

Estate Tax Act

were at the date of death domiciled in Canada or domiciled elsewhere. That is the change this clause makes.

In an ordinary case there is no requirement in the legislation of most of the provinces respecting registration of deeds for the registration of the release that is issued by the dominion succession duty authorities. In the provinces which still collect their own succession duties, provision is made prohibiting registration of any instrument affecting a title to land after the death of a person having an interest in that land without a specific release in respect of that property being obtained from the provincial succession duty office. Provision has been made, and will continue to be made in this new legislation, for the issuance of releases by the estate tax authorities in respect to specific assets of the deceased, and because of the existence of this statutory lien created by clause 43 it will be the responsibility of persons dealing with property in which a deceased person had an interest, where his successors or personal representatives are issuing instruments affecting the title, to take the responsibility—and the purchaser will have the same responsibility cast upon him for his own protection—of making sure that the estate tax has been paid; and of course the best evidence of that would be the production of the estate tax release in respect of that particular asset.

Mr. Drysdale: I do not intend to labour this point, because I have already raised it with the Minister of Finance, but we in British Columbia operate under the Torrens system of indefeasible certificate of title. In my opinion this method of imposing a lien has jeopardized our position as far as title registration is concerned, and I should like to suggest what I have already told the Minister of Finance privately; that consideration be given—not immediately, but within the next year—to putting into effect a system providing a time limitation on the filing of the lien, or else making a provision whereby the lien must be filed within a stated period of time, otherwise it would expire.

In British Columbia we have a situation at the present time, under the 1941 succession duty act under which a person searching a certificate of title, before relying on the title, must search back to 1941 in order to ascertain whether or not the estate has been released from its tax obligations and, in the case of the old act, whether the deceased was domiciled outside of Canada.

The situation at present is that there is no assurance that the government may not step in at some future time to recover the lien on the estate, maybe in five, ten or even 20 years time, and I would suggest a limitation to say six months from the date of death,

[Mr. Fleming (Eglinton).]

or from probate. I draw this to the attention of the minister because the matter is of particular importance to British Columbia.

Mr. Fleming (Eglinton): The hon. member has discussed this matter with me very earnestly. It is a subject that was touched on briefly in the banking and commerce committee, and I should just like to say a word about it.

One can appreciate the desire of persons who hold a certificate of title under the system of land tenure and registration prevailing in British Columbia and some other provinces to maintain all the features of the title to which the certificate purports to testify. On the other hand we are making no change in the law in this respect. This is simply re-enacting, in essence, the terms of the succession duty act as they have been in effect since 1941. The only change this section makes in the existing law is the inclusion of property in Canada owned by persons who, at the date of death, were domiciled in Canada.

My hon. friend speaks about a time limit. There is provision here for the registration of a caution. My hon. friend spoke about the registration of a lien. The section, of course, creates a statutory lien that can be followed up by the registration of a caution if that were thought by the enforcement authorities to be desirable. These matters, of course, are always under consideration, and we shall be glad to give continuing study to it.

I point out, Mr. Chairman, that in the certificate of title that is issued under the same system of land tenure and registration in some other provinces there are statutory exceptions. Normally they are mentioned in the certificate of title. They are not enumerated but reference is made to them, so that any person taking or acting on a certificate of title is on notice that there are some statutory provisions that will substract something from what might otherwise be regarded as an indefeasible and absolute title.

I do emphasize, Mr. Chairman, the fact that this clause does not carry the principle of the statutory lien any further. It applies it in one more case, but it does not carry the principle as such any further.

Mr. Drysdale: In fairness to the minister, I may say that in British Columbia we have a section in the land registry act, section 38, which deals with the specific exception to which he refers; but, on the other point, he said there has been no change in principle or in the law from the 1941 succession duty act. I would point out to the minister that I do not agree that the principles in the 1941 act are correct.