

UNIVERSITY OF LONDON
W.C.1.

23 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

**In the Supreme Court of
Canada**

Between:

JAMES FORBES,

(Defendant) Appellant,

—and—

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANI-
TOBA, for and on behalf of His Majesty the King in the Right of
the Province of Manitoba

(Plaintiff) Respondent.

APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

RESPONDENT'S FACTUM

Finkelstein, Finkelstein & White,
302, Montreal Trust Building,
Winnipeg, Manitoba,
Solicitors for the Appellant.

Newcombe & Company,
Ottawa Agents for the
Appellant.

John Allen, Esq.,
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Ottawa Agents for the
Respondent.

In the Supreme Court of Canada

Between:

JAMES FORBES, 327 Morley Avenue, Winnipeg, Manitoba,
(Defendant) Appellant,

—and—

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANI-
TOBA, for and on behalf of His Majesty The King in the Right of
the Province of Manitoba,

(Plaintiff) Respondent.

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PART I

STATEMENT OF FACTS

This is an appeal by the Defendant brought pursuant to special leave in that behalf granted by the Court of Appeal of Manitoba by order dated the 12th day of November, A.D. 1934 (case p. 32) from a unanimous judgment of that court dated the 12th day of November, A.D. 1934 (case p. 27) dismissing an appeal from a judgment dated the 8th day of June, A.D. 1934 (case p. 18) of His Honour Judge Cory in the County Court of Winnipeg in favour of the Plaintiff for the sum of \$20.80.

20 The Plaintiff is the Attorney-General of Manitoba and sued for and on behalf of His Majesty The King in the Right of the Province of Manitoba.

The plaintiff brought this action against the defendant in the County Court of Winnipeg to recover from him the tax of two per cent imposed by "The Special Income Tax Act" being Chapter 44 of the Statutes of Manitoba 1933 for the period from the 1st day of May, 1933, to the 31st day of December, 1933, both inclusive upon the salary paid to or received by the Defendant, which tax the Defendant refused and neglected to pay, and which tax was not
30 deducted from his salary.

Judgment was delivered in favour of the Plaintiff in the said County Court. Substantially the only evidence was that put in by the Plaintiff. This consisted of part of the examination for discovery of the defendant (case pp. 6-11).

The evidence shews that Defendant is and was, when the tax was imposed, a resident of Manitoba (case p. 7, line 12, p. 9, lines 11 and 30); that he was when the tax was imposed and has since then continued to be in the Civil Service of the Dominion of Canada in the Health of Animals Branch of the Department of Agriculture (case p. 7, lines 30 and 31); that he earned the income in respect to which he is taxed in the Province of Manitoba (case p. 7 and 8, lines 47 and 1 respectively, and p. 9, line 25); and that he received his pay from the Government in Manitoba (case p. 8, 10 lines 4 to 29); and that the tax was not paid by him, nor was it deducted by the employer from his salary (case p. 10, lines 6 to 18).

“The Special Income Tax Act” in question was passed by the Legislature of Manitoba so as to affect wages earned on or after the first day of May, 1933. Part I of this Act imposed a two per cent tax on “wages” and Part II of the Act imposed a two per cent tax on income, other than “wages”, wages being given a special definition in the Act. The full text of this Special Income Tax Act is set out in the appendix to this factum (pp. 29-36).

The Province claims under this Act the right to tax the 20 Defendant not only upon the actual cash salary received by him, but upon the amount of certain deductions made for pension, or superannuation (case p. 8). These amounts, it is claimed, formed part of the “wages” of the defendant during the period mentioned, namely, from the 1st day of May, 1933, to the 31st day of December, 1933.

The Defendant comes within the Civil Service Act, cap. 22, R.S.C., 1927, and in the appendix hereto (pp. 38-41) are to be found extracts from that Act.

The Civil Service Superannuation Act, cap. 24, R.S.C., 1927, 30 is to be found in the appendix hereto (p. 41).

PART II

POINTS IN ISSUE AND POSITION OF RESPONDENT

The main point in issue in this appeal is whether or not it is within the competence of the Provincial Legislature to impose this two per cent Tax under “The Special Income Tax Act” upon a Dominion Civil Servant, who is within the province, in the same manner as it is imposed upon all other persons in the province. In other words, is a Dominion Civil Servant exempt from this Provincial Tax because he is a Civil Servant?

Subsidiary to the main point and involving it, a number of grounds of appeal were urged before the Court of Appeal by the Appellant. These were as follows:

- (1) That the Appellant was not an "Employee" and did not receive "wages" within the meaning of the statute.
- (2) That the Appellant was not liable to the tax because the Dominion Crown was not an "Employer" within the meaning of the statute.
- 10 (3) That the statute was ultra vires as it imposed taxation upon the property of the Dominion in contravention of section 125 of The British North America Act, 1867.

The Appellant also urged before the Court of Appeal the following further points:

- (1) That the tax imposed was indirect and therefore ultra vires.
- (2) That the tax was ultra vires as being discriminatory.
- (3) That the requisites under the British North America Act, 1867, to the enactment of a valid taxing statute had not been complied with.
- 20 (4) That the statute was ultra vires upon the ground that the Dominion having enacted an Income Tax Act, the field was occupied to the exclusion of the province.
- (5) That the deduction for pension or superannuation was wrongly brought into charge.
- (6) That the County Court had no jurisdiction to entertain the action.

[30 The Respondent contends that all the grounds advanced are untenable and that Dominion Civil Servants are liable, as are all other citizens, to pay this tax, which is a direct one, validly imposed and properly recovered in a court having jurisdiction to entertain the action.

The Respondent relies upon the reasons for judgment delivered by Robson and Richards J.J.A., together with the argument here submitted.

PART III

ARGUMENT

The Respondent proposes herein to deal seriatim with the points raised by the Appellant on the appeal and submits that:

1. **It is within the Legislative Competence of the Province to tax Dominion Civil Servants as "employees" upon their "wages" within the meaning of the statute.**

It has been clearly established that employees in the Civil Service of Canada, and others such as judges who derive their income or salary from the Dominion, can be taxed upon their income or salary and that such taxation is not an interference with Dominion jurisdiction under sec. 91 (8) of the British North America Act, 1867, which provides that:

"The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada"

is within the exclusive jurisdiction of Canada. See

Abbott v. St. John (1908) 40 S.C.R. 597.

In that case Davies J. (as he then was) said at p. 606:

"The Dominion fixes and provides the salary and the Province says, 'you shall pay to us the same Income Tax upon your salary as all other residents of the Province have to pay upon their incomes.' . . . The Province does not attempt to interfere directly with the exercise of the Dominion power, but merely says that, when exercised, the recipients of the salaries shall be amenable to the Provincial Legislation in like manner as all other residents."

This case was applied in:

Toronto v. Morson (1917) 40 O.L.R. 227

and approved of by the Judicial Committee of the Privy Council in:

the Judicial Committee of the Privy Council in:

Caron v. The King (1924) A.C. 999.

A similar conclusion was arrived at in connection with state taxation in Australia in:

Outrim v. Webb (1907) A.C. 81.

Amalgamated Society v. Adelaide S.S. Co. Ltd. (1920) 28 C.L.R. 129

and in South Africa in:

Krause v. Inland Revenue Commissioners (1929) App. Div. 286 (referred to in vol. 45 Law Quarterly Review at p. 291)

The Appellant, in the view of these authorities, could not nor cannot now seriously argue that the principle laid down by **Leprohon v. Ottawa**, 2 Ont. A.R. 522, is good law. He was therefore driven to contend that a Dominion Civil Servant is not an
10 "employee", nor is his salary within the definition of "wages" as found in "The Special Income Tax Act", being cap. 44 of the Statutes of Manitoba, 1933 (see appendix pp. 29-36).

It is submitted that the Civil Servant is an "employee" and that which he receives, viz., salary, is "wages" within the meaning of the statute.

The "employee", who is required to pay the tax imposed by section 3 of the Act, is defined by section 2 (1) (b) as meaning "any person who is in receipt of, or entitled to any 'wages'." The final
20 determination, therefore, of who is an "employee", must depend upon the definition of "wages".

The opening words of the definition of "wages" contained in section 2 (1) (d) are as follows:

" 'Wages' include all wages, salaries and emoluments from any source whatsoever. . . "

It is submitted that no matter what term is used in describing the remuneration paid to a Civil Servant for his services, such remuneration will fall within the scope of that portion of the definition of "wages" quoted above. But the definition of "wages" is still broader in its scope for it continues:
30 "including

- (i) any compensation for labour or services, measured by the time, piece or otherwise;
- (ii) the salaries, indemnities, or other remuneration of members of the Senate and House of Commons of the Dominion and officers thereof, members of the Provincial Legislative Councils and Assemblies, members of municipal councils, commissions, or boards of management, and of any judge of any Dominion or provincial court, and of all persons whatsoever, whether such salaries, in-

demnities, or other remuneration are paid out of the revenues of His Majesty in right of the Dominion or in right of any province thereof, or any person."

It is submitted on behalf of the Respondent that the words "the salaries, indemnities or other remuneration . . . of all persons whatsoever", in the above quotation, plainly comprehend the salary or remuneration of the Civil Servant.

The Civil Service Act, cap. 22 R.S.C., 1927, repeatedly uses the word "salary" as describing the remuneration paid to a Civil
10 Servant for his service; the term "compensation" is also not infrequently used, which is again a word which the definition of "wages" specifically embraces.

In view of the fact that the Civil Servant is paid salary or compensation for services rendered it is submitted that such payments are clearly "wages" within the statute.

Furthermore this Act refers to the Civil Servants of the Dominion Crown as "employees".

Certain sections from the statute in which the above words appear are contained in the appendix hereto at pp. 38-41.

20 Also the Civil Servant is an "employee" because the Civil Service Act so describes him, and furthermore he is an "employee" because he is paid "wages".

The **Oxford Dictionary**, vol. 3, pp. 129-130, defines "employee" as "one who is employed; in English use, general to persons employed for wages or salary by houses of business or by Government."

It should not be overlooked that the Civil Servant is a person who is in receipt of salary, or other remuneration, which is paid out of Revenues of His Majesty, in right of the Dominion. See

30 The Appropriation Act, No. 5, 1932-33 (Dom.)

In the face of the foregoing it is submitted that it is not open to question that the Dominion Civil Servant is an "employee" and that he is in receipt of "wages".

2. The "Employer" referred to in the statute in question here includes the Crown.

The Appellant's Counsel upon the hearing of the appeal urged that the term "employer" used in the statute did not include the Crown in the Right of the Dominion and therefore the Civil Servant was not liable for the tax imposed.

His proposition was that the Crown could not be said to be within the definition of "employer" unless specifically included. And, as this had not been done, the Civil Servant could not be held liable for the tax under the statute.

It is submitted that the term "employer", in its ordinary
10 meaning, includes any person who employs or uses the services of another. This clearly comprehends the Crown. Furthermore if the Civil Servant is an "employee" the Crown is obviously an "employer", as these words used in the statute are the complement of one another.

As to the meaning of the term "employer", see
Corpus Juris, vol. 20 pp. 1241-1244.
Oxford Dictionary, vol. 3, pp. 129-130.
MacFie v. Hutchinson, 12 Ont. P.R. 167 at 179.
Williams v. Howarth (1905) A.C. 551 at 554.

20 That part of the definition of wages contained in sec. 2 (1) (d) (ii) most decidedly points at the Dominion Crown as an "employer" within the meaning of the statute. See appendix at p. 29.

