

of the income coming into their hands as such trustees derived from the investment of the trust funds. The facts sufficiently appear in the judgment.

*Smoke* for the appellants. *Caswell* contra.

McDOUGALL, C.J. :—The judgment in the appeal of the McMaster University (see ante p. 721) disposes of this appeal of the trustees of Mrs. Grayson Smith, unless the fact of the income received by the trustees who are residents of this municipality being payable to a beneficiary who is not a resident of this province makes a distinction. I am unable after the most careful consideration to establish any distinction between the two cases. Mr. Smoke has made a most elaborate and ingenious argument, but if I have correctly determined the appeal of the McMaster estate trustees I cannot look beyond the trustees who are residents of Toronto, and if I find that they are in receipt of an annual income from the investment of trust funds in their hands, that income becomes assessable in this municipality.

Sec. 44 of the Assessment Act declares that personal property of a non-resident in the hands of a trustee "shall be deemed to be the individual property of the trustee for the purposes of the Act." By sub-s. 10 of s. 2 of the Assessment Act personal property is defined as including income. The annual income or return from these invested funds if actually the individual property of the appellants would unquestionably be assessable. The statute declares that for the purpose of determining its liability for assessment it must be regarded as their individual property. Sec. 11 of the Act expressly makes all personal property of non-residents of the province in the possession or control of any agent or trustee for or on behalf of the owner liable to assessment in the same manner and subject to the like exemption as the personal property of a resident.

I have examined the English income tax Acts and I find similar provisions are contained in them. Sec. 41 of the Act of 1842 after dealing with the trustees of incapacitated persons, as infants, lunatics, etc., etc., enacts "that any person not resident in the United Kingdom, whether a subject of Her Majesty or not, shall be chargeable in the name of such trustee, etc., in the like manner and to the like amount as would be charged if such person were resident in the United Kingdom;" and sched. D. of the Act of 1853 limits the income liable to taxation to income derived from property in the United Kingdom. Sec. 11 of our Assessment Act is in effect the same both as to the liability to assessment and as to the limitation of the property assessable. It declares that it is only the personal property of such non-resident within the province that is liable. This appeal will be dismissed.