

THE MINISTER OF NATIONAL }
REVENUE (*Respondent*) }

APPELLANT;

1955
*May 12
*Nov. 15

AND

TRANS-CANADA INVESTMENT }
CORPORATION LIMITED (*Apel-* }
lant) }

RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Assessment—Taxation—Income Tax—Dividends from taxable Canadian corporations paid Trustee of Investment Trust—Net income therefrom paid by Trustee to Trust's beneficiaries—Whether sums so received taxable—The Income Tax Act, 1948 (Can.) c. 52, ss. 27 (1), 58, 60.

Under an agreement entered into between the respondent as administrator, the Yorkshire and Canadian Trust Ltd., as trustee, and the holders of certificates in a fixed investment trust known as "Trans-Canada Shares Series 'B'", the respondent purchased a fixed number of shares in fifteen Canadian companies (called a "trust unit") and delivered them to the Trustee which registered them in its own name. Pursuant to the agreement the Trustee then issued certificates repre-

*PRESENT: Rand, Estey, Locke, Cartwright and Fauteux JJ.

sending one thousand undivided one thousandths interests in the trust unit to the beneficiaries of the trust. The Trustee, as the registered owner of the company shares received all dividends paid thereon and after deduction of certain charges paid the balance to the beneficiaries of the Trust. In 1950 the respondent purchased on its own account one thousand "Trans-Canada Shares Series 'B'" and subsequently received from the Trustee payment of the net income earned by the trust unit. In its income tax return it claimed this amount as a deduction under s. 27 (1) of *The Income Tax Act* (1948, S. of C., c. 52). The deduction was disallowed by the appellant. An appeal by the respondent was disallowed by the Income Tax Appeal Board but on further appeal to the Exchequer Court of Canada was allowed.

Held (Rand and Estey JJ. dissenting): That the dividends received by the respondent were in the words of s. 27 (1) of *The Income Tax Act* received "from a corporation that (a) was resident in Canada in the year and was not by virtue of a statutory provision, exempt from tax under this Part for the year" and the mere interposition of a trustee between the dividend-paying companies and the beneficial owner of the shares did not change the character of the sum.

Per Cartwright and Fauteux JJ.: The fact that Parliament, by 1949, S. of C., c. 25, s. 27, added s-s 7 (to s. 58 of the Act), prescribing an arithmetical formula for apportioning between a trustee and an individual beneficiary the dividends from taxable corporations received in the first instance by the trustee and did not add a corresponding sub-section as to a corporate beneficiary, does not constitute a sufficient reason for construing s. 27 (1) in a manner contrary to the plain meaning of the words in which it is expressed.

Per Rand J. (dissenting): By s. 27 a corporation must have "received a dividend from a corporation" and on the face of it the respondent did not receive a dividend from the underlying companies. *In re Income Tax Acts, 1924-1928*, (1929) St. R. Qd. 276. *Baker v. Archer-Shee* [1927] A.C. 844, distinguished. In the light of the precise language of ss. 58 and 60 of *The Income Tax Act* and the scheme which it embodies, the respondent could not be said to have "received" from the underlying companies the dividends which were paid to the Trustee.

Per Estey J. (dissenting): The trust agreement read as a whole does not contain language to support a construction that either a legal or equitable right is created in favour of the certificate holders in respect of the dividends received by the Trustee from the underlying companies. *Baker v. Archer-Shee, supra*, distinguished.

Judgment of the Exchequer Court [1953] Ex. C.R. 292, affirmed.

APPEAL from a judgment of Cameron J. of the Exchequer Court of Canada (1) allowing an appeal from a decision of the Income Tax Appeal Board (2) which had disallowed an appeal by the Respondent from an assessment made upon it for the taxation year 1950.

(1) [1953] Ex. C.R. 292;
 53 D.T.C. 1227.

(2) (1953) 8 Tax A.B.C. 220.

J. L. Farris, Q.C. and *T. E. Jackson* for the appellant.

K. E. Meredith for the respondent.

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RAND J.: (dissenting)—The respondent is what is called the administrator of an investment trust. It raises money, purchases securities which it places in the custody of a trustee, in this case a corporate body, and disposes of certificates representing fractional interests in trust units of the securities deposited. A unit consists of a specified number of shares of common stock of named companies and is divided into 1,000 "Trust Shares Series B", each representing 1 1/1000 undivided interest in the unit.

