Canada. Parl. H of C. Standing Comm.on Banking and Commerce, 1958.

HOUSE OF COMMONS

First Session—Twenty-fourth Parliament

1958

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: C. A. CATHERS, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

Bill C-37

An Act respecting the Taxation of Estates

FRIDAY, JULY 18, 1958

WITNESS

Dr. A. K. Eaton, Assistant Deputy Minister of Finance (on retirement leave).

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

60880-2—1

STANDING COMMITTEE ON BANKING AND COMMERCE

Chairman: C. A. Cathers, Esq.,

Vice-Chairman: M. Deschambault, Esq.,

and Messrs.

Allard	Gour	Morton
Allmark	Horner (*The Battlefords*)	Nugent
Asselin	Horner (*Jasper-Edson*)	Pallett
Benidickson	Jones	Pascoe
Brassard (*Chicoutimi*)	Jung	Pickersgill
Cardin	Keays	Regier
Cathers	Lockyer	Robichaud
Chevrier	MacLean	Rowe
Chown	(*Winnipeg N. Centre*)	Rynard
Coates	Macnaughton	Southam
Creaghan	Macquarrie	Tasse
Crestohl	MacRae	Taylor
Deschambault	Martel	Thomas
Drysdale	Martin (*Essex East*)	Thrasher
Dumas	McIlraith	Vivian
Flynn	More	White
Fraser	Morris	Winch.

ANTOINE CHASSE
Clerk of the Committee

ORDERS OF REFERENCE

House of Commons, TUESDAY, June 3, 1958.

Resolved,—That the following Members do compose the Standing Committee on Banking and Commerce:

Messrs.

Allard,	Gour,	Morton,
Allmark,	Horner (Jasper-Edson),	Nugent,
Asselin,	Horner (The Battlefords),	Pallett,
Benidickson,	Jones,	Pascoe,
Brassard (Chicoutimi),	Jung,	Pickersgill,
Cardin,	Keays,	Regier,
Cathers,	Lockyer,	Robichaud,
Chevrier,	MacLean (Winnipeg	Rowe,
Chown,	North Centre),	Rynard,
Coates,	Macnaughton,	Southam,
Creaghan,	Macquarrie,	Tassé,
Crestohl,	MacRae,	Taylor,
Deschambault,	Martel,	Thomas,
Drysdale,	Martin (Essex East),	Thrasher,
Dumas,	McIlraith,	Vivian,
Flynn,	More,	White,
Fraser,	Morris,	Winch—50.

(Quorum 15)

Ordered,—That the Standing Committee on Banking and Commerce be empowered to examine and inquire into all such matters and things as may be referred to it by the House; and to report from time to time its observations and opinions thereon, with power to send for persons, papers and records.

TUESDAY, June 10, 1958.

Ordered,—That Bill S-2, An Act respecting The Protective Association of Canada, be referred to the said Committee.

Ordered,—That Bill No. S-3, An Act respecting The Mercantile and General Reinsurance Company of Canada Limited, be referred to the said Committee.

(*Minutes of Proceedings and Evidence relating to these two private bills were not printed*).

THURSDAY, June 19, 1958

Ordered,—That the said Committee be empowered to print such papers and evidence as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto;

Ordered,—That the said Committee be granted leave to sit while the House is sitting;

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Ordered,—That the quorum of the said Committee be reduced from 15 to 10 members and that Standing Order 65(1)(d) be suspended in relation thereto.

WEDNESDAY, July 16, 1958

Ordered,—That Bill No. C-37, An Act respecting the Taxation of Estates, be referred to the Standing Committee on Banking and Commerce.

Attest.

LEON J. RAYMOND,
Clerk of the House.

TUESDAY, June 17, 1958.

The Standing Committee on Banking and Commerce has the honour to present its

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print such papers and evidence as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto.

2. That it be granted leave to sit while the House is sitting.

3. That the quorum of the Committee be reduced from 15 to 10 members and that Standing Order 65(1) *d*) be suspended in relation thereto.

Respectfully submitted,

C. A. CATHERS,
Chairman.

MINUTES OF PROCEEDINGS

Room 497, House of Commons,
TUESDAY, June 17, 1958.

The Standing Committee on Banking and Commerce met at 9:30 o'clock a.m.

Members present: Messrs. Allmark, Brassard, (*Chicoutimi*), Cathers, Chown, Coates, Crestohl, Deschambault, Fraser, Gour, Horner (*Jasper-Edson*), Jones, Keays, Lockyer, Macquarrie, More, Morton, Nugent, Pallett, Pascoe, Pickersgill, Southam, Tasse, Vivian, Winch.

The Clerk of the Committee attended to the election of a Chairman.

Mr. Macquarrie moved, seconded by Mr. Pascoe, that Mr. Cathers be elected Chairman of the Committee.

Mr. Lockyer moved, seconded by Mr. Morton, that nominations be closed.

The question on the proposed motion of Mr. Macquarrie having been put, it was carried unanimously.

Mr. Cathers took the chair.

Mr. Morton moved that the Committee elect a Vice-Chairman. Whereupon Mr. Deschambault moved, seconded by Mr. Nugent, that Mr. Tasse be elected Vice-Chairman.

The question having been put on Mr. Deschambault's motion, it was carried unanimously.

On motion of Mr. Lockyer, seconded by Mr. Nugent,

Resolved: That the Committee be empowered to print such papers and evidence as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto.

Mr. Pallett moved, seconded by Mr. Jones, that the Committee be allowed to sit while the House is sitting. Some discussion followed.

And the question having been put on the proposed motion of Mr. Pallett, it was, on a show of hands, resolved in the affirmative. Yeas, 20; Nays, 2.

Mr. Chown moved, seconded by Mr. Fraser, that the quorum of the Committee be reduced from 15 members to 10 members. Some discussion followed.

And the question having been put on the proposed motion of Mr. Chown, it was, on a show of hands, resolved in the affirmative. Yeas, 20; Nays 3.

On motion of Mr. Pickersgill, seconded by Mr. Vivian,

Resolved: That the Chairman, the Vice-Chairman, and five other Members of the Committee to be named by the Chairman act as a Subcommittee on Agenda and Procedure.

At 10:15 o'clock a.m., on motion of Mr. Pickersgill, the Committee adjourned to the call of the Chair.

Antoine Chasse,
Clerk of the Committee.

Room 118,
FRIDAY, July 18, 1958.

The Standing Committee on Banking and Commerce met at 11:30 o'clock a.m. The Chairman, Mr. C. A. Cathers, presided.

Members present: Messrs. Allard, Cathers, Chown, Creghan, Deschambault, Drysdale, Dumas, Horner (*The Battlefords*), Horner (*Jasper-Edson*), Jones, Lockyer, MacLean, (*Winnipeg North Centre*), Macquarrie, Martel, McIlraith, More, Morton, Pascoe, Regier, Robichaud, Rynard, Tasse, Thrasher, Winch.

In attendance: Honourable Donald Fleming, Minister of Finance; Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance, (on retirement leave); Mr. Gear McEntyre, Deputy Minister, National Revenue, Taxation Division; Mr. W. I. Linton and Mr. A. L. DeWolf, of the Department of National Revenue; Mr. E. H. Smith, Department of Finance; Mr. D. S. Thorson, Department of Justice.

On motion of Mr. Chown, seconded by Mr. Martel,

Ordered,—That pursuant to the Order of Reference of Thursday, June 19, 1958, the Committee print, from day to day, 1,000 copies in English and 250 copies in French of its Minutes of Proceedings and Evidence relating to the deliberations of the Committee on Bill C-37.

The Chairman welcomed the Minister of Finance, who in turn introduced the officials in attendance.

The Committee took into consideration Bill C-37, An Act respecting the Taxation of Estates.

Mr. Fleming made a lengthy presentation respecting the legislation before the Committee and Dr. Eaton added a few words at the conclusion of the presentation.

Clause 1 of the Bill was considered and adopted.

Clause 2 of the Bill was under consideration as the Committee rose.

After some discussion it was agreed that the Committee should meet on Monday next in the afternoon and evening and the following Tuesday afternoon and evening, if necessary.

At 1:15 o'clock p.m. the Committee adjourned to meet again at 3:30 o'clock p.m. Monday, July 21st, 1958.

Antoine Chasse,
Clerk of the Committee.

EVIDENCE

FRIDAY, July 18, 1958,
11:30 a.m.

The CHAIRMAN: Gentlemen we have a quorum.

The business before us this morning is one of going into this bill on taxation of estates which succeeds the old succession duty tax bill. The Minister of Finance is with us this morning. We are anxious to get along so I am going to ask for a motion now in regard to the printing of the minutes.

Mr. CHOWN: Mr. Chairman I move, seconded by Mr. Martel that pursuant to the order of reference of Thursday, June 19, 1958, the committee print from day to day 900 copies in English and 250 copies in French of its minutes of proceedings and evidence as they relate to the deliberations of the committee on Bill C-37.

The CHAIRMAN: You have heard the motion moved by Mr. Chown, seconded by Mr. Martel regarding the printing.

Mr. MCILRAITH: Mr. Chairman, I am wondering if the minister has considered the adequacy of the number of copies to be printed in English? This is rather an important bill with widespread interest. I wonder if 900 copies will be sufficient. Has the minister considered it? If he has then this number is all right with me.

Hon. DONALD M. FLEMING (*Minister of Finance*): Mr. Chairman, I had not considered it but I should think 900 would probably be sufficient. If you would like to increase the number a little I think that would be all right. I suppose this is a matter for the committee to decide on.

Mr. MCILRAITH: I suppose the number depends entirely on the inquiries and the degree of interest which has been evident to the Department of Finance in regard to this bill.

The minister is in a better position to assess this degree of interest than I am, but I would think the interest is rather widespread.

Mr. CHOWN: I am prepared to amend the motion.

The CHAIRMAN: Could the motion be amended to read "1000 copies in English and 250 copies in French"?

Mr. MCILRAITH: I just wondered if the minister had considered it. I think the interest in this bill is very high.

The CHAIRMAN: I am going to call upon the minister immediately to explain the bill.

Mr. MCILRAITH: Mr. Chairman, I wonder if I could raise another point? This is a point I hesitate to raise yet I think it is important that it be mentioned.

This is an important bill. There has been a good deal of interest building up over the last two or three years in regard to other preceding bills which were being worked on. This bill represents the accumulation of a good deal of work done by the various departments concerned.

We are in the position that the minister took what I thought was a fairly limited view of our rights to discuss this in the resolution stage. I do not want to go back over that, but in regard to the second reading of the bill we had the extraordinary situation that the minister made no statement whatsoever

in regard to this bill. Indeed, I checked his remarks this morning in regard to the second reading stage and they are embodied in four sentences.

I only received my notice of this meeting this morning. I come in reasonably early in the morning but—

Mr. JONES: You must not pick up your mail because notice was sent out earlier than that.

Mr. MCILRAITH: I pick up my mail three times a day. I do not know when other members received notice of this meeting.

An hon. Member: Yesterday.

Mr. MCILRAITH: The members on my rigth say they received their notice yesterday afternoon. My notice was not in the mail yesterday at six o'clock. This may be a personal matter only.

In any event, the point I wanted to make is this: the House of Commons is in session now dealing with matters which are rather important. I would hope that more care can be given to the choosing of the times of sitting of this committee in order to reconcile the sittings with the business in the House of Commons. I hope there can be a little cooperation in regard to that point because, if it is necessary at all to sit when the House of Commons is sitting—it may well be with the longer hours of sitting—I would ask that there be some reconciliation of the time of sittings.

For instance, the minister undoubtedly will not want this committee to sit when his own budget resolutions are before the house. There are other departmental matters which are before the House of Commons in which private members are interested and directly concerned. I would ask there be a little more care and consideration given to these hours of sittings, and as much notice given as is possible under the circumstances.

The CHAIRMAN: Mr. McIlraith, as you know, this bill was not presented to the House of Commons until Wednesday. I sent out notice as soon as possible thereafter. I am not familiar with your collection of mail, but the rest of the members received notice of this meeting yesterday afternoon.

Mr. MCILRAITH: Members on my right say they received notice of this meeting yesterday afternoon.

Mr. JONES: In regard to this question of the inadequacy, I would just like to suggest, Mr. Chairman, that here in this committee is the place where this bill will receive the most complete discussion. I believe this is the proper place to deal with a complex bill such as this.

Mr. MCILRAITH: I merely wanted to point out the difficulties. If the chairman takes cognizance of them that will be sufficient.

Mr. FLEMING (*Eglinton*): Mr. Chairman and gentlemen, thank you very much for the opportunity of appearing before you in connection with this bill. We are here with the officials of the Department of Finance; the Department of National Revenue and the Department of Justice who have been concerned with the preparation of the bill and the very intensive studies which have led to this point.

Perhaps I should say a word at this point about the officials who are here and who, I believe, will be in attendance on the committee as long as they are required.

You are all acquainted with Dr. A. K. Eaton who, until the 15th day of this month, was the assistant deputy minister of the Department of Finance and he, as you know, has participated in the writing of the budget for the last 25 years. Dr. Eaton has entered upon a tax consulting practice but he was good enough even after staying on until July 15 at my request to help in connection with the budget this year, to agree to come back and attend the meetings of the committee day by day as it sits.

Then, the committee I am sure is well acquainted with Mr. J. Gear McEntyre, deputy minister of National Revenue (Taxation). Probably it would be the simplest if I took the gentlemen in the order in which they appear before you.

On the left is Mr. Thorson who is one of the consel to the Department of Justice and in that capacity is the draftsman of all bills in the Department of Finance that relate to taxation.

Then, Mr. Linton, who is the administrator of succession duties in the Department of National Revenue and has held that position now for over a decade. Mr. Linton has had a great deal to do with the preparation of this bill.

Next to him is Mr. DeWolf who is likewise a senior official of very long experience in the Department of National Revenue associated with the succession duties. Mr. Simth is with the Department of Finance in the tax office of which Dr. Eaton was the head until the fifteenth.

Gentlemen, these officials are here to give you service and I assure you that information and explanation on everything in this bill that anybody wants to know will be given.

Now, something was said about the second reading and I do not think I need occupy the time of the committee to dwell on that subject, Mr. Chairman. The purpose of the bill was touched on last December. It was introduced and touched on again in January. The bill was circulated and has been the subject of very careful study.

Then, referred to it again in the budget speech on June 17. We had a discussion in the committee of ways and means on the resolution paving the way for introduction of the bill. The procedure was carefully outlined. It was, I understood, acceptable to all. The financial critic of the official opposition, with whom I discussed these procedures at various stages on second reading, did not ask for a statement from the minister, made a very short statement himself and I think for very good reasons because the only discussion that could have been had on second reading in the house was on the principle of the bill.

The principle of the bill, Mr. Chairman and gentlemen, can be stated very simply. The principle of the bill is to introduce an estate tax principle instead of the succession duty principle and to effect a reduction in the aggregate impost by the federal government on the estate of a deceased person. That is the principle of the bill.

Any intrusion into the principle of the bill's intention would have been out of order on second reading and it is far from unusual to have only the shortest kind of debate, indeed any debate at all on second reading on a financial bill, on a financial bill such as this bill or such as the annual income tax amendment bill. The work that is done is done in committee and I think that was the feeling in the house and I certainly was not asked to make any extended statement and any statement I might have made on this would have been very, very brief in any event.

In this committee now, sir, we have the bill before us. May I just say a word about some features of the bill and also offer a suggestion, if I may, in regard to the sittings of the committee.

So far as the sittings of the committee are concerned, of course, they are in the hands of the committee. It is the committee that decides when it shall sit and where, and we are here before you, the officials and myself, to be at your service at all times.

May I offer this suggestion in regard to the sittings in the hope that it may meet with the approval of the committee. Mr. McIlraith has raised a point about the committee sitting while the house is in session. He will recall as I do, the course which was followed by Mr. Abbott, then minister of finance, when the present Income Tax Act was introduced. This goes back about ten

years now. That bill had been the result of extended study just like the bill that is now before the committee. The minister and officials of the department were here and had heard many representations on that bill from interested organizations and when the bill arrived before this banking and commerce committee the minister made the suggestion which I would like to offer now in the hope that it may assist the committee.

Instead of spreading the meetings of the committee out over, say, a couple of mornings a week I think that it would contribute greatly to the understanding of the bill and to orderly approach to its review as well as to the elimination of the problem which I am sure many members are faced with, of trying to be in two places at one time, if the committee just assessed the situation and settled it now to set aside a couple of days and apart from being in the house for the orders of the day to sit right through mornings, afternoons and evenings and do an intensive job on it. That was Mr. Abbott's suggestion with regard to the income tax bill and it was accepted. Although the bill was even a larger bill than the one now before the committee, that procedure was followed and I think it was found to be very useful because it meant that the committee got a sustained coherent review of the bill instead of coming and going and maybe having some members at one meeting and not at another and repetition of questions that had been asked at previous meetings.

It contributed, I would suggest, to the effectiveness of the hearings of the committee as well as possibly avoiding the problem that members have and had at that time of trying to be in two places at one time.

My officials are here as I have said. I have some concern about Dr. Eaton. It will help us so far as calling upon his time, taking him away from his new work, if that procedure is adopted, and I commend it to the chairman and the committee.

Next, may I say a word, sir, about the representations which have been received concerning this measure. The subject of an estate tax has been under consideration in the Department of Finance for some years.

Members who were here prior to 1957 will recall that we had asked at budget time, year by year, for some four years about a revision of the Dominion Succession Duty Act. Indications were given year by year by the then minister of finance that the work of revision was underway in the department and that he looked forward to introducing it at the next session.

I emphasize that by way of indicating this is not a suddent matter; it has had study over the years in the department.

Last fall, after I became minister, I felt this bill should be brought before the house at the 1957-58 session even though it would not be feasible nor, we thought, wise to ask the house to adopt it at that session. We brought it before the house, as hon. members will recall, in the form of Bill No. 248 which had first reading on January 29, 1958. The bill was not carried beyond that stage and in the statement made in the house at the time of introduction I said it was the hope of the government that interested organizations—I was thinking particularly about the professional organizations—would give us the benefit of their study of the measure and their comments and views on it.

I did not narrow that to the professional associations; I asked for representations from anybody who was interested in the subject and was prepared to study fully and assist us in that way. As I have already reported to the house, we have received a widespread response. We did receive the assistance and the views of many organizations who had made a study of the bill. There were, of course, a number of individual letters that were received which did not cover the same ground as the briefs submitted by some of the national organizations connected with industries or businesses directly related to taxation. These briefs were studied and there were hearings in the department

extending over a period of some time with those organizations, which indicated they wished to be heard. There were a number of these hearings.

Now, I can say to the committee, Mr. Chairman, that we have considered every question submitted to us, every proposal, every submission, every view. They have all been very carefully considered and they were considered except for a few latecomers before the budget was introduced.

Now, with the introduction of the bill, I may say that we have introduced some changes in the bill as compared with that at the last session on matters on which we were urged to make changes in some of these briefs. In some cases we have not seen our way clear to follow the requests that were made. Indeed, that would not have been possible in all cases because naturally there were conflicting representations made to us. There is not unanimity on some aspects of matters of this kind and I suppose never will be, in a free society. But as to all the submissions that have been made to us, we are here before you to indicate, in any particular whatever, why we have made any change that does appear in this bill as compared with bill 248 of the last session—why, when that change represents a portion, and a portion only, of views of some organizations, we accepted some of their views and rejected others, and why in other cases we have not adopted any feature of the representations that were made by a particular organization on a particular point.

For that reason, Mr. Chairman, I think it can be said that all the interested national organizations were heard. I think we were told by all of them that they were given a good, fair and ample hearing; and before this committee, as was the case when the income tax bill was before this same committee something like ten years ago, we are here to tell you in every case whatever you may wish to know about the representations made by any organization. The briefs were tabled in the house. We have them here with us, and we can tell you in every case what the view of any of these national organizations is on any particular point. We can deal with the reasons why the view submitted was either accepted or rejected, or partly accepted and partly rejected.

So we have all that information before you and can give you all required assurances that the national organizations have all been heard already in the department, and that the course that I am now proposing to the committee is precisely the course that was recommended to the committee by Mr. Abbott when the income tax bill was before it, and was followed by the committee with, I think, satisfactory results.

Perhaps now, Mr. Chairman, to conclude these opening remarks it might be of assistance to the committee if I just outlined very briefly the principal departures from Bill 248 of the last session. Here I am aware of the dangers of general statements, because in a taxing bill with fairly detailed provisions general statements very often have to yield to exceptions and qualifications. Within that reservation however perhaps it might be of some assistance to the committee if I gave a simple outline and mentioned the principal changes between bill C-37 now before the committee and Bill 248 of the last session. I stated in the house there have been many changes. They are not all of course of equal importance. My present comment will therefore be confined simply to the principal ones.

First on the subject of exemptions; naturally we have had many representations on the subject of exemptions. So far as I am aware, nobody has asked for a reduction in the exemptions and nobody has asked for an increase in the rates of taxation. That may be a surprise to some honourable members, but I think it is a fact. Consequently, on exemptions the representations have been in general in the direction of asking for increases. Here again, gentlemen, the Minister of Finance is faced with a few problems and cannot

just accede to everybody's request for increased exemptions and reductions in taxation, much as he would, in his big heart, like to do so. However, we have made one change in the exemptions by way of an increase.

Here let me say that there has been evident in many of the letters that we have received a quite fundamental misconception as to the effect of the exemption in relation to estates up to $50,000. As is the case with the present succession duty, no estate will be taxed under the present bill in such a way as to reduce the estate below $50,000. Therefore, in the case of any estate of $50,000 there is no taxation levied. But that is a rather different question from questions in relation to basic exemption. We put aside now the case of all estates up to $50,000; there is no taxation there at all. However, what about larger estates? The old rule has been that once the estate exceeded $50,000, the whole estate became taxable, subject to certain specific exemptions. Well now, what we have done—and perhaps I should say Bill 248 provided a basic exemption of $30,000 for all estates—we have increased that to $40,000. Therefore, regardless of the amount of the estate there will always be, if this bill is approved, a minimum of $40,000 subtracted from the aggregate net value of the estate for tax purposes.

For instance, to start with an estate of $70,000, if you want to arrive at the amount of that estate which will be subject to taxes, you will simply deduct—assuming it is not an estate with a widow or children—that basic exemption of $40,000 and you are left there with $30,000 which would be subject to taxation. Now that, as I say, represents the change in the bill, the increase in that basic exemption from $30,000 to $40,000. There is no change in the larger exemptions that are available in the case of estates where there is a widow of the deceased person. In those cases there is, provided there is a surviving widow, a basic exemption of $60,000. That is not in addition to the $40,000, but that is the basic exemption in the case of all estates where the deceased person is survived by a widow. In addition where such a situation exists, where the deceased person is a father and leaves dependent children under 21 years of age, there is again an exemption of $10,000 for every child, every one of these dependent children. Accordingly, if the deceased was a man leaving a widow and four children there would be an exemption of $100,000; $60,000 because there is a widow and $10,000, because of each dependent child under 21 years of age. So that if John Jones dies leaving an estate of $110,000 and has a widow and four dependent children under 21 years of age, we will subtract from that estate in order to determine the net taxable portion of the estate $100,000, arriving then at a net taxable estate of $10,000. That is the way that exemption works; it is a deduction from the estate.

Now, I do not want to anticipate in detail the other provisions in the section dealing with exemptions. We will come to those in due course. Perhaps I should not even mention the section because everybody will turn to it and we will probably be getting into the detail when we are still on this general review.

However, clause 7 is the clause which deal with exemptions. I have emphasized that this $60,000 applies where the deceased person is the husband and there is a surviving widow.

Someone may ask, well what about the case where the wife dies and is survived by the husband? Because so much of our law is built upon favouring and protecting the widow we have not provided here a basic exemption of $60,000 where the wife dies leaving a surviving husband. We do not think there are reasons, in most cases, why the husband should receive the same treatment under the law as the widow. In the ordinary case, the example of where the husband survives the wife, the $40,000 basic exemption which I

mentioned is to take care of the case where the surviving husband is not an infirm person. You will find that a definition of infirmity is that an infirm person is a person who cannot go out and earn a living. In that case of an estate where there is an infirm husband surviving the wife, it is put on the same basis with a $60,000 exemption as in the case I mentioned earlier of the widow surviving the husband.