The Appellant's Counsel also urged that even if the Civil Servant fell within the category of an employee and his salary was "wages" the statute was ineffectual to impose duties upon the Dominion Crown and no method of collection of the tax in such case was provided.

The Respondent, it is submitted has established that the Dominion Crown is clearly indicated as an "employer" within the
30 meaning of the statute, but the Respondent does not claim that the rights of the Dominion Crown can be or are affected by the collecting sections 4, 5, 6 and 7 (see appendix pp. 31-32).

The Appellant's argument was based upon a misconstruction of the principle that "no provisions . . . in any act shall affect in any manner or way whatsoever the rights of His Majesty." He wrongly construed this to mean that the Provincial Legislature could not even refer to or point at the Dominion Crown.

The statute may and does point to the Dominion Crown as an "employer" but no attempt is made to force it to comply with any

provisions affecting its rights and thus the statute is not ultra vires, nor is it ineffectual to reach civil servants merely because their "employer", the Dominion Crown, is not bound.

"The Manitoba Interpretation Act", R.S.M. 1913, c. 105 by section 11 provides in part as follows:

"No provisions or enactment in any Act shall affect in any manner or way whatsoever the rights of His Majesty, His heirs or successors, unless it is expressly stated therein that His Majesty shall be bound thereby."

- 10 It is to be noted in passing that section 16 of the Interpretation Act, cap. 1, R.S.C., 1927, makes an identical provision.

It will be noticed that the Manitoba statute does not say that the Crown may not be pointed at as within the meaning of the terms used, but merely that the **rights** of His Majesty shall not be thereby affected.

The Crown is the same Crown. See

Williams v. Howarth (1905) A.C. 551 at 554.

and therefore this provision applies equally to the Dominion and to the Provincial Crown.

- 20 As to the application wording of the Interpretation Act to the **rights** of the Crown—see the case of

Dominion Building Corporation v. The King (1933) 2 W.W.R. p. 417 at p. 429.

This case decided:

- 30 (a) That the Crown in right of the Dominion was **included** in the general words of an Ontario statute even though not specifically named;
- (b) That while the **rights of the Crown** could not be affected by the statute, it was only **accrued rights** of the Crown which were not affected;
- (c) That future rights **were** affected. The section of the Interpretation Act was strictly construed;
- (d) That a statute of the Ontario legislature could apply to the Crown in right of the Dominion even though the Crown in right of the Dominion was not named **specifically**.

Again, even if it can be argued that rights of the Crown are affected by sections 4 and 5, no attempt is made to affect them by

section 7. The only rights dealt with in section 7 are rights of the employee. The reference in the section to the "employer" deducting the tax, imposes no duty on the employer, but is for the benefit of the "employee".

Moreover, it is not necessary in construing section 7, to give any interpretation to the word "employer". Section 3 has enacted that the "employee shall pay to His Majesty" the tax of two per cent, and if no employer has deducted the two per cent, section 7 enacts that the "employee" shall pay the tax **forthwith** on receipt
10 of the wages by him.

The section should be read in this way—

"It shall be the duty of the employee to forthwith pay the tax in case the wages . . . are paid to him without the tax imposed thereon being deducted therefrom by his employer."

The words "without the tax imposed thereon being deducted therefrom by his employer" are an exception to the liability of the employee for his benefit. He is exempt from liability only if the deduction has been made. Unless the employee can show that the deduction has been made he is liable to pay the tax. Even if no
20 employer has deducted the tax the employee is liable to pay the tax because he cannot plead the benefit of the deduction. It is the employee's duty to pay the tax to the government forthwith upon the receipt of his wages unless it has been deducted and in this case it has not been deducted.

The Crown is not excluded from the operation of a statute where its rights are not in question—

Maxwell (7th ed.) pp. 120, 121

30 "The Crown, however, is sufficiently named in a statute, within the meaning of the maxim, when an intention to include it is manifest. For instance . . . it is said that the rule does not apply when the Act is made for the public good, the advancement of religion and justice, the prevention of fraud, or the suppression of injury and wrong; 'for religion, justice and truth are the sure supporters of the crowns and diadems of kings.' **But it is probably more accurate to say that the Crown is not excluded from the operation of a statute where neither its prerogative, rights, nor property are in question.**"

40 **Section 7 does not affect or bring in question any prerogative, right or property of the Crown.** Therefore the defendant cannot avail himself of a defence, that the Crown might have raised because it is not bound by the statute for the reason that the tax imposed was not deducted under the provisions of section 4 and section 7 affects no rights of the Crown.

It was submitted in argument for the appellant that the rights or privileges of the Dominion Crown were being affected. It is contended that the position taken above is an adequate answer to that argument.

In **Atkinson v. Collard** 16 Q.B.D. 254

Cave J. (at p. 265) in connection with the argument that the occupation by the military of rooms in barracks did not make the soldier an occupant and therefore not entitled to franchise; said,

10 “It was objected that this section does not apply to service in the army, because the Crown is not bound by a statute unless named in it. How the rights, prerogatives or property of the Crown are affected by soldiers having votes we cannot see”

Also a similar argument to that of the appellants in this case was negated in

Abbott v. St. John (1908) 40 S.C.R. 597 at p. 606

in the reasons for the judgment of Davis J. (as he then was), which are quoted with approval by the majority judgment of Manitoba Court of Appeal in **Attorney-General v. Worthington** 20 (1934) 3 W.W.R. 658 in the reasons delivered by Trueman, J.A.

The Abbott case was approved of by the Privy Council in

Caron v. The King (1924) A.C. 999

Again, the true limit of the principle that the Crown is not bound, or to express it more accurately, that the rights of the Crown are not to be affected, is merely that the Crown is not bound insofar as there is an attempt to affect its rights, not that the Crown is not included in the generality of the words used.

The English authorities show that the **effect** of the statute is excluded where the Crown's rights would otherwise be affected
30—see

Maxwell (7th ed.) p. 117

“ . . . the Crown is not reached except by express words or by necessary implication in any case where it would be ousted of an **existing prerogative or interest**. It is presumed that the legislature does not intend to deprive the Crown of any prerogative, right or property, unless it expresses its intention to do so in explicit terms, or makes the inference irresistible. Where, therefore, the language of the statute is general, and in

its wide and natural sense would divest or take away any prerogative or right from the Crown, it is construed so as to exclude that effect."

But it is said in—

Halsbury, vol. 27, pp. 164-5 and vol. 6 (2nd ed.) p. 483.

"The Crown is not bound by the provisions of any statute unless directly or by necessary implication referred to. It is, however, entitled to the **benefit of any statute though not named.**"

If it be true that the Crown can take the benefit of a statute even though not named, it follows, that the Crown must be within the purview of the words of the statute, **but its rights cannot be taken away.** How could the Crown take advantage of a statute unless it were within the words thereof? See

Attorney-General of Canada v. The Registrar of Titles (1934)
3 W.W.R. 165.

Regina v. Fawcett, 13 M.R. at pp. 210-211

It is therefore submitted that an adequate mode of collection against the employee has been provided by section 7 of the statute and that in enforcing the claim against the employee no rights of the Crown are interfered with.

3. **The statute is not ultra vires as imposing taxation upon the property of the Dominion in contravention of section 125 of the British North America Act.**

Counsel for the appellant contended that this statute was ultra vires as imposing a tax upon the property of the Dominion in contravention of section 125 of the British North America Act. He, in effect, said that the statute attempts to tax the moneys whilst they are still Dominion property which is beyond the power of the province.

30 It is submitted on behalf of the Respondent that this contention, even if it had any merit, is answered by the argument set out in number 2 above, namely, that the tax is imposed upon and collected directly from the Civil Servants themselves, because the statute imposes no duty upon the Crown.

Furthermore, once it is admitted that this tax is a direct one it becomes apparent that the only person who bears the tax is the Civil Servant himself and thus no argument can be made that the tax falls upon Dominion property.

Subsidiary to this argument the appellant contended that there was an intercepting of moneys in the hands of the Dominion which was beyond the competence of the province.

It is submitted that the argument that the Crown is not bound by the statute and the liability is only upon the Civil Servant when he has received the money without the tax being collected, is a complete and effectual answer to this contention.

This matter was discussed in **Attorney-General v. Worthington** (1934) 3 W.W.R. 658, but there it was not seriously contended
10 that there was any validity to such an argument insofar as cash received by the servant was concerned.

4. This statute imposes direct taxation.

The defendant urged in the court below that this taxing act imposed indirect taxation.

It is submitted that Robson J.A. in his reasons for judgment (case pp. 28-29) answers this contention when he says:

20 “With regard to the second objection, that the taxation is indirect, it seems to me that it is clear from sec. 3 of The Special Income Tax Act that the tax is placed directly on the person by whom it is intended that it shall be borne and that secs. 4, 5 and 6 merely impose a duty on an employer, if he is a person within the control of the province, to make the collection. I do not see that sec. 7 alters the case. It does not show that the employer is the person primarily to pay with the right of recoupment. It means that if the collector, i.e., the employer, shall have failed to collect, the taxpayer, i.e., the employee, shall make the payment to the province direct. It provides for recovery from the employer as money had and received if he has deducted it, and from the employee as tax, if he has not.
30 If the employer omit to collect the tax as required by the statute he would come under the penalty named in sec. 6. It seems to me to be clear that the Act does not make the employer liable for the tax; he is liable to the Crown for the amount of the tax if he has collected it. I think that the only consequence of an employer’s neglect to levy would be what is expressed, namely, that he would be liable to the penalty.

40 I am quite aware that the degree of compulsion which the Act imposes on the employer as involuntary collector is, from the standpoint of his own pocket or personal liberty, in a practical sense liable for the tax. Yet I cannot say that this makes the tax indirect or that the method employed is merely a device, in form of direct, to impose indirect taxation.

I think the case as to the penal nature of the liability of the employer is well within **Erie Beach Co. v. Attorney-General for Ontario** (1930) 1 W.W.R. 31; (1930) A.C. 161; 99 L.J.P.C. 38.”

It will also be noted that this is in accordance with reasoning of Trueman J.A. in the case of **Attorney-General v. Worthington** (1934) 3 W.W.R. 658 at p. 670.

Section 92 (2) of the B.N.A. Act 1867 gives provincial legislatures the following power:

- 10 “(2) Direct taxation within the province in order to the raising of a revenue for provincial purposes.”

This provincial power to tax is plenary and knows no limits save that the taxation must be direct taxation upon a person or thing within the province.

See **Hodge v. The Queen**, 9 A.C. 117.

Liquidators of Maritime Bank v. Receiver-General (1892) A.C. 437 at 442.

Bank of Toronto v. Lambe, 12 A.C. 575 at 584.

20 Furthermore in construing any statute, its real character, “its pith and substance”, must be considered.

See **Union Colliery v. Bryden**, (1899) A.C. at p. 587.

Bank of Toronto v. Lambe, 12 A.C. 575 at 580.

Attorney-General for Manitoba v. Attorney-General for Canada (1925) A.C. 561.

Attorney-General of British Columbia v. McDonald Lumber Co. (1930) A.C. 357 at p. 363.

Attorney-General of British Columbia v. Kingcome Navigation Co. (1934) A.C. 45 at p. 51.

