

income therefrom, in trust or otherwise, to persons or corporations not exempt, etc., . . . in the following cases:

"(1) and (2) Where the transfer is by will or intestacy.

"(3) When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within the state, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect, in possession or enjoyment, at or after such death.

"*Such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or income thereof by any such transfer, whether made before or after the passage of this Act.*"

The 1st section of the Pennsylvania statute reads:

"All estates, real, personal, and mixed, of every kind whatsoever, situated within this state . . . passing from any person who may die seized or possessed of such estates, either by will or under the intestate laws of this state, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain, or sale, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor to any person or persons . . . in trust or otherwise . . . shall be subject to a tax," etc.

It will be seen therefore, at a glance, that the first part of the 4th section of our Act is borrowed from the Pennsylvania Act, and the latter portion from the New York Act.

What appears to be the most difficult clause in this section upon which to put a construction in accordance with the spirit of the Act is: "Or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property or the income thereof"; and it will therefore be dealt with first.

By reference to the last clause of the New York Act, recited above, it will be seen from whence this clause was obtained. The words "such tax shall also be imposed when" have been struck out, and "or by reason whereof" have been substituted. It is, however, plain that the clause was intended in the New York statute *only to make the section retrospective*; but by an apparent misconception of the draftsman, it was added to s. 4 of our Act in an entirely different sense.

A writer in the *Canadian Law Times*, in commenting on the Act, has endeavoured to reconcile this clause by placing it in con-