In the case of the widow there are no strings attached. As long as there is a widow surviving there is an exemption of $60,000. The only case where there is a like exemption extended to the estate of the wife is where there is a surviving husband who is infirm, and if it is a case which complies with a definition of infirmity contained in the act. Perhaps that is enough to say on the subject of exemptions.

Next I want to say a word about the estate tax principle. Here we are breaking new ground as far as federal legislation in Canada is concerned. It may not be easy for hon. members who have been accustomed to thinking in terms of the succession duty principle to translate their thinking into the estate tax principle.

The basis of the succession duty principle is that the law looks at the estate, or let us say the benefit, that passes from the deceased person to any particular person who derives benefit on the death, either the person who derived a benefit through a will, or in the absence of a will, through the law of the province concerned which governs the devolution of the estate of the deceased person.

The basis of the Succession Duty Act has been on the statute books of this country since 1941 and has hardly been revised in any material degree since that time. Any revisions have been quite slight. This is the first time in seventeen years that there has been anything like a comprehensive review of the federal tax legislation in respect of the estates of deceased persons.

This estate tax principle, which is introduced now, has been in effect in the United Kingdom for some years. It is not new in similar jurisdictions in the world by any means. As a matter of fact it is quite old. But it is new as far as the federal legislation in Canada is concerned.

The essence of the estate tax principle is that the law does not look at the benefit passing on the death of the deceased to any particular person. It simply looks at the estate en masse and says, here is an estate with an aggregate net value of so many dollars, and on that total estate we apply a given tax. Then that leads us to the incidence of the tax.

Under the Succession Duty Act, the tax is levied on the succession. Therefore, it is the successor, the person to whom the benefit passes on the death of the deceased, again on whom the tax is, in the first instance, levied. With the estate tax principle, the tax, being an estate tax, is levied on the estate which comes into the hands of the personal representative of the deceased or an executor or administrator.

Now, consider what happens where the deceased does not leave an estate, where there is no executor and no occasion to seek the appointment of an administrator. What happens then? Well, there is provision in this bill for such cases to make sure that the tax is duly paid where exigible, on such portion of the property as is deemed under the act to pass on the death of the deceased, because, as hon. members are aware, there is property under our Succession Duty Act, and is under this bill, that is deemed to pass on the death of the deceased even though apart from the operation of this tax law it does not in fact, in law, pass at that time.

Take the sample case of a person who realizes his days are numbered and, let us say in what turns out to be an act before his death, parts with his entire estate. It would not be tolerable that the tax laws should be defeated by gifts of property under those circumstances. The law has made provision for gifts to

be deemed to be brought into the estate on death if those gifts were made within three years of the death of the deceased. The same rule applies under this new bill. If there are gifts made more than three years before the date of death they are not brought into the estate for tax purposes. If they are made within three years before the date of death they are brought into the estate for tax purposes and, of course, should be. In that event, suppose the deceased has parted with his entire estate, then we simply have to look to the donee, the person in whose favour he has made gifts in this period of three years.

This bill does make provision for a collection of this tax. On the estate tax principle the primary liability for the estate tax is on the executor since the tax is levied on the estate and therefore is the responsibility of the person who acts on behalf of the deceased who, in the great majority of cases, is the executor of his will or the administrator of his estate.

Mr. CREAGHAN: In that last example which you gave, if the man gave away all of his estate you would bring an action against the donee?

Mr. FLEMING (*Eglinton*): Yes. The liability is placed upon the donee.

I again emphasize what I said at the beginning. I am making quite a general statement now. When we reach that clause of the bill, members will see that we have spelled out in very great detail what happens in that case to make sure that the tax is equitably collected from all estates in accordance with the rules that have committed themselves to the judgment of parliament.

The next matter that I might mention is the subject of joint property. Joint property has been a difficult problem with respect to the application of succession duty or estate tax because under the law of the province—and here we are dealing with law made by the province with which parliament has no right whatever to interfere; and believe me there is no attempt in this bill to trespass one iota upon the exclusive jurisdiction of the provinces over property and civil rights. I want to make that as clear as I can. As a matter of fact, the adoption of the estate tax principle makes it easier to avoid even the appearance of trespass upon that exclusive jurisdiction of the province; because here we do not attempt to force a testator, a deceased person, to dispose of his property in particular ways. We say that that is the exclusive jurisdictional right of the province.

All that parliament is looking at here is the estate en masse, levying an estate tax on the aggregate of the estate, and looking at it not in terms of the bits and pieces into which the testator has broken it up or, in the absence of a will, into the bits and pieces into which provincial law may break it up. Parliament simply looks at the aggregate and levies its tax on the aggregate. In this matter of devolution we come to this question of joint property. It is the law of the province, and the law of the province alone, that says where there is a true joint tenancy, that on the death of one of the joint owners there is direct operation of the law of survivorship; and there is at the moment of death of one of the joint tenants an automatic, immediate merging of the estates of the two persons.

Parliament cannot say, parliament has no right to say, that in that situation the law of the province shall not operate and there shall not be a merger of the joint interest of the deceased person with the joint interest of the survivor at that moment of death. What the Succession Duty Act has said in the situation is that there shall be a tax levied on the assumption that the position of divided interests in the property, which exists up to the day of death, shall for tax purposes in effect be deemed to have survived for tax purposes only.

We have taken a look at this question of joint property and in this respect we have gone beyond the provisions of bill 248. The old law under the Succession Duty Act said that, in all cases this joint tenancy should for tax purposes

be deemed to survive the death, that is the joint property insofar as the contribution of the deceased is concerned should be deemed in effect to have survived death for tax purposes. We have eliminated that rule in this new bill. I hope that will commend itself to hon. members.

Let me say this, that we are recognizing in full the ownership principle created under the provincial law. In other words where under the provincial law there is a merger of the joint interests at the moment of the death of the deceased, that shall be recognized for all purposes. The only qualification we make under this bill is in relation to what has been done within three years of the date of death. If that joint tenancy was set up by the deceased person by way of what is a gift of a joint interest to some other person more than three years before the date of death, then the property is not included in the estate. It is exempt; but if the joint tenancy was created by the deceased within three years prior to the date of death and by way of a gift of a part interest in the joint property, then it is treated like any other gift. I think that rule is fair and equitable. It will be seen at once that the effect of the enactment in this bill will be to relieve from the tax that would otherwise be applied under the Succession Duty Act, the tax or duty on joint tenancies with the one exception I have mentioned.

Mr. RYNARD: I just have not got this absolutely clear and should like to state this as an example. If there is a joint tenancy of $50,000 each in an estate and one dies, what happens? Is there a tax on the $50,000?

Mr. FLEMING (*Eglinton*): No. The $50,000 that is held by the survivor would not be taxed unless it were itself a gift, within three years of the date of death, a gift from the deceased.

Mr. MORTON: The joint tenancy as I understand it is when the ownership passes on death of one of the parties to the surviving party, so would the tax, let us say on $50,000 owned jointly where the wife survives be on the $25,000 which is deemed the husbands share, or is the whole $50,000 exempt under the new section?

Mr. FLEMING (*Eglinton*): It depends entirely on how it was created. If you start off with a living man who, we will say, has a property to the value of $50,000 and he creates a joint tenancy by making his wife a joint owner with him, now at the moment of transfer it could be, if they part with the property, the equivalent of giving her $25,000. But you see we go on to the moment of death—they retain the property.

Now, if it is the wife who dies, then obviously in that case the husband is the survivor. The property vests in him under the merger of interests and there would be no tax payable because she has not created any benefit in his favour. There is no gift from her to him. You will recognize the principle.

Let me say here I do want to caution again about this matter of the general rule. I said at the beginning we are going to get into a lot of detail that I do not want to get into. I will be glad to deal with the multiple details if you wish, but I am going to have to qualify what I have just said in regard to the $25,000; in that case, it again depends on the date of the death. I take it the question Mr. Morton was asking was in relation to the case where the husband makes the gift to the wife and the husband dies first. Now again the test will be, was the gift—so far as this gift we are concerned with here —made by him more than three years before the date of his death or within the three-year period?

The CHAIRMAN: As the minister said earlier—and he repeated it a few minutes ago—he is making a general statement. I do wish members of the committee would withhold their questions until the minister has finished with his general statement. Otherwise I do not think we will make proper progress.

Mr. FLEMING (*Eglinton*): We shall be coming back to all of these things in fuller detail when we have the provisions of the particular clauses before us.

I am dealing with the broad changes made by this bill as compared to bill 248 at the last session.

The last one relates to insurance. Here the particular aspect of insurance was not too clearly dealt with under the Succession Duties Act.

As a matter of fact had the act been going on, there would probably be somewhat of a change in the administration in relation to this particular provision of the act.

The question which was raised with respect to bill 248 revolved around the case where an insurance policy is carried on the life of a deceased. Let us say it is a policy that he put on his life in the first place and that his wife is the beneficiary.

The CHAIRMAN: Gentlemen, the minister suggests that if you wish you may take your coats off because it is getting a little warm in here. You are free to do that.

Mr. FLEMING (*Eglinton*): Let me say at once that the offer was not entirely an unselfish one.

Mr. JONES: I am sure you would want to include the officials, Mr. Chairman.

The CHAIRMAN: Oh surely, everybody!

Mr. FLEMING (*Eglinton*): We were speaking of the case of a man—again we come back to the man, because it is probably the more typical case. The man, let us say, has a policy for $50,000 of life insurance, or a number of policies aggregating that sum. His wife is the beneficiary.

At some point or other he transfers the benefit of that policy to his wife. So let us say, it becomes a paid up policy, and that the policy is turned over to the wife. What happens then?

Well, here we have made a departure from bill 248. You will treat that policy now as part of the estate only if the deceased parted with it within three years before his death.

It is looked upon the same as any other gift. I think that is fair and sound in principle. It means however, that we will get less tax. It means a good deal of relief in the tax levied on these estates where insurance forms an important part thereof. But it is remedial, just like the changes we have made in relation to joint property.

Honourable members are aware, of course, that under the Succession Duty Act provisions, any insurance carried by a deceased, even if it is payable to a third person and not payable to his estate, is part of his estate.

Now it remains part of his estate under this bill if he remains the owner of the policy. But if he parts with the ownership of the policy, then the only circumstance, the only way to bring that policy back into his estate is if the deceased parted with the ownership (that means parted with the effective control over the policy) within three years prior to the date of his death.

Now what about the case where the deceased is an officer of a corporation which, under provincial law, has an insurable interest in the life of that person? Or let us say it is a partnership, or a small corporation where this individual is the man around whom the whole business turns. His personal value to this small business is very great.

If you take him out of that small business or out of that partnership, it might be questionable whether the business can carry on.

So, to insure itself against what would thus be a calamity in the life of that business, the business takes out an insurance policy on the life of that officer. It is perfectly lawful and correct under provincial law because the business has an insurable interest in the life of that person.

Here I would like to make it quite clear that if the policy is owned by that corporation, so that it has effective control over that policy, then it does not become part of the estate unless it has acquired effective control by a gift from the deceased within three years prior to his death.

But apart from the creation of an interest by way of gift from the deceased, a policy which is placed by that company on the life of the deceased, exercising its right to insure his life for the protection of the business, is not treated as part of the estate.

I apologize for the length of this general opening statement. I think it might be of interest to members of the committee, in case they have received representations in respect of the features of Bill No. 248, to know the extent to which we have met the representations we have received in relation to Bill No. 248. It might be well for the committee to know these at least in outline at the outset.

The bill does provide as well substantial simplification of procedures. This is something which I think is of interest to all and is going to be a distinct benefit to those who are called upon to bear the responsibility of administration of estates.

Some may say, well, you are creating, are you not, a greater measure of liability on the personal rights of executors and administrators. Yes we are under this bill. That is inherent in the estate tax principle because we are placing the primary liability for payment of these public taxes on the men into whose hands, in the ordinary case, passes the legal—as distinct from the equity —ownership of the assets of the deceased.

We are introducing provisions here that will, we believe, simplify the task of administration. We will come to these provisions in detail.

We are greatly relaxing the restrictions on the deceased person's executors to deal with bank accounts and life insurance policies in a period when he needs money and has not yet got releases of all the assets of the estate.

That is a situation that many an executor or administrator has had to face. He has needed money immediatly to provide for—it may even be the family of the deceased; he has needed money as well to meet obligations of the estate—it might be for payment of funeral expenses; he has needed money often times to pay the deposit on account of the succession duty. The releases which he has been permitted to have up to this present time have been quite limited—$1,500 in the case of life insurance policies.

In many cases the policy was not paid because in addition to the face value of the policy there might have been some accruals on the policy by way of accumulation of dividends which might make the aggregate value of the policy, we will say, $1,800 instead of $1,500.

You will find that in the provisions of this bill we have gone a long way in permitting the personal representative to have ready access to money payable by insurance companies and also to bank accounts to permit him to deal with these situations that arise so often before he obtains his releases of the other assets and is in a position to deal with the assets of the estate.

I apologize, Mr. Chairman, for the length of this opening statement. May I express the hope, Mr. Chairman, that with the very competent officials who are here to discuss in detail the meaning of every single provision in this bill to meet the desire of any member of the committee and to give all the information and explanations that any member may desire or require that the committee would be satisfied to proceed with the bill.

The officials are in a position to tell you about the representations we have had, the views which were expressed to us on behalf of any national organizations who submitted briefs to us. So that it may be possible for the committee to proceed if it meets with the committee's approval.

Mr. Chairman, I would respectfully offer the suggestion that I mentioned earlier that it will, I think, contribute to orderly treatment of the bill and to orderly understanding of the provisions of the bill and to greatly increase the effective discharge of the committee's responsibilities in relation to the bill if the committee saw fit to have these, let us say, more intensive sittings after the manner of the committee that normally sits on the report of the Canadian National Railways and Trans-Canada Air Lines.

There, because they have officials and operating officials of these companies before them, they sit mornings, afternoons and nights until they go through the whole thing. If that course commends itself to the committee we are here at your service, whatever this committee should decide. Our hope, indeed, belief, based on the incidence of the Income Tax Act when it was enacted a few years ago is that this will be the best procedure and is the procedure which will impinge least, in the long run, on the time that hon. members wish to spend in the house rather than sitting in committee.

Thank you very much indeed, Mr. Chairman.

The CHAIRMAN: Thank you, Mr. Minister, for enlightenment on this confusing bill—to my mind.

Now, I would like direction in regard to the suggestion of the minister about the future meetings. I would suggest Monday morning is taken up by the Prime Minister of Ghana and that we would sit after the question period on Monday and sit through until six o'clock and then go on from eight to ten on Monday.

The minister has reminded me that Monday is private members' day so it would be much easier for you to be here than another day.

Mr. DUMAS: Mr. Chairman, I have no objection to what the minister has advised, that we should proceed with expediency on this bill. I think he is right. While we have the officers of this department here I wish to point out that we have other committees sitting and it might be difficult. I have no objection whatever to this committee sitting, let us say, Monday after the orders and any day thereafter for two sessions, one in the afternoon and one in the evening, provided that maybe we can arrange in advance what we would do on Tuesday, for instance. If we are to go on with the bill on Tuesday and if we do not, we know in advance.

Mr. MARTEL: What is the quorum of this committee?

The CHAIRMAN: Ten members.

Mr. WINCH: As far as Monday is concerned I will agree to have two sittings.

The CHAIRMAN: All those in favour of sitting after the question period on Monday and in the evening from eight to ten?

Agreed.

Mr. PASCOE: Where do we meet, down here?

The CHAIRMAN: I cannot tell you yet. There will be a meeting some place on Monday afternoon, I do not know where, and you will be advised as to the time and place as soon as possible.

Mr. PASCOE: When will be the next sitting after Monday?

The CHAIRMAN: I would suggest Tuesday morning.

Mr. FLEMING (*Eglinton*): Is Tuesday morning a popular morning with the committees? Possibly the afternoon.

Mr. MARTEL: Make it the afternoon.

The CHAIRMAN: Tuesday afternoon, is that agreed?

Agreed.

The CHAIRMAN: We will give notice of additional meetings from then on. Now, it is a quarter to one. We will start in on clause 1.

Clause 1 agreed to.

On clause 2—Persons domiciled in Canada:

Mr. FLEMING (*Eglinton*): Mr. Chairman, perhaps a word of explanation is justified on clause 2. I cannot pretend that all the clauses are quite as simple as clause 1. I wish they were. This bill is divided into four parts and with clause 2 we begin our study of part I of the bill. Part I is the part that sets up the estate tax, creates the liability for the tax. Then if you turn to page 29 you will see that we come to part II which applies an estate tax in respect to persons domiciled outside of Canada. That leads me to point out that part I relates exclusively to the estates of persons who die domiciled in Canada. Part II relates to the assets in Canada of persons who die domiciled outside of Canada. Then part III commences at page 33. It is just described as "general". It relates to the administration, collection and enforcement of the tax and deals with particular questions such as transfer of property and consent to transfer. These provisions are largely taken up with enforcement and with machinery. Lastly, at page 44 we have the beginning of part IV of the bill, which is the shortest. It relates to interpretation and application. In other words, the interpretation clauses of this bill are contained in the last part of the bill, part IV, and this part also makes provision for the bringing into force of the new act and for the continuation in force of the old act, the Dominion Succession Duty Act with respect to estates of all persons who die before the coming into force of the new estate tax act.

I was asked a question on that subject in the house and perhaps I might mention the subject here. This whole bill goes into effect on the day on which it is proclaimed. That is referred to in clause 60 of the bill. But it is not a bill which works an automatic repeal of the legislation that it is supplanting. The estate tax is to supplant the succession duty, but there will still need to be a continuation of the succession duty act to govern the collection of the duty on the estates of all persons who die before the new act comes into effect. In other words, suppose the new act came into effect, we will say, on the first of January next; well, as to the estates of all persons who die up to midnight on the 31st of December, you will still have to have the Dominion Succession Duty Act to apply to them. If you repealed the present act, you would not have any way of taxing these estates. They will still have to be taxed too under the old act and, of course, it will be a matter of some time before all the assessments are completed and all the taxes paid under the old act on estates of persons dying prior to the coming into force of the new act. That is the reason why the old act is not immediately repealed by this bill.

I will define the four parts of the bill. Part I now deals with the creation of the estate tax with respect to the estates of persons who die domiciled in Canada.

Mr. THRASHER: May I ask a question in connection with Part I. Why do we use domicile in place of residence for the basis of taxation?

Mr. FLEMING (*Eglinton*): For a good reason. Residence can be parted with very easily. It is one thing to have a residence rule applied to income tax but it is very different in respect of succession duty. Consider a Canadian with a settled Canadian domicile who happened to move across the border and take that residence for six months or a year. That is not a good enough reason for him to escape this tax on his property here. Residence is much too easily changed to be a sound basis for the incidence of an estate tax or succession duty.

Mr. CREAGHAN: What is the meaning of "domicile"?

Mr. FLEMING (*Eglinton*): "Domicile" has its ordinary meaning in the law and, as Mr. Creaghan and all legal luminaries on this committee are aware, and I am sure all hon. members, domicile relates to the settled abode of a person. It is the sort of thing which cannot be quickly put aside, unless the person shows an intent to leave the country of his domicile and take up domicile in another country. It involves a decision and intent and also includes such actions as are required to prove that necessary intent.

Of course, the law requires quite firm proof to establish an intent to change domicile. The word "domicile" will refer for its ordinary meaning to what is well established in the judicial decisions.

Mr. CREAGHAN: Do they not vary from province to province?

Mr. FLEMING (*Eglinton*): We are dealing here with a measure which applies to the whole of Canada. Domicile can be changed from province to province, but what we are concerned with under this federal legislation is domicile in any part of Canada.

Mr. CREAGHAN: I was thinking more of the interpretation of provincial domicile as distinct from Canadian domicile?

Mr. FLEMING (*Eglinton*): I do not think there is any problem there. The rules which have been established in respect of domicile have been pretty uniform in the courts.

Hr. THRASHER: Is there any distinction between domicile in other provinces and the civil law in Quebec?

Mr. FLEMING (*Eglinton*): I do not think there is.

Mr. ALLARD: Are there any provisions in the case of a person disappearing?

Mr. FLEMING (*Eglinton*): You mean where it is not possible to establish his domicile? In those cases the Department of National Revenue would have to look at the circumstances. Did this man have a settled abode in Canada when he disappeared? Obviously the department and the courts would not assume there had been any change in domicile. If up to the time of the disappearance he had a Canadian domicile, then obviously, in the absence of proof that he had by his own decision acted to take up domicile in another country, then they are going to say that he still has a Canadian domicile and his estate will be taxed.

Mr. ALLARD: When it is shown that he has disappeared when is death confirmed?

Mr. FLEMING (*Eglinton*): You mean the presumption of death?

Mr. ALLARD: Yes.

Mr. FLEMING (*Eglinton*): In that case, Mr. Chairman, there are some special provisions, as Mr. Allard knows, in certain of the provinces for making a declaration of presumption of death by the courts. That is universal.

I cannot conceive in this case, if you have something less than the seven years within which you have a sort of rough rule of presumption in certain of the jurisdictions today, apart from the clear circumstances for which the courts of the provinces have made declarations of presumption of death today, of any purpose short of that.

You are not going to have any great difficulty because the moment anybody wants to deal with the estate of a deceased person as though that person is deceased then they have to submit themselves to the provision of this act. No person would have the right to inter-meddle with an estate of a person who has disappeared; a person who disappeared on a voyage or an air flight. No one will have the right to interfere under provincial law with

a single asset of that person's estate without having the authority to do so. Such authority as he might seek to derive in the case of the death of a deceased will have to satisfy the courts in the provinces.

Certainly they are not going to get any right to deal with assets on the basis that they are free of tax liability under this act until they have come forward and have paid their taxes.

Mr. DRYSDALE: Mr. Chairman, I notice in section 1 that all property is going to be taxed. Is this a novel idea in respect of real property? In other words, would property in the United States and other countries be included?

Mr. FLEMING (*Eglinton*): No, Mr. Chairman, there is no novelty in the idea here. I will say something about the converse case in relation to part two of the act.

I am answering a general question but we will come to some specific circumstances.

The ordinary rule is, that if a person dies domiciled in Canada we will have the right to tax his property wherever it may be. That is the rule of the Succession Duty Act today. Again we are coming to these explanations about real estate.

That real estate rule is attributable to an old common law rule, I might say, that roughly translated means that movables or personal property follow the person. That rule has not been applied to real estate. For that reason, with this exception for real estate, the Dominion Succession Duty Act treats as subject to tax the estate of the deceased and his property wheresoever situated and imposes that liability on the property in Canada.

In other words, let us take a simple case where the deceased had $50,000 of property in Canada and $50,000 outside Canada. He is domiciled in Canada—keeping away from the complication in regard to real estate—the Dominion Succession Duty Act says that this man died with an estate of $100,000 and therefore the tax rate moves up as the estate increases in size and he will tax him at the rate applicable to an estate of $100,000. We know that this is exigible from any estate over $50,000.

Canada has tax conventions with number of countries to avoid double taxation in those countries. One of the countries with which Canada has such a tax convention is the United States.

These are intended to avoid double taxation. But there is an ordinary rule. Parliament asserts the right to levy such tax as it chooses on the estate of a person who dies domiciled in Canada, or on any property in Canada belonging to a person who dies domiciled abroad.

In both of these cases Canada asserts its right to levy tax. We say how it is taxed in these respective clauses which follow in the bill.

When you come to part 2, you will see in the case of a person who dies domiciled outside of Canada, that when we tax his property in Canada we are introducing a new and very much simpler basis of taxation.

Mr. RYNARD: Under section 11 of the old act real property was only taxed in Canada but not outside of Canada. But under the new act, all property is taxed including real property.

Mr. FLEMING (*Eglinton*): That is right.

Mr. RYNARD: Why was the change made? Did any other country such as the United States and Great Britain have similar provisions? This is a new idea.

Mr. FLEMING (*Eglinton*): This feature is new, as the explanatory note opposite page 2 indicates. I can deal with it now if you wish.

Again, looking at an estate, we say we should tax the estate including real property situated abroad, and including it in the estate and dealing with it in Canada under this measure.

Again, we have a convention. If you are thinking about the most common case of a citizen of the United States, an American having property in Canada, the tax convention will meet the problem of double taxation.

But in this bill parliament is asserting its right to impose taxation with respect to the accrued estate which is left by the deceased, including real estate outside of Canada.

The calculation of the exemption as applied to such property is something which we will be coming to in the course of the review of the sections of the bill.

