

CANADA / JUDGMENT

Greenshields et al. v. The Queen

[1958] SCR 216

COURT

Supreme Court of Canada

DECIDED

12 March 1958

Source: decisions.scc-csc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Greenshields et al. v. The Queen

Collection

Supreme Court Judgments

Date

1958-03-12

Report

[1958] SCR 216

Judges

Taschereau, Robert; Locke, Charles Holland; Cartwright, John Robert; Fauteux, Joseph Honoré
Gérald; Abbott, Douglas Charles

On appeal from

Quebec

Subjects

Estates

Decision Content

Supreme Court of Canada

Greenshields et al. v. The Queen, [1958] S.C.R. 216

Date: 1958-03-12

Charles Glass Greenshields And Chartered Trust Com Pany (Suppliants) Appellants;

and

Her Majesty The Queen Respondent.

1957: November 4, 5; 1958: March 12.

Present: Taschereau, Locke, Cartwright, Fauteux and Abbott JJ. 1[1957] Que. Q.B. 63.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Succession duties—Bequest for life of net income of residue of estate— Capital to be paid to tax-exempt institution upon death of life beneficiary—Whether bequest to life beneficiary a dutiable transmission —Quebec Succession Duties Act, 1943, c. 18, ss. 2,13, 19, 31, as amended by 13 Geo. VI, c. 32.

A testatrix directed her executors and trustees to hold the residue of her estate on trust to pay the total net income from it to two of her friends for life, and on the death of the survivor to pay the whole capital to an institution exempt from duties under s. 13 of the Quebec Succession Duties Act. She further directed that all succession duties be paid out of the capital of the residue, without the intervention of the beneficiaries.

Held (Locke J. dissenting): Succession duties, under s. 31 of the Act, must be calculated as if the life beneficiaries had received the fund as absolute owners. This was clearly an "attribution of the revenue from ... capital or from [a] trust fund" within the meaning of that section.

Per Locke J., dissenting: On a proper interpretation of s. 31 of the Act, that section does not apply where the transmission in remainder is to a charity entitled to the benefit of the exemption provided by s. 13. However, duty was payable upon the life interests in the revenue, as these were transmissions within the ambit of the Act. A value for succession duty should, therefore, be placed on the life interests pursuant to ss. 38 and 39 of the Act.

APPEALS from two judgments of the Court of Queen's Bench, Appeal Side, Province of Quebec¹, reversing the judgment of Gibsone J. The suppliants-appellants claimed the repayment of \$84,183.91 paid under protest and Gibsone J. gave judgment for \$83,983.03. Appeals dismissed, Locke J. dissenting.

A. M. Watt, Q.C., and P. M. Laing, for the suppliants, appellants.

Guy Hudon, Q.C., for the respondent. Taschereau J.:—Tous les faits de cette cause ont été rapportés dans les raisons écrites de certains de mes collègues, et il est en conséquence inutile de les citer de nouveau. Je ne désire qu'ajouter quelques mots pour préciser davantage ma pensée.

Je m'accorde avec mon collègue M. le Juge Abbott sur l'interprétation qu'il faut donner aux arts. 13, 19 et 31 de la Loi des droits sur les successions, 1943 (Que.), c. 18, et sur le point que dans le présent cas, il ne s'agit pas d'usufruit, ni d'usage, ni de substitution, mais bien d'attribution des revenus d'un capital ou d'une fiducie. Il s'ensuit que le jugement majoritaire de cette Cour dans *Guaranty Trust Company of New York et al. v. The King*², ne peut nous guider dans la détermination du litige. Il s'agissait en effet, dans cette cause, de l'application d'une loi différente de celle qui existe maintenant.

De plus, si la loi concernant la fiducie (Loi des Trusts) doit s'appliquer dans la présente cause comme on le prétend, ce dont je doute fort, je suis convaincu que c'est bien celle, telle que comprise dans la province de Québec et introduite ici par la législature, lorsqu'elle a été ajoutée aux lois publiques en octobre 1879, et incorporée au Code Civil lors de la refonte de 1888. La "Loi des Trusts" anglaise était jusqu'à cette dernière date totalement étrangère au droit français de notre province, et ce n'est que partiellement qu'on a adopté certaines de ses dispositions. Comme le dit le Conseil Privé dans la cause de *Laverdure v. Du Tremblay et al.*³:

It may be useful to add that the English law relating to trusts and trustees was only adopted to the limited extent involved in those specific provisions and of any implications necessarily flowing from them. The English system of Equity was clearly not introduced. In view of those sections, however, there can be no reason for doubting that the true position of the children, including Edouard Berthiaume, after the death of the donor, was that they were beneficiaries under the deed of gift and under the will, with personal rights against the fiduciary donees (donataires fiduciaires) in the case of the deed, and the fiduciary legatee (légataire fiduciaire) in the case of the will.

(Les italiques sont miennes.)

Le Comité Judiciaire ne faisait que confirmer ce qui avait été dit précédemment par M. le Juge Rinfret, rendant la décision unanime de cette Cour dans *Curran v. Davis*⁴, et par M. le Juge Mignault dans un article remarquable intitulé "A propos de fiducie", publié dans la *Revue du Droit*, vol. 12 (1933-34), p. 73.