30 44, Section 3 of “The Special Income Tax Act” S.M. 1933, c. provides as follows:

- “(1) In addition to all other taxes to which he is liable under this or any other Act, every employee shall pay to His Majesty for the raising of a revenue for provincial purposes a tax of two per centum upon the amount of all wages earned by or accruing due to him on or after the first day of May, 1933, which tax shall be levied and collected at the times and in the manner prescribed by this part; but no tax shall be paid under this part by

- (a) a married person, in case his wages be at a rate of forty cents an hour, three dollars and twenty cents a day, eighty dollars a month, or nine hundred and sixty dollars a year or under; nor
- (b) an unmarried person, in case his wages be at a rate of twenty cents an hour, one dollar and sixty cents a day, forty dollars a month, or four hundred and eighty dollars a year or under.

10 (2) In case an unmarried person has resident with him and wholly dependent upon him, a mother, father or sister, he shall be entitled to a refund of his tax if his total taxable income under this Act be less than nine hundred and sixty dollars a year, but a claim for the refund, in a form prescribed by the administrator, shall be made to the administrator within thirty days after the thirtieth day of April following.

20 (3) In case the total income during any year does not exceed nine hundred and sixty dollars in the case of a married person, or four hundred and eighty dollars in the case of an unmarried person, he shall be entitled to a refund of the taxes paid by him, but a claim for the refund shall be made to the administrator within thirty days after the thirtieth day of April following."

"Employee" is defined by section 2 (1) (b) of the said Act as follows:

- (b) 'Employee' means any person who is in receipt of or entitled to any wages."

"Wages" are defined by section 2 (1) (d) of the said Act as hereinbefore set forth.

30 It is submitted that section 3 of the Act shows its real character, "its pith and substance," which is the imposition of a tax upon the person, using as the measuring rod thereof, the amount of income or wages received.

To determine the subject matter of the tax, or in other words where it falls, on persons or property, the charging section of the Act must be looked at. See

Kerr v. Provincial Treasurer (1933) 3 W.W.R. 38, (1933) A.C. 710 at p. 720.

In this case Lord Thankerton says:

40 "The identification of the subject matter of the tax" (in this case persons or property) "is naturally to be found in the charging section of the statute, and it will only be in the case of some ambiguity in the terms of the charging section that recourse to other sections is proper or necessary."

The charging section "3 (1)" quoted above plainly imposes the tax upon the person. There is no ambiguity and therefore it is neither proper nor necessary to examine any other section of the Act to determine upon whom the tax falls.

But even if the other sections (the collecting provisions) are looked at, though as Lord Thankerton points out, this course is neither "proper nor necessary", for the purpose of determining the incidence of the tax, it will be seen that those sections bear out the view that the tax is imposed upon the person.

10 Section 4, subsections (1) and (2) of the said Act provide as follows:

20 "4. (1) Every employer at the time of payment of wages to an employee shall levy and collect the tax **imposed on the employee by this part in respect of the wages of the employee** earned or accruing due during the period covered by the payment, and shall deduct and retain the amount of the tax from the wages payable to the employee, and shall, on or before the fifteenth day of the month next following that in which the payment of wages takes place, or at such other time as the regulations prescribe, pay to the administrator the full amount of the tax. No employee shall have any right of action against his employer in respect of any moneys deducted from his wages and paid over to the administrator by the employer in compliance or intended compliance with this section.

30 (2) Every employer shall, with each payment made by him to the administrator under this section, furnish to the administrator a return showing all **taxes imposed by this part on the employees** of the employer in respect of wages during the period covered by the return, which shall be in the form and verified in the manner prescribed by the administrator."

Section 7 of the said Act provides as follows:

"7. In case the wages earned or accruing due to an employee are paid to him without the tax imposed thereon being deducted therefrom by his employer, it shall be the duty of the employee to forthwith pay the tax, and all the provisions of sections 23, 23A, 24 and 25 of "The Income Tax Act" shall, mutatis mutandis, apply to the collection and recovery of the tax so imposed from the employer and employee, or either of them."

40 This last quoted section is the only one with a different wording, but it is submitted that this section does not change the character of the tax, nor cancel the direct imposition of it upon the person as laid down in section 3. Even in section 7 the tax is a per-

sonal burden imposed on the employee. It is his duty to pay it. He is the one liable. The Act nowhere makes the employer liable for the tax, with a right of recoupment.

Without discussing the various cases whereby Mill's definition became finally accepted as the test of the validity of provincial taxation it is sufficient to point out that in,

Attorney-General of British Columbia v. Kingcome Navigation Company (1933) 3 W.W.R. 353. (1934) A.C. 45 at p. 51.
Lord Thankerton says:

- 10 “the test to be applied in determining what is ‘direct taxation’ within the meaning of section 92, head 2, of the Act of 1867, is to be found in Mill’s definition of direct and indirect taxes.”

Applying this test to the present statute it is submitted that it is clear that the tax is imposed upon the very person whom it is expected and intended shall pay it.

Even assuming this is a tax upon **wages** specifically (a contention which is not admitted) yet, notwithstanding this, the specific thing—the wages of the employee—bears the tax and it is not passed on and is therefore a direct tax.

- 20 It was argued by the appellant’s counsel that the machinery set up for collecting the tax imposed by section 3 made the tax an indirect one because the tax was demanded from the employer with the expectation and intention that he would indemnify himself by deducting the tax from the wages of the employee.

It is submitted, however, that in view of the clear declaration in the charging sections and the form of the collecting sections that the machinery set up has not rendered this an indirect tax or changed in any particular its essential character as a tax upon the person. This machinery of collection cannot convert a direct
30 tax into an indirect tax.

See

Brandon v. Municipal Commissioner, 39 M.R. 582.

Clarke v. Moose Jaw (1923) 1 W.W.R. 1126.

Alleyn v. Barthe (1922) 1 A.C. 215.

Erie Beach Co. v. Attorney-General (1930) A.C. 161.

Attorney-General of British Columbia v. Kingcome Navigation Company (1934) A.C. 45 at p. 55.

Furthermore the provisions of section 6 merely render the “employer” liable to a penalty for refusing to act as collector or

otherwise failing in the duty imposed upon him by the statute. It is also to be noted that the statute merely makes the "employer" liable to pay over the tax (of which he is constituted a trustee) when he has collected the same. The statute in no place imposes liability upon him for the tax itself.

Even assuming that subsequent liability is imposed upon the "employer" because of his failure to perform his duty in collecting the tax, the situation is not dissimilar to the one existing under the Ontario Municipal Income Tax, where income of recipients, 10 resident out of the province, is assessed in the hands of trustees.

See **Gooderham v. Toronto** (1934) S.C.R. 158 at 164. "The machinery provided is intended" (as is the case in the Manitoba statute) "to prevent frustration of the purpose of the statute by the transfer of the income . . . without making provision for payment of the tax. The intent is to levy the tax in the hands of the trustee," (in Manitoba, the employer). "The machinery is provided for the purpose of giving effect to this intention. It is to be paid out of the property" (in Manitoba, the income) "of the person who is ultimately to bear the burden."

20 And also, in the same case, at page 164,

"In substance, there appears to be little difference between authorizing the trustee to pay out of the income and penalizing him by making him personally liable if he fails to do so, and constituting him a trustee of the income for the purpose of paying the tax, or requiring him to pay the tax out of the income."

The province's power is plenary and therefore it can make anyone its tax collection officer which is all that has been done here.

30 It is submitted that the tax imposed by this statute is, taken as a whole, an **income tax**—a tax upon part of a man's income. The sources of income upon which the tax is calculated are split up by the two parts of the Act, but notwithstanding this it is clear that this is merely an additional income tax. An income tax is a most obvious kind of a direct tax. Lord Hobhouse in,

Bank of Toronto v. Lambe 12 A.C. at p. 582 says:

"the income tax . . . is generally looked upon as a direct tax of the most obvious kind."

The tax is upon the person and his income is selected as the 40 "criterion of his ability to pay", to use Lord McMillan's language in speaking of the taxing of real and personal property in

Attorney-General of British Columbia v. McDonald Lumber Co. (1930) A.C. 357 at 365.

The taxes upon the individual and his liability to pay is “measured by the amount one earns” as put in the case of

Attorney-General of British Columbia v. Kingcome Navigation Co. (1933) 3 D.L.R. 379, per McDonald, J.A.

An income tax, no matter in what language it is imposed or the manner in which it is collected, has always been construed as a tax upon the citizen based upon his income, regardless of its source.

Their Lordships of the Privy Council (per Lord Phillimore) 10 have said in

Caron v. The King (1924) A.C. 999 at 1006.

“They are statutes for imposing on all citizens contributions according to their annual means, regardless of, or it may be said not having regard to, the source from which their annual means are derived.”

Lord Cave after referring to Mill’s definition said in

Halifax v. Fairbanks (1928) A.C. 117 at 124.

“Thus, taxes on property or income were everywhere treated as direct taxes;”

20 and again at p. 125 he says

“The imposition of taxes on property and income . . . is according to the common understanding of the term direct taxation.”

This last mentioned case was cited with approval in

Attorney-General of British Columbia v. Kingcome Navigation Co. (1934) A.C. at pp. 55-56.

and there Lord Thankerton at p. 57 says

30 “Again, taxes on property and income are imposed in respect of the particular taxpayer’s interest in property or the taxpayer’s own income, and they are a peculiar contribution upon him, and it is intended and desired that he shall pay it, though it is possible for him, by making his own arrangements to that end, to pass the burden on in the sense of the political economists.”

The various English and Canadian Income Tax Acts have always been construed as imposing direct taxation upon the person. See

Lethbridge v. Thurlow (1851) 15 Beav. 334 at 339 per Lord Romilly.

Colquhoun v. Brooks (1888) 21 Q.B.D. 52 at 62 per Fry L.J.

Whitney v. Commissioners (1926) A.C. 37 at p. 55.

Attorney-General v. London County Council (1901) A.C. at p. 26.

Re Taxation of Judge's Salaries (1924) Ex. C.R. 151 at p. 156 per Audette J.

McLeod v. Minister of Customs (1926) S.C.R. 457 at p. 464 per Mignault J.

Abbott v. St. John (1908) 40 S.C.R. 597.

10 It may be observed that the English Income Tax Act provides various rules for collecting the tax imposed upon the person. It requires anyone paying income to the person liable for the tax to deduct the amount of the tax from the income so paid, e.g., cases of rent, dividends and the salaries of certain officials. This machinery of collection has not impinged upon the principle that the tax is on the **person** based upon the quantum of his income.

5. **The taxation is not discriminatory and even if discriminatory would not on that account be ultra vires.**

20 Counsel for the appellant upon argument before the Court of Appeal seriously contended that this statute imposed discriminatory taxation and that therefore the statute was ultra vires.

The respondent submits, that any argument that certain classes of income are picked out, and these alone taxed, loses sight of the fact that there are two parts to the statute in question imposing taxation. Part I covers certain classes of income and provides a quick method of collection by appointing the employer to be the tax collector. Incomes which do not fall within the definition of "wages" come under Part II and pay the same two per cent tax. (See appendix pp. 29-36). In view of these provisions
30 of the statute how can it seriously be argued that discriminatory taxation is imposed

Even if a tax is discriminatory it is not, for that reason, ultra vires of the provincial legislature, for once it is established that the tax is a direct one the provincial power of taxation is plenary. The motive behind the legislation or the fact that it is discriminatory cannot be inquired into by the courts if the legislation imposes direct taxation. See

Hodge v. The Queen, 9 A.C. 117

Attorney-General v. Cain (1906) A.C. 542 at 547.

Re Initiative and Referendum (1919) A.C. 935

Liquidators of Maritime Bank v. Receiver-General (1892) A.C. 437 at 442.