The CHAIRMAN: May we call it one o'clock? A motion for adjournment is in order.

Mr. FLEMING (*Eglinton*): Dr. Eaton has a short statement to make at this time.

Dr. A. K. EATON (*Former Assistant Deputy Minister of Finance, Department of Finance*): The statement is quite correct that this is a new feature.

Under the general rules in many succession duty laws of other countries that I know of, they do make this exemption. But in trying to find a good reason for it, I have never succeeded.

There is some argument that if the property is in another country and there are no assets in Canada, you may not be able to collect. I do not think it is a good argument, however, for not trying.

I think it is entirely sound in principle that the total estate should be brought in just as under income tax you tax the world income from all sources. So there would seem to be no good reason why we should depart from this all inclusive rule, and we have not done so.

Mr. DRYSDALE: Are there any administrative difficulties in obtaining taxes on property of a person which is held in other countries?

Mr. Ivan LINTON (*Department of National Revenue*): There might be somebody who had only property outside of Canada and you might not be able to collect taxes on it. But I think it is a very remote contingency.

The committee adjourned.

HOUSE OF COMMONS

First Session—Twenty-fourth Parliament

1958

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: C. A Cathers, Esq.,

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

Bill C-37—An Act respecting the Taxation of Estates

MONDAY, JULY 21, 1958

WITNESSES:

Dr. A. K. Eaton, Mr. Gear McEntyre, Mr. W. I. Linton, Mr. D. S. Thorson.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
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60887-7—1

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Vice-Chairman: Yvon Tassé, Esq.

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Robichaud,
Rowe,
Rynard,
Southam,
Taylor,
Thomas,
Thrasher,
Vivian,
White,
Winch.

Antoine Chassé,
Clerk of the Committee.

*Replaced Mr. Horner (*The Battlefords*) on July 19th.

MINUTES OF PROCEEDINGS

House of Commons, Room 118.
MONDAY, July 21, 1958.

The Standing Committee on Banking and Commerce met at 3:30 o'clock p.m. The Chairman, Mr. C. Cathers, presided.

Members present: Messrs. Allard, Bell (*Carleton*), Benidickson, Cathers, Chown, Creaghan, Drysdale, Flynn, Fraser, Gour, Jones, Lockyer, MacLean (*Winnipeg North Centre*), Martel, Morton, Nugent, Pallett, Pascoe, Robichaud, Southam, Thomas, Vivian.

In attendance: Honourable Donald Fleming, Minister of Finance; Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance, (on retirement leave): Mr. Gear McEntyre, Deputy Minister, National Revenue, Taxation Division; Mr. W. I. Linton and Mr. A. L. DeWolf, of the Department of National Revenue; Mr. E. H. Smith, Department of Finance; Mr. D. S. Thorson, Department of Justice.

The Committee resumed from Friday, July 18th, consideration of Bill C-37, An Act respecting the Taxation of Estates.

Clauses 2 to 5 inclusive were severally considered and adopted.

At 6:00 o'clock p.m. the Committee took recess.

EVENING SITTING

The Committee resumed at 8:00 o'clock p.m. The Chairman, Mr. C. A. Cathers, presided.

Members present: Messrs. Allard, Bell (*Carleton*), Benidickson, Cathers, Chown, Creaghan, Drysdale, Flynn, Fraser, Jones, Lockyer, MacLean (*Winnipeg North Centre*), MacRae, Martel, Nugent, Pallett, Pascoe, Southam, Tasse, Thomas, Vivian, Winch.

In attendance: The same officials as are listed as in attendance at the afternoon sitting.

The Committee resumed consideration of Bill C-37, An Act respecting the Taxation of Estates.

Clauses 6 to 12 inclusive were severally considered and adopted.

During the study of the several sections of the Bill, Honourable Mr. Fleming, Dr. Eaton, Mr. Linton, Mr. Thorson and Mr. McEntyre were questioned.

At 10:00 o'clock p.m. the Committee adjourned to meet again at 3:30 o'clock p.m. Tuesday, July 22, 1958.

Antoine Chassé,
Clerk of the Committee.

60887-7—1½

EVIDENCE

MONDAY, July 21, 1958.
3:30 p.m.

The CHAIRMAN: Gentlemen, I think we have formed a quorum and we will start in again where we left off at our previous meeting. I believe we were at clause 2.

Mr. BENIDICKSON: I regret that I was not able to be with you on Friday, but I think you will admit that very little advance notice was given of the first meeting to discuss this bill. In addition, to plan our studies in connection with the bill, I do not believe there was an agenda meeting of the committee held, which is customary I think in anything as important and big as this bill.

Now I quite realize that the principle of this bill for various reasons has been talked about for several sessions. For various reasons, including elections and so on, it has not come forward, and no one would want to see any slowing down of the activity of the committee that would result in it not going through the next stages through the house. My thought would be that a number of national organizations have expressed a desire to make their views known and it seems to me that we are putting the cart before the horse in going through the bill section by section before we do what is normally done, that is invite some of these nationally interested bodies to come and find out by sending telegrams whether they want to come. I do know that the Canadian Chamber of Commerce as late as May 7 in its submission to the Minister of Finance has of course commended him for making the former bill available to the public from January on, but they stated very positively that it was their desire to put forward their views at public hearings. I tried today to reach two of the women's organizations that have over the past years taken a great deal of interest in this legislation. As I said at the resolution stage of the debate in the house it just happens that the Vice-President of the Canadian Federation of University Women and the President of the Canadian Committeee on the Status of Women both reside in Ottawa. I was not able to reach them on the telephone this morning, but I would imagine that we would not be long delayed if we sent telegrams to them to find out whether it was their desire to object, as I believe it would be. Now similarly I think the tax foundation would like to come before the committee; I have reason to believe they would. It is true that a number of the sections of Bill 248 to which criticism was advanced in the various briefs submitted to the minister since introduction of Bill 248 have been either corrected or some relief has been provided, but the minister himself, I am sure, will admit that there are many of the criticisms that are contained in the briefs, sessional paper No. 208, which have not been subject to change. I can scarcely think that members of this committee on a bill of this importance which is not likely to be up again for parliamentary consideration for some years would want to proceed as rapidly as it seems the intention to do without giving an invitation to people such as the following who have expressed interest. These are the Canadian Retail Federation, the Canadian Chamber of Commerce, the Canadian Bankers Association, the Canadian Tax Foundation, the Canadian Federation of University Women, to which I have referred, and the Canadian Committee on the Status of Women, the Canadian Institude of Certified Public Accountants, the Trust Companies Association of Canada, and the Life Underwriters Association of Canada.

I have heard second hand that the last organization is fairly satisfied with the changes that have been made in the bill, but perhaps by looking at this document we will realize that these national organizations upon the invitation of the minister have put a great deal of study on Bill 248. The new bill was made available for distribution only on Tuesday. It had first reading a week ago Thursday. I tried to get it in regard to work which I proposed to do myself over the week end and it was not available. I tried fairly persistently to get a copy and was not able to do so. I tried the minister's office, the staff and the legislative branch of the House of Commons and it was not available until Tuesday. This is an important and technical bill and I think out of respect to those national organizations whose committees have obviously given their most painstaking care to the former bill we should send telegrams to them and ask them whether or not it would be their wish to come before this committee, and having examined the new bill and compared it with the old come before the committee and give us the benefit of the very professional and expert opinion we all concede they have in this field.

Hon. DONALD M. FLEMING (*Minister of Finance and Receiver General*): If I may say a word, Mr. Chairman, I would like to submit to the committee in line with what I said in introducing the bill before the committee at Friday's meeting that the proposals made by Mr. Benidickson are, I think, entirely unnecessary. The purpose of calling or permitting national organizations to appear before committees of the house, which is sometimes done, is to make sure that their points of view or their submissions are before the committee or that the matters they wish to raise are properly brought before the committee. I do want to say with respect to every one of the organizations that Mr. Benidickson has mentioned that we already have received their briefs and submissions. We know their views and are prepared to lay them before the committee on any subject whatever that we touch on in the bill. That being the purpose of hearing deputations I suggest, Mr. Chairman, it is in this situation totally unnecessary. Before this bill was ever brought to the house we had received these briefs; we had studied them and they had been reviewed by the officials of both the Department of National Revenue and the Department of Finance. We had heard deputations from most of the organizations that Mr. Benidickson has enumerated. Some of them actually did not wish to be heard through deputations. They were content to send their briefs. But we heard a great number of them and I think we are in a position to give to the committee all the information as to the point of view of any such organization. The briefs have been tabled. They are known to members of the committee and are available. The officials know the views of all of these organizations on every question that may arise. We have the briefs here and are prepared to discuss them. I would like to point out to the committee that we cannot start in to hear some organizations and not open the door wide to whoever may wish to come. I think we will be here for a very long time if we start to invite people to come before the committee. They may be sure that their viewpoint is fully understood and we are here to give the committee all the information on any representation that was made to us. Any member of the committee on any question we come to can ask the question "what representations did you have on this?". As I mentioned in my remarks at the opening on Friday in the case of some of these representations we gave effect to them in the new bill; in other cases we took them up in part and not as to the balance. In every case we did not give effect to them and we are prepared to give the reasons in every case. I would point out also—and perhaps Mr. Benidickson may have overlooked this and did not hear me say it on Friday—the procedure we are following here is precisely the same procedure as Mr. Abbott followed when he introduced the income tax bill some ten years ago when he came before the committee. He rejected any idea of having delegations

heard—the same kind of interested organizations as Mr. Benidickson has mentioned today. He said we have heard all those at length in the department and now we have incorporated some of their ideas and rejected others and this is now our bill; it is a government bill.

This is the same situation we have here today. When this matter was under discussion in the house, I put forward the same idea that in the committee—this can be looked up at page 2104 of *Hansard*, July 10—I pointed out the briefs would be before the committee. There has been no suggestion held out to these organizations at any time that we would be asking the committee to repeat the hearings they have already had. Therefore, Mr. Chairman, I submit to the committee that the procedure Mr. Benidickson is suggesting is quite unnecessary. It is a repetition of something that has already been done. The committee may be very sure it will have all the information about all the views of all the organizations that it wishes to know and it may be very sure now that we have been over all these and have considered them and the new bill is a result of the consideration of all these questions.

Mr. LOCKYER: Has there been any basis of opposition to any of the amendments that are incorporated in the bill?

Mr. BENIDICKSON: We have not seen the new bill.

Mr. FLEMING (*Eglinton*): The various organizations that made representations to us may, in some cases, have confined their representations to certain outstanding points, outstanding in the sense that in their view they were very important to them. In the case of some organizations they made running comments on the various clauses of the bill. We have all these and we can discuss the views of anyone on any clause of the bill as we come to it. The briefs were all tabled.

Mr. FRASER: Mr. Benidickson said that it was not likely this bill would be reviewed again for some years. Would it be your intention if you received requests from different organizations to review certain parts of the bill that you would perhaps go over it again in a year or so?

Mr. FLEMING (*Eglinton*): We think, Mr. Fraser, that we have a very good bill here. We do not say it is perfect and we are certainly going to watch the operation of the bill very closely in the period after it comes into operation. Members may be very sure if there are any weaknesses found in it or anything that has not been foreseen with the extended study that has been given to it that we will be coming back to parliament for correction of any short comings that may be found.

Mr. FRASER: If that is so, then those people who have put the briefs before the committee and the members of the House of Commons if after they have studied the bill, can request a review?

Mr. BENIDICKSON: After it is passed and mistakes made.

Mr. FLEMING (*Eglinton*): I think there is a misunderstanding there. We know the views of these organizations now on the points that are raised by the bill and any departures in the present bill from Bill 248 of the previous session. We have already put a number of these suggestions into the new bill. In the case of those we have not accepted, we are prepared to give the committee the reasons why.

Mr. FRASER: We ought to let it go on the new bill now and in a year or so bring it back if there is something definitely wrong with it which should be changed. It could come before the committee again.

Mr. FLEMING (*Eglinton*): I would not want to leave the impression we think there is anything wrong with the bill. I am prepared to defend the bill. At the same time, Mr. Chairman, we will welcome free and full discussion of this committee on any aspect of it.

Mr. FRASER: I never said there was anything wrong with the bill but in cases where someone thinks there is it could be remedied and you would be quite willing to check up on it.

Mr. FLEMING (*Eglinton*): I can give an unreserved assurance to the committee just as with the Income Tax Act and the Excise Tax Act these taxing measures will be under constant review and if there is any need indicate of amendment we will be bringing forward amendments year by year.

Mr. FRASER: I think all the people want is the assurance that it will be checked into whenever needed.

Mr. BENIDICKSON: I think that is far from satisfactory. I think one of the chief objections is that you are moving so fast with double meetings scheduled for today and tomorrow, you will find the work of this committee has proceeded so fast that the public is I think going to complain, and these organizations which are interested are naturally going to complain two or three days from now when they realize this committee has started this work. The first publicity that was given was in Saturday's press. It was during the week end. I have had some inquiries today about the bill in regard to what is to be done with it. You will find in the next day or two that will develop. I think it is a most improper procedure to rush through a parliamentary committee and hold two meetings a day on a bill of this importance and have our work finished by the time it would normally develop that organizations would express a desire to come forward and say something about the new bill which they have only had before them a day or two for the purpose of study.

Mr. FLEMING (*Eglinton*): I am sorry that Mr. Benidickson was not here on Friday so this matter could have been dealt with at that time. I am sorry he did not hear my reference at that time, a reminder of the position that Mr. Abbott took with respect to the income tax bill when he brought it forward some ten years ago. I am following the procedure he followed and urged on the committee at that time that they should sit intensively in order to have the benefit of continuity of discussion. While there were some grumblings then in having to sit intensively—and I think they were in the banking and commerce committee—I believe they realized it was a sound procedure. In this way they were not starting here and dropping it and coming back a couple of days later and going over the same ground again.

The advantage of sitting twice a day is threefold. In the first place there will be continuity in a bill that has to be followed to be properly understood. One does not go away and come back a couple of days later and pick up the trend on a new clause. Secondly, we have to consider the officials, and I have mentioned Dr. Eaton. He is attending the committee at my personal request. He is here just by the day and he has his own practice. I just have not any right to ask him to keep on coming back, meeting after meeting and week after week. In the third place I think the idea that was approved on Friday by the committe is going to help the committee over the difficulty of having so many committees sitting at the same time. That is a matter of common complaint and the idea was if we concentrated on this and got on with it that members would be spared the conflicts that arise in attending so many committees which are sitting at the same time if the committee meetings are to be confined as under normal circumstances to say, Tuesday and Thursday.

I want to say this also in regard to the time schedule. I emphasized on Friday that we are here with the officials to offer the fullest information nad to answer all questions so that the committee may have unimpeded opportunity of going thoroughly into the bill. As to the time schedule with respect to the session I have to remind the committee that this bill still has to go to the Senate and will be reviewed in a committee there. We cannot assume this is like some other financial bill which the Senate does not review in detail, like

the Appropriations Act. This one bill I am told the Senate is expected to sit on in committee and we cannot leave it until the last minute in the session.

Those are all reasons, I think, Mr. Chairman, why the decision that I understood the committee took on Friday last is a sound one and will afford the committee the fullest opportunity for a complete and comprehensive study, understanding and review of the bill.

Mr. BENIDICKSON: I do not think probably three members of the committee are familiar with any of the particular briefs that I referred to, coming from national organizations with the possible exception of the brief that we all received as members of parliament from the Canadian Federation of University Women, and I just cannot see how members of the committee would be satisfied to just simply hear the minister say, "I have looked at the complaints that have come from all parts of the country, I have reviewed them with my staff, we are satisfied with our bill, now we will rush it through."

Mr. JONES: Mr. Chairman, I understood the minister to put forward a very different suggestion. I understood him to say that he was prepared not to follow the generalization that Mr. Benidickson has just mentioned, but to outline for the committee the complaints of these various organizations on the various aspects which have come up in respect of this bill and that he and his staff are prepared to advise the committee not only of the complaints of these various organizations on this latter bill in general, but also in respect of the differences of the old bill and this present bill before us. Surely in the light of the assurances that the minister has given us the remarks of Mr. Benidickson are out of order.

Mr. BENIDICKSON: The members of the committee have not been informed of every point raised in the briefs, so they cannot intelligently ask the minister questions unless you want to blindly say on each clause, "Now, what representations did you receive on this clause and from whom and what did they say?"

There is one suggestion I might make—these briefs are so important and so valuable that another suggestion I would make is that we have these briefs filed, these national briefs—not letters from individuals but briefs from national organizations—and that these briefs from these national organizations should be made an appendix to our minutes, so that the members of the committee when they proceed will be fairly well acquainted with the criticisms that have been advanced by these professional organizations after a great deal of work on their part, and they represent the public. It is our duty as a parliamentary committee, not just taking the statement that the minister is satisfied for the reason that there are a lot of things which are to the advantage of the administration, that may lead to ease in their administration and so on but may be very disappointing to the community as a whole or inconvenient to the community as a whole.

Mr. FLEMING (*Eglinton*): Mr. Chairman, Mr. Benidickson is the financial critic of the opposition. He has been over these briefs too, I am sure, but Mr. Benidickson is competent to raise any kind of question that he thinks was soundly raised in any of the briefs, and I will be happy, as I said today and as I said on Friday, to deal with any point and any reason why we accepted suggestions in whole in any brief or why we accepted it in part and did not accept it in whole and, thirdly, why we did not accept it. I am sure that Mr. Benidickson is going to see to it, Mr. Chairman, having discharged his responsibility as financial critic, to see to it that those points are raised.

Mr. BENIDICKSON: Well, Mr. Chairman, I think the minister is certainly imposing an unusual burden on any one member of the committee to bore the committee steadily for several days trying to see just what has been pointed out by one organization and another organization and why the department

decided not to have one section in and to put another section in. I think the committee would feel they had discharged their duty far better if before getting down to the detailed points of the bill it had before it this important view or that important view or at least to know if another view had been submitted.

Mr. GOUR: I was not here Friday, I am able to be here now. I will not be here tonight. I think you said we would be all together; then come to a cocktail party for my son-in-law who is a new lawyer and it is from six to eight. Therefore if I want to be with you you have to come with me.

Mr. BELL (*Carleton*): Are we to take that as an invitation?

Mr. GOUR: A Liberal when he say something it is always what he means. I claim that twice today and twice tomorrow—I do believe you should take maybe fifteen days and still not be sure of that also. It is an important thing and I think you should leave more opportunity for that bill so that it will be in good form. All the experts are very clever because they were well trained like the Liberal party. They are good men. But for the sake of the party, the Tories, give a chance to the profession so that the bill will be in better shape. You understand my anxiety that they will repeat in a year or two a mistake you make. Do not make many mistakes because that will be a big thing next election. I do think it will be better for everyone because we are having nice weather, we are not going to sit up here all night. It would be better for Canada and better for the government. There are only a few Liberals in the house just now, you know we are only a little group. Give us a chance on these committees where we are not sitting all the time and I think it would be a good thing if you had those groups because after all those groups are Canadan people and they are working on these things all day long and have a right to have their views expressed, and I think it would be a good thing if you give them a chance to give their view.

Mr. MACLEAN (*Winnipeg North Centre*): Mr. Chairman, the minister, as far as I can see, has taken a very sensible and practical approach to this whole thing. What Mr. Benidickson requests here cannot be done. We have these briefs and the members of the committee have considered them. Now he wants to have this bill sent back to these people and have it considered again by these professional people and after it comes back we will have it re-drafted. That could go on forever. This is something that deserves intensive study and when we sit down to consider it we can go right through it and get the job done. The material in the briefs is available to any member of this committee and any information we want we can get. Let us go ahead and get this job done.

Mr. BENIDICKSON: That is my point, Mr. Chairman. I doubt that there are any more than three members of this committee who have read these briefs. That is what I have put forward. Those who have not should read them and I think that so much care has gone into their preparation that I would say I think they very properly should be made an appendix to our notes. It certainly would be the case if the organization sent a representative here to present their views. We always print their briefs and certainly if they are not going to be here I think the least we can do is to have them printed as an appendix to our minutes.

Mr. CHAIRMAN: On that point we have had 245 and 247.

Mr. BENIDICKSON: They are not there. These have been submitted in May and June, but that is true not of today. You have to do some homework to compare the criticisms that have been made.

Mr. MORTON: How many briefs are there?

Mr. BENIDICKSON: I was referring to those that came from national organizations.

Mr. MacLEAN (*Winnipeg North Centre*): Would it not be possible to have it printed so that if anyone here wanted to get some briefs they could get it?

Mr. BENIDICKSON: Do members of the committee really want to proceed on the basis that they do not want to be familiar with what the Canadian Retail Federation has said, what the Canadian chambers of commerce have said, what the Canadian University Women's Association has said?

Mr. JONES: No member of this committee, as far as I am aware, would try to rush this. I was here on Friday. This bill was brought before the committee and it seems to me this discussion that has gone on this afternoon for thirty-five minutes would have been all over if the members speaking for the Liberal party had been here at that time.

Mr. BENIDICKSON: The first thing that should have been done with this committee would have been to have a meeting called of the agenda committee on banking and commerce and we could have had a proper discussion of this bill.

Mr. PALLETT: Mr. Chairman, the original bill was introduced at the last session of parliament.

Mr. JONES: We discussed this at the first meeting of the Banking and Commerce Committee and we decided at that time we would hold meetings both on Monday and Friday when it became convenient.

Mr. BENIDICKSON: I am speaking of the normal agenda committee where it is decided what witnesses will be called and the times of hearings and so on.

Mr. LOCKYER: Mr. Chairman, does Mr. Benidickson suggest that the briefs that have been submitted are generally opposed to the principles of the bill?

Mr. BENIDICKSON: I think after examining some there are some very serious objections throughout the briefs and many objections to parts of the bill.

Mr. BELL (*Carleton*): I do not think that is a fair statement at all. These briefs—and I have read them all—are mostly in favour of the bill. There are things to which they take exception in certain details of the bill, but the minister has indicated to the committee that those objections raised in the briefs will be presented to the committee when we reach those sections of the bill.

Mr. BENIDICKSON: But if those briefs were before the committee it would be of much assistance to the committee.

Mr. BELL (*Carleton*): Surely that is a matter of the conduct of the committee and if the principal objections are available to the members of the committee as they read the sections of the bill it will work probably in a manner which is becoming to the committee. If we print all this volume it will become hard for members of the committee who will not be able to go through it and we will not be able to proceed in an efficient and suitable manner.

Mr. DRYSDALE: Mr. Chairman, could we not go through the bill on the basis that it is now with the proviso that if there is some objection Mr. Benidickson or somebody else could ask any subsequent questions by returning to that particular section? In other words, maybe Mr. Benidickson is anticipating difficulties which may or may not arise. He apparently has the background and the competency to ask questions on all the sections.

Mr. BENIDICKSON: But I cannot. Do you think I would set myself up as the equal of the certified accountants association in a discussion of this kind or the Canadian chambers of commerce or would I be able to express properly the view of the Canadian University Women's Association or people of that kind? That is a great compliment, but I think it would be far better to get this evidence presented first-hand.

Mr. CREAGHAN: Apparently Mr. Benidickson has more facets than he thought. I still say the only way we can get through the bill is going through it clause by clause and then if anybody like Mr. Benidickson has been provided with questions he wishes to ask we can go back to this particular clause.

Mr. BENIDICKSON: I do not expect to get questions from any organization. If I have any questions it will only be as the result of reading briefs. But this bill, I think, is a harsh denial to those at this point who might be interested in it, such as the Canadian University Women's Association.

Mr. BELL (*Carleton*): It is not a question of refusing. The hon. gentleman is well aware of the fact that what we are doing in respect of this is following a precedent which was proposed by Mr. Abbott, a procedure to which the hon. gentleman did not object at the time, and a procedure to which he should not have the slightest objection now. May I say this, that it was a procedure developed and conducted in a similar way by those to whom he owed his allegiance and I think it should be stated further that this procedure lends itself to the most efficient manner of conducting the committee. I think the best possible way to run this is to follow the bill clause by clause. I think this is the best procedure in a bill as complex as this.

Mr. BENIDICKSON: You do not think if this bill was decided in this way the members of the committee would be able to sift all the material?

Mr. DRYSDALE: I think Mr. Benidickson can. He has to carry the weight.

Mr. BENIDICKSON: Not at all.

Mr. DRYSDALE: I would suggest we go through the act section by section and then see if the difficulties that Mr. Benidickson says are coming up are coming up we can consider them at a later date.