But the administrator can, in addition, be itself a purchaser of these certificates, and that was the case here. Three agencies are thus concerned: the underlying companies earning income in respect of which dividends are paid; the intermediate trustee by which that stock is held and to which the dividends are paid; and the respondent the holder of Series B shares. Dividends declared out of income on which the underlying companies had paid taxes imposed on Canadian companies resident in Canada were received by the trustee. These and other incidental income arising in the course of administering the trust, after deductions for fees, etc. of both the trustee and the administrator, were distributed among the certificate holders including the respondent. As received by the respondent, they became income out of which dividends would be payable to its own shareholders.

Under the Act these moneys represented taxable income in the hands (a) of the underlying companies; (b) of the respondent; and (c) of its shareholders. But the respondent claims to be entitled to deduct from its income the amount so received as dividends received by it from the underlying companies under s. 27(1) which reads:—

(1) Where a corporation in a taxation year received a dividend from a corporation that

(a) was resident in Canada in the year and was not, by virtue of a statutory provision, exempt from tax under this Part for the year,

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an amount equal to the dividend minus any amount deducted under subsection (2) of section 11 in computing the receiving corporation's income may be deducted from the income of that corporation for the year for the purpose of determining its taxable income.

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and the question is the narrow one whether the moneys were so received by the respondent. The Minister was of the opinion that they were not, and this view was upheld by the Tax Appeal Board. But Cameron J. in the Exchequer Court, on the authority of *Baker v. Archer-Shee* (1), held they were and that the respondent was entitled to make the deduction as claimed.

I regret that I am unable to agree with that view of the statute or of the application of the authority mentioned. In *Archer* the question with which the House of Lords had to deal was quite distinguishable from that here. It was whether the moneys to which a life beneficiary under a trust was entitled were "income arising from securities"; and it was held they were. In this sense "arising from" is equivalent to "derived from", and here as there the moneys payable to the beneficiary by the trustee can, as held by *Archer*, be said to be "derived from" the dividends paid by the underlying companies; and it is true that, in this case, when a certain share of a trust unit is acquired through certificates, the holder is entitled to call for a fractional part of the underlying securities themselves, a circumstance not present in *Archer*.

But several obstacles lie in the way of the respondent: the language of s. 27, the provisions of s. 58 dealing with trustees and beneficiaries, and the nature of the trust itself. It is seen that by s. 27 a corporation must have "received a dividend from a corporation" and on the face of it the respondent did not receive a dividend from the underlying companies. In *Re Income Tax Acts, 1924-1928* (2) the expression "derived as dividends", held to extend to income in the hands of a life beneficiary received by the trustee as dividends, was argued by the Commissioner as meaning "received by a shareholder". On this *Henchman J.* observed:—

Is there, then, anything in the words in s. 8, subsec. 8, of our Act, "income derived as dividends from any company," to compel me to set aside this reasoning and its result? Do the words "derived as dividends from any company" necessarily connote the meaning "received by the taxpayer from the company as dividends"?

I do not think so. If that were the meaning, and if it had been intended to bring about a result different from that reached by the Victorian Court, it would have been easy to say "income received (or received by the taxpayer) as dividends from any company . . ." But the

(1) [1927] A.C.

(2) (1929) St. R. Qd. 276.

words are "*derived as dividends*," and these words appear to me to be directed to the nature of the "original source of the income, rather than to whether the ultimate recipient is the shareholder himself or a person otherwise entitled to the benefit of the dividend."

Then the trust is one for holders of certificates that may number among the thousands; the moneys are massed and the charges to be made against them represent the business return for the organization and management of the investments on the part both of administrator and trustee. The certificates may be payable to holders and transferable by delivery. The administrator has certain powers of directing the sale or purchase of constituent stocks and the investment of proceeds in bonds of or guaranteed by the Government of Canada or that the proceeds remain on deposit in a chartered bank; and all voting power in respect of the stock is vested in the administrator. What is created is an intermediate origin of income distinct from the underlying investments. In Archer the trustee was little more than a depository, but even that was seemingly thought sufficient to divorce the beneficiary from the primary securities by the Court of Appeal and by Lord Sumner and Lord Blanesburgh, dissenting, in the House of Lords.