Fredericton v. The Queen, 3 S.C.R. 505 at p. 552

Re Baines (1924) 2 D.L.R. 1191; 51 N.B.R. 309 at 317-318

Fortier v. Lambe 25 S.C.R. 422

Any argument respecting discriminatory taxation is confusing the provincial power with municipal power of taxation. The privy council have definitely laid down that the test of validity is, whether or not the taxation is direct taxation within the province.

Bank of Toronto v. Lambe, 12 A.C. 575

Burland v. The King (1922) 1 A.C. 215

The only possible argument against validity would be the misuse of the power to destroy functions of the Dominion. No such contention can be seriously made here.

6. The statute has been validly enacted under the British North America Act, 1867.

20 The appellant by his counsel, on the day upon which judgment was delivered, obtained leave from the trial judge to file a copy of the Speech from the Throne delivered at the opening of the provincial Legislature, the session of 1933. In the Court of Appeal he pressed the contention upon the court that, as the enactment of the statute in question had not been foreshadowed in the speech, it was not validly enacted.

He relied upon sections 54 and 90 of the B.N.A. Act 1867, which sections are as follows:

sec. 54—

30 “It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue, or any tax or impost, to any purpose that has not been first recommended to that House by message of the Governor-General in the session in which such vote, resolution, address or bill is proposed.”

sec. 90—

- 10 “The following provisions of this Act respecting the Parliament of Canada, namely—the provisions relating to appropriation and tax bills, the recommendation of money votes, the assent to bills, the disallowance of Acts, and the signification of pleasure on bills reserved—shall extend and apply to the Legislatures of the several Provinces, as if those provisions were here re-enacted and made applicable in terms to the respective Provinces and the Legislatures thereof, with the substitution of the Lieutenant-Governor of the Province for the Governor-General, of the Governor-General for the Queen and for a Secretary of State, of one year for two years, and of the Province for Canada.”

This argument, it is submitted, proceeds upon misconceptions of the true extent of the rule. In the first place Sec. 54 only refers to “adopting, passing, a vote or resolution etc., for **the appropriation of any tax or impost**”, not the passing of a bill imposing a tax or impost.

This is borne out by—

- 20 **Bourinot’s Parliamentary Procedure** (41st ed.) pp. 412-13
Debates of House of Commons of Canada (1878) vol. II
pp. 2157-8

Also this argument loses sight of the fact that a message from the Lieutenant-Governor recommending to the House the appropriation of money, etc., is frequently brought down during the session, by a minister of the Crown. This is the “message” to which section 54 refers and not the speech from the Throne. See

- May’s parliamentary Practice** (11th ed.) p. 42
Bourinot *Supra*, p. 268.
30 **English Hansard Debates**, vol. 222 p. 96

Matters of procedure in Parliament will be judicially noticed.

See

- Stockdale v. Hansard**, 9 Ad & E. 1.
Bradlaugh v. Gossett, 12 Q.B.D. 271

But the appellant has lost sight of the fact that the Lieutenant-Governor has assented to the Act which it is submitted, would cure any defect. Even if the assent does not go that far it raises a very strong presumption that all necessary formalities have been complied with.

- 40 It is contended upon behalf of the respondent that the presumption “*Omnia Praesumuntur Rite esse acte*” applies, see
Broom’s legal maxims (9th ed.) p. 609

and therefore the onus is upon the defendant to do more than produce the Speech from the Throne; he must establish by the Journal of the House or by other evidence that no message was in fact given. This he has not done.

7. The Jurisdiction of the province to enact legislation imposing direct taxation within the province is not interfered with by Dominion Taxation of a similar character.

The appellant's counsel contended that the Dominion Parliament by having enacted an Income Tax Act had thereby occupied 10 this field of taxation to the total exclusion of the province.

It is submitted, however, that this argument proceeds upon a misconception of the principles of construction laid down by the privy council.

Sec. 91 (2) of the British North America Act, 1867, gives the Dominion jurisdiction for "the raising of money by any mode or system of taxation." Sec. 92 (2) entrusts the province with "direct taxation within the Province in order to the raising of a revenue for Provincial purposes." These two powers must be construed so that they will stand together. See

- 20 **Citizens' Insurance Co. v. Parsons**, 7 A.C. 96 at pp. 108-9
Bank of Toronto v. Lambe, 12 A.C. 575 at 585.
Caron v. The King (1924) A.C. 999 at 1004.

8. The moneys deducted for pension are part of "wages" and subject to tax.

The appellant, on his examination for discovery, admitted that 5 per cent of his wages was deducted each month for pension or superannuation purposes. (see case p. 8). This pension or superannuation comes under The Civil Service Superannuation Act, cap. 24, R.S.C., 1927 (see appendix pp. 41-53).

- 30 The appellant's counsel contended that the amounts deducted were not subject to provincial taxation.

It will be observed that sec. 5 (g) of The Income War Tax Act (Dominion), cap. 97 R.S.C., 1927, and section 5 (1) (i) of The Income Tax Act (Manitoba), cap. 91 C.A., 1924, specifically enact that such deductions are free from tax, but no such provision is made in Part I of "The Special Income Tax Act", cap. 44, S.M. 1933.

It is submitted that these amounts deducted are part of the "wages" of the employee and are subject to tax, as they constitute 40 part of the income of the taxpayer.

The early English Income Tax acts made no provision that pension deductions should be excluded in calculating the tax and therefore they were taxable. See

Bell v. Gribble, 4 Tax cas. 522

Smyth v. Stretton, 5 Tax cas. 36

Bruce v. Hatton, 8 Tax cas. 180

Since these cases were decided the English statutory provisions have been changed and such deductions are now permitted. See

Frame v. Ferrand, 13 Tax cas. 861.

10 **9. The County Court had jurisdiction to entertain the action for the recovery of the Tax.**

The appellant, before the trial court and before the Court of Appeal, contended that the County Court had no jurisdiction in Crown Revenue cases. His point was that the exclusive jurisdiction was vested in the Court of King's Bench as the descendant of the Exchequer Court in England.

Section 57 of "The County Courts Act", cap. 44 R.S.M., 1913, provides in part as follows:

- 20 "The County Court shall have jurisdiction in, and the judge holding the said courts may hold plea of . . .
- (b) all actions for legal and equitable claims and demands of debt . . . or money demand . . . when the amount or balance payable does not exceed eight hundred dollars;"

It is submitted on behalf of the respondent that the action based on sec. 7 of "The Special Income Tax Act" is the common law action of debt and that is a type of action which is within sec. 57 quoted above. See

30 pp. **Street's Foundations of Legal Liability**, vol. 2 pp. 207-8, vol. 3 127 etseq.

Shepherd v. Hills (1855) 11 Ex. ch. 55

Robertson's Civil Proceedings of the Crown, p. 172

Orpen v. Roberts (1925) S.C.R. 364 at 369.

Furthermore section 7 of the statute makes the tax recoverable as a debt, and therefore on this ground again it is within section 57 of "The County Courts Act". See

Cohen v. Hall (1922) 2 K.B. 37

McGregor v. White (1844) 1 U.C.Q.B. 15

South Norfolk v. Warren, 8 Man. R. 481

40 **R. v. Spirit River Lumber Co.** (1925) 3 D.L.R. 777.

It was urged that the provisions of section 70 of The Income War Tax Act (Dom.) were of greater efficacy than the provision of section 25 of "The Income Tax Act" (Manitoba) which were made applicable by section 7 of this Act.

It is submitted that section 70 of the Dominion Act or section 25 of the Provincial Act is a mere statutory statement of the existing prerogative right of the Crown, adding nothing to it and taking nothing away from it. Also that the words "any court of competent jurisdiction" add nothing to the meaning of the section in the
10 Dominion Act. The jurisdiction must be resident in the court, independently of any such pronouncement.

The term "action" which is contained in section 57 (b) of "The County Courts Act", in the words "all actions for . . . claims and demands of debt . . .", includes proceedings instituted by the Crown and therefore includes these proceedings. See

Clarke v. Bradlaugh, 8 A.C. 354 at pp. 358-62.

The Crown, while not bound by a statute which takes away any of its rights or prerogatives, may still take advantage of the statute. See

20 **Halsbury**, vol. 27 pp. 164-5
Robertson, supra pp. 393; 566.
C.E.D. (Ont.) vol. 3 p. 364

Therefore the Crown may commence its action in the County Court to recover the debt due to it.

It was admitted that the King's Bench could entertain this action and as the County Court has the same jurisdiction under sec. 57, wherein it is provided:

30 "All actions for . . . claims and demands of debt . . . and in any action the judge shall have all the powers and jurisdiction which a judge of the Court of King's Bench would have in case the action had been brought in that court . . ."

the action was properly brought in the County Court. See

Robertson, supra pp. 171-2.

The Crown may choose its own forum. Therefore it can sue if it pleases in the County Court. See

Attorney-General v. Walker (1877) 25 Gr. ch. 233

Reg v. Grant (1898) 17 P.R. 165

Farwell v. The Queen, 22 S.C.R. 553 at 562.

Attorney-General v. MacDonald, 6 Man. R. 372 at 375.

Reg v. Fawcett, 13 Man. R. 205 at 211
Halsbury (2nd ed.) vol. 6 p. 484
R. v. McCarthy (1919) 18 Ex. C.R. 410 at 413.
Bradlaugh v. Clarke, 8 A.C. 354 at 360.

The Crown may utilize the ordinary methods of suit in a Court to recover a debt due it;

Robertson (supra) pp. 2; 172
Bradlaugh v. Clarke 8 A.C. 354 at 360.
Reg v. Grant (1898) 17 P.R. 165
10 **Reg v. Fawcett**, 13 Man. R. 205 at 211
Halsbury (2nd ed.) p. 484.

It was urged in support of the contention that exclusive jurisdiction was in the King's Bench and the authority cited was—

Archbold's Q.B. Practice (1862) vol. 1 p. 2

The answer to this contention is that in Manitoba the County Court has, by statute, been given the same jurisdiction in actions of debt as the King's Bench. But in any event, if the authorities quoted by **Archbold** are examined, it will be found that they do not bear out the proposition that the jurisdiction is so exclusive
20 as to prevent the King himself suing in another Court.

Also the case of

Miller v. Attorney-General, 9 Gr. ch. 558 cited in support of the contention misconstrues the statute of 33 Henry VII, ch. 39, sec. 55. This debt is not of the kind covered by the statute, which restricts jurisdiction exclusively to exchequer. See

Anon., Jenk. 227, case 89; 145 Eng. Reps. 157.

Lord Anderson's Case, 7 Co. Ref. 21 (a); 77 Eng. Reps. 443.

Robertson, supra pp. 149-150.

It follows from the authorities cited herein that the jurisdiction of the Exchequer Court is not so exclusive as to oust the prerogative right of the Crown to sue in another court.
30

It is submitted that there was a prerogative right in the Crown to remove into the Exchequer Court any matter affecting the King's Revenue, but no rule that the King was confined to that Court in suing for debt due him.

10. Interpretation of a Taxing Statute.

It is submitted that while the general principle is that the person to be taxed must come within the letter of the law, yet it is

subject to this qualification that when an exemption is sought, as in this case, the rule is that the person seeking the exemption must clearly bring himself within it.

In **Kennedy v. Minister of National Revenue** (1929) Ex. C.R. 36 Audette J. at p. 40 says:

“There is no such thing as presumption of exemption, if anything the presumption would be in favour of the taxing power . . . Immunity from taxation will not be recognized unless granted in terms too plain to be mistaken.”