Mr. BENIDICKSON: My hon. friend has at least tried to make a gracious attempt, but on the other hand I would like to hear what the chairman has to say. There is no use passing clause after clause and then finding we are estopped from reverting to this section.

The CHAIRMAN: Mr. Benidickson, I would like to inform you that, for example, the Life Underwriters' Association of Canada were advised and here is their answer:

> "Many thanks for your telephone call of yesterday re today's meeting of Banking and Commerce Committee. After consultation with our general counsel Mr. R. L. Kayler it has been agreed that it is not necessary for us to appear before committee."

Mr. BENIDICKSON: All right, if they were advised who else were advised and what replies were received from anybody else?

The CHAIRMAN:

> "Your kindness in passing message concerning today's meeting was most appreciated."

They asked to be advised and they were advised, and I understand they are the only ones that have asked to be advised and asked to come before the committee.

Mr. BENIDICKSON: Well, I know most of the points they advanced in their brief did have some ground, but there are some organizations to my knowledge which would still have criticisms on the bill.

The CHAIRMAN: Well, Mr. Benidickson, do you not think it would be better to carry on and go through the bill? We can have a start and then if there is an application by some of these organizations to come before the committee then we can put it up to the committee at that stage. If we find quite properly there is some point that we want to hear them on, could we not go into it then?

Mr. BENIDICKSON: Well, supposing—we are here today—supposing we do proceed to clause 2, I think the committee will soon see how valuable some of the briefs of these associations are and how difficult it is to proceed without these organizations presenting their views.

Mr. THOMAS: Mr. Chairman, this matter was settled on Friday and the procedure laid down on Friday. I was not here Friday either, I was unable to be here, but suppose we proceed along the lines laid down. I suggest that this discussion is out of order without a motion to reconsider.

The CHAIRMAN: Well, as the minister pointed out on Friday and again today there was a precedent for this procedure along this line by Mr. Abbott in the income tax bill and we thought we would proceed the same way.

Mr. LOCKYER: Mr. Chairman, I think our officials can give us a clearer, better picture on those who are in favour or those who are against.

The CHAIRMAN: One other thing, when you are speaking perhaps you should give your name because I do not know all of you by name and if you would please give your name before you address the chair it will help the secretary.

Will clause 2 carry?

Mr. BENIDICKSON: Mr. Chairman, here we have a very fundamental and radical departure from past practice. This proposes to bring into taxation foreign real estate. Now, I wonder if somebody could tell us what the trust associations have to say about that, what do organizations who are expert in this field like the Canadian Tax Foundation, say, and some others?

Mr. FLEMING (*Eglinton*): Mr. Smith has the briefs here and can tell you that the organizations mentioned preferred not to bring foreign real estate into taxation, that is to say, real estate situated abroad owned by persons dying domiciled in Canada. But the feeling of the department, after weighing this question very carefully, as Dr. Eaton outlined in the committee last Friday, is that there is no reason in principle for making an exception in favour of real estate. If you tax the personal property situated abroad of a man who dies domiciled in Canada, is there any sound principle that says you should not also bring the real estate into taxation? When I say bring it into taxation I mean actually bring it into the computation of the value of the estate.

I mentioned on Friday—and here we are going over ground which was covered on Friday—that with the principal countries that are concerned we already have tax agreements that prevent double taxation. For example, the United States is the most common case. But there are a number. There were submissions made in opposition to the principle. We think that the principle is correct.

Mr. BENIDICKSON: Well now, I think that we would have to ask somebody to comment on that very important observation on this, as you say, new departure from past practice in the brief of the Canadian Tax Foundation. I know no organization in Canada probably representing the public who takes a more considered and more expert view of some of these matters. They say:

> Heretofore Canada has recognized it not only in the Dominion Succession Duty Act but in its conventions or agreements with respect to the avoidance of double death duties. It is apparent that those conventions or agreements will have to be changed if Bill 248 is not changed in this respect. It may be questioned whether the countries with whom conventions or agreements have been made would be willing to change their own systems of taxation in order to accord with Canada's ideas on the subject, and it is possible accordingly that these conventions or agreements may be terminated by reason of the fact. It is not apparent that the countries with whom Canada has entered into such agreements would recognize Canada's right to levy duty upon land

situated within their borders and at the same time waive their right to levy duties on land situated within the borders of Canada. In other words, it is basic to these conventions or agreements that there should be no exception as to the agreement with respect to situs.

They go on to say that this will produce increased tax to the extent that credit is inadequate, it will raise the aggregate value and consequently the rates of tax and by imposition of an entirely new tax where the foreign realty is not taxed in the jurisdiction where situated. They also make this observation:

> It is suspected that the whole Canadian community is subjected to the increased taxes under headings (a) and (b) in order to bring into charge foreign realty where there is no local death duty where situated.

Now, the trust associations have this to say: they say that the real estate abroad belonging to all Canadian residents is made subject for the first time to the estate duty on death. This is a radical departure from the normal practice in which real estate is subject to taxation on death only in the judisdiction where it is situated.

That observation is contained in practically all the briefs I have already made reference to, but I see how muchmore valuable it would be to this committee in a matter of this kind to have these experts on death duties and administration come before us and tell us what Canadians are thinking about the subject which is now before us. I would like to ask what is the practice in the United Kingdom and the United States?

Mr. FLEMING (*Eglinton*): Mr. Chairman, in view of the fact that Dr. Eaton said something about this the other day perhaps he could elaborate now for the benefit of Mr. Benidickson.

Mr. BENIDICKSON: Of course, I am quoting from a brief which you gentlemen have not got.

Dr. A. K. EATON (*Former Assistant Deputy Minister, Department of Finance*): Mr. Chairman, I might comment a little further on this point and I think I might just say that generally countries do not, under existing law, tax real estate situated abroad.

Now, let me explain further why that system has grown up. Succession duties or death taxes are very old. They have been in force now since the latter part of the nineteenth century. In those days there was never such a thing as a tax credit. Nobody ever heard of it. The results was that none of these countries would tax real estate outside their own boundaries belonging to a person domiciled within their boundaries because they knew that this real estate would be taxed by the country where it was situated. They said, "We will exempt it because there is no mechanism for alleviating double taxation." That is an explanation of the inheritance of this principle of exemption.

Now, in this bill, as distinct from the succession duty law, there is a general provision regardless of treaty, regardless of what any other country does, of giving a credit for tax paid, in respect of property situate in the other country. That you will find in the bill. So the whole question of double taxation is taken care of. There is a very real possibility of Canadians investing in real estate where there are no succession duties or real estate taxes. It would be possible for Canadians to borrow in Canada and have that as a general debt against their estate, and invest that money in real estate in a country which has no succession duty, in which case no duty would be paid on that even though it was owned by a Canadian with a debt accredited against his domestic estate. That is blocked by this bill.

This question was raised when I was on the platform at the Bar Association in the city of Toronto shortly after the old bill came up in January. We had

quite a discussion on this and I am not sure I convinced them. However, I did point out certain features here that they had not recognized when they made their objections.

Mr. BENIDICKSON: I think all I can practically say on this point of the brief is that this is a departure from what is normally done in most countries, and that perhaps this legislation may very well have a bad effect on Canada because this is a country that looks for the import of capital for development, and so on.

What would Dr. Eaton say about that comment?

Dr. EATON: I must say that I do not see the relationship between import and capital. I could see where it might discourage the potential export of capital—that is the acquiring of real estate in countries that have no succession duty laws.

Mr. BENIDICKSON: What I had in mind was that if we start this process other countries would probably do the same and this would then probably have a detrimental effect.

Dr. EATON: I think that any other country has the right to follow the course we propose here. I would grant them that right.

I think we are merely following the same principle we follow in regard to income tax. A person resident in Canada pays tax on world income, wherever he receives it. The same principle applies here.

Mr. BENIDICKSON: In connection with real estate tax on real estate, you aggregate here whereas they do not aggregate it in the United Kingdom, do they?

Dr. EATON: I am not sure that they do not tax it. They may bring it in to establish the rate but not apply the tax to the proportionate portion of the estate represented by the foreign real estate.

Mr. MACLEAN (*Winnipeg Norh Centre*): In regard to the different provinces, they have their own estate tax acts. Do they have the same provision, or do you know whether or not they can have the same provision?

Mr. LINTON: They do not. I think it would be ultra vires for them to do so.

Mr. FLYNN: They do the same in regard to property outside the province. Why would they tax movables? That would be intra vires. It seems to me that the direct Dominion Succession Duty Act will impose a tax on movable property outside.

Mr. LINTON: The Quebec succession duty act will impose a tax on movables outside Quebec if they devolve to persons inside Quebec but not if they devolve to persons outside. Real estate outside Quebec is free.

Mr. FLYNN: Even though it devolves to persons residing in Quebec?

Mr. LINTON: Yes.

Mr. BENIDICKSON: Would it not come into the aggregate set rate?

Mr. LINTON: It certainly is not taxed. I am not sure if it gets into the rate.

Mr. BENIDICKSON: Of course it has been advanced here that not only are you taking into the tax something which you did not tax before, but you are bringing up the rate also. The rate of tax, of course, would be higher because the total estate would be higher than it would have been prior to the passing of this bill.

Mr. FLEMING (*Eglinton*): I hope an account will be taken of the point that Dr. Eaton mentioned, namely, that we give a tax credit for foreign tax paid.

Mr. CREAGHAN: It seems to me, Mr. Chairman, that what you are doing is making the tax more uniform. It does not seem right to me that a person can invest in real estate in Florida—build a summer home—but earn the money in Canada to pay for the home, yet unlike his neighbour, have a tax avoidance. It certainly is not basic to assessment.

It seems to me there should be a principle of treating people alike, the rich as well as the poor. I think you will find that most of the foreign estate involved is owned by the more wealthy.

The point was raised with regard to the use of the word "domicile". Supposing a man has a winter home in Florida and a summer home in Muskoka, which principle would be applied?

Mr. FLEMING (*Eglinton*): What was his original domicile?

Mr. CREAGHAN: Supposing his original domicile is half and half? I think this is one of the points raised by the trust companies.

Mr. FLEMING (*Eglinton*): The ordinary rule for determining "domicile" would be applied here. It would have been a mistake to include a statutory definition of "domicile" in the act. The rules which have been laid down in the courts for determining domicile are quite adequate and satisfactory for this purpose.

Mr. FLYNN: Are the civil rules in each court interpreted?

Mr. FLEMING (*Eglinton*): Here there is no problem about the difference between the terms. You are dealing with the question of Canadian domicile.

Mr. FLYNN: This is determined by the rules applicable to each province, even though they are the same?

Mr. FLEMING (*Eglinton*): I do not think there is any difference in this respect between the civil law and the common law in determining domicile.

Mr. FLYNN: It is not determined by this act, it is determined by provincial law.

Mr. FLEMING (*Eglinton*): If the question arises where a taxpayer thinks the department has proceeded wrongly it will be an easy matter to take it to adjudication.

Mr. BENIDICKSON: Dr. Eaton has not commented on the tax foundations suggestion that this departure from past practice will involve amendments, or abrogation of certain of our tax treaties with other countries.

Dr. EATON: I believe it will require negotiation there in certain cases.

Mr. BENIDICKSON: In regard to this question of domicile—this is an interesting point, and probably this is the place to raise it—we are all familiar with the fact that we have two cases; we have those persons domiciled in Canada, and those domiciled outside of Canada. The tax foundation committee again had reference in their brief to the suggestion that perhaps the word "resident" in some cases should be used as well as the word "domiciled". They described a very interesting case. I would like a comment from the experts in this regard.

The tax foundation committee pointed out there might very well be, in this country with so many specialists of American companies operating in Canada, a man who was resident in Canada but not domiciled here. He was not sure that he was not going back to the United States. He had not given up his United States domicile. He died here and his domicile was not in Canada. Supposing this man had a wife and four children. Has there been any consideration given to this? If this man was taxed under the Canadian section as domiciled in Canada, or a Canadian resident? Under this bill he would pay no tax. However, because of his foreign domicile, although he may be a resident of Canada with a wife and four children who had been living here, he would pay 15 per cent tax. That would be $15,000 on an estate of $100,000 as against nothing. What consideration was given to that suggestion of the tax foundation committee that there should be an "and/or" in there as to resident or domiciled?

Dr. EATON: I am not sure, sir. I see what the problem is. If a man is domiciled in the United States and resident in Canada this bill would swing

in and say that a person domiciled in the United States is taxable at the rate of 15 per cent on his property situated in Canada.

Mr. BENIDICKSON: As you know, a lot of American employees do not give up their United States domicile, but they may very well have assets in Canada and may have their residence here in Canada, and live here for some years.

Dr. EATON: That is right.

Mr. BENIDICKSON: In that case, if domicile and not residence is the basis he pays tax of $15,000. In this case he is retaining his United States domicile whereas a man with a wife and four children would pay no tax under this bill.

Mr. LINTON: This man, Mr. Chairman, if he was domiciled outside of Canada, but resident here, would pay on his Canadian property. He would pay the 15 per cent rate.

Of course, since this representation was made, allowance has been made for the deducting of specific debts, like mortgages on residences, which I think this brief, of course, did not consider. He might, if he had a big enough estate, if he could take advantage of it by paying less at the 15 per cent rate than he would pay if he was domiciled in Canada, do so. It seems fair enough to tax him only on his property in Canada if he is not domiciled here.

Mr. BENIDICKSON: The recommendation of the tax foundation committee was that we should refer to residence and domicile in the provinces of Canada.

Mr. LINTON: The word "residence" is a very awkward word to use, Mr. Chairman, in dealing with estate taxes. A residence is very changeable and a very indeterminable sort of thing. Domicile, except in very extraordinary circumstances, is easily established. It is the basis of taxation in all other jurisdictions that I know of except in regard to the United States where they tax on domicile or citizenship, whichever is the better way for them.

Mr. FLEMING *(Eglinton)*: I think that is the point, Mr. Chairman. In regard to taxation of estates of deceased persons the base of taxation is well established in regard to domicile. We use the residence basis in taxing the annual income. That is a very different matter. You are there taxing income literally at one time once a year.

In the other case, where you are taxing a man's estate, surely domicile is the only satisfactory basis. If we ever started taxing on the residence basis we would again open the problem of a man who has more than one residence.

The case Mr. Pallett has cited would present very great difficulties.

Mr. BENIDICKSON: I take it that this new provision would certainly discourage a man from investing in a home here in Canada. He would be far better off to have all his assets in the place of domicile.

Mr. FLEMING *(Eglinton)*: I cannot think that this is going to discourage him. For every discouragement that may be visited on him in that particular case I can cite half a dozen where the shoe is on the other foot.

Mr. THOMAS: Mr. Chairman, may I ask how domicile ties in with residence or citizenship?

Mr. FLEMING *(Eglinton)*: The two are not synonimous. Citizenship is one thing, but a number of circumstances are examined in determining where a man is domiciled.

Take for instance the simple case of a man who was born and raised in Canada. He remains in Canada until he reaches the age of 21 and is a Canadian citizen. He goes abroad. The law will require very clear evidence of an indication on his part to change his domicile before it will assume that he has acquired such domicile. If he goes abroad and changes his citizenship by a deliberate act I think the courts would regard that as some indication—not

conclusive—that he intended to make his permanent abode in the country of which he was becoming a citizen and they would treat that as one manifestation of his intention to change his original Canadian domicile.

Mr. THOMAS: Would not citizenship be a greater determining factor?

Mr. FLEMING (*Eglinton*): No, that is one. There are a great many people who change domicile without changing citizenship.

Mr. FLYNN: I suppose there is a question of intention, of course, if a man resides in a place and has his business there?

Mr. FLEMING (*Eglinton*): Yes, if he has a settled abode and he intends to remain there and make that his life home, that would be considered a permanent abode.

Mr. THOMAS: What would happen say in the case of an American citizen who came to live in Canada for 15 or 20 years and died here with a taxable estate? Could his relatives, if there was an advantage in it, claim he was an American citizen?

Mr. FLEMING (*Eglinton*): Yes, but that would not be conclusive. The department, in a case like that, would have a look at all the circumstances. The fact that he had lived here for 15 years would raise a fairly strong prima facie case that he had a Canadian domicile.

Again, it depends on the circumstances of the particular case. You would have to look at them all. The courts are accustomed to doing that and the department is accustomed to doing this in connection with the administering of the present Dominion Succession Duty Act.

Mr. FLYNN: Mr. Chairman, could I ask the minister if it is possible for a man to have his domicile in two countries?

Mr. FLEMING (*Eglinton*): I cannot imagine the situation arising except in the case of the rules that some of the states of the union set up for creating what is called the "matrimonial domicile". There are a lot of cases where a man has acquired matrimonial domicile in six weeks, but that is not the kind of domicile we are speaking of here.

Mr. FLYNN: I am asking if you could tax an estate on the basis of the deceased having been domiciled in two countries. Supposing a deceased was domiciled in two countries, what would happen then?

Mr. D. S. THORSON (*Legislation Section, Department of Justice*): The likelihood of two different courts taking two different views of the situation in two different circumstances is immeasurably reduced if the test is domicile rather than residence.

Mr. FLYNN: I agree.

Mr. LINTON: We have a provision in one or two of the treaties with foreign countries for that very possibility; that two different jurisdictions will each consider that he is domiciled within their borders. We have an equalizing credit if that happens, but so far as I know we have never used the section.

Mr. FLYNN: As long as there is a provision, that answers my question.

Clause 2 agreed to.

On clause 3—property included.

Paragraphs (a), (b) and (c) agreed to.

On paragraph (d):

Mr. LINTON: Mr. Chairman, the difference here is that we refer to disposition rather than gifts. The idea here was that we wanted a section to cover, not by implication, but by statement, any transaction which resulted in the kind of thing stated. This probably was plain enough in the old section but this makes it much more specific.

Mr. BENIDICKSON: I was going to ask if you could give us an illustration of something that you formerly did not cover that you will cover now.

Mr. LINTON: I do not think there is anything that we did not cover. The situation that we might conceivably be in doubt about is one where a gift with a reservation of benefit is made in the form of a sale. They call it a sale but it really is nothing more than a gift a disposition.

Mr. BENIDICKSON: You come down to it a little later on in the inadequacy of the consideration?

Mr. LINTON: In regard to the inadequacy of the consideration, yes, which comes in later.

Paragraph (e) agreed to.

On paragraph (f):

Mr. DRYSDALE: Could you give an explanation of that and compare it with the former section.

Mr. LINTON: The difference here is of principle. The old section taxing joint property looked to the contribution of the properties and the contribution by the deceased. The proportion of the property contributed by the deceased became taxable. Under this provision the part that passes by the deceased's death becomes taxable.

Mr. BENIDICKSON: You have altered this considerably from the former draft; what is the consequence?

Mr. LINTON: That is the consequence. The property now taxable is only what passes.

Mr. BENIDICKSON: I am referring to Bill 248.

Mr. LINTON: Only what passes from the ownership of the deceased by his death. Bill 248 and the old act were based on the same principle. This is different.

Mr. BENIDICKSON: Practically all the briefs said this was an infringement of the gift beyond three years of death principle and that you were putting into tax a widow's joint ownership which you had not done before. Have you corrected that?

Mr. LINTON: This is the point represented and corrected by this. In the ordinary simple way a husband and wife own a home together; half will be taxed unless the joint tenancy was created within three years.

Mr. BENIDICKSON: Except in the province of Quebec.

Mr. LINTON: In the province of Quebec you have different ownership laws.

Mr. BENIDICKSON: You have the community property law there. Is there a limit on the half interest; is it limited to $100,000?

Mr. LINTON: No sir. In the province of Quebec one-half of the community is free.

Mr. FLYNN: If they were married less than three years before?

Mr. LINTON: Still free.

Mr. BENIDICKSON: This is the point which is emphasized so strongly by the national women's organizations brief. We have another place, probably in the exemptions, where we can consider this. We can speak to the chairman again.

Mr. FLEMING (*Eglinton*): That was a point that was bound to rise and if Mr. Benidickson had not raised it, I would have when we came to that question, because it is the question of the status of the widow under the common law. I think if Mr. Benidickson prefers we would deal with that on the exemption section. We had representations from the women's organizations on that point.

Mr. DRYSDALE: I am not too sure I understand the phrasing, "to the extent of the beneficiary's interest" which it says here. Could we have an illustration?

Mr. LINTON: Suppose you have a man and a woman owning a property in joint tenancy and it has been put in their names and provided entirely by the deceased husband say ten years ago. Under the old provision all of it would have been taxed as having been provided entirely by him. Under this provision half would be taxed as being his part of the beneficial interest.

Mr. DRYSDALE: It is just an interpretation of joint tenancy.

Mr. MACLEAN (*Winnipeg North Centre*): Does this mean that even if the property is held jointly or as tenants in common in equal shares that the tax would be the same?

Mr. LINTON: There is no difference as long as an equal half interest in the amount would be taxable.

Mr. MACLEAN (*Winnipeg North Centre*): In joint property even though one person has put all the money in, it will still only be taxed 50 per cent?

Mr. LINTON: Yes, unless the creation was within three years in which case it would fall into the gift section.

Mr. FLEMING (*Eglinton*): We will come to that specific provision or exemption. I touched on that point, the difference we have made in this bill as compared with Bill 248. Here we have adopted the ownership principle which some of the briefs very strongly supported. The change we have made has been gratifying to a number of organizations who did submit briefs.

Mr. BENIDICKSON: And they referred to the old Bill 248 as denying a privilege that had always been there when one property was given up and a new property was purchased again in joint names. That was considered to be a contribution.

Mr. FLEMING (*Eglinton*): This bill breaks new ground in this respect. Bill 248 followed the principle that has always been enshrined in the Succession Duty Act. Now we are giving a new kind of exemption by recognizing this ownership principle.

Mr. BENIDICKSON: But you were taking something away too in Bill 248.

Mr. FLEMING (*Eglinton*): No, no. I think on exemption cases Mr. Benidickson will find what we are doing here is new. This is the first time this principle has been recognized in the law of this country and it is a principle that a number of organizations he has mentioned argued for quite strongly when they reviewed Bill 248, and what we are doing really amounts to a brand new form of exemption.

Mr. BENIDICKSON: The view of the Canadian Tax Foundation, even on Bill 248, was "under present practice if a husband transfers a property jointly to his wife and himself and the property is subsequently sold the departments have recognized that in respect to any property purchased jointly the wife has made here contribution under this section", that is property derived from or exchanged or substituted for any property jointly held is made subject to taxes.

Mr. LINTON: In the old Succession Duty Act we considered and administered it as meaning what Bill 248 clearly says, but we did come to a few cases in which it was held we could not look to substitution, and Bill 248 clarified that we could.

Mr. BENIDICKSON: Your recent practice had not been as outlined in the brief.

Mr. LINTON: It had been as outlined but only very recently.

Mr. FLEMING (*Eglinton*): That is all changed by this clause.

Paragraph (*f*) agreed to.

Paragraph (*g*) agreed to.

Mr. DRYSDALE: What effect has this section in regard to market values of some properties? For example, say you purchase a house for $10,000 and within two or three years it is worth $12,000; is the $2,000 to be included in the aggregate value?

Mr. LINTON: This is the situation. I take it where the deceased has sold the house for something less than it is worth?

Mr. DRYSDALE: No, where the house has appreciated; in other words, we are in a rising market. He might purchase a house for $10,000 and value is taken as of the date of death. It might be worth $12,000.

Mr. LINTON: If he continues to hold the house on the date of his death this section would not operate. It would be valued as of the date he died. This section operates where he has disposed of property for something less than it is worth and if the property so disposed of appreciated in value, the appreciation does not come into it.

Mr. DRYSDALE: Take for instance the other situation. Supposing a man had a house worth $15,000 and he wanted to sell it to his son. He says, "I will make you a gift of $5,000 and charge you $1,000 a year for ten years." The father dies when he is in year twelve. Would the $5,000 be included as a gift tax or would it be forgotten about?

Mr. FLEMING (*Eglinton*): The $4,000 of a $5,000 gift is gift tax exempt, but that is of course the gift tax.

Mr. DRYSDALE: The problem I am speaking of is a sort of continuing disposition. In other words, if he dies in year twelve, if you take the $5,000 at the end, it will come out of the provision to clause 12 if it was considered at the beginning.

Mr. LINTON: He has made a gift of $5,000.