Avec cette notion de la fiducie telle qu'elle existe dans la province de Québec, et non pas telle qu'on la trouve ailleurs, comme en Angleterre ou dans les provinces de droit commun, il n'y a pas d'obstacle à la détermination de cette cause, de la manière que l'a proposée la Cour du banc de la reine¹.

Evidemment, les appelants sont véritablement des administrateurs fiduciaires des biens légués. Il exercent sur ces derniers un droit de propriété limité par le texte de la loi et par la jurisprudence que j'ai citée; il sont comptables aux légataires des revenus qui leur sont attribués. Le temps venu, ils devront remettre le capital à "The School for Crippled Children" qui est le légataire ultime, en déduisant cependant le montant employé au paiement des droits, tel que l'a voulu la testatrice, et comme d'ailleurs l'autorise l'art. 31 de la Loi des droits sur les successions.

Pour ces raisons, ainsi que pour celles données par mon collègue M. le Juge Abbott, je suis d'avis que les appels doivent être rejetés avec dépens.

Locke J. (dissenting):—The proceedings in this matter were commenced by petition of right by the executors of the late Isabel Greenshields to recover certain moneys paid under protest to the Crown under the provisions of the Quebec Succession Duties Act, 1943, 7 Geo. VI, c. 18, as amended. The claim of the suppliants was allowed in the Superior Court by Gibsone J. but that judgment was set aside in the Court of Appeal⁵ and the action dismissed.

By the will, all of the estate of the testator was bequeathed to the executors upon certain trusts which included the following:

- (c) To pay to my friends, Claire Johnston and Dorothy Hamilton, wife of Dr. Griffin Hill or the survivor of them, during their lifetime, the net income of the residue of my said Estate;
- (d) Upon the death of the survivor of the said Claire Johnston and or Dorothy Hamilton-Hill, to deliver the residue of my Estate to the School for Crippled Children at Montreal; It was further directed that all succession and other death duties should be paid out of the capital of the residue, without the intervention of the beneficiaries.

The evidence discloses that the residue of the estate, after providing for a legacy to Charles Glass Greenshields, one of the executors, was \$342,118 and upon this amount the Province required payment of succession duties in the sum of \$83,983.03, and the suppliants sought the return of this amount or, alternatively, that amount less any amount payable as succession duties upon the life interests.

Section 9 of the Quebec Succession Duties Act specifies the rates of duty upon transmissions which vary where the property is transmitted to the wife or to relations in blood or in law and where the beneficiary is a stranger. In this case, the beneficiaries of the life interests provided were strangers and the bequests attracted accordingly a higher rate of duty.

Section 31 of the Act provides in part:

In the case of usufruct, use, substitution or attribution of the revenue from any capital or from any trust fund, the amount of duties payable shall be calculated as though the usufructuary, the person having the right to use, the institute or the beneficiary of the revenue, received, as absolute owner, the property subject to the usufruct, right of use, substitution or trust, and the said duties may be paid from the capital.

While it is admitted that no succession duties were exigible upon the gift of the residue to the School for Crippled Children by reason of the provisions of s. 13 of the Act, the Crown, relying upon the above provision, levied duty on the bequest of the life interests as if the beneficiaries, Miss Johnston and Mrs. Hill, had received the corpus of the residue of the estate. In the result, as the will directed, and s. 31 permitted, the executors to pay the duties levied out of the capital of the residue, the value of the legacy to the charity declared exempt under the Act has been reduced by the amount to which the duty thus exacted exceeded such duty as would have been payable upon the life interests in question.

The following further sections of the Act are to be considered. Section 2 reads:

All property, moveable or immovable, the ownership, usufruct or enjoyment whereof is transmitted owing to death, shall be liable to duties, calculated upon the aggregate value of the property transmitted, at the rates fixed in section 9. Section 4 defines property in a manner which would include the life interests in question. Section 9 is the charging section and the duty is imposed on the property transmitted.

Section 13, so far as applicable, reads:

... no duties shall be exigible on legacies, gifts and subscriptions for religious, charitable or educational purposes.

Section 19 reads:

Life rents or other rents and endowments shall be capitalized and valued at the amount required, on the date of the death, by a life insurance company, to secure a rent or endowment of a like sum.

Articles 981a to 981n of the Civil Code and the nature of the rights of *cestuis-que-trust* were considered by the Judicial Committee in *Laverdure v. Du Tremblay et al.*⁶ From the date of the death of Mrs. Greenshields the appellants, as trustees, were seized of the corpus of this estate in trust upon the trusts declared by the will and were entitled to possession of it as against the beneficiaries named in the will and, in that capacity, were liable to account to the beneficiaries and to pay to those entitled to the life interests the income from the residue in accordance with the terms of the will and to transfer the residue to the School for Crippled Children on the death of the survivor of those entitled to the life interests.