10 In **Re Scottish Widows' Fund etc. Assce. Society** 1 Tax Cas. 1 at p. 10 Lord Ardmillan says:

20 “We have been told that a taxing statute must be construed liberally and favourably to the subjects. In one sense that is true, and the remark is well founded, but on the other hand, equality and impartial justice in the incidence of taxation are of greater moment, and the statute should be construed so as to promote that equality and that impartiality of justice. There is no presumption in favour of the exemption of a few from the incidence of a general tax. I think the presumption is for equality, and rather against the partiality which is involved in special exemptions.”

In **Roenisch v. The Minister of National Revenue** (1931) Ex. C.R. 1 at p. 4, Audette J. again deals with matter and says:

“However, the taxation is the rule and the exemption is a case of exception which must be strictly construed.”

30 It is also submitted that if there are two possible constructions to the words of this taxing statute; one of which will exempt persons of the class of the appellant, and a second which will include them, the latter is to be preferred if it is most in accord with the spirit of the Act.

In **Scottish Shire Line v. Letham** 6 Tax Cas. 91. at p. 99 it was said:

“Even in a taxing statute it is legitimate to consider which of two possible constructions is most in accordance with the spirit and intention of the Act.”

It was urged that the Manitoba statute provided no means of collection even if the tax was properly imposed upon the

military. It is submitted that the short answer to that argument is section 7 of the Act where it provides the mode of collection.

As Lord Dunedin said in—

Whitney v. Inland Revenue 10 Tax Cas. 88 at p. 110

10 “Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction make that end unattainable.”

A reasonable construction is to be given to the provisions of taxing statutes and one which will effectuate the main object of the Act.

Re Glasgow Gas Commissioners 1 Tax Cas. 122 at p. 132.

Colquhoun v. Brooks 2 Tax Cas. p. 500.

Commissioners v. Incorporated Society 3 Tax Cas. p. 108.

Maxwell—Interpretation of Statutes (7th ed.) p. 198

20 Furthermore it is to be observed that the rule of liberal interpretation which requires it to be construed so as to insure the attainment of the object of the statute, applies to all statutes—see

“The Manitoba Interpretation Act” R.S.M. (1913) cap. 105 sec. 13.

provides inter alia as follows:

30 “every Act and every provision or enactment thereof shall be deemed remedial, whether its immediate purport be to direct the doing of anything which the Legislature deems to be for the public good, or to prevent or punish the doing of anything which it deems contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best insure the attainment of the object of the Act and of such provision or enactment, according to its true intent, meaning and spirit.”

This section is to the same effect as the corresponding section of the Interpretation Act R.S.C. 1927 cap. 1.

There is no similar provision in England, and English cases must be read with that in mind.

The provision of the Dominion Act has been applied in interpreting taxing legislation in

Algoma Central R.R. Co. v. The King 32 S.C.R. 277 at p. 283 (1903) A.C. 478.

R. v. Dominion Cartridge Co. (1923) Ex. C.R. 93 at p. 98.

All of which is respectfully submitted,

Isaac Pitblado
Wilson E. McLean
of Counsel for Respondent.

APPENDIX**The Special Income Tax Act Cap. 44 S.M. 1933.**

1. This Act may be cited as "The Special Income Tax Act".

INTERPRETATION

2. (1) In this Act, unless the context otherwise requires:

(a) "Administrator" means the Income Tax Administrator, appointed pursuant to "The Income Tax Act"; and for the purpose of collecting taxes or enforcing the provisions of this Act includes any official delegated by him;

10 (b) "Employee" means any person who is in receipt of or entitled to any wages;

(c) "Employer" includes every person, manager, or representative having control or direction of or responsible, directly or indirectly, for the wages of any employee, and in case the employer resides outside the province, the person in control within the province shall be deemed to be the employer;

(d) "Wages" includes all wages, salaries, and emoluments from any source whatsoever, including

20 (i) any compensation for labour or services, measured by the time, piece, or otherwise;

(ii) the salaries, indemnities, or other remuneration of members of the Senate and House of Commons of the Dominion and officers thereof, members of the Provincial Legislative Councils and Assemblies, members of municipal councils, commissions, or boards of management, and of any judge of any Dominion or provincial court, and of all persons whatsoever, whether such salaries, indemnities, or other remuneration are paid out of the revenues of His Majesty in right of the Dominion or in right of any province thereof, or any person;

30

(iii) personal and living expenses and subsistence when they form part of the profit or remuneration of the employee; and

(iv) emoluments, perquisites, or privileges incidental to the office or employment of the employee which are reducible to a money value.

(2) The value of that part of the wages of an employee which is within the scope of sub-paragraphs (iii) or (iv) of the definition of wages in subsection (1) shall be determined by the administrator at the actual amount thereof if payable in money, or otherwise in accordance with any prevailing rates.

(3) Withdrawals by any person from a business, whether the owner thereof or an employee therein, shall, subject to adjustment by the administrator on the filing of the next annual return under this Act, be deemed to be wages and subject to the provisions
10 of this part.

PART I.

TAXATION OF WAGES

3. (1) In addition to all other taxes to which he is liable under this or any other Act, every employee shall pay to His Majesty for the raising of a revenue for provincial purposes a tax of two per centum upon the amount of all wages earned by or accruing due to him on or after the first day of May, 1933, which tax shall be levied and collected at the times and in the manner prescribed by this part; but no tax shall be paid under this part by

20 (a) a married person, in case his wages be at a rate of forty cents an hour, three dollars and twenty cents a day, eighty dollars a month, or nine hundred and sixty dollars a year or under; nor

(b) an unmarried person, in case his wages be at a rate of twenty cents an hour, one dollar and sixty cents a day, forty dollars a month, or four hundred and eighty dollars a year or under.

(2) In case an unmarried person has resident with him and wholly dependent upon him, a mother, father or sister, he shall be
30 entitled to a refund of his tax if his total taxable income under this Act be less than nine hundred and sixty dollars a year, but a claim for the refund, in a form prescribed by the administrator, shall be made to the administrator within thirty days after the thirtieth day of April following.

(3) In case the total income during any year does not exceed nine hundred and sixty dollars in the case of a married person, or four hundred and eighty dollars in the case of an unmarried person, he shall be entitled to a refund of the taxes paid by him, but a claim for the refund shall be made to the administrator within
40 thirty days after the thirtieth day of April following.

4. (1) Every employer at the time of payment of wages to an employee shall levy and collect the tax imposed on the employee by this part in respect of the wages of the employee earned or accruing due during the period covered by the payment, and shall deduct and retain the amount of the tax from the wages payable to the employee, and shall, on or before the fifteenth day of the month next following that in which the payment of wages takes place, or at such other time as the regulations prescribe, pay to the administrator the full amount of the tax. No employee shall have
10 any right of action against his employer in respect of any moneys deducted from his wages and paid over to the administrator by the employer in compliance or intended compliance with this section.

(2) Every employer shall, with each payment made by him to the administrator under this section, furnish to the administrator a return showing all taxes imposed by this part on the employees of the employer in respect of wages during the period covered by the return, which shall be in the form and verified in the manner prescribed by the administrator.

(3) Every employer who deducts or retains the amount of
20 any tax under this part from the wages of his employee shall be deemed to hold the same in trust for His Majesty and for the payment over of the same in the manner and at the time provided under this part.

5. (1) Every employer shall keep at some place in the province, of the location of which he shall inform the administrator when requested to do so, a true and correct record of the names and residential addresses of all his employees, and of the dates upon which each of them worked, the wages paid to each, and such other matters as the administrator requires.

30 (2) Every employer shall, on request of the administrator or any person authorized by him in writing, produce for inspection all records kept by the employer relating to his employees.

6. (1) If an employer, in violation of the provisions of this part fail to collect and pay over any tax imposed by this part, the administrator may demand and collect from him as a penalty ten per cent. of the tax payable, and he shall in addition be liable to a fine of ten dollars for each day of default, but not more than two hundred dollars.

40 (2) Every person, who contravenes any provision of this part in respect of which no penalty is otherwise provided, shall be liable to a fine not exceeding five hundred dollars, and each day's continuance of the act or default out of which the offence arises shall constitute a separate offence; but nothing contained in this section nor the enforcement of any penalty thereunder shall sus-

pend or affect any remedy for the recovery of any tax payable under this part or of any moneys in the hands of an employer belonging to His Majesty.

7. In case the wages earned or accruing due to an employee are paid to him without the tax imposed thereon being deducted therefrom by his employer, it shall be the duty of the employee to forthwith pay the tax, and all the provisions of sections 23, 23A, 24 and 25 of "The Income Tax Act" shall, mutatis mutandis, apply to the collection and recovery of the tax so imposed from the employer and employee, or either of them.

PART II.

TAXATION OF INCOME OTHER THAN WAGES

8. (1) In addition to all other taxes to which he is liable under this or any other Act, every person other than a corporation, shall pay annually to His Majesty for the raising of a revenue for provincial purposes, a tax of two per centum upon the value of his taxable income, other than wages as to which a tax has been paid under Part I, and such tax shall be ascertained and collected in accordance with the provisions of this part; but no tax shall be paid under this part by

(a) a married person, in case his total income, including wages, be less than nine hundred and sixty dollars a year; nor

(b) an unmarried person, in case his total income, including wages, be less than four hundred and eighty dollars a year.

(2) Without limiting the generality of the provisions contained in subsection (1), the tax imposed by this part shall apply in respect of all taxpayers, other than corporations, within the scope of "The Income Tax Act", or who would be within the scope of that Act if no deductions or exemptions were allowed therein, and shall also apply in respect of income earned within the province of persons not resident in the province, and upon the income of a personal corporation distributed or deemed to have been distributed as a dividend under "The Income Tax Act".

(3) In case an unmarried person has resident with him and wholly dependent upon him, a mother, father or sister, he shall be entitled to a refund of his tax if his total taxable income under this Act be less than nine hundred and sixty dollars a year; but a claim for a refund in a form prescribed by the administrator shall be

made to the administrator within thirty days after the thirtieth day of April following.

9. The tax imposed by this part for the year 1933 shall be based on the income of the taxpayer for the year 1932 and the tax for each year thereafter on the income for the previous year, but where the taxpayer has a method of accounting fixing a fiscal or business year ending on a day other than the thirtieth day of April, the administrator may apply the tax with respect to the income of the taxpayer for the fiscal or business year or in any manner based
10 thereon that he deems expedient.

10. (1) The following income shall be exempt from taxation under this part:

(a) pensions or allowances granted under "The Child Welfare Act", "The Old Age Pensions Act" or "The Workmen's Compensation Act";

(b) pensions or allowances granted under "The Pension Act" (Dominion), or any other Act respecting the granting of war disability pensions;

20 (c) all income exempted from taxation by the provisions of 4 (a), 4 (b) and 4 (c) of "The Income Tax Act"; and

(d) all income derived in the form of relief from any municipality or the province.

(2) All income of the taxpayer which consists of wages in respect of which he has paid the tax imposed by Part I shall be exempt from taxation under this part.

11. The taxable income of each taxpayer shall be ascertained for purposes of this part by deducting from his gross income the income exempt under this part and all expenses incurred in the
30 production of that part of his income which is liable to taxation; but no deduction by way of expenses shall be made for:

(a) rents, interest, wages, salaries, or other remuneration unless the names and addresses of the persons receiving same are given by the taxpayer in his return;

(b) interest on moneys borrowed from without the province, either by way of loan or advance, unless a separate

return is made covering the aggregate amount of such interest, and income tax is paid on that amount at the rate provided in this part; or

(c) any of the items specified in paragraphs (a) to (f) of section 5A of "The Income Tax Act".