Ss. 27 and 58 distinguish clearly between a corporation shareholder and a corporation beneficiary of a corporate trustee. S. 58 is headed "Trusts, Estates and Income of Beneficiaries and Deceased Persons". It provides that a trust or estate shall, for the purposes of the Act, be deemed an "individual"; and in this conception, rules out by s-s. (3) the basic deductions under s. 25 to individuals.

S-ss. (4) and (5) provide:—

- (4) For the purposes of this Part, there may be deducted in computing the income of a trust or estate for a taxation year such part of the amount that would otherwise be its income for the year as was payable in the year to a beneficiary or other person beneficially interested therein or was included in the income of a beneficiary for the year by virtue of subsection (2) of section 60.
- (5) Such part of the amount that would be the income of a trust or estate for a taxation year if no deduction were made under subsection (4) of this section or under regulations made under paragraph (a) of subsection (1) of section 11 as was payable in the year to a beneficiary or other person beneficially interested therein shall be included in computing the income of the person to whom it so became payable whether or not it was paid to him in that year and shall not be included in computing his income for a subsequent year in which it was paid.

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In relation to s. 11(1)(a) the right is given by s-s. (6A), enacted in 1950, to the beneficiary

who is entitled, either contingently or absolutely, to the property of the trust or estate or some part thereof at some future time

to deduct from the amount that would otherwise be his income from the trust by virtue of s-s. (5), such part as would otherwise be deductible from the income of the trust under regulations authorized by para. (a) of s-s. (1) of s. 11, as the trustee may determine. S-s. (6B), enacted in the same year, deals with depletion and in a somewhat converse form it provides that no part of any amount payable to a beneficiary shall, for the purposes of s-ss. (4) and (5), be deemed to be payable out of an amount deductible in computing the income of the trust under para. (b) of s-s. (1) of s. 11 except such part as is designated by the trustee as being so payable. Then s-s. (7) makes applicable to the income of an individual beneficiary s. 35, which provides for a deduction from tax by an individual of a percentage of dividends received from taxable corporations. With this specific provision for an individual, how can the case of a corporate body as beneficiary be implied on an interpretation that would render the former superfluous? S-s. (8) provides for the deduction of foreign tax by the beneficiary. S. 60 extends taxation to all benefits received by a beneficiary as, for example, amounts paid by the trust for upkeep and maintenance of property for a life beneficiary. The comprehensive scope of these provisions makes it quite evident that Parliament intended them to be an exclusive code for dealing with the interests of beneficiaries in the conception of which the trustee is deemed to be an independent and individual taxpayer in relation to the income of the trust from which deductions and treatment of moneys payable to the beneficiary are expressly dealt with.

In the light of this precise language and the scheme which it embodies, the respondent as beneficiary cannot be said to have received from the underlying corporations the dividends which were paid to the trustee. What it received was a fractional income from a complex business trust, and whether or not the amount so received may be the subject of deduction in ascertaining the income of the beneficiary depends upon whether it is permitted by the statutory

prescriptions dealing with trust beneficiaries. The deduction claimed is not permitted and it results in what may be called triple taxation. That is a consideration which inclines a court to a rigorous scrutiny of the enactment before it, but it does not permit an interpretation that supplies what Parliament must be taken to have deliberately omitted.

I would, therefore, allow the appeal and restore the original assessment, with costs in this and in the Exchequer Court.

ESTEY J. (dissenting): The respondent, Trans-Canada Investment Corporation Limited (hereinafter referred to as administrator), is administrator of an investment trust, the terms of which are embodied in an agreement dated September 1, 1944, made between the administrator as the party of the first part, the Yorkshire and Canadian Trust Company Limited (hereinafter referred to as the trustee), the party of the second part, and the holders from time to time of the certificates representing the Trans-Canada Shares, Series "B", the parties of the third part (hereinafter referred to as certificate holders).