The property transmitted to Miss Johnston and to Mrs. Hill was a life interest in the net income and it is upon such interests alone that the duty was imposed by ss. 2 and 9. The property transmitted to the School for Crippled Children was the right upon the death of the survivors of those beneficiaries to a conveyance of the residue of the estate. The corpus of the estate, as it was as of the death of the testator, was made subject to the payment of the debts and funeral and testamentary expenses, in addition to such succession and other death duties as might be payable upon the bequests to Charles Glass Greenshields and to Miss Johnston and Mrs. Hill, to the fees and expenses of the Chartered Trust Company and to the payment of such expenditures as might be incurred for repairing, improving or rebuilding any property of the estate. The amount of the residue would not, accordingly, be determined until the expiry of the last of the life interests. In *Guaranty Trust Company of New York et al. v. The King*⁷, the facts were similar to those affecting the present matter. The net revenues were given to three life beneficiaries and, on the extinction of these interests, were to be, paid to charitable institutions, bequests to which were entitled to exemption. The judgment of the majority of this Court delivered by Rand J. held that the Province was not entitled to assess succession duties upon the corpus of the estate, but merely upon the value of the life interests. That case, however, was decided under the terms of the Quebec Succession Duties Act as it appeared as c. 80 of the Revised Statutes of 1941. In that statute, s. 13 (which was repealed and re-enacted by c. 18 of the statutes of 1943), so far as relevant, read:

In the case of transfer of property with usufruct or substitution, the amount payable shall be calculated as if the usufructuary or the institute received as absolute owner and the duties shall be paid only on the actual capital of the property transmitted.

Rand J., in delivering the judgment which allowed the appeal from the Court of Appeal of Quebec, said in part⁸:

But here we have a life interest, not usufruct, in income with the interest in the corpus exempt from tax. The beneficiary has no contact with much less possession of the corpus and the duty of the trustee under section 13 is to deduct the tax from property in his hands belonging to the person liable for it. To deduct tax in respect of the property of the charity would be in the face of the exemption.

Section 31 was again repealed and re-enacted by s. 8 of c. 32 of the statutes of 1949 and now reads as first above quoted. The words "attribution of the revenue from any capital or from any trust fund" appear to me to be sufficient to describe the bequest to the beneficiaries of the life interest in the present matter and, if the section applies to a case such as the present where the corpus of the estate, after the satisfaction of the charges imposed upon it, is held upon terms such as exist in the present matter, the position taken on behalf of the Crown would appear to be justified.

The taxing sections of the Quebec Succession Duties Act in terms impose the duties upon the property transmitted at specified rates. There was no transmission to Miss Johnston or Mrs. Hill of either the corpus or the residue of the estate. The exemption given to legacies for charitable purposes is in the clearest terms and no duties were exigible upon the bequest to the School for Crippled Children, payable either at the time of death or at the time when, on the extinction of the life interests, the trustees convey the corpus to them.

The status of the property held in trust by the executors under the will in question must, of necessity, be considered in the present matter, since it has been resorted to to pay the succession duties.

Article 981a reads:

All persons capable of disposing freely of their property may convey property, moveable or immovable, to trustees by gift or by will, for the benefit of any persons in whose favor they can validly make gifts or legacies.

Article 9816 reads in part:

Trustees, for the purposes of their trust, are seized as depositaries and administrators for the benefit of the donees or legatees of the property ... conveyed to them in trust. ...

Article 981d provides that trustees dissipating or wasting the property of the trust, or refusing or neglecting to carry out the provisions of the document creating the trust, or infringing their duties, may be removed by the Superior Court.

By art. 981h it is declared that trustees are obliged to execute the trust which they have accepted, unless they be authorized by a judge of the Superior Court to renounce.

Article 981k declares the duty of the trustees to exercise reasonable skill and care in administering the trust and art. 981l provides that at the termination of the trust, they must render an account and deliver all the properties in their hands to the persons entitled.

These are the same duties that are imposed upon trustees under the laws of England.

Articles 981a to 981n were added to the Code in 1888.

In *Curran v. Davis*⁹, Rinfret J. (as he then was), in delivering the judgment of the Court, said in part:

Après la revue que nous venons de faire de la jurisprudence et de la doctrine dans la province de Québec sur la matière de ce litige, il est difficile de ne pas conclure que le chapitre de la fiducie dans le code est vraiment d'inspiration anglaise. In Curran's case, Sir Mortimer Davis had executed a trust deed conveying property to trustees in trust, inter alia, to pay an annuity on the death of the said Davis to his adopted son. Before his death, Davis assumed to revoke the trust in favour of the son who in the action, following his father's death, asserted that the revocation was ineffective, the trust deed having become effective upon the acceptance of the trust by the named trustees. There was no evidence that the son had accepted the gift to him and it was contended that, in these circumstances, the donor might validly rescind the trust. This contention was rejected in this Court. While that was the issue, the learned judge who delivered the judgment of the Court discussed at some length the effect to be given to the article in question, saying that he was of the opinion that art. 981a was the fundamental article and that it contained all that was necessary to define a deed of trust. Speaking of the position of the trustees, he said¹⁰:

Les "trustees" n'en seront cependant pas propriétaires, dans le sens absolu du mot. Les "trustees", bien que seuls propriétaires apparents à l'égard des tiers, n'auront ni l'usus, ni le functus [fructus?] ni l'abusus de la "trust property".