12. (1) On or before the thirtieth day of April of each year hereafter the taxpayer, without any notice or demand and whether liable to taxation hereunder or not, shall deliver to the administrator a return of his total income, without deduction or exemption, 10 during the last preceding year, in such form as the administrator prescribes.

(2) The tax imposed on a taxpayer by this part shall be assessed and levied and payable annually at the same times as the annual income tax under "The Income Tax Act" is assessed, levied and made payable; but the last bi-monthly instalment of the tax shall be payable with the next annual return of the taxpayer instead of the thirty-first day of October of the year in which the tax is levied.

(3) When an examination of the taxpayer's return filed in 20 any year discloses that the tax levied in the preceding year is different in amount from a tax based on the income shown by the return, the administrator shall adjust the tax to an amount equal to that based on the taxable income shown by the return and shall collect any remainder of the tax owing after making such adjustment, which remainder shall be payable forthwith; and if the taxpayer has been overtaxed and has paid the amount, the administrator shall either refund the overpayment or apply it on the tax payable by the taxpayer under this Act in the next succeeding year or on any tax payable under "The Income Tax Act".

30 (4) If any taxpayer under this part has failed to pay any instalment of his tax as and when payable, he shall pay in addition a sum at the rate of ten per cent. per annum upon the deficiency from the date of the default to the date of payment, but no penalty or interest shall be incurred or be payable by a taxpayer on the instalment due on the thirtieth day of April, 1933, until the expiration of one year from that date.

40 13. Subject to the provisions of this Act and the regulations, all the provisions of "The Income Tax Act" relating to a person who is a taxpayer, shall, mutatis mutandis, apply to the assessment, levy, collection and recovery of taxes imposed by this part. in like manner as to taxes imposed under that Act, and the powers given to the Minister under that Act shall for the purpose of administering this Act be vested in the administrator.

PART III.

SUPPLEMENTARY

14. (1) The administrator and every person authorized by him in writing, for the purposes of this section, may inspect and examine all books, pay-rolls, and other records of any employer which in any way relate to his employees or of any taxpayer relating in any way to his income; and may take extracts from or make copies of any entry in such books, pay-rolls and records; and may by notice in writing require from any employer or from any person
10 liable to taxation under this Act, full and correct statements in writing, duly verified on oath, respecting any matter of which he is required by or under this Act or "The Income Tax Act" to keep a record.

(2) Every person to whom a notice is given pursuant to this section shall comply fully with its requirements within fourteen days after its receipt by him.

15. In case any error be found in the levy or collection of any tax imposed by Part I, the administrator may correct the same and refund to the taxpayer the amount erroneously collected. In case
20 any error be found in a notice of assessment of any tax imposed by Part II, the administrator may correct the same accordingly.

16. (1) For the purpose of carrying into effect the provisions of Parts I and II of this Act, the Lieutenant-Governor-in-Council may make regulations governing the administration of this Act, not inconsistent with the spirit of this Act, and may provide for any proceeding, matter, or thing for which express provision is not made in this Act, or for which only partial provision is made.

(2) Without thereby limiting the generality of the foregoing subsection, the power of the Lieutenant-Governor-in-Council
30 under this Act shall extend to the making of regulations

(a) for providing for the joint administration of this Act or any part or provision of this Act and "The Income Tax Act"; and for obviating any doubt as to matters of procedure arising therefrom;

(b) for determining what sections or what provisions of any section of "The Income Tax Act" shall apply for the purposes of this Act, and with what exceptions and modifications.

(3) Such regulations shall have the force of law as if made
40 an integral part of this Act.

17. This Act shall come into force on the day it is assented to.

The Income Tax Act Cap. 91 C.A. 1924 and Amendments provides in part as follows:

23. (1) The Minister, if he suspects that the taxpayer is about to leave Canada, may for that or any other reason by registered letter addressed to the taxpayer, demand payment of all taxes, penalties and accrued interest for which the taxpayer is liable, and the same shall be paid within ten days from the date of mailing such registered letter, notwithstanding any other provisions in this Act contained. Non-payment of the said tax within the specified time shall render the goods of the taxpayer liable to seizure by the bailiff of the County Court division in which the goods of the taxpayer are situate. A certificate of non-compliance with any such demand, signed by authority of the Minister setting forth the particulars of the demand and placed in the hands of such bailiff, shall be sufficient authority for the bailiff to seize sufficient of the goods of the taxpayer to meet the said demand and costs.

(2) The sale of such goods and disposition of the moneys realized shall be conducted in the manner prescribed by "The County Courts Act," as if seizures were made under a writ of execution issued out of the said County Court.

23A. If any person, not having given notice of appeal, neglects or refuses to pay any tax, interest or penalty or instalment of tax due under this Act, the Minister, on giving ten days' notice by registered mail addressed to the last known place of residence of the taxpayer, may issue a certificate declaring said person to be in default and may authorize any person whom he deems proper, upon receipt of such certificate, to distrain the person in default by his goods and chattels. The distress levied in accordance with this section shall be kept for ten days at the cost and charges of the person neglecting or refusing to pay, and if the person aforesaid does not pay the sum due, together with the costs and charges, within the said ten days the goods and chattels distrained shall be sold by public auction. Except in the case of perishable goods, notice of such sale setting forth the time and place thereof, together with a general description of the goods to be sold shall be published at least once in one or more of the local newspapers of general local circulation. Any overplus coming by the distress after deduction of the amount owing by the taxpayer and of all costs and charges shall be restored to the owner of the goods distrained. Such goods and chattels of any person in default as would be exempt from seizure

under a writ of execution shall be exempt from distress under this section.

24. Any person liable to pay the tax shall continue to be liable, and in case any person so liable shall fail to make a return as required by this Act, or shall make an incorrect or false return and does not pay the tax in whole or in part the Minister may at any time assess such person for the tax, or such portion thereof as he may be liable to pay and may in such cases prescribe the time within which any appeals relating thereto may be made under the provisions of this Act, from the assessment, or from the decision of the commission on an appeal to it, and may fix the date for payment of the tax.

25. (1) In addition to all other remedies herein provided, taxes, penalties and costs and unpaid portions thereof assessed or imposed under this Act may be recovered as a debt due to His Majesty from the taxpayer.

(2) All taxes, interest and penalties payable under this Act remaining unpaid, whether in whole or in part, after two months from the date of mailing of the notice of assessment, may be certified by the Minister.

(3) On the production to the County Court or Court of King's Bench of Manitoba, the certificate shall be registered in the said court and shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the said court for the recovery of a debt of the amount specified in the certificate, including interest to date of payment as provided for in this Act and entered upon the date of such registration.

(4) All reasonable costs and charges attendant upon the registration of such certificate shall be recoverable in like manner as if they were part of such judgment.

(5) When the Minister has knowledge or suspects that any person is or is about to become indebted to a taxpayer he may, by registered letter, demand of such person that the moneys otherwise payable to the taxpayer be in whole or in part, paid over to the Administrator on account of said taxpayer's liability under the provisions of this Act. 1931, C. 25, S. 13.

(6) The receipt of the Administrator therefor shall constitute a good and sufficient discharge of the liability of such person to the said taxpayer to the extent of the amount referred to in the receipt. 1931, C. 25, S. 13.

(7) Any person discharging any liability to a taxpayer after the receipt of the registered letter herein referred to shall be

personally liable to His Majesty to the extent of the liability discharged as between him and the taxpayer or to the extent of the liability of the taxpayer for taxes, interest and penalties, whichever is the lesser amount.

“The Civil Service Act,” cap. 22, R.S.C. 1927, provides in part as follows:

- 10 2. (a) “civil service” means the civil positions and employees in and under the several departments of the Government of Canada, and in the offices of the Auditor General, the Clerk of the Privy Council, the Governor-General’s Secretary, the Public Archives, the Board of Railway Commissioners for Canada, the Civil Service Commission, and all other civil positions under and persons in the civil employ of His Majesty, but not including the members of any commission or board appointed by the Governor-in-Council;
- (d) “employee” means and includes officers, clerks, and employees in the civil service, but does not include deputy heads;
- 20 9. (4) As soon as any plan of organization is confirmed by the Governor-in-Council, the deputy head shall, subject to the approval of the Commission, forthwith cause the officers, clerks and employees affected thereby to be reclassified for the purpose of placing each officer, clerk and employee in a proper place under such plan of organization.
- 30 (5) If, after such organization and classification has been effected, the number of officers, clerks, and employees in any portion of the civil service, or in any class or grade thereof, is greater than the number allowed under such organization, the remainder shall be supernumeraries in that class or grade respectively in which they rank, and shall so remain until they are placed in any vacancies that may occur or until they are transferred to another portion of the civil service, or until they leave such service.
10. (4) The statement of duties made in defining a class in the classification shall not affect the powers or duties of any employee under any statute or the power of a head of a department or a deputy head to control and direct the work of any employee under such head or deputy head.
- 40 11. (3) Employees shall take the classification of their respective positions, but no temporary employee shall be given a permanent position as a result of such classification, except upon

examination under the provisions of this Act or without examination under regulations made by the Commission and approved by the Governor-in-Council.

(4) No permanent employee who was appointed before the tenth day of November, one thousand nine hundred and nineteen, shall have the salary of his position on that date reduced by reason of the classification of his position, and if any such employee is placed in any class where the maximum salary is smaller than the maximum salary of the subdivision or grade in which he was before classified he shall be entitled in the same manner and to the same extent as heretofore to increases until he has reached the maximum fixed for the subdivision or grade in which he was previously classified.

12. (1) The Commission shall, from time to time, as may be necessary, recommend rates of compensation for any new classes that may be established hereunder, and may propose changes in the rates of compensation for existing classes.

(2) In each class there shall be a minimum and maximum salary rate and such intermediate rates as may be considered necessary and proper to provide increases between the minimum and maximum.

(3) Such proposed rates of compensation shall become operative only upon their approval by the Governor-in-Council, and, where any increased expenditure will result therefrom, when Parliament has provided the money required for such increased expenditure.

13. The rate of compensation of an employee upon appointment to a position in any class in the civil service shall be at the minimum rate prescribed for the class; provided, however that when the appointee is already in the civil service in another position, the rate of compensation upon appointment to the new position through promotion shall be the same as that received before such new appointment, or, if there be no such rate for the new class, then at the next higher rate, but no appointment shall in any case be made at less than the minimum nor at more than the maximum rate prescribed for a class.

14. (1) The rate of compensation of an employee who has not reached the maximum rate of compensation of the class in which he is serving may, subject to the regulations of the Commission, be increased by the deputy head, if he is satisfied that the employee has rendered meritorious service and has increased his usefulness in the service.

(2) Such increase shall be to the next higher rate for the class, and the new rate shall become effective at the next quarterly date after the increase is granted by the deputy head, that is to say, either the first day of January, April, July or October in any year.

15. (1) The rate of compensation for a temporary employee appointed after the tenth day of November, one thousand nine hundred and nineteen, shall be the minimum rate of the class to which his position is assigned.

10 (2) In the case of temporary employees required in Canada outside the city of Ottawa, if such minimum rate be less than the prevailing rate of pay for the work incident to the position in the place or locality where the work is required to be performed, the Commission may engage a temporary employee at such prevailing rate instead of the minimum rate, if the said prevailing rate does not exceed the maximum rate of the class in which the position is classified.

(3) No temporary employee shall be deemed to be eligible to receive any increase of compensation under the provisions of 20 this Act.

16. The Commission shall make regulations under which the deputy head may, for sufficient reason, authorize the payment to employees, not in administrative or executive positions, of such additional remuneration as may be prescribed in such regulations, for work done outside of prescribed hours.