While in the ordinary course of the business under this investment trust the administrator receives funds to invest, as will be more fully explained, the issue here arises out of the fact that in 1950 the administrator invested its own funds in the purchase of 1,000 Trans-Canada Shares, Series "B" and received two half-yearly payments "of the net income less deductions" from the trustee in a total sum of \$737.26. This amount, in its tax return, is shown as a receipt, but claimed as a deduction under s. 27(1) of the *Income Tax Act* (S. of C. 1948, 11 & 12 Geo. V, c. 52), the relevant part of which reads as follows:

27(1) Where a corporation in a taxation year received a dividend from a corporation that

(a) was resident in Canada in the year and was not, by virtue of a statutory provision, exempt from tax under this Part for the year,

* * *

an amount equal to the dividend minus any amount deducted under subsection (2) of section 11 in computing the receiving corporation's income may be deducted from the income of that corporation for the year for the purpose of determining its taxable income.

It is conceded that, if the administrator received, within the meaning of s. 27(1), the dividends from the underlying companies, it is entitled to succeed in this litigation.

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The Minister disallowed the deduction and in this he was supported by the Income Tax Appeal Board. It was, however, allowed in the Exchequer Court on the basis that the dividends received by the trustee from the fifteen underlying companies referred to in Clause 13 of the trust agreement (hereinafter referred to as the underlying companies) did not, as and when paid to the certificate holders, lose their character as dividends and, by virtue of s. 27(1), were deductible and, therefore, not taxable income.

In this appeal it is contended on behalf of the Minister that the \$737.26 was received by the administrator as a *cestui que trust* under the terms of the trust agreement and not as dividends from the underlying companies and, in any event, this amount was not dividends received by a corporation from another corporation within the meaning of s. 27(1).

The trust agreement provides that the administrator, with the funds received by him for investment, must purchase the number of shares of common stock specified opposite the names of the respective underlying companies and when the shares there specified have been purchased they constitute, within the terms of the agreement, a trust unit. The administrator, having purchased these shares constituting a trust unit, is required to deliver them to the trustee, who registers the common shares in his own name and issues to the respective investors certificates evidencing Trans-Canada Shares, Series "B". Each share represents a one-thousandth undivided interest in the trust unit.

Though the shares are held in the name of the trustee, "the right to vote or consent or otherwise act in respect of such shares of stock or other securities shall vest solely in the Administrator" and the trustee "shall, upon demand of the Administrator, execute . . . valid proxies or powers of attorney to vote or consent or otherwise act in respect of such shares of stock or other securities." Moreover, the administrator may, under the provisions of para. 25 of the agreement, direct the trustee to sell shares of stock. Para. 25 reads as follows:

25. If the Administrator at any time shall deem it advisable that the shares of stock of any one or more or all of the Underlying Companies or any other property forming part of the Trust Units should no longer be held by the Trustee hereunder, whether the same shall have been sold and repurchased and as often as any sale and repurchase thereof may or shall

have been made, the Administrator may, in its sole discretion, direct the Trustee to sell such shares of stock or other property, and the Trustee, upon receipt of such direction from the Administrator, shall sell such shares of stock or other property in the manner provided in Clause 22 hereof.

Whenever the trustee shall sell the shares of stock it shall, after making certain deductions, hold the proceeds of the sale in a capital account subject to the detailed directions contained in the agreement.

The trust agreement provides that "the Certificates may be fully registered Certificates without coupons, or may be bearer Certificates with coupons attached." They are transferable. The holder of the bearer certificates may deal with them as the absolute owner and "every Holder waives or renounces all his equities and rights in such Certificate in favour" of a purchaser from a holder. Further, the trustee and the administrator, in dealing with the party in possession of such certificates, is protected by the express terms of the agreement.

The forms of the certificates evidencing Trans-Canada Shares, Series "B" are contained and set out as schedules to the agreement.

Reverting now to a trust unit, it is, under the terms of the trust agreement, included in the phrase "deposited property," which is defined in the trust agreement as follows:

The term "Deposited Property" shall mean all Trust Units held by the Trustee hereunder, including all shares of stock, securities and other property, and any cash received by the Trustee in respect thereof, and the amount of any reserve established pursuant to the provisions of Clause 32 hereof and the amount of any accumulated Net Income.