And, speaking of the right of the beneficiary, said¹¹:

En conséquence, Philippe Meyer Davis n'a aucun droit de propriété sur la "trust property". Il n'a que des droits conservatoires; et l'on peut se demander s'il a le droit de suite, ce qu'il n'est pas nécessaire de décider pour les fins de ce litige.

A second appeal of *Curran v. Davis*¹² was heard at the same time and the judgment follows at p. 307 of the report. Rinfret J. said that there was no distinction, in the legal sense, between the cases and, speaking of the status of the trust property conveyed to the trustees, said¹³:

It follows that the trust property would, immediately upon being received, become subject to all the terms and conditions of the trust, which would at once be binding upon the trustees.

And again¹⁴:

"As and when received" by the trustees, the trust property became affected ipso facto by the terms and conditions of the deed. The case of *Laverdure v. Du Tremblay*¹⁵ was decided by the Judicial Committee four years later and there is nothing in the judgment delivered by Lord Maugham conflicting with the above-quoted passages from the judgment in the Curran cases, though something of importance was added. After saying that the Civil Code of Quebec had originally no article relating to trusts and that, generally speaking, the French system does not recognize trusts, he said that their great convenience was recognized in Quebec and arts. 981a to 981n were added to the Code. Lord Maugham then said in part¹⁶:

It may be useful to add that the English law relating to trusts and trustees was only adopted to the limited extent involved in those specific provisions and of any implications necessarily flowing from them. The English system of Equity was clearly not introduced. In view of those sections, however, there can be no reason for doubting that the true position of the children, including Edouard Berthiaume, after the death of the donor, was that they were beneficiaries under the deed of gift and under the will, with personal rights against the fiduciary donees (*donataires fiduciaries*) in the case of the deed, and the fiduciary legatee (*légataire fiduciaire*) in the case of the will.

(The italics are mine.)

That the English system of equity was clearly not introduced into Quebec is a circumstance that has no bearing on the present question. The English law as to trusts, to the extent described, was introduced, which is the only matter with which we are concerned. The latter part of this quotation does not purport to define or limit the rights which the beneficiaries might assert for the protection of their interest or the status of the trust estate. The words in italics are to be noted and are of importance.

The duties of the trustees are defined in the present case by the will and by the terms of the article which I have quoted. As declared by the article, the property is held by the trustees for the benefit of the *cestuis-que-trust*. The legal title is vested in the trustees as well as the right to possession but, from the time of the death of the testator, that estate was in their hands impressed with a trust in favour, *inter alia*, of the School for Crippled Children. To say this is but to paraphrase the language of Rinfret J. in Curran's case¹⁷. It is perfectly clear from the language of the article and from what was said in Curran's case and in the judgment of the Judicial Committee in Laverdure's case that the *cestuis-que-trust* were entitled, in respect of the property and the revenues from the property held in trust for them, to assert the same rights against the trustees for the protection of their respective interests as might be had under the English law and which are described at p. 706 et seq. of Lewin on Trusts, 15th ed. 1950.

It is with these considerations in mind that s. 31 of the Quebec Succession Duties Act is to be interpreted.

Put bluntly, the argument for the Crown is that while the transmission to the School for Crippled Children, which the will directs, is by virtue of s. 13 exempt from succession duty, due to the interposition of the life estate in the revenues, the corpus held by the trustees and impressed with a trust in favour of the School may be resorted to to pay duties assessed against Miss Johnston and Mrs. Hill.

This construction obviously ignores the right of exemption which the charity is entitled to by law. It is true that the duty is not assessed against it and it is only the property held in trust for it, art. 981b, that is levied upon. But this is a distinction without a difference. It is construing the statute in a manner which permits the Crown to do indirectly what it cannot do directly. No statute should be so interpreted unless its terms make it perfectly plain that no other reasonable construction can be placed upon it.

The broad general rule for the construction of statutes is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest: *Jennings v. Kelly*¹⁸. The law will not allow the revocation or alteration of a statute by construction when the words may be capable of proper operation without it. It cannot be assumed that Parliament has given with one hand what it has taken away with another: *Maxwell on The Interpretation of Statutes*, 10th ed. 1953, p. 160.

It is not, I think, without significance that when the Quebec Succession Duties Act was repealed and re-enacted in 1943 and amended in 1949, while changes were made in the terms of s. 31, the absolute nature of the exemption of legacies to charitable institutions such as the School for Crippled Children was not changed.

In my opinion, the proper interpretation to be placed upon s. 31 is that it applies to cases where the transmission of property such as a life interest in the revenue and of the residue upon the extinction of the life interest are all liable to duty under the charging sections. By reason of its terms, where, as in the present case, the life interest is given to strangers, the amount of the duty must be calculated at the higher rate imposed by s. 9(3) and be payable upon each of the transmissions.

