De par le langage clair et net des directives du testament et de l'acte de donation, la défunte était libre de disposer des biens dont il s'agit selon qu'elle le jugeait opportun; ceux qui ont bénéficié en vertu de son testament ont reçu d'elle et non pas de son père.

APPEL d'un jugement du Juge Dumoulin de la Cour de l'Échiquier du Canada[1], en matière d'impôt successoral. Appel rejeté.

APPEAL from a judgment of Dumoulin J. of the Exchequer Court of Canada[1], in an estate tax matter. Appeal dismissed.

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[1] [1967] 1 Ex. C.R. 414, [1966] C.T.C. 662, 66 D.T.C. 5430.

1968

ROYAL TRUST COMPANY *et al.* v. MINISTER OF NATIONAL REVENUE

John de M. Marler, Q.C., and *D. J. A. MacSween,* for the appellants.

Alban Garon and *A. Peter F. Cumyn,* for the respondent.

The judgment of the Court was delivered by

FAUTEUX J.:—This is an appeal from a judgment of the Exchequer Court of Canada[1], dismissing appellants' appeal from an estate tax reassessment made by the Minister of National Revenue and levying a tax in the net amount of $250,390.60 in respect of the estate of Agnes Henry Wilson.

Agnes Henry Wilson, hereafter also called the deceased, died, while domiciled in the province of Quebec, on January 26, 1963. She was survived by her husband, Robert George Sare, and three children of mature age. In her last will and testament, she made certain particular legacies, bequeathed the residue of her property including, *inter alia,* any property over which she *"may have the power of appointment or disposal"* and appointed as her executors the appellants and her husband; the latter died on September 24, 1965, and has not been replaced as an executor.

The present litigation concerns (i) the property being the share which, by his last will and testament, executed at the City of Montreal on December 11, 1912, James Reid Wilson, the father of Agnes Henry Wilson,—who himself died on May 11, 1914,—allotted to the latter as one of his universal residuary legatees and (ii) certain other property which, by deed of donation *inter vivos,* done at the City of Montreal on December 17, 1912, he gave, in trust, to the Royal Trust for her. At the date of the death of the deceased, the value of the property comprised in her share in the estate of her father was $986,593.11 and the value of the property given to the Royal Trust for her was $113,054.03.

The issue between the parties can be briefly stated. In computing,—as he is required to do by s. 3 of the *Estate Tax Act,* (1958), 7 Eliz. II, c. 29,—the aggregate value of the *property passing on the death of the deceased,* the Minister included the property mentioned above which he considered as property coming within that description. On appellants' view, such is not the case. Their submission is

[1] [1967] 1 Ex. C.R. 414, [1966] C.T.C. 662, 66 D.T.C. 5430.

that, in view of the terms of the will and of the deed of donation, executed by her father, the deceased was never, within the meaning of ss. 3(1)(*a*), 3(2)(*a*) and 58(1)(*i*) of the *Estate Tax Act*, competent to dispose of this property.

The Will:—After bequeathing numerous particular legacies, the father of the deceased left the residue of his estate to his children in equal shares, thereby instituting them as his universal residuary legatees. With respect to the share of his daughters, he directed that:

> The shares of each of my daughters shall be retained in the hands of my Executors during her lifetime, and only the revenues thereof paid to her.

and dealing particularly with the share of his daughter, Agnes Henry Wilson, the deceased, he further directed in the tenth clause:

> TENTH:—The capital of the share of my daughter AGNES HENRY WILSON (Mrs. R. G. SARE) shall be disposed of after her death in the following manner:—Should she die without leaving issue surviving her, one-fourth of her share shall belong to her husband, if living, and the remaining three-fourths shall belong to her brothers and sister, in equal shares. *Should she die leaving issue surviving her which live to be six months old, the capital of her share shall be disposed of after her death in such manner as she may direct by Will,* or should she die intestate it shall belong to her heirs-at-law. The donation to be made by me to THE ROYAL TRUST COMPANY for the benefit of my said daughter AGNES HENRY WILSON, shall be considered as a payment to my daughter in advance on account of her share in my estate & in the division of my estate the TRUST PROPERTY mentioned in said Deed, or the securities representing the same at the time of my death, shall be considered as of the value of FIFTY THOUSAND DOLLARS.

