

Estate Tax Act

tenancy on the part of the husband was made more than three years before the date of death. This bill is much more generous to the taxpayer in this case than the Dominion Succession Duty Act has ever been, and if any spouses in any of the provinces of Canada, whether common law provinces or the civil law provinces, choose to create community of property between them as to all their property or as to any specific portion of it, this bill will take account of that legal fact. But it leaves it for the parties to create that result, and does not by this measure attempt to create it. We believe that there would otherwise be a trespass on the jurisdiction of the provinces over property and civil rights.

Mr. Benidickson: My hon. friend has referred to contracts entered into to establish community of property in a province other than Quebec, but if that was done, and the source of funds belonged to only one spouse and the contract was entered into within three years of death, the same exemption would not apply with respect to half the estate, would it? In addition, if a contract of that kind with respect to community of property were entered into, and it was of a substantial amount and was solely that of one spouse, the income tax people would want a gift tax with respect to the gift of half, would they not?

Mr. Fleming (Eglinton): My hon. friend knows we have gone some distance in an amendment to the Income Tax Act this year in exempting gifts made by a spouse to his wife where the gift is of an interest in the home they occupy.

Now, as to the estate tax, Mr. Chairman, the only limitation that is placed upon the right to create the joint tenancy and to exempt property thereby created from the estate tax is the three-year rule. So far as it is a gift, then the gift must take place more than three years prior to death in order to give rise to the exemption.

Mr. Benidickson: In a province other than Quebec, but in Quebec the establishment of the community of property does not have to take place within three years of death?

Mr. Fleming (Eglinton): In that case there is not a gift.

Mr. Godin: I followed very carefully the remarks of the Minister of Finance. I do not think his remarks replied to the problems which were presented by the hon. member for Megantic and myself. It is true the devolution of property is a provincial matter. Relief assistance is also a provincial matter.

We are here taxing estates in various provinces of Canada, and we do feel it is right to do so, and in doing so we are bringing about certain exemptions which we also feel it is our right and duty to do.

Now, the step the government is failing to take is to bring about a measure of understanding that those exemptions will be applied in a satisfactory manner, and that is the complaint I have to make and undoubtedly the hon. member for Megantic has to make. The Minister of Finance seemed to suggest that we will indicate exemptions, but we will leave it to the provinces to deal with them as they see fit under their own laws. The contention of myself and of the opposition is that in granting exemptions we do not take into consideration certain benefits which no doubt it is not the intention of the government to grant.

An example has been given, but the minister has not explained why this government should grant an exemption of \$60,000 to a total stranger just because a man died leaving a wife who was practically unknown to him, and who was possibly presently living in Vancouver while the man lived in Ontario, say. That is the purpose of the amendment of clause 7, and it is difficult for the opposition to see the value in it, and why the government should take on itself the responsibility of granting exemptions but will not indicate to whom they may properly apply, leaving that problem to the provinces. This applies to the ownership in partnership by parents of certain goods.

This has been explained by the Minister of Finance in the sense that it is very difficult, especially in smaller estates, to realize what assets may be those of the wife or those of the husband. It is most difficult, and it is felt that if the act provided for a minimum exemption which would take into consideration the livelihood of those people, one of whom unfortunately has died, and considered a certain amount as the normal value of the share that the surviving spouse contributed in obtaining those assets, it would be a great help.

I do feel that this could be explained further. Let us say that one half of \$100,000 could be considered as a fair share which may have been contributed by the surviving spouse in making up the assets but, upon the death of the husband, it may not be possible to ascertain exactly who has the interest and exactly who is the owner. I realize that the wording is slightly changed and that it now reads that the department is to ascertain the interest which the deceased may have had in certain property, but that is very difficult to ascertain also. I think in Canada especially we realize the community in marriage, and