Where the transmission in remainder is entitled to the benefit of the exemption provided by s. 13, s. 31 does not apply, in my opinion.

It has been said in argument that the language of s. 31 is clear, but that is equally true of s. 13. Applied literally to a case such as the present, they are inconsistent and irreconcilable. It is, however, not merely the interpretation of the language of s. 31 that is to be considered but the subject-matter to which it applies. The language of s. 13 is specific and that of s. 31 general. In the case of conflict between an earlier and a later statute, a repeal by implication is never to be favoured and is only effected where the provisions of the later enactment are so inconsistent with, or repugnant to, those of the earlier that the two cannot stand together. Unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal cannot be implied. Special Acts are not repealed by general Acts unless there be some express reference to the previous legislation or a necessary inconsistency in the two Acts standing together which prevents the maxim *generalia specialibus non derogant* being applied: *Broom's Legal Maxims*, 10th ed. 1939, p. 349; *Maxwell, op. cit.*, p. 176. This principle is, in my opinion, applicable in the present case. There is no difficulty in giving both sections a reasonable and precise meaning without injustice either to the taxpayer or to the Crown. The interpretation which I would give the Act complies, in my opinion, with the rule stated in s. 41 of the

Interpretation Act, R.S.Q. 1941, c. 1, which reads:

Every provision of a statute, whether such provision be mandatory, prohibitive or penal, shall be deemed to have for its object the remedying of some evil or the promotion of some good. Such statute shall receive such fair, large and liberal construction as will ensure the attainment of its object and the carrying out of its provisions, according to their true intent, meaning and spirit.

What, in my opinion, is the fallacy of the argument addressed to us on behalf of the Crown may perhaps best be demonstrated by an illustration. As pointed out by my brother Cartwright, if the will in question directed that the estate be held in trust for any period of time for the charity and, upon the expiration of that period, for those to whom the life interest was given, if effect be given to the Crown's contention there would be no duties payable under the Quebec Succession Duties Act by anyone, since none would be payable upon the succession in favour of the charity. It is a cardinal rule for the interpretation of all statutes that they should be so construed, if possible, that they do not lead to an absurdity. In *Grey v. Pearson*¹⁹, Lord Wensleydale said:

I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther.

The cases on the matter are collected in the 10th edition of Maxwell and the learned author, after repeating the above statement of Lord Wensleydale, says (p. 6):

In repeating this canon in *Abbott v. Middleton* (1858) 7 H.L.C. 114, 115, Lord Wensleydale said: "This rule in substance is laid down by Mr. Justice Burton in *Warburton v. Loveland*, 1 Huds. & Bro. 648, H.L. It had previously been described as 'a rule of common sense as strong as can be,' by Lord Ellenborough, in *Doe v. Jessep*, 12 East 292. It is stated (by Lord Cranworth, when Chancellor) as 'a cardinal rule,' from which, if we depart, we launch into a sea of difficulties not easy to fathom; and as the 'golden rule' when applied to Acts of Parliament, by Jervis C.J., in *Mattison v. Hart*, 14 C.B. 385."

While this interpretation is urged upon us by counsel for the Crown, and while to approve it would clearly be beneficial to the Province in this matter, it would be obviously disastrous to the revenue in the future since, by the simple expedient of making a bequest of an interest in the revenue of an estate for a short period to a charity entitled to exemption under the terms of s. 13 and leaving the remainder of the estate to other persons such as Miss Johnston and Mrs. Hill, transmissions to whom would normally be taxable under the Quebec Succession Duties Act, liability for any such duty would be avoided entirely. That, of course, is a matter with which we are not concerned. The statute, however, is to be expounded "according to the intent of them that made it": *Sussex Peerage Case*²⁰, and I decline to believe that the Legislature of Quebec intended by the language of s. 31 to deprive charitable institutions of the immunity given to them by s. 13 or to permit transmissions which would otherwise be liable to duty to be exempted by an

expedient of the nature above mentioned.

While the appellants contended that no duty was payable upon the life interests in the revenue, that claim cannot be sustained. These transmissions are clearly within the ambit of the taxing sections.

Gibson J., who considered that the duty payable in respect of these interests should be computed from year to year and paid by the trustees when the amount of the annual revenue was determined, gave judgment for the full amount of \$83,983.03. Sections 38 and 39, however, contemplate that the amount of the duty upon a transmission is to be calculated once and for all by the collector forthwith following the death of the testator, which involves placing a value on each transmission in order that the rate and the amount payable may be determined under s. 9. I do not think that the evidence given by the witnesses Gammell and Baldwin is sufficient to enable us to determine the value for succession duty of the legacies of the life interests.

I would, therefore, set aside the judgment of the Court of Appeal and at the trial and direct that the appellants recover judgment against the Crown in the amount of \$83,983.03, less the amount of duty payable upon the bequests to Miss Johnston and Mrs. Hill, with leave to apply in the event that the parties are unable to agree upon the proper amount of the latter assessment. I would allow the appellants their costs in the Court of Appeal and in this Court. Cartwright J.:—The relevant facts and statutory provisions and the contentions of the parties are set out in the reasons of other members of the Court.