The Deed of Donation:—By the deed of donation to the Royal Trust Company, made six days after his will, the father of the deceased gave certain securities to the Trustee upon trust to pay the net revenues therefrom to his daughter, Agnes Henry Wilson, during her lifetime and provided in the fifth clause that:

> FIFTH:—*In the event of the said Dame Agnes Henry Wilson surviving said donor, she shall have the absolute right to dispose of the said Trust Property by her Will in such manner as she may deem advisable,* and, failing to doing, the same shall at her death pass to her heirs-at-law. In the event of the said Dame Agnes Henry Wilson predeceasing the said Donor, leaving issue her surviving, any of whom has attained or shall attain the age of six months, then the said Trust Property shall be governed by the Will of the said Dame Agnes Henry Wilson, and, failing a Will, the same shall become the property of her heirs-at-law. In the event of the said Dame Agnes Henry Wilson predeceasing the said Donor, without leaving issue, or, leaving issue, none of whom attains the age of six months, then the said Trust Property shall be divided between the said Robert George

1968

ROYAL TRUST COMPANY *et al.* *v.* MINISTER OF NATIONAL REVENUE

Fauteux J.

Sare and the Estate of the said Donor in the proportion of one-fourth to the said Robert George Sare and three-fourths to the Estate of the said Donor, but, in the event of the said Robert George Sare being not then living, then the whole of the said Trust Property shall revert to and form part of the Estate of the said Donor.

In these extracts of the will and of the deed of donation, I have indicated in italics the very event which, amongst others contemplated by the father of the deceased, did actually take place.

It is common ground that the provisions of the *Estate Tax Act* which are here relevant are to be found in the following sections:

3. (1) There shall be included in computing the aggregate net value of the property passing on the death of a person the value of all property, wherever situated, passing on the death of such person, including, without restricting the generality of the foregoing,

(*a*) all property of which the deceased was, immediately prior to his death, competent to dispose;

* * *

(2) For the purposes of this section,

(*a*) a person shall be deemed to have been competent to dispose of any property if he had such an estate or interest therein or such general power as would, if he were *sui juris*, have enabled him to dispose of that property;

* * *

58. (1) In this Act,

(*i*) "general power" includes any power or authority enabling the donee or other holder thereof to appoint, appropriate or dispose of property as he sees fit, whether exercisable by instrument *inter vivos* or by will, or both, but does not include any power exercisable in a fiduciary capacity under a disposition not made by him, or exercisable as a mortgagee;

The trial judge rejected as ill-founded appellants' fundamental contention that the deceased, Agnes Henry Wilson, was not competent to dispose of the above property. He considered that the latter had survived her father and left three children of mature age; that, in such event, her father had directed, in his will, that *the capital of her share shall be disposed of after her death in such manner as she may direct by Will* and had directed, by the deed of donation, that *she shall have the absolute right to dispose of the said trust property by her Will in such manner as she may deem advisable;* and the learned judge held that these were plain and unambiguous directives which vested the deceased with a general power to dispose, by will, of such property as she saw fit.