The agreement then provides in para. 17:

The Trustee shall receive all income profits earnings dividends interest and distributions from and proceeds of the Deposited Property and shall apply distribute and deal with the same under the terms and provisions hereof and to the extent that may be necessary or proper to carry out the powers hereby granted.

* * *

The agreement then provides that the trustee will distribute and pay on March 1 and September 1 in each year "shares represented by the several Certificates, of the Net Income received by the Trustee during the half-yearly period ending respectively fifteenth February and fifteenth August next preceding the date of each such payment, less the deductions hereinafter specified."

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The phrase “net income” is defined:

The term “Net Income” shall mean the aggregate of (a) all cash received by the Trustee by way of dividends (except liquidating dividends) or interest in respect of the Deposited Property, and (b) the net cash proceeds received by the Trustee from the sale of any stock dividends (subject however as provided in Clause 19 hereof) subscription rights, warrants, securities and other rights and property, and (c) any interest allowed by the Trustee hereunder, after making the deductions from such aggregate authorized by Clause 31 hereof.

The deductions referred to in Clause 31 are the amount of the administrator’s semi-annual fee provided for in the agreement, the amount of the trustee’s semi-annual fee and expenditures also provided for in the agreement, as well as all necessary assessments and other governmental charges in respect of the “deposited property” or the income therefrom and also any amount set aside as a reserve fund.

Throughout this litigation the respondent relied upon the decision in *Baker v. Archer-Shee* (1). There the wife (Lady Archer-Shee) of the taxpayer, under the will of her father, Alfred Pell, who died domiciled in New York, was entitled, as tenant for life, to the income from an estate consisting of foreign government securities, foreign stocks and shares in other foreign property. This property was held in trust by the Trust Company of New York which received the income, made certain deductions, including sufficient to pay government taxes, and paid the balance to the order of Lady Archer-Shee into Morgan’s Bank in New York. The majority of their Lordships, upon the assumption that the United States law was the same as that of England, held as expressed by Lord Wrenbury, that Lady Archer-Shee had “an equitable right in possession to receive during her life the proceeds of the shares and stocks of which she is tenant for life . . . Her right under the will is ‘property’ from which income is derived.” Lord Atkinson, who agreed with Lord Wrenbury, stated that her life interest had become “vested in her.” In the opinion of the majority the trustee, in making the deductions, was acting as agent for Lady Archer-Shee.

In order to bring the facts of this case within the principle enunciated in *Baker v. Archer-Shee*, the respondent contended that the dividends received from the underlying companies retained their character as such, notwithstanding

(1) [1927] A.C. 844.

the manner in which they were dealt with by the trustee, until the latter paid them out, less deductions, to the certificate holders. It would seem that an examination of the provisions of the trust agreement indicates that such is untenable.

The intervention of a trustee or of more than one beneficiary will not, in circumstances such as existed in *Baker v. Archer-Shee*, destroy the identity of the dividends or cause them to lose their character as such. In the case at bar, however, there is much more. Under the trust agreement the trust unit provides the basis upon which the Trans-Canada Shares, Series "B" are issued. Constituted of shares of stock of varying proportions in fifteen underlying companies, this unit, in the hands of the trustee, becomes a part of the "deposited property" and the other sources of revenue specified, less deductions, constitute "net income" (the definition of which is above quoted) and it is "the proportionate part attributable to the Series B. Shares" thereof to which the holders of Trans-Canada Shares, Series "B" are entitled. That this "net income" may consist of items other than the dividends from the shares of stock in the underlying companies is evident from the definition of "net income," but, when regard is had to the responsibility of the administrator, in certain circumstances, to sell the shares in the underlying companies, this difference is particularly emphasized. Further, not only is there no express provision giving the certificate holders an interest in the dividends as received by the trustee, but the scheme, considered as a whole, would indicate an intention that the certificate holders should have a claim against the "net income" and only to "the proportionate part attributable to the Series B. Shares." With these factors in mind it would seem that the very purpose of the scheme, the importance therein of the "trust unit," the "deposited property" and the "net income," as well as the fact that the certificates evidencing Trans-Canada Shares, Series "B" are transferable, disclose a situation entirely distinguishable from that before the court in the *Archer-Shee* case. The certificate holder may, in the case at bar, direct the trustee as to in what manner it should deliver his return out of the proportionate part of the "net income" attributable to Trans-Canada Shares, Series "B", but, with respect to the dividends received from the underlying companies, they become a part of the fund out of