The question before us may be summarized as follows: When a deceased has bequeathed a fund to his executors in trust to pay the income therefrom to A for life and on the death of A to transfer the capital of the fund to B, what duties, if any, are exigible under the provisions of the Quebec Succession Duties Act, hereinafter referred to as "the Act", when A is a stranger in blood to the deceased and B is a charitable institution a legacy for whose purposes falls within s. 13 of the Act?

I have reached the conclusion that the answer to this question given by the unanimous judgment of the Court of Queen's Bench (Appeal Side)²¹ is correct.

The case stated appears to me to fall within the words of s. 31 of the Act, those which are relevant being as follows:

In the case of ... attribution of the revenue from any ... trust fund, the amount of duties payable shall be calculated as though the ... beneficiary of the revenue, received, as absolute owner, the property subject to the ... trust, and the said duties may be paid from the capital.

If I have understood correctly the arguments of counsel and the reasons of the other members of this Court and those of the learned justices in the Courts below it has not been suggested in any of them that s. 31 would not govern this case if B instead of being a charitable institution were an individual belonging to either of the classes defined in s. 9(1) and s. 9(2) of the Act.

For the appellants, however, it is contended that since B is a charitable institution the application of s. 31 would result in the nullification or virtual repeal of s. 13, that the two sections should, if possible, be reconciled and that if reconciliation is impossible s. 13 should be given effect under the rule expressed in the maxim *generalia specialibus non derogant*. But, assuming that the maxim is applicable, it appears to me that, as between the two sections, s. 31 rather than s. 13 is the special one. Sections 9(1), 9(2), 9(3) and 13 contemplate four classes, of which the first three are liable to pay duties at different rates and the fourth is free from duty. Into one of these classes will fall every legatee to whom property is transmitted owing to death. If it were not for the terms of s. 31, where property is transmitted in trust for two persons successively each would pay duties at a specified rate or would be free from duty according to the rule for the class of which he was a member ; but the Legislature has seen fit to make a special rule for the case in which certain successive interests are given.

Prior to the enactment of s. 31, by 7 George VI, c. 18 (1943), the case with which we are concerned did not fall within the terms of the second paragraph of s. 13 of R.S.Q. 1941, c. 80, which was the predecessor of s. 31, and read as follows:

In the case of transfer of property with usufruct or substitution, the amount payable shall be calculated as if the usufructuary or the institute received as absolute owner and the duties shall be paid only on the actual capital of the property transmitted.

It was so held by this Court in *Guaranty Trust Company of New York et al. v. The King*²². Dealing with dispositions which fell within the second paragraph of s. 13, as then worded, Rand J. said:

Here the conception is the transfer of ownership "with usufruct or substitution"; all interests are dealt with as a single whole, and the implication is clear that the provision is special.

It is true that Rand J. was not discussing the application of the maxim *generalia specialibus non derogant* and that what was said as to the meaning and effect of the provision of which he was speaking may be regarded as obiter, as that provision was held inapplicable to the terms of the will there before the Court, but I agree with the view expressed that the provision is a special one.

I am unable to discern a satisfactory reason in principle for holding that s. 31 applies where B is in a class liable to pay duty at a rate higher or lower than that payable by A but does not apply where B is in a class not liable to pay duty at all. It is argued that there is a fundamental difference between holding that s. 31 is effective to change the rate which would but for the section be payable by B to that payable by A where the former is either greater or less than the latter and holding that the section is effective where the former is zero; but this difference appears to me to be one of degree rather than of kind.

It appears to me that wherever a fund is given to two persons successively, whether by usufruct, use, substitution or (as in the case at bar) by attribution of revenue, the Legislature has provided that, as it was put by Rand J. in the passage quoted above, the successive interests given are to be dealt with as a single whole, that the duty on that whole is to be calculated as though the beneficiary of the revenue received the whole property as absolute owner, that is to say at the

rate, if any, applicable to the beneficiary of the revenue, regardless of the rate, if any, that would otherwise have been applicable to the one who takes in remainder, that the duty so calculated is payable out of the capital of the property and that no other duty is exigible from the property or from any of the persons successively entitled thereto. By this construction s. 13 is not repealed or nullified, it has full effect except in cases in which the successive interests embraced in s. 31 are given; in those special cases s. 13 supersedes or yields to the provisions of s. 9 according as the charitable institution is or is not the first in order of those who take successively.

I find support for the view that this construction should be adopted in the reasons of the majority in *Guaranty Trust Company of New York v. The King*, supra, particularly at pp. 210, 211 and 212. In rejecting the argument of the respondent in that case that s. 3 of the Act, as it then read, should be construed so as to bring about a result similar to that at which I have arrived in the case at bar, Rand J. contrasted the language of s. 3 with that of the second paragraph of s. 13, and his reasons appear to me to imply that had the case fallen within the words of that paragraph he would have accepted the respondent's argument. I, of course, do not regard this as in any way decisive of the present case, for I am not unmindful of the words of Lord Halsbury in *Quinn v. Leathern*²³:

... a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it.