In support of their appeal from this decision, appellants' first submission is that, on a proper interpretation of s. 3(1)(*a*), it cannot be said,—as admittedly it has to be found in this case to sustain the assessment,—that the deceased was *immediately prior to her death, competent to dispose of the property.* They argue that since the property to be included, under s. 3(1)(*a*), is *all the property of which the deceased was, immediately prior to her death, competent to dispose,* and since a will has no disposing effect until the time of or after death, one must conclude that a person, whose estate or interest in property is such as to enable him to dispose of it only by will or whose general power over it is exercisable only by will, is not a person immediately prior to his death competent to dispose of it. Thus, on appellants' interpretation, s. 3(1)(*a*) contemplates property which a deceased was competent to actually and effectively transfer immediately prior to his death, and not property which is only actually and effectively transferred after death. In my opinion, s. 3(1)(*a*) deals with the competency to transfer and not with the transfer of property; and the words *immediately prior to death* in s. 3(1)(*a*) refer to the point at which a person is competent to dispose of property and not to the point at which there is, consequent to the exercise of competency, an actual and effective transfer of property.

Appellants' interpretation is further conclusively defeated, in my view, by the provisions of s. 58(1)(*i*) which, collectively with ss. 3(1)(*a*) and 3(2)(*a*), operate to provide that a person shall be deemed to have been competent immediately prior to his death to dispose of property if the general power enabling him to dispose of property is exercisable either by instrument *inter vivos* or *by Will,* or both.

Doubts were cast by appellants as to the applicability or effectiveness of s. 58(1)(*i*) for the reason that s. 58(1)(*i*) is in Part IV of the Act, while s. 3(1)(*a*), the taxing section, is in Part I thereof. Part IV, as its heading accurately indicates, deals exclusively with *Interpretation and Application* of the Act. Section 58 defines various expressions found in the Act. The opening words of the section leave no doubt that the meaning and effect which must be given

1968

ROYAL TRUST COMPANY *et al.* v. MINISTER OF NATIONAL REVENUE

Fauteux J.

to the expression *general power* appearing in s. 3(2)(*a*), is the meaning and effect that Parliament ascribed to that expression in s. 58(1)(*i*).

Appellants contended that their interpretation of s. 3(1)(*a*) is borne out by s. 3(2)(*e*) which relates to the legal system of community of property and which prescribes that:

> 3. (2)
>
> (*e*) notwithstanding anything in this section, the expression in paragraph (*a*) of subsection (1) 'property of which the deceased was, immediately prior to his death, competent to dispose' does not include the share of the spouse of the deceased in any community of property that existed between the deceased and such spouse immediately prior to his death.

It is said that, in effect, this section provides that when a deceased husband and his spouse were in community of property, the share of the surviving spouse is not to be included in the property of which the husband was, immediately prior to his death, competent to dispose. And it is then argued (i) that if, on the one hand, the expression *immediately prior to his death* means at the time of his death, then, these provisions are unnecessary, since, under art. 1293 of the *Civil Code* of the province of Quebec, the husband is not competent at the time of his death to dispose by will of anything more than his share in the community; and (ii) that if, on the other hand, the expression means a point during the lifetime of the husband, then, since the husband has the right to dispose of the community property, during his lifetime, these provisions are necessary to prevent that, on the death of the husband, tax be exigible on the whole and not merely on his half of the community property. Hence, the appellants conclude that the latter meaning must be given to the expression *immediately prior to his death.* The *Estate Tax Act,* enacted in 1958 and coming into force on January 1, 1959, governs the estate of persons who died on or after that date and is designed to replace the *Dominion Succession Duty Act,* R.S.C. 1952, c. 89, which continues to govern the estate of persons who died prior to that date. I agree that s. 3(2)(*e*) of the *Estate Tax Act* is not really necessary. Indeed, it had no counterpart in the *Dominion Succession Duty Act* and, in my opinion, was inserted in the *Estate Tax Act ex majore cautela* to ensure that, in cases of com-

munity of property, on the death of the husband, his estate would not be deemed to include the widow's community half. While, in a loose sense, it may be said that the husband is competent to dispose, in his lifetime, of community assets, under the general administrative power conferred on him by art. 1292 *et seq.* of the *Civil Code* of the province of Quebec, he is not free, not competent to dispose of such assets in any sense contemplated by ss. 3(1)(*a*), 3(2)(*a*) and 58(1)(*i*) quoted above. The premise, on which rests the second branch of the dilemma propounded by appellants, is not valid. In my opinion, these provisions of s. 3(2)(*e*) do not support appellants' interpretation of s. 3(1)(*a*).

