

McDOUGALL, Co. J.

DECEMBER 26TH, 1901.

COUNTY COURT OF YORK.

RE MACPHERSON AND CITY OF TORONTO.

RE HAMILTON AND CITY OF TORONTO.

*Assessment and Taxes—Personal Property—Exemptions—Trustees
—Non-resident Beneficiaries—Income of Trust Estate.*

Appeals by the trustees of the Macpherson and Hamilton estates from the decisions of the Court of Revision for the city of Toronto in respect of the assessments made upon the estates respectively.

J. T. Small, for the trustees of the Macpherson estate.

W. A. H. Kerr, for the trustees of the Hamilton estate.

J. S. Fullerton, K.C., for the city corporation.

McDOUGALL, Co. J.—In the Macpherson and Hamilton estate appeals the effect of the amendment made in 1900 to sec. 46 of the Assessment Act must be again considered. The Macpherson estate is administered in Toronto. The will was proved in this county, and several of the trustees reside here. Some of the beneficiaries reside in this Province, and others reside out of the Province. The income of the estate is collected at Toronto; the annual accounting is made by the trustees here, and the various annual shares of the income payable to the beneficiaries is distributed from this point, the shares of the non-residents being transmitted to them out of the Province. It is conceded that the shares of those resident in the Province are liable to assessment, but it is contended that the shares of the non-residents are not so liable. Section 46 of the Assessment Act was a section which, before amendment, contained a provision only as to the manner of assessment of personal property vested solely in third persons, trustees, guardians, executors, or administrators, namely, that such property could be assessed in the name of such third persons, trustees, etc., alone. This provision obviated the necessity of the assessor ascertaining who the cestuis que trust were, and of placing their names on the assessment roll. The amendment directs that the assessment shall be made in the name of such person, trustee, etc., alone, in cases only where, if the personal property were in possession of the beneficiary, the same would be liable to taxation. The amendment does not define any new principles of assessment or exempt any particular class of personal property from taxation. It does not qualify the general direction contained in sec. 7 that "all property in the Province shall be liable to taxation," nor does it affect the further direction contained in sec. 38 that all personal property within the Province owned by non-residents shall