It is argued that if s. 31 be construed in the manner I have indicated above an absurdity results, in that if a testator bequeathed a fund in trust directing that the income be paid to a charity for any length of time and that the capital of the fund thereafter be paid to an individual, falling within any of the classes defined in s. 9(1), (2) and (3), no duties whatever would be payable on any part of the fund. I can see no escape from the conclusion that such a result would follow. In the supposed case, which is the converse of that in the present appeal, the duties payable would be calculated as though the charity received as absolute owner the property subject to the trust and, by virtue of s. 13, no duties would be exigible. I have some difficulty in supposing that the Legislature intended this result, but I am unable to regard it as such a manifest absurdity as requires or permits the Court to refuse to apply the literal and, I think, plain words of s. 31 and to read into the first paragraph of that section some such words as "provided all those who take successively are liable to pay duties". In dealing with such an argument, as is pointed out in *Maxwell on The Interpretation of Statutes*, 10th ed. 1953, p. 7, "the difficulty lies in deciding between words that are plain but absurd, and words that are so absurd as not to be deemed plain".

In view of the differences of judicial opinion that exist in the case at bar I have reached my conclusion with hesitation; but the difficulties in construing the Act in the manner contended for by the appellants seem to me to be even more formidable than those raised against the construction I have adopted.

Before parting with the matter I wish to make two further observations. First, I agree with all that is said in the reasons of my brother Locke in stating the rules of construction by which the Court should be guided in ascertaining the meaning of the statute here in question, although I have the misfortune to differ from him as to the result which flows from the application of those rules in this case. Second, I am unable to see that the questions arising for decision in these appeals are affected by any differences there may be between the law relating to trusts and trustees as it exists in Quebec and as it exists in those Provinces which apply the law of England.

I would dismiss the appeals with costs.

Fauteux J.:—Pour les raisons données par mes collègues MM. les Juges Taschereau et Abbott, je suis d'avis que les appels doivent être rejetés avec dépens. Abbott J.:—The facts are set out in the reasons of Mr. Justice Hyde in the Court below²⁴ and I need refer to them only briefly. In their petition of right appellants claim the reimbursement with interest of succession duties, in an amount of \$84,183.91, paid under protest by appellants in their quality of testamentary executors and trustees of the late Mrs. Hugh Mackay. The testatrix died on January 20, 1952, domiciled in Quebec, and under the terms of her will bequeathed all her property to the appellants in trust for the execution of certain trusts, two of which were as follows:

- (c) To pay to my friends, Claire Johnston and Dorothy Hamilton, wife of Dr. Griffin Hill or the survivor of them, during their lifetime, the net income of the residue of my said Estate;
- (d) Upon the death of the survivor of the said Claire Johnston and or Dorothy Hamilton-Hill, to deliver the residue of my Estate to the School for Crippled Children at Montreal;

It is conceded that the School for Crippled Children at Montreal qualifies for exemption under s. 13 of the Quebec Succession Duties Act, and claim for reimbursement of the duties paid is made by reason of the assessment of the legacies of revenue to Miss Johnston and Mrs. Hill as though these two ladies had been bequeathed the residue of the estate as absolute owners.

Three questions arise on this appeal, all relating primarily to the interpretation to be given to certain provisions of the Quebec Succession Duties Act, 7 Geo. VI, c. 18, as amended. These questions are (1) Are there any succession duties imposed under s. 2 of the Act with respect to the bequest of revenue made to Miss Johnston and Mrs. Hill? (2) If there are duties payable with respect to such bequest, upon what basis is the amount of such duties to be calculated? and (3) By whom are such duties payable?

As to the first of these questions, the said bequest, in my view, comes clearly within the terms of s. 2, which reads as follows:

2. All property, moveable or immovable, the ownership, usufruct or enjoyment whereof is transmitted owing to death, shall be liable to duties, calculated upon the aggregate value of the property transmitted, at the rates fixed in section 9.

Moreover, the question as to whether such a bequest is subject to succession duties under the Act was settled in my opinion by the decision of this Court in *Guaranty Trust Company of New York et al. v. The King*²⁵, in which a similar bequest of revenue was in issue. The argument that the bequests to Miss Johnston and Mrs. Hill were not subject to any duties was not pressed too strenuously by Mr. Watt.

As to the second question, duties being payable under s. 2, the amount falls to be determined under ss. 9 and 31. Section 9, which deals with rates, is not in issue, and the relevant portion of s. 31 reads as follows:

31. In the case of usufruct, use, substitution or attribution of the revenue from any capital or from any trust fund, the amount of duties payable shall be calculated as though the usufructuary, the person having the right of use, the institute or the beneficiary of the revenue, received, as absolute owner, the property subject to the usufruct, right of use, substitution or trust, and the said duties may be paid from the capital.

Sections 2 and 31 read together provide (1) for duties with respect to property transmitted subject to "usufruct, use, substitution or attribution of revenue"; (2) that the duties payable shall be calculated as though the usufructuary, the person having the right of use, the institute or the beneficiary of the revenue, received, as absolute owner, the property subject to such life or other similar interest; and (3) that payment of the duties may be made out of such property. Section 42 provides for a privilege upon the property of an estate to secure the payment of succession duties.