Appellants' next proposition is that even if it can be said that the deceased was *immediately prior to her death competent to dispose,* she could not appoint or dispose as she saw fit, for, notwithstanding the unlimited language used in the will and in the deed of donation, her father did not intend, thereby, his daughter to have the power to dispose of the property by her will in any way and to any person. Accordingly, it is said, she has no such general power as meets the definition of s. 58(1)(*i*). This view, as to the intention of the father of the deceased, is formed by the appellants on a consideration of the directions appearing in the tenth clause of the will and of the provisions of the fifth clause of the deed of donation which they seek to interpret and rationalize in a manner consistent with the motives which, in their view, prompted the father of the deceased to so direct and provide. The legal principles applicable in the determination of intention are well-known. With respect to the determination of the intention of a testator, the rule is stated in *Auger v. Beaudry*[2], where Lord Buckmaster, delivering the judgment of the Board, said, at page 359:

> .... it is now recognised that the only safe method of determining what was the real intention of a testator is to give the fair and literal meaning to the actual language of the will. Human motives are too uncertain to render it wise or safe to leave the firm guide of the words used for the uncertain direction of what it must be assumed that a reasonable man would mean.

With respect to the determination of the common intention of the parties to a contract, the rule, stated in art. 1013 of

[2] (1919), 48 D.L.R. 356, [1920] A.C. 1010, [1919] 3 W.W.R. 559.

1968

ROYAL TRUST COMPANY *et al.* *v.* MINISTER OF NATIONAL REVENUE

Fauteux J.

the *Civil Code* of the province of Quebec, is to the effect that the common intention must be determined by interpretation rather than by adherence to the literal meaning of the words of the contract only if there is doubt as to what the parties intended. In view of the plain and unmistakable language of the tenth clause of the will and of the fifth clause of the deed of donation quoted above, and particularly to the italicized part thereof, I find no need or justification to resort to interpretation. Nor am I able to agree with the further submission made in support of this second proposition, that the words *in such manner as she may direct by Will* and *in such manner as she may deem advisable,* respectively appearing in these clauses of the will and of the deed of donation, only mean that the deceased could by her will prescribe the manner in which her children would take. In the whole context of the clauses in which they are found, these words are only apt to describe the unfettered power which the deceased had to dispose of the property by will to any person.

Appellants then submitted that even if Mrs. Wilson, the deceased, could appoint or dispose to any person, nevertheless she never had a *general power* within the meaning of s. 58(1)(*i*), in view of the following provisions in the deed of donation and in the will:

In the Deed of Donation:

> THE PRESENT DONATION, being intended as an alimentary provision for the beneficiaries herein named, the said Trust Property shall be, in capital and revenues, so long as it remains in the hands of the Trustee, incapable of being taken in attachment for the debts of the said beneficiaries, nor shall the said annuity be capable of being assigned or anticipated in any way, any such assignment or anticipation to be treated as an absolute nullity.

In the Will:

> TWELFTH:—I declare that all the bequests herein contained are thus made on condition that the property bequeathed and the revenues thereof shall be exempt from seizure for any debts of the legatees named, the said bequests being intended for their alimentary support.

