

SECOND DIVISIONAL COURT.

MAY 12TH, 1919.

*RE GIBSON AND CITY OF HAMILTON.

Assessment and Taxes—Income Assessment—Income of Estate of Deceased Person in Hands of Trustees not Presently Payable to any one—Whether Assessable at all—Where Assessable—Place of Residence of Trustees—Place of Residence of Deceased—Assessment Act, secs. 5, 10, 11, 12, 13—Interpretation Act, sec. 29 (x)—“Person.”

An appeal by the trustees of the estate of William Gibson, deceased, from the order of the Senior Judge of the County Court of the County of Wentworth dismissing an appeal by the trustees from the decision of the Court of Revision for the City of Hamilton whereby an assessment of the estate of the deceased for taxable income at \$9,200 in the year 1918, was affirmed. The appeal was upon a case stated by the County Court Judge. The assessment was made by the Corporation of the City of Hamilton, where two of the trustees and one beneficiary resided.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, and SUTHERLAND, JJ.

John Jennings and George C. Thomson, for the appellants.

F. R. Waddell, K.C., for the Corporation of the City of Hamilton, respondents.

MULOCK, C.J.Ex., read a judgment in which he said that the testator by his will directed that all the income of his estate from time to time not required for the purposes of maintenance of his children should be added to and form part of his estate, called in the will the “general trust estate;” and directed that his trustees should hold the “general trust estate” and all other trust premises (if any), and, after having carried out the terms of any declaration or declarations of trust, upon trust, on his youngest living child attaining 25 years, to divide the “general trust estate” among his children then living and the children then living of any deceased child, etc.

It was admitted that no portion of the \$9,200 income was required for the maintenance and education of any child of the testator.

By sec. 5 of the Assessment Act, R.S.O. 1914 ch. 195, all income derived either within or out of Ontario by any person resident therein, or received in Ontario by or on behalf of any person resident out of the same shall be liable to taxation, subject to exemptions, none of which applied to the income in question.