In the *Guaranty Trust* case, *supra*, a majority of this Court held that, on the facts, the bequest of revenue there in issue came within the terms of what is now s. 19 of the Act for the purpose of fixing the value of the bequest for succession duty purposes, and that finding was conclusive so far as the question at issue in that appeal was concerned.

In 1943 however, subsequent to the death of the testator whose estate was in issue in the *Guaranty Trust* case, the Quebec Succession Duties Act, R.S.Q. 1941, c. 80, was revised and replaced by the Act 7 Geo. VI, c. 18. In this new Act the second paragraph of s. 13 (considered in the *Guaranty Trust* case) was amended *inter alia* by adding the words "or attribution of income from any capital or from any trust fund" to the words "usufruct, use and substitution" already contained in the section, and it became s. 31 of the new Act. In my opinion this amendment is clear and unambiguous and it has the effect of bringing a bequest of revenue (such as is in issue here) squarely within the terms of s. 31, thus rendering the provisions of s. 19 inapplicable.

If I am right in this view, the reasons of my brother Rand, speaking for the majority in the *Guaranty Trust* case, are of little assistance in determining the second question to which I have referred.

It was argued by Mr. Laing that if the Crown's contention as to the interpretation to be given to s. 31 were to be accepted, the effect would be implicitly to repeal, in part at any rate, the provisions of s. 13. I cannot accept this contention. The two sections forming part of the same statute must,

of course, be read together, but I am unable to see any conflict between them, however unfortunate the result may seem to be in certain cases. It was also suggested during the course of the argument that had the income of the residue been bequeathed to the charity even for one day and the capital to an individual, no duties would have been payable by the latter and that this could not have been intended by the Legislature. I am far from being satisfied that such a result would follow (since in my view in such a case s. 31, which is not the charging section, never comes into play) but even if it did, I can see no reason for refusing to apply the plain words of s. 31.

The Act does not purport to determine the apportionment to be made, if any, of the duties payable, between a person entitled to receive revenues and a person ultimately entitled to receive capital. In the present case the testatrix provided that all duties payable with respect to the benefits conferred under her will, including those on a particular legacy to her brother, were to be paid by her executors and trustees out of the mass of her estate before any distribution of capital or revenue. Had she not done so, this matter of apportionment, if any, might have had to be determined in accordance with the general law as was the case in *Lamarche v. Bleau*²⁶, referred to in argument, but as to this I do not find it necessary to express any opinion.

Since preparing these reasons I have had the advantage of reading the notes of my brother Taschereau and I am in agreement with the views which he has expressed as to the law concerning "trusts" in the Province of Quebec.

Appellants also appealed against the judgment of the Court of Queen's Bench maintaining the Crown's appeal against that portion of the judgment of the learned trial judge which reserved to the respondent the right to collect duties from year to year upon the annual payments to Miss Johnston and Mrs. Hill.

For the reasons which I have given, as well as for those delivered by Mr. Justice Hyde in the Court below, with which I am in substantial agreement, I would dismiss both appeals with costs.

Appeals dismissed with costs, Locke J. dissenting.

Attorneys for the suppliants, appellants: Foster, Hannen, Watt, Leggat & Colby, Montreal.

Attorney for the respondent: G. Hudon, Quebec.

1 [1957] Que. Q.B. 63.

2 [1948] S.C.R. 183, [1949] 1 D.L.R. 565.

3 [1937] A.C. 666 at 682, [1937] 2 D.L.R. 561.

4 [1933] S.C.R. 283 at 284, 293, 294, [1934] 1 D.L.R. 161.

5 [1957] Que. Q.B. 63.

6 [1937] A.C. 666 at 682, [1937] 2 D.L.R. 561.

7 [1948] S.C.R. 183, [1949] 1 D.L.R. 565.

8 [1948] S.C.R. at pp. 213-4.

9 [1933] S.C.R. 283 at 302, [1934] 1 D.L.R. 161.

10 [1933] S.C.R. at 293.

11 At p. 294.

12 [1933] S.C.R.307

13 At p. 309.

14 At p. 310.

15 [1937] A.C. 666.

16 At p. 682.

17 [1933] S.C.R. 283 at 309-10.

18 [1940] A.C. 206, 229, [1939] 4 All E.R. 464.

19 (1857), 6 H.L. Cas. 61 at 106, 10 E.R. 1216.

20 (1844), 11 CL. & F. 85 at 143, 8 E.R. 1034.

21 [1957] Que. Q.B. 63.

22 [1948] S.C.R. 183 at 212, [1949] 1 D.L.R. 565.

23 [1901] A.C. 495 at 506.

24 [1957] Que. Q.B. 63.

25 [1948] S.C.R. 183, [1949] 1 D.L.R. 565.

26 [1930] S.C.R. 198, [1930] 3 D.L.R. 545.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/6961/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/greenshields-et-al-v-the-queen-1958>

Prepared on 28 October 2026 · Esheria