

be payable by and may be recovered from" the executor. Is there discretion as to whether or not it shall be recoverable from the executor?

Mr. HANSON (York-Sunbury): An alternative, is it not?

Mr. MACDONALD (Brantford City): Or is it an alternative?

Mr. ILSLEY: It is payable by the donee, by the successor—I think that is the proper term. It also may be recovered from the executor in his capacity as executor, and up to the amount of the property he has in his hands.

Mr. MACDONALD (Brantford City): If I may anticipate and go to section 13, it provides that if the executor is forced to pay duty in respect of property not in his hands he can recover from the successor liable therefor. My question with respect to section 12 is this: Is he liable in his capacity as executor only for the assets of the estate which come into his hands? How can that accord with section 13?

Mr. HANSON (York-Sunbury): Perhaps I can help the minister. I do not see the hon. member's difficulty. In the first place the successor is liable for the duty. It comes out of him eventually. Section 12(1) gives the taxing authority the right to recover from the successor, or the duty may be recovered from the executor if the money is still in his hands. It is a permissive right of the crown to look to either place for the duty, and I think that is all right. You have to protect the treasury to that extent, and give the crown that alternative right. Section 13 is a protection to the executor who has to pay under section 12. I am going to ask the minister to consider, under 13 or 12 or at some other appropriate point, that where there is a liability imposed on the executor, a liability that may be exercised, he be given more than a possessory lien on the assets; that he be given a statutory lien. I think he ought to have that. He has only a possessory lien at the moment.

Mr. ILSLEY: Why is that not good enough?

Mr. HANSON (York-Sunbury): It may not be. I would give him full protection.

Mr. ILSLEY: The executor is given pretty full protection under this act.

Mr. HANSON (York-Sunbury): But that is one provision which I think is lacking.

Mr. ILSLEY: I think this compares pretty favourably with other acts.

Mr. HANSON (York-Sunbury): I am in agreement there.

Mr. ILSLEY: I speak subject to correction, but under some acts I believe the executor is liable for the amount of these gifts in any event.

Mr. HANSON (York-Sunbury): I do not recall any that go so far as to compel him to pay it out of his own pocket unless he has violated his duty as executor and paid the gift out before the tax was paid. But no executor would think of doing that.

Mr. ILSLEY: I may be wrong about that.

Mr. MACDONALD (Brantford City): I have followed the argument of the leader of the opposition but if according to section 12 the executor is liable only in his capacity as executor, how can he by section 13 be required to pay duty upon assets which do not come into his possession or control? The first line of section 13 uses the words "is required".

Mr. ILSLEY: The executor is required to pay duty on the value of a donation even though the gift is not in his hands. He is required to pay the duty, provided that he has property up to that amount. Section 13 gives him the right to recover against the successor the amount of duty which he had to pay. The gift is not being administered by the executor. The property upon which succession duty is payable does not come into his hands. He is not administering it. Nevertheless he is obliged to pay the duty on it if he has other property in his hands, and section 13 provides that he can recover the amount of the duty from the successor, who in this case would be the donee.

Mr. MACDONALD (Brantford City): I see. Thank you very much.

Mr. WHITE: If the executor of the estate is liable for the duty on gifts which have been made by the testator in his lifetime, the executor will have to pay that duty out of the assets of the estate under his administration. If he is unable to collect the amount of the duty so paid from the person who received the gift, he will have to pay the duty, and it will have to come out of some of the other heirs.

Mr. HANSON (York-Sunbury): That is a possibility.

Mr. WHITE: It is quite a probability.

Mr. ILSLEY: The concluding words of section 12(1) do away with that difficulty. It says that the executor is liable "for an amount not exceeding the value of the interest of the successor in the property administered by the executor." Therefore he would not be dipping into the interests of others.