17. (1) In the absence of special authority of Parliament no payment additional to the salary authorized by law shall be made to any deputy head, officer, clerk or employee permanently employed in the civil service in respect of any service rendered 30 by him, whether in the discharge of his ordinary duties of office or of any other duties which may be imposed upon him, or which he may undertake or volunteer to discharge or otherwise perform.

(2) Nothing in this section is intended to prohibit the payment to any officer, clerk or employee of a separate annual salary from each of two or more departments or distinct branches of the civil service in respect of separate duties performed for each of such departments or branches respectively, if one of such salaries is not sufficient to compensate him for his whole time, and if the aggregate salaries do not, in the opinion of the deputy head, con- 40 curred in by the Commission, exceed reasonable compensation for the discharge of all the duties so performed.

19. Save as otherwise provided in this Act or in any regulation made hereunder, neither the Governor-in-Council nor any minister, officer of the Crown, board or commission, shall have power to appoint or promote any employee to a position in the civil service.

43. (1) Every deputy head, officer, clerk and employee permanently employed in the civil service, before any salary is paid him, shall take and subscribe the oath of allegiance and also the oath contained in Schedule A to this Act, or such other oath as is 10 provided by any other Act, in that behalf.

48. When any officer, clerk or employee is absent from duty without leave, his salary for each day of such absence shall be deducted from his monthly salary.

49. (1) Promotion is a change from one class to another class with a higher maximum compensation, and vacancies shall be filled, as far as is consistent with the best interests of the civil service, by promotion.

(2) Promotions shall be made for merit by the Commission upon such examination, reports, tests, records, ratings or recommendations as the Commission may by regulation prescribe.

(3) In making promotions, the Commission may, by regulation restrict the competition by merit to all employees or to employees of certain class or classes of a specified seniority, and may prescribe the marks or ratings to be obtained by such employees for efficiency and seniority, such marks or ratings not to exceed one half of the total marks required under any merit system or method adopted by the Commission for promotion purposes.

An Act to provide for the Superannuation of Civil Servants,
R.S.C. 1927, cap. 24.

30 1. This Act may be cited as the Civil Service Superannuation Act.

INTERPRETATION

2. In this Act, unless the context otherwise requires,
- (a) "child" includes a step-child and an adopted child;
 - (b) "civil servant" means and includes any permanent officer, clerk, or employee in the Civil Service as herein defined,
 - (i) who is in receipt of a stated annual salary of at least six hundred dollars, and

(ii) who is required, during the hours or period of his active employment, to devote his constant attention to the performance of the duties of his position and the conditions of whose employment for the period or periods of the year over which such employment extends preclude his engaging in any other substantially gainful service or occupation;

10 (c) "Civil Service" means and includes the several positions in or under any department, branch, or portion of the executive government of Canada and, for the purposes of this Act, the Senate, House of Commons and Library of Parliament, but saving all rights and privileges of either House in respect of the control or removal of its officers, clerks and employees; and such other branches or portions of the public service of Canada as the Governor-in-Council from time to time designates under the provisions of section eleven of this Act;

(d) "contributor" means a civil servant who contributes under this Act to the Consolidated Revenue Fund;

20 (e) "dependant" of a contributor means and includes the father, mother, brother, sister and child of a contributor who is at the date of death of the contributor dependent upon the contributor for support;

(f) "head of department" and "deputy head" shall have the same meanings as these expressions have respectively under the Civil Service Act, and shall include for any portion of the Civil Service to which these expressions as defined in the said Act do not extend, such officers of the Crown as the Governor-in-Council may respectively designate;

(g) "Minister" means the Minister of Finance;

30 (h) "Misconduct" means wilful disobedience of the provisions of any statute or regulation governing the performance of official duties the breach of which involves dismissal from the Civil Service, malversation in office, or abandonment of office;

40 (i) "permanent officer, clerk, or employee" means a person who is appointed during pleasure to perform the duties of an office or position of continuing indeterminate duration by Act of Parliament or by order of the Governor-in-Council in the competent exercise of subsisting executive powers in that behalf, or under and in pursuance of authority in that behalf conferred upon an officer or agent of the Crown by Act of Parliament or by order of the Governor-in-Council as aforesaid; and in the case of any officer, clerk or employee of the Senate or House of Commons or of the Library of Parliament, a person who has been or is appointed as aforesaid, or by or under resolution, order or other authorization of the Senate, House of Commons,

or both Houses of Parliament jointly, as the case may be, to perform such duties as aforesaid or duties from year to year during or having relation to the sessions of Parliament;

(j) "Retirement Act" means Part II of the Civil Service Superannuation and Retirement Act;

(k) "Retirement Fund" means the Retirement Fund created by the Retirement Act;

10 (l) "salary" of a contributor means the regular salary paid in respect of his service, together with the value of living and residential allowances but does not include allowance or payment for overtime or other extra allowance or pay or any gratuity;

(m) "service," for the purpose of computation of any allowance under this Act, shall include service rendered by a civil servant in a temporary capacity, except as hereinafter provided;

(n) "Superannuation Act" means Part I of the Civil Service Superannuation and Retirement Act.

PART I

20 3. This Part applies to every person who becomes a civil servant after the nineteenth day of July, one thousand nine hundred and twenty-four, and to such other civil servants as elect under the provisions of any of the other Parts of this Act to become contributors.

4. Every person to whom this Part applies shall, by reservation from his salary, contribute five per cent. of such salary to the Consolidated Revenue Fund, but no such contribution shall be made in respect of a period of service in excess of thirty-five years.

5. The Governor-in-Council may grant

30 (a) to any contributor who has served in the Civil Service for ten years or upwards and

(i) who has attained the age of sixty-five years, an annual superannuation allowance to the amount specified in section six of this Act, or

(ii) who before attaining the age of sixty-five years becomes disabled or otherwise incapable of performing the duties of his office, or who retires from the Civil Service by reason of the abolition of his office, an annual retiring allowance equal to the superannuation allowance to which

he would have been entitled if he had attained the age of sixty-five years at the date of such disability or retirement, or

(iii) who for any reason other than misconduct or those hereinbefore specified retires, whether voluntarily or by dismissal or removal, from the Civil Service, a withdrawal allowance payable in one sum equal to the total amount of his contributions made under this Act without interest;

10 (b) to the widow of any contributor who dies while in the Civil Service or while in receipt of a superannuation or retiring allowance under this Act, an annual allowance payable until remarriage, equal to one-half the allowance which the said contributor was receiving or would have been entitled to if he had been superannuated or retired at the date of his death, as the case may be;

20 (c) to each child of any contributor who dies while in the Civil Service or while in receipt of a superannuation or retiring allowance under this Act, an annual allowance payable until the said child reaches the age of eighteen years, equal to ten per cent. of the allowance which the said contributor was receiving or would have been entitled to if he had been superannuated or retired at the date of his death, as the case may be, such child's allowance not, however, to exceed three hundred dollars per annum: Provided that the total allowance to the children of any contributor shall not exceed the allowance to the widow and the total allowance to the widow and children shall not exceed three-fourths of the allowance which the contributor received or would have been entitled to, as the case may be; and that the allowance to a child who has lost both parents by death may be increased by the Governor-in-Council to twice
30 the amount hereinbefore specified as the child's allowance.

6. (1) Except as hereinafter otherwise provided the superannuation allowance mentioned in the next preceding section shall be one-fiftieth of the average salary received by the contributor during the last ten years of his service multiplied by the number of years of his service, not, however, exceeding thirty-five years.

(2) If the service of the contributor has not been continuous the period or periods during which such service has been discontinued
40 shall not be counted in computing the allowance: Provided that absence on active service in the War declared by His Majesty, on the fourth day of August, one thousand nine hundred and fourteen, against the Empire of Germany and subsequently against other powers, whether with or without leave of absence, shall not be deemed a discontinuance of service.

(3) If a contributor who is subject only to the provisions of this Part has, prior to becoming a contributor, served in the Civil Service, whether in a temporary or permanent capacity, such prior service shall be counted only to the extent of one-half in computing all allowance under this Act unless within three months after his becoming a contributor, he contributes to the Consolidated Revenue Fund an amount equal to five per cent. of the total salary received by him during the period of such prior service, with simple interest thereon, at the rate of four per cent. per annum, which amount shall
10 be deemed to be a contribution under this Act and shall be payable in one sum or in instalments of equivalent value computed on such bases as to mortality and interest as the Governor-in-Council may by regulation prescribe.

(4) If the average salary for the period fixed by this Act for the purpose of computing the allowance of any contributor is less than the average salary for any like period during the contributor's service, the contributor, or his widow or children under the age of eighteen years, as the case may be, shall be entitled to receive, in addition to any allowance under this Act, a refund of the contribu-
20 tions made in respect of the excess of his salary during any like period over his salary for the period so fixed: Provided that the Governor-in-Council, on the recommendation of the Treasury Board, may by regulation determine the basis of such refund in any case or class of cases, and when a contributor has died without receiving such refund, the person or persons amongst the surviving widow and children, or children only, of such contributor to whom it shall be paid, and if to more than one of them, the manner in which it shall be apportioned.

7. (1) If a contributor becomes disabled or otherwise incap-
30 able of performing the duties of his office, or if his office is abolished, and if he is ineligible by reason of age or length of service for a superannuation or retiring allowance under this Act, the Governor-in-Council may grant him a gratuity not exceeding one month's pay for each year of his service; or, if he is required to retire on marriage, a gratuity not exceeding the amount of his contributions made under this Act without interest.

(2) If a contributor dies while in the Civil Service, and if his period of service is less than ten years, the Governor-in-Council may grant to his widow, or, if he leaves no widow, to his children under
40 eighteen years of age at the date of his death, a gratuity not exceeding one month's pay for each year of his service.

(3) If a contributor dies while in the Civil Service and leaves no widow and no child under the age of eighteen years, the Governor-in-Council may grant to the dependants of the contributor, in accordance with regulations made by the Governor-in-Council under

the provisions of section eleven of this Act, an amount not exceeding the amount of the contributions made by the contributor under the provisions of this Act without interest.

8. The annual allowances hereinbefore provided for shall, unless otherwise provided by regulation made in pursuance of the provisions of this Act, be payable in equal monthly instalments and, unless otherwise herein specified, shall continue during the lifetime of the recipient: Provided that the Governor-in-Council, on the recommendation of the Treasury Board, may, by regulation, authorize the
10 payment of an annual allowance to the last day of the month in which the recipient dies.

9. (1) No allowance shall be granted to a contributor under this Act unless the Treasury Board reports that he is eligible within the meaning of this Act, and no superannuation or retiring allowance shall be granted unless the Treasury Board, on the advice of the Civil Service Commission, reports in addition that the granting of such allowance will be in the public interest: Provided that the latter report shall not be required if the contributor has attained the age of sixty-five years.

20 (2) No allowance shall be granted to the widow or any child of the contributor

(a) if the person to whom it is proposed to grant the allowance is, in the opinion of the Treasury Board, unworthy of it; or

(b) if the contributor married after superannuation or retirement; or

(c) if the contributor was over sixty years of age at the time of his marriage contracted after the nineteenth day of July, one thousand nine hundred and twenty-four;

30 (d) if the contributor dies within one year after his marriage, unless the Treasury Board is satisfied that he was in good health at the time of his marriage and that there are no other objections to the granting of the allowance:

Provided, however, that a breach by the contributor of the conditions as to marriage prescribed by this subsection shall not prejudice the right to an allowance of a child of an earlier marriage of the contributor.