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which "net income" is derived and with respect to which the trustee must follow the directions of the trust agreement. Under this latter the control of these dividends remains at all times with the trustee and is never subject to change or direction on the part of the certificate holders. This trust agreement, read as a whole, with particular emphasis upon the portions already referred to, with great respect to those who hold a contrary opinion, does not contain language to support a construction that either a legal or an equitable right is created in favour of the certificate holders in respect to the dividends received by the trustee from the underlying companies.

The provisions of para. 34 of the agreement have been stressed as indicating that the certificate holders have an equitable interest in these dividends. Under para. 34 it is provided that

At any time prior to the termination of this Agreement, the Holder of Certificates representing in the aggregate 200 Series B. shares, or any multiple thereof shall be entitled to receive

* * *

- (b) Certificates duly endorsed and other instruments in proper form for transfer representing $\frac{1}{4}$ th, or any multiple thereof as the case may be being the proportionate part thereof applicable to the shares of stock, securities and other property held by the Trustee which constitute one Trust unit.

It is further provided that the certificate holder is also entitled to the benefits which have accrued in respect of his shares. Under this para. 34 the certificate holder has a privilege or an option which he may exercise at any time. However, he may never exercise that option and neither the administrator nor the trustee, nor any other person, can compel him to do so. It is, moreover, a privilege which can be exercised only by those holding in the aggregate 200 Series B. shares or any multiple thereof. Under this clause, until such time as the holder may exercise his privilege or option, he has no property interest thereunder, equitable or otherwise. The language of Channell B. is appropriate:

... when the position of things is that one party has a right to require a legal interest to be executed at his option and the other party has not a right to have the legal interest executed there then is no equitable interest until the option has been exercised. *Drury v. Rickard*, (1).

With great respect to those who hold a contrary opinion, it would appear that para. 34 does not create any equitable

rights in the certificate holder until he has exercised the privilege or option. Moreover, his rights are then with respect to the shares and whatever amounts may, as aforesaid, be attributable thereto, rather than to the dividends with which we are, in this litigation, concerned.

The appeal should be allowed with costs.

LOCKE J.:—The circumstances under which the shares in what have been referred to as the “underlying companies” were deposited with the Yorkshire and Canadian Trust Limited are described in the reasons for judgment of the learned trial judge. I respectfully agree with his conclusion and with his reasons for reaching that conclusion.

The matter to be determined is the proper interpretation of s. 27(1)(a) of the *Income Tax Act* of 1948. It is conceded that the underlying companies were of the nature defined in that portion of the section and, accordingly, if the respondent had been itself registered as the shareholder, the dividends would not have been subject to taxation in its hands. Since, however, the respondent did not receive payment of these dividends directly from the underlying companies but from the trustee, it is said that liability to tax attaches. If this argument were carried to its logical conclusion and a corporation shareholder of such a company should direct that instead of issuing dividend cheques to itself they be paid to its solicitors on its behalf or to its credit in a bank, the tax would apply since the dividend would not be “received” directly by the shareholder from the underlying company.

I think no such meaning is to be assigned to the language of the section. As pointed out by Cameron J., the shares in the underlying companies representing the trust unit were kept separate from all others by the trustee, and when dividends were received they were immediately placed in a special trust account and all distributions made out of that account. No question arises as to the portion of these moneys to which the respondent was entitled as administrator, income which would, of course, be subject to taxation in its hands. Indeed the fact that the respondent was named as the administrator with the functions described in the agreement of September 1, 1944 is an irrelevant circumstance in determining the present matter. From the

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funds so received, the trustee was entitled to deduct its own charges, any taxes or other governmental charges, and at its option an amount for any contingent tax liability: the balance of the dividends were held in trust for the respondent and in due course paid over to it.