Mr. DRYSDALE: He sells a $15,000 house for $10,000 over a period of ten years.

Mr. THORSON: That disposition I assume took place ten years before the death of the deceased.

Mr. DRYSDALE: Assume it one way or the other.

Mr. LINTON: Suppose he transfers a house worth $15,000 for $10,000 and the $10,000 is payable for ten annual installments. Then the thing would be tested at the date of the transaction which would be more than three years ago and nothing would come in.

Mr. DRYSDALE: In other words, when does it conclude; at the last $1,000 payment?

Mr. THORSON: The disposition took place I suggest at the moment the property was originally disposed of. The other is a method of repayment.

Mr. FLEMING *(Eglinton):* It brings us back to the idea of the disposition.

Mr. DRYSDALE: I do not want to raise it, but I notice the definition has been changed from that in Bill 248.

Mr. LINTON: I think this points up a change made from Bill 248. In Bill 248 any transaction which was payable over a period would come in if it did not conclude more than three years ago. This has been changed so the date effective for testing whether it was within the three years was the date the disposition was made regardless of the date of payment.

Mr. BENIDICKSON: That is in line with the other disposition.

Paragraph (g) agreed to.

On paragraph (h):

Mr. MACLEAN *(Winnipeg North Centre):* Would someone explain that?

Mr. LINTON: This is a situation where property is transferred in consideration of an annuity. Those are frequent between father and son. This, read that section 4 (2), which provides a method of computation, brings them into tax if the amount of the reserved benefit, if the amount of the annuity, is less than the yield of the property. In theory that is the same thing again as a gift with reservation of benefit. If the amount is greater than the yield of the property then section 4 (2) gives a way of splitting the consideration and the gift.

Mr. PALLETT: What do you mean by the yield of the property; when you say the yield of the property do you mean the revenue?

Mr. LINTON: Yes, and the revenue is in the subsequent section. The crucial revenue is 5 per cent. If the annuity is less than 5 per cent of the value of the property or not more than 5 per cent, it is considered to be the yield.

Mr. PALLETT: That would be the property taken at the time of the transfer?

Mr. LINTON: That is right.

The CHAIRMAN: Does paragraph (h) carry?

Agreed to.

On paragraph (i):

Mr. BENIDICKSON: What provision, if any, do you have in the bill for imposing the liability on the executor? Have you any other place where it is stated that the liability should not be on the executor?

Mr. LINTON: That is another representation made which was acceded to and I would go to the section which takes the liability for the tax on the excess which the estate does not get, and which is taxable under this section, and places that liability on the recipient.

The CHAIRMAN: Does paragraph (i) carry?

Agreed to.

Paragraph (j) agreed to.

On paragraph (k):

Mr. BENIDICKSON: Death benefit, what do you call death benefit?

Mr. LINTON: Well, Mr. Chairman, it is taking an account of benefit paid by an employer by reason of the death of his employee pretty generally.

Mr. BENIDICKSON: Do you still have to refer to the payroll benefit in the next section? They are different?

Mr. LINTON: Yes, Mr. Chairman, the paragraph (l) would cover voluntary payments where there was no fund, no plan, no liability, whereas (k) would cover those where there was.

Mr. FRASER: May I ask a question on this, Mr. Chairman? Some of these fraternity organizations have what they call death benefit and they pay to the widow so much for funeral expenses and so much for perhaps something else. Would that be included in the estate?

Mr. FLEMING *(Eglinton):* Yes, they always have been. They are treated as part of the estate for succession duty purposes.

Mr. THOMAS: Mr. Chairman, may I ask briefly how the value of superannuation or pension would be computed?

Mr. LINTON: Precisely in the same fashion as we use now, which will be incorporated in regulations of the department on the life of the recipient, the expectancy of life of the recipient and an actuarial table of values at various ages. They are based on 4 per cent interest yield.

Mr. FLEMING *(Eglinton):* Let us take a sample case. An annuity, we will say, consists of $2,000 a year that is payable to a spinster of forty years of

age. The tables show that she has a life expectancy of thirty-two years, your actuarial calculation is $2,000 per year for thirty-two years taken at the present value, discounted by 4 per cent. That is taken to be the actual value at date of death of that benefit.

Mr. FLYNN: Mr. Chairman, am I correct in thinking that some of these pensions payable, for instance, to a widow under the Veterans' Pension Act, were not taxed up to now and would there be a change in this section?

Mr. LINTON: Mr. Chairman, I do not think there is any change in the pension, in the pensions that fall under the Pension Act. There are exemptions in this act and in the old act for these war pensions.

Mr. FLYNN: They are excepted?

Mr. FLEMING (*Eglinton*): We will come to them under the exemptions section.

Mr. PALLETT: One question, Mr. Chairman, on this computation of values of annuities and this principle of double taxation, where a widow receives half an annuity and half cash on which that particular widow pays income tax. Is there some provision to cover payment to her or are the two interlocked?

Mr. FLYNN: There is a provincial credit, is there?

Mr. LINTON: There is no credit given for the income tax paid, no.

Mr. PALLETT: Or the amount that will be paid although she is in fact receiving capital from the capitalized account and yet she is paying income?

Mr. JONES: Is there not a provision for credit in the event she dies before the amount is fully paid?

Mr. FLEMING (*Eglinton*): That is one of the points that was raised in several of the briefs that Mr. Benidickson was referring to and we wrestled with this problem a long time. First of all, let us look at the position with respect to income tax. For any annuity, the payments of taxation begin with income under the Income Tax Act. There must be no departure from that principle. It is income like any other form of income.

Now, let us look at the matter from the point of view of estate tax. I suppose it is just as convenient to deal with this point here. It would have arisen under a later section. It is said it is double taxation because you levy a tax on death. Then, mark you, sir, a benefit accruing to the widow on the death of the deceased, a right raised at that moment under some antecedent principles whether under the will or some contract under which, we will say, the widow receives the right to a benefit or annuity for life or for a fixed term of years.

If you do not treat that as capital and tax it in accordance with well established practices for determining the present value of future payments then you are going to create a discrimination as between different kinds of property.

Part of her assets that the deceased has built up is, we will say, insurance, which becomes part of the capital of the estate and is taxed as such. If he puts his money into real estate it is capital; it is taxed as such. If he puts it into motor cars or racing horses or into stamp collections or into mining stocks or bonds, these are all taxed as part of the estate. But it is being argued by some of those who have submitted briefs that if the deceased puts his investments into an asset which creates on his death a right on the part of the widow to fixed periodical payments in the form of annuities or pensions it should be exempt. But, Mr. Chairman, I think it will be seen by anyone that that would create such a real difficulty, would create discrimination in favour of pensions and annuities. I shall be quite frank with you. I

found it very hard to overcome in my own mind this problem. I think Mr. Benidickson will understand that this problem is what looks on the face of it to be double taxation, the same as when I ran into it and Dr. Eaton can bear out that I sat at the meetings we had over this problem and in the end I had to come to this, that if you do not treat the present value of those future periodical payments as capital and part of the estate you are creating a discrimination in favour of that particular kind of property to the disadvantage of the other kinds of property. Frankly, I cannot see any way through that, try as I might.

Then, there is this problem also: Mr. Jones raised the problem of reassessment. You are dealing with the case of a widow. Here is a life benefit going to her, an annuity, and you say if she does not live out the full span that is assumed by the tables to be her life expectancy would she get any reduction? By that time the widow is dead. The executor might be gone by that time, the whole estate is administered, the widow cannot get any benefit from it and the estate, should the estate get some benefit or should the benefit go back to the original estate?

Your beneficiaries may be spread by that time from Dan to Beersheba and there is another second insuperable problem at that point. But you cannot set this up any way to give the widow the benefit of any repayment after she dies before the annuity has run its full course.

Mr. THOMAS: If you did that it would be contrary to all the practices of the insurance business. If a person takes insurance they get the insurance after their first payment has been made.

Mr. FLEMING (*Eglinton*): I can assure the hon. members this question was one to which I was very sympathetic.

Mr. PALLETT: What about the other person, this person who invested in annuities possibly to buy a house or houses and rented them and say this part, the real estate part was passed on to the widow, she pays income tax on what she receives in income but after she sells it and receives capital from it she does not pay any income tax on that, but in the case of a widow who receives a pension on death of the man she receives a pension on income and it seems to me that is the point where you get double taxation, not only the taxation because of future benefit and in the second case the taxation on what the widow receives as income on capital.

Mr. CREAGHAN: I think the question should be what the widow does with the cash after the disposition of the real estate.

Mr. PALLETT: But if she spends the money she receives in disposition of the real estate, that is not considered as income revenue while the pension, everything she receives is regarded as income.

Mr. FLEMING (*Eglinton*): But her right to receive it is preserved by the form in which that benefit is created for her. My friend Mr. Pallett might go out tomorrow and squander all he owns and apart from his other income he would have that much less income tax to pay because there would not be any income to be paid on the revenue yielded on his capital, and that applies to anyone who handles money. The widow is protected against any dissolution of the capital benefit because she is protected by the will or contract. In that case she is protected against any squandering of the capital so she is getting a pension and she is getting her income.

Mr. PALLETT: That is as between herself and whoever set up the fund but that is not as between herself and the government. I suggest to you, Mr. Chairman, there may be a reason—it may go back to the fact that the person who contributed into the fund received an income tax déduction and

therefore it would all be taxable. Then supposing you take the case of other people where the income tax deduction was not claimed and then you have the point I am referring to.

Mr. EATON: Perhaps I can clarify this. In all these cases where a full annual payment is taxable as in the case where there has been tax postponed on the one hand, that is, where no tax has ever been paid on this income that is thrown into the fund and becomes capital, if you like. Therefore because of the postponement during life and the accumulation of any tax on this income the whole flow becomes taxable at the time it goes out into the hands of the person receiving it. As to the actual annuity, where a man goes out and purchases it, he purchases that with tax paid income. It has already gone through the income tax mill and accordingly he is taxable only on the interest element of it. Therefore in the other case the income tax liability arises a merely as a result of the taxpayer having achieved complete exemption on the flow of capital into this fund with the idea that when he is in a lower income bracket the tax will be at a lower rate.

Mr. PALLETT: And in the instance where no tax exemption is claimed on the provision of the fund when the widow receives her portion, when it is passed on to her, you allow her to apply hers into the return on capital?

Mr. EATON: In a government annuity, yes. If her husband had left her a government annuity which he had purchased out of tax-paid income it is not subject to income tax.

Mr. PALLETT: Or on the other type?

Mr. EATON: Yes, on the other type it would not be income tax exemption as we know it.

Mr. BENIDICKSON: Just on this point, later on we will have a section as to the periodical payments of the succession duties—

Mr. FLEMING (*Eglinton*): That is the other point, the beginning of the difference. Yes, we will come to that.

The CHAIRMAN: Will paragraph (1) carry?

Mr. DRYSDALE: Mr. Chairman, subparagraph (i), is that to provide for cash donations when somebody dies, is that what it is for? If so, are there any administrative provisions? I have seen that problem raised in some briefs.

Mr. LINTON: Mr. Chairman, this would take in cash payments or annuities, whichever they happen to be, which were voluntarily granted. The only administrative difficulties that seem likely is that someone might not determine immediately after death how much they would be and how much they should pay and those would have to be assessed when they come to determine it.

Mr. CREAGHAN: If the gift was made direct to the widow rather than the estate?

Mr. FLEMING (*Eglinton*): Well, your Income Tax Act covers the payment by the employer up to the equivalent of three months' salary of the deceased, but this was designed, you see, to get at cases where the employer, we will say a large corporation, decides to give a whopping big payment to a widow.

Now, we had this case put up to us in the brief again. Should you treat such a payment as exempt or should you treat it as part of the estate? The view that has been adopted is that it should go in as part of the estate because you have no means otherwise to meet a situation where, we will say, your executive of a big corporation has gone along, not drawing all the salary that he could have taken, on the understanding expressed or implied that on his death the corporation is going to make it all up by a substantial payment to his widow. As a matter of fact there was a case where a corporation undertook

to make a payment of $40,000 to a widow. That is the sort of situation that it was felt you could not ignore. Therefore, it is brought in here. It is exempt up to three months' salary under the Income Tax Act.

Mr. DRYSDALE: Is there any limitation on this or would it apply to a payment made any time?

Mr. FLEMING (*Eglinton*): There is no limitation on this sort of thing. It is the sort of thing that would have to be watched to make sure in the case of a corporation that it was not waiting for an indefinite period for an assessment to be completed before it proceeded to be very munificent.

Mr. CREAGHAN: The point that was bothering me on paragraph (1) was whether the word should be "by" or "to"—"property disposed of to any person—"

Mr. LINTON: Mr. Chairman, the "by any person" is the payor, the company or employer or whoever it may be.

Mr. THORSON: If you look at the subparagraph following it refers to a person employed by the deceased as an employee.

The CHAIRMAN: Does paragraph (1) carry?

Mr. BENIDICKSON: This is a new departure too. This is bringing in something that has not been taxable before, a voluntary provision. It may be a small amount in a lump som or it may not be, it may be an annuity, but this is the class of property with respect to which the deceased has no claim. It is not like in paragraph (k) where it is either part of his contract or his fringe benefits, something that he has negotiated, but at the time of his death he has absolutely no legal right to this property at all, it is presumed to be something that is gratuitously come by. This is something done by his employer for the benefit of his widow and most of the briefs have referred to this and complained about it. They suggest, first of all, it will discourage this form of generosity voluntarily on the part of the employer and they also point out that surely in this case when it is not something to do with a man's working arrangement and working conditions surely in this case the crown should be satisfied by collecting income tax.

Mr. JONES: They are not collecting income tax.

Mr. FLEMING (*Eglinton*): There is an exemption to the equivalent of three months' salary and as far as income tax is concerned it is felt everything over and above that should not be exempted, but here I think I will ask Dr. Eaton to comment on that. As I mentioned, this point runs through most of the briefs. It is in most of the briefs and most of them take issue with it.

Mr. BENIDICKSON: I suppose the donor claims this as something the equivalent of his wages?

Mr. EATON: By way of labour. Those are taken as a deduction. It is a labour cost.

Mr. BENIDICKSON: And of course the recipient would pay taxes subject to that.

Mr. EATON: Yes.

Mr. JONES: Three months' exemption at his rate of salary?

Mr. EATON: Remuneration for a man's services.

Mr. FLEMING (*Eglinton*): The estate tax might or might not fall on the recipient. It might be just a levy on the estate in keeping with the estate tax principle.

Mr. JONES: But in most cases there would not be a tax at all because of the three months' salary exemption that had been provided under the Income Tax Act?

Mr. FLEMING (*Eglinton*): It takes care of the majority of cases where the employer makes a salary payment to the widow. This provision, like the provision in the Income Tax Act, is designed to take care of the case where the former employer hands out this whacking big payment and then deducts it from his income as an expense of doing business.

Mr. BENIDICKSON: This whacking big income would be income subject to taxation by the recipient within that year?

Mr. FLEMING (*Eglinton*): Beyond the three months, yes.

Mr. FLYNN: The figure of $40,000 you mention here . . .

Mr. EATON: I might make one other comment. This payment could be taken care of by group insurance. Ordinarily it is done that way and it is the sort of employer who wants to perhaps be a little paternalistic but the whole thing could be done by group insurance and so would not be income of the person.

Mr. NUGENT: Is there any time limit when that gift might be made?

Mr. FLEMING (*Eglinton*): No sir.

Mr. NUGENT: Is there any time limit in regard to when a gift can be made? A gift could conceivably be made a year or two later.

Mr. FLEMING (*Eglinton*): No, sir.

Mr. NUGENT: Perhaps an employer's conscience bothers him in regard to his treatment of an employee, having regard to how his family was getting along, and two or three years, following the death of the employee, he could conceivably make a gift. Does this act in its present form still regard this as part of the estate?

Mr. FLEMING (*Eglinton*): This covers the case of a gratuitous payment.

Mr. CREAGHAN: In other words we read into the section "whenever made"?

Mr. FLYNN: This cannot be taxed. There would be no income tax payable on it. There are two taxes. This might be a barrier in regard to such a donation.

Mr. FLEMING (*Eglinton*): Ordinarily where there is an estate left by a deceased, or will that instructs the executor or the corporation to do so, the tax will be payable on the capital value of the gift. The estate tax will be payable out of the estate and not payable by the widow who is the recipient of the gift from the corporation.

Apart from including that, you are going to open the door wide, to all kinds of properties, to extend benefits at the expense really of the treasury. Every one of these payments costs the treasury, in the form of increased expenses in doing business on the part of the corporation, 47 per cent. It is the treasury which is paying the 47 per cent of the gift by the corporation.

Mr. FLYNN: It could be collected in income tax.

Mr. FLEMING (*Eglinton*): The provisions of the income tax, I would submit, are fair. You do not treat as income a gift to a widow which does not exceed three months' salary of the deceased. If you take a man, we will say, who is earning up to $6,000 a year, three months' salary would give $1,500. That is a good deal more than the vast majority of the provisions which are made. $1,500 can be given in that case without a cent of it being treated as taxable income.

In the case of a widow, she is entitled to her normal exemptions against that. The gift would have to be very substantial before the widow would have to pay tax on it.

If we take the case of a man who was earning $12,000 per year, the three months' salary feature allows the corporation to pay the widow $3,000. I do not suppose there are very many cases where the payment is larger

than $3,000. Against that amount the widow is entitled to her own $1,000 exemption as well as the exemption for the children she may have. She will have those exemptions to set off against the $3,000 income.

It would have to be a very large payment in the hands of the widow before it would attract income tax of any dimension at all.

Mr. NUGENT: Mr. Chairman, there is a difficulty in making up state papers and tax papers because the executor does not know whether there is going to be any disposition of property in favour of the estate by any other person. I can conceivably see that you will be delayed no end waiting for an employer to decide whether or not he wants to make a gift.

Mr. THOMAS: We do not have that difficulty here because the employer is dead already.

Mr. FLEMING (*Eglinton*): No, the employee is dead.

I would just like to deal with the case brought up by Mr. Nugent. He is taking the case where the payment to the widow of the deceased executive of the corporation, is made, not in pursuance of any contract between the deceased and the corporation, but simply as a gratuitous payment on the part of the corporation to the widow after holding back, we will say, for nine months.

The corporation may just be looking the situation over because they are not sure the widow needs the money and they are going to see how well the assets realized, and so on.

There may be a case where the corporation is deliberately holding back in the hope of avoiding tax liability.

Mr. NUGENT: They may be short of money too.

Mr. FLEMING (*Eglinton*): Yes, that is another case.

The fact is, if the payment comes within the terms of this clause it becomes a part of the estate for the purposes of requiring the estate to pay the tax. It is not very likely, except in extraordinary cases, that a gift is going to be made more than a year or so after the date of the death.

If it comes along later, out of part of the estate, it will be the duty of the executor to report and to pay tax on it. If he does not, the widow in that case will be responsible for the payment of the taxes. This would have to be so to assure fair and equal enforcement.

Mr. MORTON: In the case of a late gift would there also be interest on the tax not paid within the six month period, from the date received?

Mr. BENIDICKSON: If this is not something that the deceased had a right of action in respect of—oh, you are thinking in terms of the crown?

Mr. MORTON: Yes.

Mr. FLEMING (*Eglinton*): I think the hon. member will see that this is necessary in order to assure fair and equal treatment for all persons under the act. Interest would be payable there commencing six months after the date of death.

I hope you will note that provision which helps to create an additional sanction against employers holding back—delaying and delaying,—in the hope that the estate will be closed up and someone will overlook reporting this additional benefit.

Mr. CREAGHAN: Mr. Chairman, this might be a poor example but you might have a couple of miners or prospectors in partnership, and one of the partners suffered accidental death while in partnership duties, and five, ten, or even two years later the surviving partner struck gold, or oil and wanted to make a gift to his deceased partner's wife. This gift might be made in the surviving partner's name or in the name of the corporation.

Would the widow then be penalized in regard to interest?

Mr. FLEMING (*Eglinton*): Does your case fall within the terms of this clause at all?

Mr. CREAGHAN: I do not know.

Mr. FLEMING (*Eglinton*): Is it paid under any disposition made voluntarily in recognition of services rendered by the deceased as an employee of that person or as an employee of any other person? That is not an employer-employee relationship. This is probably a straight gift from him.

Paragraph (l) agreed to.

On paragraph (m):

The CHAIRMAN: This paragraph is new. Could we have an explanation in this regard for the record?

Mr. LINTON: Mr. Chairman, this is entirely new and a result, at least in part, of representations made.

The old Dominion Succession Duty Act and Bill No. 248 aimed in a general way at taxing insurance on the basis of what the deceased provided. This aims in a general way at taxing the insurance which he owned or controlled. It has been necessary to elaborate in this because, if you had ownership only, it would be too easily defeated by corporate entities and other means, so it is pretty fully covered as to what is meant "owned" and what is meant by "controlled".

This part has to be read in conjunction with subclause (5) of clause 3.

Basically policies owned by him, or owned by a trust which the deceased could vary the terms of, or owned by a corporation controlled by him, come under the purview of the tax, except that of controlled corporations which are legitimately in business; other than simply collecting revenue from bonds or investments. There is a provision whereby, five years net income from these corporations is regarded as the amount of insurance that they can carry which will be regarded as necessary to the corporation. That amount is free.

Mr. FLEMING (*Eglinton*): I may say that we have had representations in regard to this provision as it appeared in Bill No. 248 in different forms. We have given effect to the representations, recognized the principles for which they contended, and we have had commendations in regard to this clause from those who made those recommendations.

We have, for instance, had insurance companies represented before us, we have had life underwriters associations represented before us and I think we have given effect to the representations they made.

Mr. PALLETT: You also had a letter from me.

Mr. FLEMING (*Eglinton*): Yes, in spite of that letter from Mr. Pallett we did it.

Mr. BENIDICKSON: What is the new feature on paragraph (q)?

Mr. LINTON: The new feature here, Mr. Chairman, is to provide special provisions arising out of the unusual dower rights in Alberta. In Alberta the dower right gives rise to transactions during lifetime in a way that it does not in other provinces.

This paragraph is to try and equate the treatment of an Alberta dower with the dower in other provinces.

Mr. BENIDICKSON: What representations were received with respect to this subclause (2) paragraph (a)?

Mr. FLEMING (*Eglinton*): I do not think there are any representations in respect of subclause (2) paragraph (a), Mr. Chairman. There is no change in substance made by this provision. I do not think we had any representations with regard to this.

Mr. BENIDICKSON: This is the paragraph that the tax foundation committee referred to in regard to the Bathgate case. This appears in part two of the Canadian tax foundation committee's brief in regard to aggregate net value?

Mr. LINTON: Yes. The tax foundation have some mention in their brief.

Mr. BENIDICKSON: The tax foundation committee suggests that the legislators are going to do something now that the law said they could not do.

Mr. LINTON: No, Mr. Chairman.

Mr. BENIDICKSON: That does not come under this one?

Mr. LINTON: The Bathgate case was won by the department. This paragraph is just a continuation of the same practice the courts upheld in the Bathgate case.

Mr. BENIDICKSON: In this regard the tax foundation committee says, and I am quoting from their brief:

> One suspects again that the branch is legislating to prevent repetition of an isolated transaction even though the change will operate to the detriment of the community at large.

Mr. LINTON: Could I ask, Mr. Chairman, where that appears in the brief? The brief is very hard to follow.

Mr. BENIDICKSON: The brief is very hard for all of us to follow because it has reference to Bill No. 248, and it referred to the section of the bill. We have to translate it back to the new bill which is in front of us. This statement appears on the following page.

Mr. LINTON: On page 4?

Mr. BENIDICKSON: On page 4. They are referring to clause 3, subclause (3) paragraph (b).

Mr. LINTON: We are considering clause 3 subclause (2) paragraph (b) now.

Mr. FLEMING (*Eglinton*): We are referring to clause 3 subclause (2) paragraph (b), Mr. Benidickson.

Mr. BENIDICKSON: I will bring it back again.

Subclause 2, paragraph (b) carried.

On subclause 2, paragraph (c):

Mr. JONES: What is new about this?

Mr. LINTON: This is entirely new inasmuch as no provision was made in the Succession Duty Act for tenancies in tail. Tenancies in tail are rare in Canada, but there are some and if there is no provision we suspect they never would be taxable in the death of anyone, in perpetuity.

Mr. FLEMING (*Eglinton*): It is a very old form of land tenure and extremely rare, but because of this rarity it was not included in the definition of property in the Succession Duty Act.