40 (3) If a contributor marries after the nineteenth day of July, one thousand nine hundred and twenty-four, and if his age exceeds that of his wife by twenty years or upwards, the allowance to such wife under this Act shall be reduced by such an amount as the Governor-in-Council may by regulation prescribe.

(4) A widow's or a child's allowance shall be suspended or discontinued if, in the opinion of the Treasury Board, such widow or child becomes unworthy of it.

10 **10.** (1) Retirement from the Civil Service shall be compulsory on every contributor to whom the superannuation or retirement allowance is offered, but such offer shall not be considered as implying any censure on the person to whom it is made, nor shall any person be considered as having a right to such an allowance, but it shall be granted only in consideration of good and faithful service during
10 the period in respect of which it is calculated.

(2) No contributor shall be retained in the Civil Service beyond the age of seventy years: Provided that if the deputy head of any department reports, within two years after the nineteenth day of July, one thousand nine hundred and twenty-four, in respect of any contributor in such department who, whether before or after the coming into force of this Act, attains the age of seventy years, or not less than thirty days before the attainment of the said age by any contributor, that on account of his peculiar efficiency and fitness for his position the continuance in office of such contributor beyond
20 the said age is in the public interest, and if such report is concurred in by the head of the department and the Treasury Board, the Governor-in-Council may extend annually the service of such contributor beyond the said age for a period not exceeding five years.

(3) If the said contributor be himself a deputy head, the report herein required of the deputy head shall be made by the head of the department.

(4) Nothing herein contained shall be understood as impairing or affecting the right of the Governor-in-Council to dismiss or remove any contributor from the Civil Service.

30 **11.** (1) The Governor-in-Council may, on the recommendation of the Treasury Board, make regulations:

(a) prescribing the method of computation of superannuation and retiring allowances authorized by this Act;

(b) prescribing the cases in which the annual allowances herein provided for shall be payable otherwise than in monthly instalments;

(c) prescribing the nature and form of the accounts to be kept of income and disbursements under this Act, and of the statement to be laid before Parliament by the Minister;

40 (d) prescribing and determining, in any case of doubt, to what persons in any branch or portion of the Civil Service the provisions of this Act do or do not apply and the conditions on

which, and the manner in which they shall apply in any case or class of cases;

(e) prescribing the basis for the computation of instalments of contributions made under any other Part of this Act;

(f) determining the amount which shall, for the purposes of this Act, be deemed to be the salary of a contributor who, out of his authorized salary, is required to pay for the services of one or more assistants;

10 (g) for any other purpose deemed necessary to give effect to the terms of this Act.

(2.) Notwithstanding any provision of this Act the Governor-in-Council may on the recommendation of the Treasury Board, also make regulations determining whether, and to what extent and under what conditions:

(a) any duly authorized period of absence from duty without pay after the fourteenth day of April, one thousand nine hundred and twenty-seven, shall be counted as service for the purpose of computing allowances under this Act; and

20 (b) any contributor who has been absent on leave without pay shall nevertheless be deemed to have been in receipt of salary for the purpose of computing the average salary received by him for the purposes of this Act;

30 (c) any benefits may be granted under this Act to a contributor or the widow or children or dependants of a contributor who, by reason of a reduction of his salary or other change of the conditions of his employment, ceases to be eligible to be a contributor under this Act: Provided that, in the event of such contributor leaving the service or dying without becoming re-eligible to be a contributor under this Act, the benefits which may be granted to him or to his widow or children or dependants shall not in any case be in excess of those which would have been received if he had been retired from the service immediately before he ceased to be eligible to be a contributor under this Act;

40 (d) the period during which a former contributor, though still serving in the Civil Service, has not been eligible to be a contributor under this Act shall, in the event of his becoming re-eligible to be a contributor, be counted for the purposes of this Act, and the manner in which the retiring or other allowances under this Act shall, in such case, be computed when such period forms part of the period fixed by this Act for the purpose of computing such allowances;

(e) periods of past non-contributory service in or under any branch or portion of the public service of Canada which had ceased to exist prior to the nineteenth day of July, one thousand nine hundred and twenty-four, shall be counted for the purposes of this Act;

10 (f) persons whose duties or employment are of a seasonal character shall be deemed to be civil servants within the meaning of this Act and eligible to be contributors hereunder and their periods of work and of lay-off from work shall be counted for the purpose of computing any allowance or gratuity under this Act.

12. The moneys received under the provisions of this Act shall form part of the Consolidated Revenue Fund, and the moneys payable under the said provisions shall be payable out of the said Consolidated Revenue Fund.

13. Every civil servant to whom this Part is or becomes applicable, shall be entitled, in making a return of his income for purposes of taxation on or in respect of income under any Act of the Parliament of Canada, to deduct from his salary the amount of the
20 contribution reserved from his salary during the taxable year and paid into the Consolidated Revenue Fund under the provisions of this Part.

14. The Minister shall lay before Parliament within fifteen days after commencement of each session thereof:

30 (a) a statement of all superannuation and retiring and withdrawal allowances granted during the last fiscal year under the terms of this Act, giving the name and rank of each person superannuated or retired, his salary, age and length of service, the allowance granted to him on retirement, the cause of his superannuation and whether the vacancy has been subsequently filled, and if so, whether by promotion or by new appointment, and the salary of the new incumbent;

(b) a statement of all allowances granted to widows, children or other dependants of Civil Servants under this Act during the said year, showing the name, age and sex of each person to whom any such allowance has been granted; and the name, age at death, salary and length of service of the Civil Servant to whose widow, children or other dependants such allowance or allowances have been granted;

40 (c) a statement showing the amount received as contributions and the amount paid as allowances during the said year

under this Act, together with such further information as may be prescribed by the Governor-in-Council by regulation made under this Act.

PART II

15. This Part applies to Civil Servants who on the nineteenth day of July, one thousand nine hundred and twenty-four, are subject to the provisions of the Retirement Act.

16. Any such Civil Servant who, within three years after the nineteenth day of July, one thousand nine hundred and twenty-four, elects to become a contributor under this Act, shall have transferred to the Fund created under this Act the amount standing to his credit in the Retirement Fund, which amount shall thereupon be deemed to be a contribution under this Act, and such contributor shall, as from the date of such election, be deemed to have waived his right to any payment or benefit under the provisions of the Retirement Act and shall be subject to the provisions of, and entitled to all the benefits and privileges under, Part I of this Act to the same extent as if he had been appointed after the nineteenth day of July, one thousand nine hundred and twenty-four, and had been a contributor for the period in respect of which he contributed to the Retirement Fund: Provided, however, that in computing the superannuation allowance of any such contributor, the average salary shall be based upon the salary received by the contributor, during the last five years of his service.

17. (1) If the said contributor has not contributed to the Retirement Fund in respect of his entire period of service, including any service rendered by him in a temporary capacity, prior to the time of his election, under the provisions of the next preceding section, the period in respect of which he did not so contribute shall be counted only to the extent of one-half in computing allowances under this Act in respect of his service, unless, subject to the provisions of section four of this Act, the said contributor at the time of his said election pays into the Consolidated Revenue Fund an amount equal to five per cent. of the total salary received by him during the said period, with simple interest at the rate of four per cent per annum, in which event the entire period of service of the said contributor shall be counted in computing allowances in respect of his service under this Act.

(2) Any payment made under this section shall be deemed to be a contribution under this Act and shall be made in one sum or in instalments of equivalent value computed on such bases as to mortality and interest as the Governor-in-Council may by regulation prescribe.

PART III

18. This Part applies to Civil Servants who, on the nineteenth day of July, one thousand nine hundred and twenty-four, are subject to the provisions of the Superannuation Act, 1924, c. 69, s. 19.

19. (1) Any such Civil Servant who, within three years after the nineteenth day of July, one thousand nine hundred and twenty-four, elects to become a contributor under this Act, shall, as from the date of such election, be deemed to have waived his right to any payment or benefit under the Superannuation Act, and, except as
10 hereinafter provided, shall be subject to the provisions of, and entitled to all the benefits and privileges under Part I of this Act to the same extent as if he had been appointed after the nineteenth day of July, one thousand nine hundred and twenty-four, and had been a contributor for the period in respect of which he contributed under the Superannuation Act.

(2) In computing the allowance of the widow, child or other dependants of any such contributor under this Act, the period of service during which he contributed under the Superannuation Act prior to the date of his election as aforesaid shall be counted only to
20 the extent of one-half unless the said contributor at the time of his election pays into the Consolidated Revenue Fund an amount equal to the difference between five per cent. of the total salary received by him during such service and the amount actually contributed by him in respect of such service under the Superannuation Act, with simple interest at the rate of four per cent. per annum, in which event the said period of service shall be counted in full in computing the said allowances.

(3) If for any period of his service, including service rendered by him in a temporary capacity, prior to the date of his election as
30 aforesaid any such contributor did not contribute under the Superannuation Act, the said period shall be counted only to the extent of one-half in computing all allowances under this Act, unless, subject to the provisions of section four of this Act, the said contributor at the time of his election as aforesaid pays into the Consolidated Revenue Fund an amount equal to five per cent. of the total salary received by him during such period, with simple interest at the rate of four per cent. per annum, in which event such period shall be counted in full in computing the said allowances.

(4) The superannuation or retiring allowance of any person
40 to whom this Part applies shall not be less than the allowance to which he would have been entitled if he had continued to be subject

to the Superannuation Act and had not elected to become a contributor under this Act.

(5) Any payment made under the provisions of subsections two or three of this section shall be deemed to be a contribution under this Act, and shall be made in one sum or in instalments of equivalent value computed on such bases as to mortality and interest as the Governor-in-Council may by regulation prescribe.

PART IV

20 **20.** This Part applies to Civil Servants who, on the nineteenth day of July, one thousand nine hundred and twenty-four, are not subject to the provisions of the Retirement Act or the Superannuation Act.

21. (1) Any such civil servant who, within three years after the nineteenth day of July, one thousand nine hundred and twenty-four, elects to become a contributor under this Act, shall, as from the date of such election, except as hereinafter provided, be subject to the provisions of, and entitled to all the benefits and privileges under Part I of this Act to the same extent as if he had been appointed after the nineteenth day of July, one thousand nine hundred and 20 twenty-four, and had been a contributor for his period of service prior to the date of such election: Provided, however, that in computing the superannuation allowance of any such contributor, the average salary shall be based upon the salary received by the contributor during the last five years of his service.

(2) In computing allowances under this Act in respect of such contributor the period of his service prior to the date of his election as aforesaid shall be counted only to the extent of one-half, unless subject to the provisions of section four of this Act, at the time of such election he pays into the Consolidated Revenue Fund an 30 amount equal to five per cent. of the total salary received by him in respect of such service, with simple interest at the rate of four per cent. per annum, in which event the said period shall be counted in full in computing the said allowances.

(3) Any payment made under the provisions of the next preceding subsection shall be deemed to be a contribution under this Act, and shall be made in one sum or in instalments of equivalent value computed on such bases as to mortality and interest as the Governor-in-Council may by regulation prescribe.

PART V

22. Every employee of the Civil Service who, on the nineteenth day of July, one thousand nine hundred and twenty-four, occupies a position which is subject to the provisions of the Civil Service Act, or which would be so subject but for an Order-in-Council made under the authority of section fifty-nine of the Civil Service Act, shall be subject to the provisions of this Act to the same extent as if he were a permanent employee, unless he was assigned by the Civil Service Commission upon certificate of temporary employment 10 and is still serving under such certificate.