I agree with the learned trial judge that the respondent was the beneficial owner of these shares, and I am quite unable to understand how the character of these moneys became changed through the intervention of the trustee or by the fact that by the agreement it was entitled to make the deductions I have mentioned before paying over the amount to the respondent.

I would dismiss this appeal with costs.

The judgment of Cartwright and Fauteux JJ. was delivered by:

CARTWRIGHT J.:—For the reasons given by the learned trial judge I agree with the conclusion at which he has arrived. I wish, however, to add a few observations as an argument, which is not referred to expressly by the learned trial judge, was addressed to us, i.e., that the terms of s. 58 of The Income Tax Act require a construction of s. 27 (1) different from that adopted by the learned trial judge.

If the words of s. 27 (1) alone are considered it would be my opinion that the words—"from a corporation that (a) was resident in Canada in the year and was not by virtue of a statutory provision, exempt from tax under this Part for the year"—constitute an adjectival phrase qualifying the word "dividend" and not an adverbial phrase qualifying the word "received". If this be the correct view, it follows that in applying the words of the section to the facts of this case the question to be answered is not, from whose hand did the appellant receive actual payment of the sum of \$737.26, but rather, of what did such sum consist, and, in my opinion, the reasons of the learned trial judge make it clear that the answer to such question is that it consisted of dividends of the sort described in the phrase above quoted and that the mere interposition of a trustee between the dividend-paying companies and the beneficial owner of the shares did not change the character of such sum. The

finding of the learned trial judge that the appellant was the beneficial owner of the shares in the underlying companies was not questioned before us.

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It is argued, however, that, assuming that this would be the correct construction of s. 27 (1) read by itself, when read with the rest of the Act, and particularly with s. 58 it must be construed as having no application to a case in which a corporation receives a dividend of the sort described through the medium of a trustee. It is said that s. 58 is a code dealing exhaustively with all cases in which income is received in the first instance by a trustee and paid over by it to a beneficiary, and that as s-s. 7 expressly provides the manner in which an individual beneficiary may avail himself of the provisions of s. 35 in respect of the part of the income received by him from the trustee which consists of income from the shares of the capital stock of taxable corporations and the section is silent as to corporate beneficiaries it must be inferred that a corporate beneficiary is left without relief in respect of such income received by it through the medium of a trustee.

This is a persuasive argument but I do not think it is entitled to prevail. In Statutes of Canada, 1948, 11-12 George VI c. 52, s. 58 ended with s-s. 6. As it then stood the effect of the section was to provide that a trustee in computing its income should deduct such part thereof as was payable to a beneficiary who in turn was required to add such part in computing his income. In so far as such part consisted of dividends from taxable corporations the beneficiary if an individual would have been entitled to the benefits of s. 35 and if a corporation to the benefits of s. 27, unless it could be maintained that the character of so much of such part as consisted of dividends had been changed by passing through the hands of the trustee and, in my opinion, the reasons of the learned trial judge make it clear that this could not be successfully maintained.

It does not appear to me that the fact that Parliament, by Statutes of Canada, 1949, 13 George VI, c. 25, s. 27, added s-s. 7, prescribing an arithmetical formula for apportioning between a trustee and an individual beneficiary the dividends from taxable corporations received in the first instance by the trustee and did not add a corresponding

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sub-section as to a corporate beneficiary constitutes a sufficient reason for construing s. 27 (1) in a manner contrary to what appears to me to be the plain meaning of the words in which it is expressed or for introducing the anomaly that the interposition of a trustee between a dividend-paying taxable corporation and the beneficial owner of its shares should leave unaffected in the case of an individual beneficial owner but destroy in the case of a corporate beneficial owner that protection against multiple taxation which it was the clear intention of Parliament to afford to all recipients of dividends from taxable corporations. As was pointed out by Fauteux J. in *Attorney General for Quebec v. Bégin* (1), the rule *expressio unius est exclusio alterius* must be applied with caution in construing a statute. To apply it in this case would, in my opinion, defeat the intention of Parliament.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *T. E. Jackson.*

Solicitors for the respondent: *Campbell, Meredith & Murray.*
