

The CHAIRMAN: I think a declaration of intention if it is honestly made would be accepted. Who can foresee the circumstances in the future?

Senator MACDONALD: That is right. A great many people move out of a home to live in an apartment.

The CHAIRMAN: That is right.

Senator BRUNT: Senator Power raised the point that this does not apply in the province of Quebec. Is that correct?

The CHAIRMAN: That is because of Quebec law.

Senator POWER: Have you done anything to try to soften the blow on Quebecers?

Senator BRUNT: Or even it up?

Senator LEONARD: Mr. Chairman, I just wanted to see what would be the effect in a case that I think is quite common where a father may help a son acquire a farm and instead of making the gift outright at the time, he probably lends him \$5,000 or \$10,000 and takes a mortgage on the farm until the son gets established, and he may want at some time to give a discharge of that mortgage to the son. Let us take the case of the \$10,000 mortgage. Is that discharge of the mortgage a gift within this section?

Mr. HARMER: It has to be an interest in real property, Senator Leonard, but I do not know.

Senator LEONARD: You do not consider that a mortgage qualifies as an interest in property? That is a question I would like an answer to.

Mr. MACLATCHY: In the common law provinces I think that would be an interest in real property.

Senator LEONARD: Then your answer is, in the case I have given, it would qualify as a gift if he gives a discharge of that mortgage?

Mr. MACLATCHY: In effect a discharge of a mortgage is a transfer of the legal title to the property.

Senator LEONARD: I raise the question by way of draftmanship because it says:

a gift to the spouse or child of the donor of an interest in real property—

and then it goes on to speak of a transfer, assignment or other disposition of that property, and does not use the words again, "interest in real property". It raised in my mind a question of whether it really did mean the fee in the property or the title in the property rather than the disposition of the interest in the property, that is a discharged mortgage, for example. If the words are intended to cover the transaction that I have described as a gift, it would seem to me that it should say, by way of a transfer, assignment or other disposition of that interest in the property.

The CHAIRMAN: I think so too, senator. What do you say Mr. MacLatchy?

Mr. MACLATCHY: I do not think the situation was thought of when the section was drafted. This proposition was made to me recently and after some consideration it was my opinion that it would be covered by the section, because the discharge of the mortgage I think would be in effect a transfer of the fee.

The CHAIRMAN: You speak of an interest in real property and then go on to say, "made by way of a transfer, assignment or other disposition of that property." Is that not of interest in real property?

Mr. MACLATCHY: I think it means the same thing.

Senator LEONARD: I just wanted to be sure that the transaction is intended to be covered, and the opinion of counsel is that the wording does cover that transaction.