Thus, in both cases, the liberalities are declared to be intended for alimentary support and the property is made immune from seizure and, moreover, inalienable in the case of the property donated, for the debts of the beneficiary. Obviously, the provision of the deed of donation becomes emptied of any purpose and object, at the moment

at which Mrs. Wilson dies if, immediately prior to death, she disposed of the property by will. In my opinion, in no way could it affect her right to exercise the power enabling her to dispose, by will, of the property donated "in such manner as she may deem advisable". Nor could the provision of clause twelve of the will affect a similar power given to her with respect to the property bequeathed to her. A disposition, declaring that property, donated or bequeathed, is intended to be donated or bequeathed for alimentary support and is, for that reason, made immune from attachment, has always been interpreted by the courts as not limiting the right of the beneficiary to dispose of the same as he sees fit, but as having for sole object and effect to prevent third parties to acquire possession of the property by attachment, without the consent of the beneficiary. *Nolin v. Flibotte*[3]; *Delisle v. Vallières*[4]; *Caisse Populaire de Lévis v. Maranda*[5]. Hence, it cannot be said, in my opinion, that, because of these provisions, Mrs. Wilson never had a general power to appoint or to dispose within the meaning of s. 58(1)(*i*).

Appellants' last proposition is that the father created a fiduciary substitution, in his will, with respect to his daughter's share in his estate and that for this reason and also because he created a trust, in the deed of donation, with respect to the property donated, it is not his daughter, Mrs. Wilson, who disposed of the property at the time of her death, but the father himself. In the deed of donation, there is admittedly no fiduciary substitution. As expressed in their factum, appellants' submission is that when, by the deed of donation, the father of Mrs. Wilson disposed of the property to the trustee, he also disposed of it, on his daughter's death if she survived him, to the person or persons that she might direct would receive it. And because, it is said, the father disposed of the property on his daughter's death, she herself could not dispose of it at that time. In my view, this submission is, to say the least, repugnant to the unlimited grant, which the father made to his daughter in the deed of donation, of

> .... the absolute right to dispose of the said property by her Will in such manner as she may deem advisable ...

[3] (1934), 56 Que. K.B. 315.
[4] (1938), 77 Que. S.C. 277.
[5] [1950] Que. K.B. 249.

1968

ROYAL TRUST COMPANY *et al.* v. MINISTER OF NATIONAL REVENUE

Fauteux J.

As to the will, any fiduciary substitution, which it may be said to contain, would be related to and conditioned upon the happening of an event other than the one which actually happened and with which, only, the Minister was concerned. I am in respectful agreement with the learned judge of the Exchequer Court that, in the provision applicable to the event which did actually take place, there is no fiduciary substitution. The plain and unmistakable language of the direction, relevant in that case, rendered Mrs. Wilson free to dispose as she saw fit of the property; and those who benefited as a result of her will, received from her and not from her father. Even if there were in the will, as contended for by appellants, a fiduciary substitution with respect to the share of Mrs. Wilson in the estate of her father, there would still remain to be determined whether, by a fiction of the law,—which is open for Parliament to create for purposes of federal taxation,—that share was not property passing on the death of Mrs. Wilson within the meaning of the *Estate Tax Act*.

The cases of *Montreal Trust Co. et al. v. M.N.R.*[6] and *Wanklyn and others v. M.N.R.*[7], to which we were referred by appellants, differ, fundamentally and in more than one way, from the one here considered. Suffice it to say that in the first one, there was, in the will, an effective fiduciary substitution and that the second, governed by the *Dominion Succession Duty Act*, (1940-41), 4-5 Geo. VI, c. 14, was determined on consideration of certain provisions thereof which differ, in substance, from their counterparts in the *Estate Tax Act, supra.*

In my view, the appeal, from the judgment of the Exchequer Court dismissing the appellants' appeal from the estate tax reassessment made by the Minister, fails and should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: Cate, Ogilvy, Bishop, Cope, Porteous & Hansard, Montreal.

Solicitor for the respondent: D. S. Maxwell, Ottawa.

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[6] [1964] S.C.R. 647, [1964] C.T.C. 367, 64 D.T.C. 5230, 47 D.L.R. (2d) 66.

[7] [1953] 2 S.C.R. 58, [1953] C.T.C. 263, 53 D.T.C. 1167, 3 D.L.R. 705.