Mr. JONES: You have run across it?

Mr. LINTON: Yes, but they are rare cases, but I happen to know they are in existence, certainly in Ontario and perhaps in some other provinces, and it seemed inequitable not to tax them on the death of anybody.

Mr. PALLETT: I am aware of some farms in that category.

Subclause 2, paragraph (c) agreed to.

Subclause 2, paragraph (d) agreed to.

Subclause 3(a) and (b) agreed to.

On subclause 3, paragraph (c):

Mr. FLYNN: Could we have an explanation in regard to (c)?

Mr. FLEMING (*Eglinton*); There is a pretty full note there in regard to 3(c). The paragraph relates to the value of debts owed to the deceased by a person with whom he was not dealing at arm's length that became statute-barred within three years. We have just had a provision dealing with cases of extinction of statute-barred debts but we could not tolerate that in cases of persons not dealing at arm's length unless it is more than three years. If it is more than three years you have the gift principle. If it is within three years they should not be permitted any extension by these means where parties are not dealing at arms length.

Subclause 3, paragraph (c) carried.

On subclause 4:

Mr. BENIDICKSON: Why this? There is no explanatory note here.

Mr. LINTON: This, Mr. Chairman, is to operate...

Mr. FLEMING (*Eglinton*): That was too clear.

Mr. BENIDICKSON: That is always good for the record.

Mr. LINTON: This is to provide where two persons make an agreement whereby property passes on the death of the first to die. The fact that they both made an agreement together, mutuality of the arrangement, is not itself a valid consideration, thus eliminating the tax on the death.

Mr. FLEMING (*Eglinton*): I know what is going through Mr. Benidickson's mind—the same as mine, the old common law rule that seal importeth consideration. You have a covenant, and it is surely consideration. But the principle here is that the mere existence of the covenant, the giving of the covenant is not to be deemed to be adequate consideration per se. You look behind the covenant itself. The mere giving of the covenant is not deemed to be a consideration.

Mr. BENIDICKSON: I think the explanation was left out because it was going to be too long.

Subclause 4 agreed to.

On subclause 5:

Mr. DRYSDALE: I have one comment to make on section 5; it discriminates in favour of a wealthy spouse or child.

Mr. LINTON: How so?

Mr. DRYSDALE: That is where you have got me. A particular group made this comment and I was wondering if you had any information on that.

Mr. LINTON: I do not think it does, Mr. Chairman.

Mr. FLEMING (*Eglinton*): I really do not follow that at all. It is not confined to any particular group or for any particular amount. It is a general application. I think all one can say is that there is no discrimination. I do not think there is any discrimination created by this.

Subclause 5 agreed to.

On subclause 6:

Mr. BENIDICKSON: Just a minute. This is an exercise of power within three years before the death of the deceased, is it?

Mr. LINTON: What this does, Mr. Chairman, is it treats the exercise of a general power of appointment by the deceased in the same way as the disposition of his own property would have been treated.

Mr. BENIDICKSON: Supposing the deceased had simply 51 per cent of the ownership of the corporation; is the disposition considered to be entirely his?

Mr. FLEMING (*Eglinton*): If he owned 51 per cent he would certainly control it.

Mr. BENIDIKSON: Not necessarily; he might not be getting along with the remaining shareholders.

Mr. FLEMING (*Eglinton*): I would think it would be very hard to conceive of a situation where he held 51 per cent of the voting stock and did not have control of it. It might be different if it were not the voting stock.

Subclause 6, paragraph 2 agreed to.

The CHAIRMAN: That completes section 3. Now we will proceed to section 4.

Mr. FLEMING (*Eglinton*): Here we are coming to the property that is excluded from the reckoning of the value of the estate. We are on the opposite principle here; this is a popular clause.

The CHAIRMAN: Does clause one carry?

Agreed to.

Clause 2?

Agreed to.

Mr. FLEMING (*Eglinton*): This is the clause, Mr. Chairman, that in subclause (a) contains the principle referred to earlier by Mr. Linton of five per cent. It is referred to in both (a) and (b), five per cent in relation to the calculation of the annuity.

Mr. DRYSDALE: Why did you reduce it from six per cent?

Mr. LINTON: Well, Mr. Chairman, we just thought that five per cent was a more sound view of the average yield of property, that six per cent was perhaps too high.

Mr. DRYSDALE: Was it due to pressure that it came down from six per cent to five per cent?

Mr. LINTON: No, I would not say so.

Mr. FLEMING (*Eglinton*): We took a look at that and felt that quite frankly in making that change that five per cent was a more realistically fair figure than six per cent.

The CHAIRMAN: Does clause 3 carry?

Agreed to.

Mr. THOMAS: Mr. Chairman, if we might go back to that clause (a) it was a reduction to five per cent from six per cent, would not that tend to increase the value of an annuity, for instance?

Mr. LINTON: No, I think the reduction in all cases to five per cent, Mr. Chairman, is beneficial to the estate. It assumes that a five per cent yield is the limit to which you can regard the yield as properly being. To take an example, if a man gave $10,000 away and paid back six per cent or $600 he would be taxed on the whole $10,000. Now, if he did that, he would be taxed only on the excess over the capitalized value of the difference between the $600 and the $500.

Perhaps I am not very clear. The five per cent—

Mr. FLEMING (*Eglinton*): This is pretty heavy stuff.

Mr. LINTON: The five per cent is regarded as the normal yield on the property and if he does take an annuity in the transfer of the property of that amount or less he is taxable on the whole value of what he transferred as if it were a gift so that if the amount is six per cent and he gets back $600 or less the whole of this is taxable. If it is five per cent it is only wholly taxable if he gets $500 or less.

Mr. FLEMING (*Eglinton*): This change from six to five is to the advantage of the taxpayer in this situation.

Mr. THOMAS: It is not even for the purpose of computing the capital value of a gift?

Mr. LINTON: It works that way, yes.

Mr. FLEMING (*Eglinton*): It is in the course of that, the point that was made earlier, why it was changed from six to five; the advantage there is with the taxpayer.

Mr. LINTON: Perhaps we can take another sample, Mr. Chairman.

Suppose he transfers property of $100,000 and he gets back an annuity of 10 per cent or $10,000. Then when the amount is six per cent he is taxed on the capitalized value of the difference between 10 per cent and six per cent—I am sorry, he is allowed a deduction of four per cent capitalized at his age. When it is five per cent he is allowed a deduction of $5,000 capitalized at his age, the difference between the $10,000 and the five per cent is regarded as being normal return.

Mr. THOMAS: We will take your word for it.

Clause 4 agreed to.

On clause 5—Amounts deductible:

Mr. BENIDICKSON: Now we are on a section that everybody can understand.

Mr. FLEMING (*Eglinton*): This is one of the popular sections again.

Mr. BENIDICKSON: I was surprised the minister had not made a change here. I thought he would have had solicitors' costs as a proper claim.

Mr. FLEMING (*Eglinton*): We did wrestle with the problem. It is raised in some of the briefs. May I say to the members of the committee who are not lawyers this is a question of the solicitor's fees charged by the solicitor to the executor or administrator in connection with services rendered in the course of not simply an extended administration, probably the lifetime of the estate, but in connection with taking out the letters probate of the will or letters of administration of the estate.

Now, we have had a situation in Ontario where one jurisdiction allowed nothing and the other jurisdiction made an allowance of $100. This $100 did not amount to very much. It is all right in a very small estate but in the larger estates it really did not begin to represent anything like the figure and here is the trouble we are up against and if you try to bring this in—and I was interested in trying, I can assure the committee—here is what we are up against. You cannot ascertain this until some time after. Are you going to allow according to the sliding scale that is observed now in a good many of the surrogate courts? If so, when are you going to determine it and if you are going to leave that wide open to be determined either according to the amount that is actually charged or the amount that accords with the tariff recognized in the particular surrogate court when are you going to determine it, because that might not be determined for a long time, your estate is kept open in the meantime.

Now, here the assessing authorities have got to be able to strike an amount. This is a debt subtracted from the estate before they can assess the tax payable. They cannot wait until the costs are passed a couple or three years later and you have got to come back to the same old thing, some flat rate or sliding scale. The sliding scale is open to some objection, some difficulties. The flat amount is perhaps going to supply an ample amount for the ordinary medium sized estate, but for large estates is something that is virtually worthless, and you get down to the $100 again. The thing was so beset with complications that finally we had to give it up and say well, no allowance is made now, we will have to leave it that way.

Mr. BENIDICKSON: The *Canadian Tax Foundation brief*, I think, complained here, in fact others did as well and others added to it the items of inevitable

expenses that lead to eventual return from the estate. They refer to brokerage charges on transfers of stocks, bonds and so on, and other costs of estates. Someone also referred to the fact that administration is even more difficult because it is a continuing thing and some referred to the distinction that takes place between the estate that is transferred over to the beneficiary who can take personal charge of the administration as against some professional administration which adds to the costs.

Mr. FLEMING (*Eglinton*): Well, we wrestled with that one too on the same basis—expenses that are incidental to the normal function of administration and again you are up against the problem of trying to determine when are you going to determine it. Here is something when the whole pressure is on the department to assess within six months. You have got to get the return in, get all the particulars in regard to debt and the department has to make the assessment all within six months.

Well, these might not be ascertained until the actual letters of administration are passed which might be two, three, five years after and it creates a very difficult problem, the same sort as I mentioned in regard to the solicitor's fees.

We found it very hard, indeed impossible to work out any equitable rule here that would lend itself to administration of the provisions of the act.

Mr. CREAGHAN: Don't you think, Mr. Chairman, that what you have here is going to cause complications and it seems to me many executors will try to get legal taxes but surrogate and probate are not like court costs until the subsequent passing of the cost, and if you confine them to the original issue of the letters it might be easier interpreted.

This way I think they will want to determine the subsequent costs.

Mr. FLEMING (*Eglinton*): Well, Mr. Chairman. I know that the fees paid to the registrar of the surrogate court are deductible. We are speaking of the fees that will be earned in the course of administration by the executor or administrator.

Mr. BENIDICKSON: But there is a good point there?

Mr. CREAGHAN: I mean fees that will be paid on the original issue of the letters and the fees that might be paid a year later on the first or second passing.

Mr. BENIDICKSON: At the time of winding up and if you can pay them why cannot you pay the solicitor who can get his bill in at the winding up.

Mr. FLEMING (*Eglinton*): But that is long after the period of the assessment. What are you going to do—reopen the whole assessment when that time comes? I think you are up against a substantial problem here, Mr. Chairman. I think there are virtually insuperable difficulties on the administrative side and then I believe the number of debts created by the deceased himself is one thing and expenses incurred in carrying his estate through the various stages of administration is another.

The first has always been recognized as a proper deduction from the estate in determining the taxable value. The second has never been recognized and frankly I am afraid I cannot see how you can allow these two things that are different in kind.

Mr. CREAGHAN: I think it would be very much clearer to me, Mr. Minister, if you put in there those things from a revenue point of view.

Mr. FLEMING (*Eglinton*): I am not just interested in revenue, I am interested in writing a bill here which will be beneficial to the taxpaying public.

Mr. CREAGHAN: If you put in the word "initial", or "first" before the word "surrogate" it would eliminate a lot of confusion. If you added the word "initial" before the word "surrogate" there would be no doubt in the executor's mind as to how much they could turn up.

Mr. THORSON: You will note the present provision's reference to court fees in respect of the death of the deceased. I suppose it is possible to argue that where there is a passing of accounts five years later it is questionable whether that is a probate fee in respect of the death of a deceased.

Mr. CREAGHAN: That is the part I am worried about.

Mr. THORSON: This applies where there is a subsequent action altogether.

Mr. FLEMING (*Eglinton*): I think it is quite clear that this is something which arises out of the desire of the executor or administrator to have his accounts audited by a court and so be relieved of the liability. It is not something that necessarily ensues from the death. In many cases the accounts are not audited at all, the beneficiary just signs releases.

Mr. PALLETT: The provisions in many jurisdictions for persons other than executors requires that accounts be passed. This may be contrary to the wishes of the executor because of his desire to save expenses, and so on, but with that requirement he may still be forced to assume the expenses of taxing accounts.

Mr. FLEMING (*Eglinton*): We are dealing here only with the fees payable to the registrar of the court. We are not dealing with fees payable to solicitors on the passing of accounts.

Mr. BENIDICKSON: You are not dealing with solicitors at any stage?

Mr. FLEMING (*Eglinton*): No. The amount payable to the registrar of the court by way of probate is what we are dealing with. We are dealing with money in the surrogate, the probate and other like courts, fees in respect of the death, other kinds of court fees which are determined by surrogate and probate fees.

I think that the ejusdem generis rule of interpretation could include something that occurs after, arising out of the passing of the accounts.

Mr. CREAGHAN: You might put in a lot of expenses.

Mr. FLEMING (*Eglinton*): You could have various kinds of surrogate court fees. You could have the simple case of the probation of a will, or the administration of a will; you could have the case of ancillary letters probate. That is the item which we are getting at here. This is normally not the case. This has to do with fees payable to the registrar on the passing of accounts that may occur long after.

Mr. PALLETT: Am I to understand that the only change in this is to add the words "—in respect of the death of the deceased—"?

Mr. FLEMING (*Eglinton*): That is right.

Mr. PALLETT: Everything else is exactly the same as the Dominion Succession Duty Act.

Perhaps Mr. Linton could tell us whether there has been any problem in administering this, and whether there have been any claims for fees such as for passing of accounts?

Mr. LINTON: Mr. Chairman, I do not think we have had any trouble in respect to this at all.

Mr. PALLET: If there has been no trouble I see no reason for making this change now. This is just to clarify it in respect of the death.

Mr. CHOWN: Is proof required in solemn terms in respect to expenses which are contested?

Mr. FLEMING: (*Eglinton*): If you are speaking of fees payable to the court, then those fees are court fees in respect of the death of the deceased.

Mr. DRYSDALE: Clause 5 paragraph (a) subparagraph (ii) says "any encumbrances created by him,". One organization I believe suggested that the

word "assumed" be added after the word "created". I was wondering if encumbrances assumed would be considered to be created, or would that make any difference?

Mr. FLEMING (*Eglinton*): I suppose you are distinguishing between the case where John Jones buys a property free from encumbrances and then proceeds to add a mortgage on it—the mortgage then is clearly created by him and is an encumbrance—and the case where John Jones buys a property on which there already is a mortgage. That clause is wide enough to provide that the encumbrance that is assumed by him is clearly deductible from the value of the property.

Mr. PALLETT: Is that not a debt incurred?

Mr. FLEMING: (*Eglinton*): Yes.

Mr. CREAGHAN: I am still confused with this clause in regard to fees. Would you call them reimbursements rather than fees?

Mr. FLEMING (*Eglinton*): These are fees charged by the court. They are disbursements as far as the executor or administrator is concerned, but they are properly called court fees. They are fees charged by the registrar of the court.

Mr. PALLETT: You are talking about the actual cash that the court gets?

Mr. FLEMING (*Eglinton*): Yes. The lawyer does not get anything out of this at all. These fees which are payable by the executor to the court on probate, or payable by the administrator to the court on letters of administration.

Mr. MORTON: Mr. Chairman, it is six o'clock.

Clause 5 agreed to.

The CHAIRMAN: We will meet again at eight o'clock tonight.

EVENING SESSION

The CHAIRMAN: Order gentlemen. When we adjourned at six o'clock we had just passed clause 5 and were about to commence with clause 6. This is on page 8.

Clause 6 agreed to.

On clause 7:

Mr. FLEMING (*Eglinton*): Section 7 is one of the important clauses of the bill and perhaps I should say a word in particular about it. I touched on some aspects of the exemptions provided by the act in my opening remarks on Friday and perhaps anything I might say now would be largely repetitious. But I would like to emphasize again the provisions of the act bearing on exemptions and to draw attention to some of the representations that we received in regard to exemptions.

The burden of a number of representations we received was that there should be an exemption of $50,000 from every estate. That was one of two principal representations we had from a number of women's organizations. Now, it will be remembered in Bill 248 of the last session there had been provision for an exemption of $30,000 in respect of every estate. That meant regardless of the size of the estate, whether it was $60,000 or $1,060,000, that amount was deducted from the estate regardless of the family circumstances. A number of these representations however overlooked the fact that no estate under $50,000 pays any taxes under this bill. Now, let us distinguish in our minds at once between a provision that an estate under $50,000 shall not be taxed at all and a provision that there shall be a deduction or exemption of, let

us say, $30,000 from every estate. But in this new bill we have come up halfway in relation to these representations and we have provided here for a flat exemption of $40,000 from all estates. In other words, we have left untouched the provision that no estate under $50,000 shall be taxed at all, but we have also provided that there shall be a deduction of $40,000 now instead of $30,000 as in Bill 248 on all estates. Now, that is the lowest basic exemption. We have provided also however—and here there is no change as compared with the provisions of Bill 248—for this enlarged exemption of $60,000 in every case where the widow survives the husband. Then, as well, there is provision made for an additional exemption of $10,000 in that case for every child surviving who is dependent and under the age of 21 years. I draw attention again to the fact that this $60,000 exemption is available to the estate. The first case is where a deceased male person is survived by a spouse. That is a case of a husband dying leaving the widow surviving. The second case is where a deceased female person is survived by a spouse. This is a case of a wife dying leaving surviving a husband who at the time of the wife's death was infirm and where the wife in that case is also survived by a child under 21 years of age or 21 years of age or over and wholly dependent on the wife or the husband or both for support by reason of being infirm.

Now I will try to repeat that to make it perfectly clear. There is a $60,000 exemption instead of the basic $40,000 where the husband dies leaving a wife surviving. There is also that $60,000 exemption in the case where the wife dies first leaving surviving a husband who is infirm and a child who is either 21 years of age or is over 21 years of age and wholly dependent on his mother or father, or both, by reason of being infirm. Now what is the meaning of "infirm". I was asked that question and if you look at the top of page 45 you will see the definition of "infirm". "Infirm" as applied to any person has reference to any mental or physical infirmity rendering that person incapable ordinarily of pursing any substantially gainful occupation. In other words, the test of infirmity, whether physical or mental is that it renders the husband in this case incapable ordinarily of pursuing any substantially gainful occupation.

Now, the theory or view back of these views is this. The wife under our law is entitled to a preferred position. The law recognizes her right to special consideration. Therefore, there is no question of infirmities or anything else attached to that exemption created in favour of the estate where it is the estate of the husband who is survived by the wife; but the husband gets that preferred protection, or at least the estate gets that preferred protection where it is the estate of a wife only where the husband is infirm and incapable of pursuing a gainful occupation. Now (b) sets forth a basic exemption of $40,000 and (c) provides an exemption of $10,000 in the case of a deceased person in the case of whom a deduction may be made under paragraph (a). That is the case I was just speaking of; $15,000 however instead of the $10,000 in the case of a deceased person not survived by a spouse, for each surviving child who at the time of the death of that person was under 21 years of age or over 21 years of age and wholly dependent on that person. In other words, $15,000 is the exemption in the case of a death where there is no survival by husband or wife but there are dependent children and there is $15,000 there for each surviving dependent child.

Now, to sum it up we think these are, as compared with the existing law, much more generous exemptions than have existed. We think this is a move in the right direction. The value of exemptions in terms of dollars since the Dominion Succession Duty Act came into effect in 1941 has entirely shrunken the value of the dollar. There will be those who will say we would like to have gone further and increased these exemptions. My answer is who would not, but we still have to have revenue to meet the expenses of

government, to pay for national defence and social security and all the other burdens of government. We have stretched the exemptions here further.

There is just one other thing I should mention in relation I think to the submissions that were tendered to us by some of the women's organizations and also by one or two of the other national organizations. It was on the score of treating the wife as entitled to half of the estate on the theory that husband and wife are partners and the wife has contributed equally with her husband to the amassing of whatever estate he may leave. It is, in other words, an attempt to apply to the nine common law provinces of Canada the conception of the community of property under the civil law of Quebec. We have not adopted that proposal and for these reasons. Here I am speaking now only of the common law. What I say now has no application in the province of Quebec. The civil code there creates the community of property unless the parties have contracted themselves out of it in an antinuptial contract. As to the nine common law provinces, there is no recognition in the common law of this theory of partnership as between husband and wife in matters of property. The wife is in no sense responsible for her husband's obligations. The theory of partnership has never been recognized in that respect. Moreover, the wife has never been put on the basis of equality with her husband in every aspect of property law in the common law provinces. To put her on that basis for purposes of succession would necessarily involve a loss on the part of the wife of some of the benefits the law creates for her in her lifetime under the common law. Now, the wife has this recognition of a preferred position. We felt in putting the bill forward in this form we had no right as a federal parliament without any jurisdiction whatever over property and civil rights to write into this taxing statute as though it were a principle of the law of property in the nine provinces, something that has not been made a principle of property law in all these nine provinces. We have a right to legislate in these situations only with respect to taxation. Those briefly I think are the reasons why we felt we had no right to accede to these submissions that were made which were based upon the theory of the law that simply does not receive any recognition in the nine common law provinces.

That leads me to one final observation on this clause. This is something that is pointed out in the submissions of some of the women's organizations. They argue that you should deduct the special exemption of $60,000 only where the will or in the absence of a will the devolution of estate acts in the province provide that the widow shall receive the $60,000.

You will see this clause 7 does not provide that the $60,000 exemption exists only where the widow receives the benefit of $60,000 under the will. To do that would turn counter to the estate principle. The estate principle—again I repeat what I said in my opening statement on Friday—looks at the estate in the gross. It says: "There is a widow here. Therefore we do not look at the devolution, we do not look to see what the widow gets, we do not look to see what each of the four children get, we simply look at the estate en masse and we find that the deceased is survived by a widow."

Well, without inquiring further the act says all right, in that case you take off $60,000 from that aggregate net value of the estate. You look further and you say: "Are there any dependent children here under 21 years of age? Answer: "Yes, there are four of them." Then you go further and take off another $40,000. You do not look at the will, you do not look in the absence of a will to see what provision the law of a province says each widow shall receive or each dependent child shall receive.

There are a couple of features that one might comment on in that respect. The first is that this has simplicity. The second is that in the future you will not have taken what it is not the function of parliament to take, it is the

function of the legislatures of the provinces whose rights must be scrupulously protected. So we leave it to the legislatures of the provinces to determine what benefit the wife shall be entitled to and what rate shall be paid to the testator in making provision for the family and still we leave it to the law of the province to say what provision the widow shall be entitled to before provisions of the will shall have effect. For instance, in some of the provinces, I think in most of the common law provinces you have legislation which gives the dependant relief. At least in Ontario it is provided that the testator may not part with his property by will without first having made adequate provision for those who are dependent upon him.

Now, that is one of the functions of the legislatures of the provinces and we have proceeded here with a view not only to recognize in all respects the established principle of policy but to keep before us at all times the necessity of leaving strictly to the provinces their exclusive jurisdiction over property and civil rights. Therefore these exemptions apply in the circumstances named here. For instance, if there is a widow there is an exemption of $60,000; if there is a dependent child under twenty-one, in that case there is an exemption of $10,000 and so on down the line where the widow receives the $60,000 and where the child receives the $10,000.

Now, there is probably one other observation I might make on that point, in case the point raised in the submissions of some of the women's organizations is weighed further. I think I should say this, that to have moved up from the $40,000 to the $50,000 the basic exemption would have meant that you are leaving only $10,000 of additional exemption in the case where the deceased leaves a widow. Again, thinking about the preferred position of the wife or widow under our law, we felt that $20,000 was certainly not too much of a distinction to make between cases where there is no widow and cases where there is a widow.

I think I have said enough or perhaps too much on exemptions, Mr. Chairman.

Mr. JONES: Mr. Chairman, the women in connection with this matter refer, in support of their argument which you have been discussing, to the fact that under the United States Revenue Act a husband may bequeath to his wife half of his estate at his death exempt from United States inheritance tax. I think they go on to say that the Canadians are archaic in that respect. I wonder if you could comment on that point that they raise?

Mr. FLEMING (*Eglinton*): We think we have as good a bill here as they have in the United States, in fact perhaps in modesty we think we have a better bill. It is true that the law of the United States makes that provision. We have gone some considerable distance beyond the law hitherto existing in providing wider exemptions in the case of the estate of a husband dying leaving a widow surviving and whatever might be said for the conception of community property under the civil law it has not been recognized in the law of nine provinces of this country, not taking anything away from the position—

Mr. BENIDICKSON: Or in the United States.

