

the principal funds should be transferred directly to the McMaster University Corporation, subject to a charge thereon of two thousand dollars a year in favour of the regular Baptist Missionary Society of Ontario. Several of the annuitants were still living, and, consequently, the principal funds constituting the estate were still vested in the trustees who managed the same and annually paid over the income to the annuitants, and the balance thereof to the University. The net income coming into the hands of the trustees last year was \$30,324.85. Of this amount it was stated by the trustees that \$8,504.16 consisted of rents arising from real estate in their hands, and the balance was interest from mortgages and other investments. They paid out of income last year to the annuitants, \$7,400 and to the University \$22,924.85.

D. E. Thompson, Q.C., for the appellants. This \$22,924 must be regarded as part of the income of McMaster University. If the accounts of the University are taken it will appear that the University has no taxable income, because the proper annual expenditure of the University equals or exceeds their gross revenue from all sources, including in such income this \$22,924; so that, as the University would not be assessable for any sum whatever, that portion of their income coming to them from the endowment fund at present vested in the trustees is not assessable in the hands of the trustees. The salaries of the University staff paid by the University out of its general income (the major part of which consists of the moneys annually paid to the University by the trustees) pay a municipal tax already, the professors, lecturers, etc., being individually assessed by the city on their several annual stipends. If this portion of the University income should be held to be assessable in the hands of the trustees it is tantamount to a double assessment.

Drayton, for the City of Toronto, contra.

McDUGALL, Co. J.: I need not point out that this latter contention is untenable. The professors and lecturers are taxed under s. 35 of the Assessment Act as individuals upon their respective incomes. Their liability to taxation has nothing whatever to do with the liability to taxation of either the McMaster University or the trustees, the present appellants. But can I take cognizance in any case of the destination of income in determining the liability of trustees to be assessed for income? The apparent intention of the Assessment Act is to ignore the existence of trusts and to treat for the purposes of the Act the person actually holding or controlling the personal property as the actual owner of the property. Sec. 46 of the Assessment Act states that personal property in the sole possession or under the sole control of any person or trustee, guardian, executor or administrator shall be assessed against such person alone. Sub-s. 2, "Where a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such with the addition to his name of his representative capacity, and such assessment shall be carried out in separate line from his individual assessment. He shall be assessed for the value of the real and personal