Mr. FLEMING (*Eglinton*): Well, there are some fourteen states of the union in which the principle of community property has been recognized.

Mr. BENIDICKSON: Originally I think it was only one.

Mr. FLEMING (*Eglinton*): I am told it is now fourteen. So perhaps anyway by this legislation we are taking nothing away from the principle of community property under the law of Quebec, but because it has not been recognized in the other nine provinces we do not think we would be justified

in placing our federal taxing legislation on the basis of an assumption in that respect that has not been carried into the property laws of these other provinces.

Mr. DRYSDALE: Mr. Chairman, the minister raised the concept of infirmity. I was wondering since it comes into the sections rather strangely as to the present application of the definition—just looking at it very briefly it has reference to "any mental or physical infirmity rendering that person incapable ordinarily of pursuing any substantially gainful occupation." The first thing that comes to mind is what kind of test is necessary to establish the mental or physical infirmity? Will it be by a medical certificate or will it be done with the department assessment of the problem? Secondly, what is the difference between a gainful occupation and a substantially gainful occupation? The distinction they have of physical infirmity says any substantially gainful occupation, because the person might be physically or mentally infirm as to the particular occupation that they were pursuing and yet they would not be mentally or physically infirm enough to pursue a substantially gainful occupation?

Mr. FLEMING (*Eglinton*): Those are good points, Mr. Chairman. Perhaps I could take them in order.

The determination of what is infirmity is a matter for the assessing authority. The test of infirmity is assumed at the date of death of the wife in this particular case. If it is claimed in that case that the husband is infirm within the definition contained in this act then the burden will rest upon the executor in that case, the personal representative to furnish affirmative proof to satisfy the Department of National Revenue that the surviving husband is incapable ordinarily of pursuing any substantially gainful employment.

Now, as to what will be required, I do not think one could limit the kind of evidence that will be required. Obviously in any case of that kind if it is submitted by the personal representative that the surviving husband is physically incapable then I would take it there would have to be medical evidence of the fact. In other cases if it is claimed by his personal representative that the surviving husband is mentally incapable then again there would have to be medical evidence. If the man, for instance, is confined at the time in a government hospital I would think that is sufficient evidence and that we would feel that at that time he is incapable of pursuing a substantially gainful occupation.

Now, on the second branch of the question, the matter of pursuing another substantially gainful occupation, I think we can conceive of situations where a surviving husband at the time of his wife's death is capable of doing some things, perhaps looking after himself, but quite incapable of doing anything more perhaps than a few little things that might—suppose, for instance, as a matter of therapy he was asked to take up knitting and sold a few knitted goods, I do not think anyone would say that is a substantially gainful occupation in that case.

These words will have to be given a reasonable interpretation. It does not mean that he has to be able to pursue the calling for which he was qualified by training but it is any substantially gainful occupation and I think in the interpretation of this provision the Department of National Revenue can be relied upon to be reasonable and sensible.

Mr. DRYSDALE: Mr. Chairman, what does the word "substantially" add to "gainful occupation"?

Mr. FLEMING (*Eglinton*): That is what I was trying to illustrate by my reference about the knitting. Let us take a man who is paralyzed except for his hands and arms. As a matter of therapy he is advised to take up knitting and as a result of knitting he sells a few things like socks, wash cloths

and so on. He might sell those. That would be a gainful occupation. All these clauses we are looking at here are for the benefit of the taxpayer in the case of an estate to provide that that estate shall not lose the benefit of the extra $20,000 exemption simply because he can do a little knitting and earn himself a few dollars. It has got to be a "substantially gainful occupation." In other words, if he could not carry on an occupation which would provide him with a livelihood, not just a little pocket money, then the department is not going to say this estate is not entitled to the exempion of $20,000.

That word "substantially" is written in there for the benefit of the estate in that case.

Mr. DRYSDALE: Would it not have been simpler to perhaps have set an average exemption of, say, $50,000 and relate it to infirmity, perhaps increase the exemption as to infirmity; in other words, removing the concept of infirmity because we can see potential administrative difficulties and I was wondering if there would be any saving to the department in the direction of more simplicity?

Mr. FLEMING (*Eglinton*): The department is quite prepared to pass on the problem raised by the definition of infirmity. What is more, we do not think it is fair to put on a basis of equality an estate where the husband is a healthy able man fulfilling a gainful occupation, quite able to look after himself on the one hand, and the estate of the wife where a surviving husband is incapable by reason of mental or physical infirmity of filling a gainful occupation. In other words, we put the estate of the deceased husband whose wife survives him in a category where we say that the estate is entitled to special consideration and therefore we will give the estate a $60,000 exemption and we think that there is merit in giving some special recognition also to the estate of the wife where a surviving husband is in these circumstances dependent wholly upon the wife and where he is not able to go out and earn for himself. Surely in those circumstances some provision should be made to take account of the virtual dependence of the surviving husband and therefore as far as taxing legislation can do it we create a benefit in that estate intended for the benefit of that dependent husband.

The CHAIRMAN: Now, clause 7.

Mr. THOMAS: Mr. Chairman, in connection with that infirmity definition, what about elderly retired people? They both might be quite healthy. If the husband drops off the wife is provided for. If the wife drops off what about the husband? He may have severed all his business connections and be living on the same kitty they have both built up over the years.

Mr. FLEMING (*Eglinton*): If he is infirm in the statutory sense the estate will be entitled to a $60,000 exemption. It will be a matter of determination in every case.

Mr. PALLETT: Is not the key word "substantially" there?

Mr. FLEMING (*Eglinton*): Yes.

Mr. VIVIAN: Mr. Chairman, I am concerned with the same point. Take the case of a surviving husband aged 55 to 70 who is on a limited pension who by reason of age is unable to do as much as he did formerly and because of his age is unable to obtain satisfactory gainful employment. The point I would like to have the minister answer is, why was not some age factor made mention of here specifically? This is going to be very difficult to determine to say what is infirm and what is not infirm over age 65.

Mr. FLEMING (*Eglinton*): Mr. Chairman, the idea of infirmity is not new. This is not a new conception that we have introduced into the law. It has been in the Succession Duty Act for the last seventeen years and experience has not shown any serious difficulty in the interpretation and administration in that

respect. Frankly, I would say in reply to Dr. Vivian's question that it alone is not a satisfactory test in this case. You may find in the case of people over 65 years of age there are some men of 65 who are active and even at the height of their earning power and in these cases where there is no ground for giving the wife's estate in that case the maximum exemption of $60,000. On the other hand there are lots of people who are infirm long before they reach 65. Therefore, to select some particular age or to select age arbitrarily as the basis of entitlement in these cases we think would not be sound or fair. We are trying to make this as equitable as possible, having regard to all circumstances and we do not anticipate difficulty over the interpretation of infirmity.

The CHAIRMAN: Clause 7?

Mr. BENIDICKSON: It is right at this particular clause, Mr. Chairman, that I say more than anywhere we not only have available to us in Ottawa but should have available to us first-class evidence and not second-hand evidence such as we are getting. I have in the dinner recess looked up the Banking and Commerce discussions that took place in 1948 when the Income Tax Act was presented to it and I think the fundamental error that we have committed here is proceeding with our discussions too soon after the presentation of the bill and before the public is aware that these discussions are taking place.

I have called a couple of these women's organizations in Ottawa. They were not aware that we were discussing the problems which they have given quite a number of years to studying through their committees. I have reason to believe that they would like to be heard. I find that at least a week elapsed between the reference by the house to the committee of the study of the Income Tax Act before the committee got under way with its discussions. I think that in itself is important. But I find that when the first sittings of the committee took place that Mr. Macdonnell who was then acting for the opposition raised the question of bringing possible witnesses. He said that he was not aware of anybody who might want to be heard but he simply wanted to know what the attitude of the committee would be.

It is perfectly true, as Mr. Fleming said, Mr. Abbott said at that point he thought as they proceeded with the bill they would find that witnesses perhaps were not necessary as they were simply revising the bill and not bringing in new evidence.

In any event, he said that it would be something that the committee, from time to time, would have to make its mind up about. Here we are discussing, and probably concluding a discussion on a matter that is of keen interest to women's organizations whose senior officers happen to be right here in the city of Ottawa, who know nothing about the fact that these deliberations are being conducted.

Again there is so much in these briefs it is impossible for the minister or anybody else to advise us, even in a very proper resume as he gave us.

In regard to some of these points I think the committee must appreciate the feelings that are back of these briefs. We just cannot take a short summary, such as the minister gave with the best of intentions.

Someone made reference to a criticism of a denial of the practice, and that community property was rather archaic. That statement was attributed to the Canadian committee on the status of women. Actually they use pretty strong language but that particular phrase was not theirs. That phrase came from a group of men who belong to the Canadian tax foundation. They said, and I quote, with respect to this section on community property:

> "It is submitted that this thinking is archaic in Canada and is lagging behind the rest of the world in affording relief. The bill does not recognize that a wife is capable of contributing to the husband's estate by her services, her thrift and her savings."

The women's brief itself, which my friend was quoting from said:

> "It is regrettable indeed if we must continue to make excuses or apologies for outmoded legislation in our state finances."

You could say, therefore, that feeelings are strong in a matter of this kind. I think people of this kind are entitled to be heard.

There are a lot of other points that come up in the briefs which no one could present to this committeee without making a very long speech.

The women quoted the president of the Montreal Trust Company, for instance, as saying that the basic exemption should be $75,000. They say that this gentleman in 1953 claimed that even if the exemption was $75,000 and had been in effect in 1951 there would have been 36 per cent fewer taxable estates but only 6 per cent loss of revenue.

These kinds of things are quite worthy of consideration, I think, and without careful presentation by the people who have some zeal and interest in this subject, we are just going to be moving too quickly.

When it comes to the question of exemption for the widower of a female deceased I think practically all the briefs complain that this provision is restrictive and does not seem to be logical, modern or justified. I find that women themselves are the first to say that in the first place they do not think that this inequity should be provided there. They also point out that the exemption of $60,000 hinges upon the existence of a child. They can conceive that a husband may very well be left infirm, irrespective of the existence of a child, and would certainly find it difficult to maintain himself if infirmity is the test for which the exemption is provided. In the opposite circumstances it is a clear exemption.

Again a men's organization, the interprovincial farm union council, has this to say on this point:

> "We would like to see the act exempting a mentally or physically infirm husband at $60,000 regardless of children. In the case of an able man we feel that lowering the exemption from $50,000 to $30,000—"

It is now $40,000.

> "—is too drastic and would urge that the government consider this clause with a view to using the exemption of $50,000."

There are a lot of representations on this subject. I simply reiterate, we are not covering them in this fashion.

Mr. JONES: I do not understand, Mr. Chairman, how Mr. Benidickson can say, first of all, that we are getting the representations of the women at second-hand. I thought every member of the committee had a copy of the brief that the Canadian committee on the status of women presented to the minister.

Mr. FLEMING (*Eglinton*): I understand that it was circulated quite widely.

Mr. JONES: I would say we received this at first-hand.

Just to clear up the record in regard to the reference to my earlier comment; I was quoting when I used the word "archaic" from the brief of the Canadian committee on the status of women. It may be, as Mr. Benidickson has said, that the Canadian tax foundation has used the same or similar words but the quotation I read was from the Canadian committee on the status of women. That is where the quotation came from.

In the brief which I have and in some of the other briefs I have here, they have set out their thoughts in this regard at great length and in great detail.

Mr. FLEMING (*Eglinton*): Mr. Chairman, with all respect to Mr. Benidickson, I think the committee is well aware of the principal points which were

put forward in the brief. This is one brief which was, as I understood it, sent to all members. Everyone is fully informed as to the representations and views that they entertained.

It is perfectly open to any member to take up those ideas and press them if he thinks they are justified in this committee.

If the committee is going to hear one organization then it will have to hear all organizations, we cannot pick and choose.

With respect, Mr. Chairman, there was not any suggestion held out that the purpose of sending this bill to this committee was to hear organizations at first-hand. The purpose was to afford the opportunity for critical and detailed examination that the hon. members have now of going over this in the way we are doing now, picking up every clause, or every expression that anyone wished to ask questions about.

Mr. BENIDICKSON: I wish my hon. friend had made that clear at the resolution stage.

Mr. FLEMING (*Eglinton*): I did.

Mr. BENIDICKSON: I said very clearly that I anticipated that these people would be called.

Mr. FLEMING (*Eglinton*): I made that quite clear in my remarks. I referred to them here this afternoon, and if my friend will look at page 2104 of Hansard, the second column, he will see there that I made reference to the briefs of these organizations which would be before the committee.

There never was a suggestion that the purpose of sending this bill to the committee was to have organizations heard again who have already been heard before the bill was brought here.

The government has to take the responsibility in all taxing legislation in the last analysis for what it submits to the House of Commons.

Without subtracting one iota from the opportunity in this committee for the fullest discussion, the fullest inquiry into the meaning of every phrase here, or what anybody has submitted in regard to it, I do submit, Mr. Chairman, that the way in which the committee is proceeding now is the proper method having regard to the business of the house and the fact that there is another chamber that this bill must pass through after it leaves the house. I think we are not proceeding with undue expedition.

As I say, if Mr. Benidickson, or any other member wants to take up these ideas that are put forward, not just for further reiteration of them, but to take up the idea and sponsor the idea in this committee, that is a different matter. If he wants to sponsor any of these ideas that are being mentioned, I will be happy to deal with them. If an amendment is brought in then the committee will be in a position to deal with that amendment. Any member could bring in an amendment to give effect to these various ideas.

Mr. Chairman, there is not much use of our talking about increasing these exemptions. Everybody would like to increase exemptions, but when the time comes to increase some of these exemptions to $75,000 I hope I will be the minister of Finance.

The fact is that under the present circumstances we have gone further than the old act did. I do not remember hearing Mr. Benidickson or anybody else arguing for increased exemptions under the old act, year by year.

Some Hon. MEMBERS: Hear, hear.

Mr. FLEMING (*Eglinton*): We are going further than parliament has ever gone before in creating these exemptions.

With respect, I do urge that we be realistic about the situation. We would like to go further; who would not, as I said earlier today, with regard to exemptions? We have to pay for national defence, we have to pay for social security and many other things, and we have a deficit this year too.

Mr. LOCKYER: It is quite apparent that the minister has gone a long way in regard to incorporating these suggestions already.

Mr. CHOWN: I would suggest that if Mr. Benidickson wants to hear these briefs rehashed in detail, we appoint him as a special committee of one, and he better get his politics out of his system and come back here to do what we normally do; that is what we are doing now, going through this clause by clause.

An Hon. MEMBER: He could go and visit the ladies.

Paragraphs (*a*), (*b*) and (*c*) agreed to.

On paragraph (*d*):

Mr. BENIDICKSON: In that connection, there is a reference to the language in respect to a child over 21 being treated similarly, as in the language that is now used in the income tax in respect of a child that is still at school, or at university, notwithstanding the fact that the child is over 21 years of age, being wholly dependent for that purpose.

Mr. FLEMING (*Eglinton*): I do not think the same holds true in this legislation. This legislation deals with the passing of estates, and the other legislation is a matter of provision for exemption out of income tax year by year.

Mr. BENIDICKSON: There is a dependency that could probably be tied to it at the time of death, or something of that kind.

Mr. FLEMING (*Eglinton*): That is true, but the dependency here is between the accounting and the fact, and there is a capital value passing. I think that is the difference.

Mr. BENIDICKSON: With respect to paragraph (d) itself, what has been the practice in regard to the deduction of a charitable gift?

Mr. LINTON: Mr. Chairman, much the same thing is provided here. We have the same test of an organization in Canada.

Mr. BENIDICKSON: You would now have the portion of the tax attributed to the total of the chargeable gift?

Mr. LINTON: Under the Dominion Succession Duty Act, no.

Mr. BENIDICKSON: Under this bill?

Mr. LINTON: No.

Mr. PALLETT: Mr. Chairman, on this clause, does anyone in the department have the figures as to what percentage of estates would be taxable under the new legislation that you propose? It must be a very small percentage.

Mr. LINTON: You are speaking of the total number of estates and the total number of deaths in Canada?

Mr. PALLETT: Yes. I suppose we are dealing with a very small percentage?

Mr. LINTON: Yes, it is very small.

Mr. FLEMING (*Eglinton*): We start out by eliminating every estate under $50,000, and then we start allowing these other deductions as well, and that eliminates a good many more.

If you take the case of a deceased man leaving a wife and four children, there is not a cent of tax levied against that estate unless the estate is over $100,000.

Mr. LINTON: Probably, Mr. Chairman, there would be in the neighbourhood of 4,000 estates in a year which would be taxable—that is, Canadian estates.

Mr. PALLETT: You do not know how many estates are involved in all?

Mr. LINTON: No, but it is very much larger.

Mr. FLEMING (*Eglinton*): We have about 200,000 deaths in Canada.

Mr. PALLETT: That was the figure I was interested in.

Mr. FLEMING (*Eglinton*): It means that you are dealing with tax on estates of about two per cent of those who die in Canada.

Paragraphs (d) and (e) agreed to.

On paragraph (f):

Mr. THOMAS: Could we have a brief explanation of the application of this paragraph on compensation paid under the regulations made under section 5 of the Aeronautics Act?

Mr. FLEMING (*Eglinton*): There is no change providing for that in the present act, Mr. Thomas.

Mr. Chairman, may I ask for an amendment to paragraph (f) of subclause (1) in clause 7 by adding before the figure 112 in line 35, the figures 64, 78, and then 112. Perhaps Mr. Bell would move that, Mr. Chairman.

Mr. BELL (*Carleton*): I will so move that amendment, Mr. Chairman.

Mr. FLEMING (*Eglinton*): This amendment is to include two more sections of the Royal Canadian Mounted Police Act.

Mr. DRYSDALE: I will second that amendment.

The CHAIRMAN: The motion is moved by Mr. Bell, seconded by Mr. Drysdale that Bill C-37, an act representing the taxation of estates, be amended by striking out line 35 on page 10 thereof and substituting therefore the following:

"The War Veterans' Allowance Act or section 64, 78 or 112.."

Motion agreed to.

Mr. FLEMING (*Eglinton*): Mr. Chairman, may I amend an answer that I gave Mr. Thomas a moment ago? I was wrong in stating that these provisions in relation to compensation paid under section 5 of the Aeronautics Act are included in the present Dominion Succession Duty Act. That kind of compensation has been treated as an exemption. These words are not written into the Dominion Succession Duty Act but it has been interpreted to the same effect.

Paragraphs (g) and (h) agreed to.

Subclauses (2) and (3) agreed to.

Mr. BENIDICKSON: Seven on division.

Mr. FLEMING (*Eglinton*): Mr. Chairman, I am just appearing before this committee as a witness, however, would my friend Mr. Benidickson mind my asking him on what basis he is objecting to clause 7? I am not clear yet as to the objection he takes to clause 7.

Mr. BENIDICKSON: I do not feel that I can approve of it. I do not feel that I have had enough evidence on this particular point. I would like to have heard from these other people, and I might say I am following a very good authority of 1948, none other than yourself.

Clauses 7 and 8 agreed to.

On clause 9—deduction from tax: provincial taxes.

Mr. FLEMING (*Eglinton*): Mr. Chairman, in view of the importance of this section probably you would like a word of explanation from Mr. Linton as to the scope of the clause which relates, as you will see, to the deduction of provincial taxes in computation of the tax under this bill.

Mr. BENIDICKSON: I would like Mr. Linton to comment also on the reference in the chartered accountants' brief. I think they question whether or not the words "outside Canada" should be used.

Mr. LINTON: Yes, Mr. Chairman.

At least two of the briefs assumed that the words "outside Canada" should be "outside of the prescribed provinces", but that is not an error.

This clause puts into effect the credit for provincial tax which is wholly related to tax on situs. A later subclause in clause 9 determines the situs of all property. When property has situs in a province which taxes, then a credit results, whether in fact the province taxes that property or not.

If the province taxes property other than what has situs within it then there is no credit. That is extended through to property we tax outside of Canada devolving to persons domiciled in a taxing province inasmuch as the province can and does tax that man's property.

Mr. BENIDICKSON: There was a suggestion, for instance, that property in British Columbia might be taxed, of course, for a resident in Ontario, but the deduction under this clause would not be applicable.

Mr. LINTON: That is so.

Mr. BENIDICKSON: That is so?

Mr. LINTON: Yes.

Mr. EATON: Could I make an explanation there?

I think we could explain that a little further in this way: for example, assuming British Columbia were taxing and not renting, and Ontario was taxing, ordinarily Ontario would be required, or would, in the ordinary course of events, give a deduction in respect of the British Columbia tax.

That is to say, in effect, assuming the rates were equal, Ontario would not be netting any revenue from that property situated in British Columbia where British Columbia has a right to tax it, British Columbia in fact has a prior right, being the province of situs. They would give a credit for that. Therefore we should not, under this provision, give them the credit for that for which they would have to give a credit if they were in the taxing field.

Mr. LINTON: I do not know that there is anything more I can say on that. The change is there, and there is no test as to whether the province taxes property. The question of whether the property has situs in a taxing province is the matter that the briefs complain of, and is supposed to be an error, but is not an error.

Mr. DRYSDALE: Could you give us a simple illustration of the application of this section?

Mr. LINTON: Perhaps we should add, Mr. Chairman, that the abatement is 50 per cent of our duty on any property which has a situs in a taxing province.

Mr. PALLETT: This would only apply to Ontario and Quebec?

Mr. LINTON: Yes.

Mr. BENIDICKSON: How much notice does a province have to give in order to withdraw from the existing agreement?

Mr. FLEMING (*Eglinton*): They have signed agreements to run for the five-year life of the present federal-provincial tax sharing act.

Mr. BENIDICKSON: They could not step out with respect to one particular tax.

Mr. FLEMING (*Eglinton*): I speak subject to correction, but my recollection is the agreement runs for the full five-year period without any power of termination.

Mr. DRYSDALE: Could we have a simple illustration in regard to "the part of the tax otherwise payable"?

Mr. LINTON: Suppose you had an establishment of $100,000 and had $10,000 of this property in Ontario. One-tenth of the tax would be applicable to that and one-tenth of our tax would be applicable to that property and therefore there would be a credit of 50 per cent of that 10 per cent—an abatement of 50 per cent.

Mr. EATON: Ontario will tax that property situated in Ontario and we abate our rate at 50 per cent.

The CHAIRMAN: Does clause 9 carry?

Mr. FLEMING (*Eglinton*): In fairness, may I make this one reservation? I received a telephone call at noon from the general manager of one of the trust companies saying that he wanted to make some representations concerning this clause. It was quite apparent to me as we talked that it was on the same point that Mr. Linton has just now dealt with and which we had considered very carefully before. But I did say to him "now if you have anything you want to submit, send it forward and we will have a look at it." He is writing to me today and if there is anything new in his submission I can bring it to tomorrow's meeting, but otherwise I think it is the same representation we have had from a couple of sources already which has been reviewed.

Mr. BENIDICKSON: I appreciate your intervention in going back to our precedents of 1948. As I quickly looked over Hansard I found the chairman did invariably give to the committee copies of any representations that were received while the committee's deliberations were being carried on. I think if people are approaching the chairman with any suggestions based on that precedent, I am sure he will be willing to convey them to the committee.

Mr. FLEMING (*Eglinton*): I do not know if this particular gentleman would want to be identified or have his company identified, but if there is anything new in his representation I will acquaint the committee fully with it.

Clause 9, subclause (1) carried.

Clause 9, subclause (2) carried.

Mr. FLEMING (*Eglinton*): There is no change in substance there.

On clause 9, subclause (3):

Mr. BENIDICKSON: Now, this is a credit item to which reference was made this afternoon for taxes on foreign realty.

Mr. EATON: In our succession duty law there was no general unilateral credit in the law for foreign taxes. I do not know why that omission happened, but following the succession duty law we made a number of tax agreements with other countries and invariably we gave the tax credit for their taxes at the source if they would do the same for ours. Having written most of these agreements, we now introduce this unilateral credit whereby we give a credit in respect of foreign taxes paid on property situated in foreign countries just as we do under income tax. If any other country taxes income which flows to a Canadian, then the Canadian has in general a deduction in respect of that foreign source. It just parallels the income tax provision.

Clause 9, subclause (3) carried.

On clause 9, subclause (4):

Mr. BENIDICKSON: I notice in subclauses (4) and (5) there has been a revision since Bill 248; could that be explained?

Mr. LINTON: Yes, the revision in subclause 5 is simply of the limit to which the notch operates which is changed because the $40,000 exemption is replacing the $30,000.

Mr. BENIDICKSON: The wording is the same except for the figures?

Mr. LINTON: Yes.

Mr. BENIDICKSON: Going back to the $40,000, does that probably correct some of the instances that I gave at the resolution stage of certain places where the tax under this bill was not necessarily less than the tax under the former Succession Duty Act?

Mr. FLEMING (*Eglinton*): Generally speaking the tax on an estate in any particular bracket will be less under this bill than under the Succession Duty Act. That is not to say in other cases that will result. Something would depend upon the number of individual devolutions. For instance, if you have an estate where there are many beneficiaries, many individual devolutions of persons who under the Succession Duty Act have specific exemptions, personal exemptions, you could have in an extreme case like that a lower tax under the Succession Duty Act than you could have under this new bill. But in most cases—in fact in the overwhelming majority of cases—the tax under this new bill will be less than under the Succession Duty Act on an estate in any of the categories. The reductions are particularly material in estates up to $200,000. From that point up the reduction brought about by this present bill tends to become reduced, but in no bracket apart from the situation I have mentioned is the general effect of this act to increase the levy. When you get up to figures like half a million and above that, the tax under this bill is practically the same as it was under the Succession Duty Act.

Clause 9, subclauses (4) and (5) agreed to.

Clause 9, subclauses (6) and (7) agreed to.

On clause 9, subclause (8):

Mr. BENIDICKSON: This involves a great deal of detailed examination.

Mr. FLEMING (*Eglinton*): On subclause (8), in view of the fact it is somewhat conflicting, perhaps Mr. Linton will say a word in explanation of any submissions we have had in regard to it.

Mr. LINTON: Mr. Chairman, the aim of subclause (8) is to define the situs of different kinds of property. The reason for doing so is to simplify both the administration from the department's point of view and from the estate's point of view. The law of situs is a very complicated affair as you all know, and if you do not have some definition you have constant trouble in deciding what the situs of property is. You have different jurisdictions deciding this within their boundaries at the same time. This problem has been met in all our conventions with other countries by agreed rules of situs. The place of effective transfer is the rule of situs normally followed. We have developed these rules of situs with the idea of keeping as closely as is reasonably possible to the common law rules so that the divergence between our basis of taxation and the provincial basis will be as small as possible.

Mr. BENIDICKSON: The Canadian Tax Foundation which has given this a lot of close study has said in many respects by statute now depart from long-standing rules under the common law as to situs of these various types of property and in several places I was disturbed to have them assert that you are actually creating a difference between situs under this statute and situs as it has long been determined by the common law in provinces that collect their own succession duty. In addition to that there are variations with the situs as contained in our tax treaties with other countries and as now established in our statute. Could you indicate whether you have altered the existing rules?

Mr. LINTON: Yes, we can do that. To speak generally, our rules as between Canada and foreign countries follow the rules in the treaties as nearly as possible, but the rules in all the treaties are not quite identical since they were arrived at by negocation.

Mr. BENIDICKSON: They also asserted that even if we did by this statute provide a new rule as to situs in a certain property that the tax treaties would override this. There is a provision in the tax treaties themselves which give them paramount.

Mr. LINTON: That may be so, but someone said they probably will have to be renegotiated in reference to this act.

Mr. EATON: On stocks, particularly where there is a common law rule, this is greatly to Canada's advantage to have the situs and shares in Canadian companies defined as Canada and we thought we won quite a victory over the U. K. & U. S. boys in getting them to agree to that rule, which they did. That is one of the cases where we did depart from common law rule.

Mr. BENIDICKSON: One of the simpliest ones, say you are changing the well-known rule with respect to the situs of a negotiable instrument; is that provided?

Mr. LINTON: Yes, to a degree and the reason is for the sake of simplicity. One thing we wanted to avoid was as much inquiry of a technical nature as possible. The rules were designed to avoid having to ask where they are going to transfer property, and whether instruments were under seal or not. We tried to make what they had to report as simple as possible.

Mr. BENIDICKSON: It makes it simple for the administration, but does it create any difficulties with the taxpayers in Ontario and Quebec?

Mr. LINTON: Well, in the odd case it will be advantageous and in other cases it will not. It will depend on whether or not the rules we have determined coincide with what the province does. It would be impossible to follow the same rules which the provinces follow. It is very helpful to executors to have these simplifications inasmuch as it would not be difficult for us to ask all these details on a long return but it would be troublesome for them to pick them up. Often they have not access to the instruments on hand and if we do not know where the transfer agencies are and they do not know where they are going to transfer them, it makes it very difficult. The simplification is not purely from the department's administration's point of view, but from the executor's point of view as well.

Mr. BENIDICKSON: This continues to worry me. I think I would have to stay on division on this at the moment.

Mr. FLEMING (*Eglinton*): There is a printing error on page 16 in the last line of clause 9 of the bill. The figure 39 is a printer's error. It should be 38. Perhaps we could have an amendement. Maybe Mr. Bell would move this amendment.

Mr. BELL (*Carleton*): I move that Bill C-37, an act respecting the taxation of estates, be amended by striking out line 19 on page 16 thereof and substituting therefor the following: "38, be determined as provided in that section."

Mr. DRYSDALE: Mr. Chairman, in paragraph (b) referring to death where they distinguish between companies incorporated federally and those incorporated provincially just sort of looking at it at first blush does it make any difference as to extra provincial companies?

Mr. LINTON: Mr. Chairman, the reason for making a distinction is the basic rule we had and these rules for provinces were taken from the rules for national as against foreign estates. The rule was the place always of incorporation. Well, unless you make a special rule for dominion-incorporated companies you would have them all having a situs in Ontario.

Mr. DRYSDALE: Oh, I see.

Mr. LINTON: And again we think we are closer to the common law rule by doing this than by regarding them all as being in Ontario.

Mr. DRYSDALE: Well, a company incorporated provincially in one province and extra-provincially in another, where would the place be?

Mr. THORSON: Well, it is incorporated in only one place, Mr. Chairman. It may have a licence issued under the Extra-provincial Incorporation Act, but you will still have one place only of incorporation.

Mr. BENIDICKSON: This is new, where you set out so many paragraphs—(a), (b), (c) and so on, that clause 38. I take it it is easier for one to read the statute, it is easier and clearer to find out whether there is agreement between the definitions than in Bill 248. I think this is an improvement.

Mr. FLEMING (*Eglinton*): We still cannot coax you to vote for it even though there is an improvement in it?

Mr. BENIDICKSON: I will have another look at it.

The CHAIRMAN: Well, that is 9.

Mr. BENIDICKSON: It is a drafting improvement. I admit that so far.

The CHAIRMAN: Clause 10?

Mr. BENIDICKSON: I will have another look at it.

Clause 10 agreed to.

On Clause 11—Returns:

Mr. BENIDICKSON: We hear a great deal about six months being an inadequate time for settlement of anything as complex as an estate, and the difficulty of getting professional services.

Mr. FLEMING (*Eglinton*): Excuse me, we have not come to that one yet.

Mr. BENIDICKSON: I though you had carried 10?

Mr. FLEMING (*Eglinton*): But that is not the assessment. Clause 11 just deals with returns. You have got to make returns within six months.

Mr. BENIDICKSON: Well, will interest not run from that—

Mr. FLEMING (*Eglinton*): We will come to the assessment clause later, but this is the clause that requires the return by the executor within six months after the death of the deceased.

The CHAIRMAN: Does clause 11 carry?

Mr. BENIDICKSON: Subclause 2 is pretty broad under administrative power.

Mr. FLEMING (*Eglinton*): Well, it is the same principle as you have and have had for years in the Income Tax Act. There is a right on behalf of the Department of National Revenue to require the filing of a return. It is precisely the same power as was given to the department under the Income Tax Act as far as income tax returns are concerned.

The CHAIRMAN: Will clause 11 carry?

Clause 11 agreed to.

On clause 12—Assessment.

The CHAIRMAN: There is no change until you get down to (5), new in part.

Mr. FLEMING (*Eglinton*): Mr. Chairman, perhaps as there is a change in subclause (5) you would like to hear a word of explanation from Mr. Linton on that. There is no change in substance in the first four subclauses of clause 12.

Mr. LINTON: Mr. Chairman, by subclause (5) the minister's power to assess and reassess is considerably curtailed as against the old act. But the curtailment is accompanied by doing away with the certificate of discharge. Under the present act he can assess and reassess at any time providing a certificate of discharge has not been issued. Here he can only reassess within definite limitations, but it is not necessary for them to apply for a certificate of discharge, the limitation becomes automatic.

Mr. PALLETT: There have been some interesting decisions under the Income Tax Act on the definition of the word "assessment."

Mr. FLEMING (*Eglinton*): It is those nil assessments.

Mr. PALLETT: Well, it may hit some under the Succession Duty Act.

Mr. FLEMING (*Eglinton*): You do not have that in the Succession Duty Act. That nil in the Income Tax Act is the albino of its breed. There is no such thing under the Succcession Duty Act nor will there be in this act.

Mr. PALLETT: I do not follow that.

Mr. FLEMING (*Eglinton*): After you get a notice of assessment under this act it will be an assessment for all purposes including nil. It may result in showing no total, but it will also be a nil assessment in the sense of the nil assessment that preliminary notice of assessment does show under the Income Tax Act.

Mr. THORSON: Perhaps if I might elaborate on what a nil assessment return represents under the Income Tax Act. It is because of the provision for business losses where a person wishes to establish a minus factor in his income position. Under this statute that sort of issue cannot arise, of a carry forward or carry backward of business losses or farm losses for averaging of incomes. That, I think, is the difficulty that has been encountered under the Income Tax Act.

The CHAIRMAN: Shall clause 12 carry?

Mr. PALLETT: I do not want to worry this point but a person files a return and the estate is not dutiable and they show it and you might write them later saying, "We would like to have a return on this estate." Then, four years passes and someone in the department says, "Well, this real estate was actually worth ten times more." Now, what recourse would the department have after the four years' time?

Mr. LINTON: Well, I suppose if they had not assessed they would still be able to assess.

Mr. PALLETT: That is the point I am getting to.

Mr. FLEMING (*Eglinton*): Take it both ways, Mr. Linton—take the case where there has been an assessment and follow it through and the case where there has not been an assessment and follow that through.

Mr. LINTON: Well, if there has not been an assessment it would still presumably be open; if there had been an assessment it would be closed at the end of four years in respect of these death benefits.

Mr. PALLETT: So in point of fact the fact that there is no assessment is the same as a nil assessment under the Income Tax Act?

Mr. FLEMING (*Eglinton*): In my view you can reassess any time within four years under the amendment that has been produced this year in the resolutions form. That power to reassess is limited to four years in ordinary cases.

Mr. PALLETT: But in this act?

Mr. FLEMING (*Eglinton*): We have got the same rule here, the four-year rule, but that is a reduction. You see, formerly you had a six-year rule under the Income Tax Act.

Mr. PALLETT: But there is nothing to stop a person assessing an estate after four years?

Mr. LINTON: If it has never been assessed at all.

Mr. PALLETT: If the papers have been filed, if an assessment has been made, say, probably it is a remote contingency but it is still there.

Mr. THORSON: Under 13(1) the minister is under an obligation to assess with all due despatch.

Mr. FLEMING (*Eglinton*): I think the case that Mr. Pallett is putting is perhaps a case where there was not a return and four years have passed and Mr. Pallett's case—

Mr. PALLETT: No, I am putting the case where you have written a letter and demanded a return.

Mr. FLEMING (*Eglinton*): And this return has been made and you say no assessment has been made.

Mr. PALLETT: Well, it is not a taxable estate but they just accepted the valuation as filed and therefore the estate is not taxable. Then eight years later, for some reason or other, someone in the department pokes into the estate and sees this real estate was actually worth ten times the value as accepted at that time.

Mr. THORSON: I think the answer to it, Mr. Chairman, is that the assessment would still be open.

Mr. LINTON: You see, Mr. Chairman, if you do not have that you would have people escaping liability through failing to file returns. We will have people coming to us saying, "My wife died in 1894—"

Mr. PALLETT: But this is one where a return was filed.

Mr. LINTON: But if you left it open you would have people who did not file escape.

Mr. BENIDICKSON: What is the true definition of assessment?

Mr. THORSON: "Assessment" is defined only to the extent that the assessment is made for some specific purpose. Otherwise it is as any other definition that is ordinarily attributed to it.

Mr. JONES: Perhaps I might help in advancing what Mr. Pallett is after here. How could an executor, for example, under that clause receive from the department an assessment—

Mr. LINTON: It is so marked.

Mr. FLEMING (*Eglinton*): It is marked "Notice of assessment." It is a prescribed form. It has that heading and it has got a serial number on it and it tells the taxpayer about the fact of assessment.

Mr. JONES: Even when there is a nil return perhaps when there is no tax payable?

Mr. FLEMING (*Eglinton*): The assessment is issued where there is anything to assess. If there is nothing to assess no assessment is issued.

Mr. JONES: Well, the point I think Mr. Pallett is making is that in cases of estates that are not originally taxable therefore no assessment would be made the four-year rule will not come into operation. That is the difficulty that he is raising.

Mr. FLEMING (*Eglinton*): Well, is it a difficulty? You see, these assessments like the Canadian system of income tax is a self-assessment system. The individual taxpayer in the first instance makes his own assesment and he makes up his own return to assess himself and shows his taxes. In those cases while the assessors in the department review this particular return as thoroughly as they can they find no reason to assess; in other words, no reason to conclude that there is any tax payable and then for some reason or other discover later and it may be under conditions for which there is a very serious responsibility on the taxpayer that—

Mr. JONES: That is the point. On making this inquiry if you get yourself in the position of the executor who is primarily liable for the payment of the tax and executors do like to be in the position of clearing themselves with the estate. Now, if you came into a position such as has been outlined here where there is no extra assessment made and he disbursed the funds of the estate then he has no protection under the four-year rule referred to here.

Mr. FLEMING (*Eglinton*): Well, how can you extend any exemption to him because reassessment in that case is depriving the department of a right it must have in the interests of sound and fair enforcement to insist that it have that right in cases where there has not been an assessment.

Mr. JONES: The question here is the relationship or the responsibility of the executor, it is not a question of depriving the department of going after —supposing if it is subsequently found that the estate is taxable. The executor may have disposed of the assets but he is still primarily responsible.

Mr. PALLETT: You could put this case, sir, that you file estate A to get your succession duty release in writing and that is found to have a tax of $30,000 paid. So at the end of four years that estate is free and clear. Estate B is filed to get release as well, it is not taxable. At the end of four years that estate is not clear.

Mr. LINTON: No, Mr. Chairman, but as far as the executor's responsibility is concerned there is a provision relieving him of any liability if he has exercised all due diligence.

Mr. PALLETT: Even apart from the executor's responsibility.

Mr. LINTON: If somebody has filed a non-dutiable return and has not declared all the assets he is still liable for it.

Mr. PALLETT: The liability is the same regardless of whether it is dutiable or not.

Mr. LINTON: If it is found dutiable originally it will get a more careful going over so the likelihood of anything following it is much smaller.

Mr. JONES: Is there a precaution in the bill in the case where an asset is subsequently found to be not properly declared by an executor not through any intention on his part?

Mr. LINTON: Oh, yes, this provision to which I referred where if he has exercised all due diligence he certainly has cleared himself there.

Mr. FLEMING (*Eglinton*): Will you look at the next subclause, line 38, exercised all due diligence and took all reasonable precautions to ensure that the amount so payable by him was paid in full?

Mr. BENIDICKSON: They are new words, they have greatly improved it.

Mr. DRYSDALE: Is not four years sufficient whether there has been an assessment or not? Why cannot the four-year period apply to the provision you are setting?

Mr. LINTON: Excuse me, four years from when would you make it? If you got a return filed with very little in it the work done on it is naturally minimal and if there is to be a closure I suppose we would have to give a more detailed assessment.

Mr. DRYSDALE: But on the other hand why should the executor have tax hanging over his head indefinitely?

Mr. LINTON: He has not if he has fulfilled his obligation, if he has exercised due diligence and made full disclosure.

Mr. DRYSDALE: Then this would cover the executor after four years?

The CHAIRMAN: Well, it is clear if he has exercised due diligence.

Mr. PALLETT: If he has paid $26 tax he is clear. The estate paying $26 tax is clear after four years.

Mr. LINTON: Providing there is no fraud.

Mr. FLEMING (*Eglinton*): The executor is clear if he has exercised due diligence.

Mr. PALLETT: But the estate?

Mr. LINTON: The estate is not completely clear, he is clear.

Mr. PALLETT: I just wanted to bring it up for your guidance.

Mr. DRYSDALE: I think the minister should take steps to finally clear it off rather than going to take another look at it and maybe we will turn something up.

Mr. FLEMING (*Eglinton*): Under these self assessments we are putting an onus on the taxpayer to make full disclosure and an onus on the executor to make himself a full disclosure. He must do this with due diligence and he must make a declaration that he has made that kind of search and has disclosed all the assets.

Mr. DRYSDALE: What you are saying is that the department has two standards, one, if the tax is paid they are going to look at it very closely; if there is no tax to be paid they are just going to glance through it very briefly if at all.

Mr. PALLETT: Could you put in some clause such as this: where an executor requests an assessment on a non-taxable estate it should be subject to the same careful scrutiny as a taxable estate.

Mr. JONES: I do not think we should pass over the "due diligence" quite so lightly, because it does seem to me an executor would have to be in a position to prove due diligence. He has the value of having some sort of departmental ruling to the fact that he has declared the assets.

Mr. BENIDICKSON: Formerly you had a certificate of discharge but now it has gone.

Mr. FLEMING (*Eglinton*): I would like to have Mr. McEntyre, the deputy minister, say what this means and the costs that go with it.

Mr. J. G. McENTYRE (*Deputy Minister, Department of National Revenue*): Mr. Chairman, the costs of the administration of the taxation division are, of course, borne by the public of Canada and if additional duties are placed on the staff of the department to make thorough investigations of all these returns, where little or no revenue is anticipated, then, of course, the costs of administration will go up.

Now, with the self-assessment procedure that we have both for income tax and succession duties we feel that we certainly should be able to rely on executors and others to make out the returns, to complete them fully so that when we get the return it is not assessable or shows very little tax payable we feel that we can spare our staff from examining those as thoroughly as perhaps they may examine the more important returns. For that reason we feel that perhaps the public would expect us to economize as much as we could in our administration.

Mr. FLEMING (*Eglinton*): It is not necessary to examine all the returns equally thoroughly.

Mr. DRYSDALE: Why could you not do it in four years? Why do you require infinity to ascertain whether or not you are going to check up?

Mr. McENTYRE: Well, we lay down a program to get through our work every year in a fairly prompt fashion.

Mr. DRYSDALE: You can reassess the big ones in four years where there is a fairly substantial amount of money involved, but where there is none involved then you require a greater amount of time?

Mr. McENTYRE: We would probably receive 4,000 assessable returns in a year and perhaps as many as 75,000 non-assessable returns.

If we had to look at the whole 80,000 returns in a thorough fashion we would have to have a staff who could look after an average of 200 returns a day. We would need quite a large staff. When we consider that we can slough off 75,000 that are non-assessable and do them with a cursory look, and only have sufficient staff to examine 4,000 assessable returns thoroughly, it means a considerable savings in staff and, of course, expense to the taxpayer.

Mr. DRYSDALE: Do you ever review any of those 75,000 returns, or will you be reviewing them, and if so, how many years do you require if your years is not sufficient—10 years, 15 years, 20 years? I still think there should be a definite ending point instead of infinity.

Mr. MCENTYRE: They would be filed away, and of course, if we had information that assets turned up at some later time which were brought to our attention perhaps to obtain a release, or something of that kind, then we would have them available to look over again at that time.

In the ordinary course they would be given a cursory look, put away and never looked at again.

Mr. DRYSDALE: What would be a reasonable limitation period in your opinion? That period still has not been mentioned.

Mr. MCENTYRE: I believe Mr. Linton mentioned a little while ago that we have some of these cases that turn up 10, 15, 20 years later where some assets that were unknown at the time of the original return are discovered and a release is required so that the executor, or whoever is looking after the estate here, comes back and says, we discovered in such and such a deceased's estate, these assets that have now turned up and we would like to get a release for them.

Mr. DRYSDALE: I realize the situation, but the point I am getting at is, would you not discover this within four years, say, so that this thing does not become ridiculous from an administration point of view, if you are going to discover them at all, so that you could use your re-assessment provision?

Mr. MCENTYRE: I think perhaps if we did not discover it ourselves within a few months after the return was filed it would be put away on the shelf. It would only be, perhaps, as a result of information given to us by an informer, or perhaps from subsequent income tax information resulting in the assessment of a beneficiary's income, or something of that kind that would lead us to the discovery. That might not happen for 10 or 15 years. In the case of additional property turning up, it may not happen for 20 to 25 years.

Mr. DRYSDALE: But if you made the 26th payment, after four years you would be clear?

Mr. LINTON: Not in the case of additional property.

Mr. PALLETT: It is only where you have made a full disclosure that you are free in four years.

Mr. DRYSDALE: There still would be a duty.

Mr. PALLETT: I am wondering about these borderline estates. I suppose if you got very close to a $40,000 estate, and some few years later decided, for some reason, to re-examine them and were to look at the values at that time, there is a loose thought, or something of that sort that—

Mr. LINTON: That would only occur if the duty was so great as to be misfiled in the first place. This is a thing you have to watch out for; that someone does not put in property worth $80,000 at $1,000, while you catch property worth $80,000 being put in at $60,000.

Mr. PALLETT: But in this illustration, say a lot up north at the present time is a rock field, and at some later date there was gold discovered, or uranium, or something of that sort,—

Mr. LINTON: It still would not have value at the date of death. The re-assessment is only effective, and would only occur in the case where the difference was so great as to be next door at least to fraud. Most of these re-assessments of small estates would be because of assets not disclosed, or later discovered.

Mr. PALLETT: I would still leave that thought with you.

Mr. FLYNN: The deputy minister said it took 10 or 15 years sometimes to find out these things. That must happen on estates taxable as well as non-taxable estates. I do not think this information would turn up later except in respect of cases where there would be no tax. It seems to me there should be some basis.

Is it not an obligation on an executor if, after having filed a return, he finds out that he has not declared some kind of property, to make a return even after four years has expired?

Mr. LINTON: Mr. Chairman, whether it was dutiable or not dutiable, if it was property not disclosed, the new property then would still be taxable.

Mr. FLYNN: Yes, that is what I thought. If that obligation exists, it seems to me that the department is well protected even on small estates for which they cannot spend as much time as they can in regard to the most important estates.

Mr. JONES: Perhaps we could leave this clause and the thoughts which have been expressed, and the matter might be considered in regard to further amendments that might be worked out in order to provide the protection with respect to the executors.

Mr. FLEMING (*Eglinton*): I have no objection, Mr. Chairman, to this clause being left for the moment. I do not see that we can do much on it. Certainly there is no objection to leaving it for the moment. We will have a good look at it as we are bound to. I think the committee appreciates the difficulties that we are up against with the administrative enforcement of the legislation here.

Mr. PALLETT: May I suggest that there should not be any necessity of changing the amount of work in regard to the administration because of that point. As far as the department is concerned these people are released unless something comes up that they have not disclosed. The practice would not be changed. There is no need to change the practice. It is only when something new comes up that this is re-opened in any event.

Mr. LINTON: Mr. Chairman, there is a point in that if someone has under-disclosed their property or under-valued it seriously and they know that they have a time limit, they are more likely to do so than if they know there is no time limit. We would have to look more closely if there was a time limit.

Mr. FLEMING (*Eglinton*): That would be inevitable, Mr. Pallett.

Mr. DRYSDALE: Four years is a long time.

Mr. PALLETT: I can appreciate the point you are putting forward, but surely there must be some relationship as to how much they can under-value any estate.

The CHAIRMAN: Is this not a club over a person that is going to make a fraudulent return?

Mr. JONES: The problem that is being raised here, Mr. Chairman, is not that we do not want to keep a club over the fraudulent person—nobody wants to protect him—but we do want to protect the person who has honestly tried to do his job as executor. After having done so he then passes on to the distribution of the estate to the best of his ability. He has evaluated the property properly.

The question is, how can he prove ten years later that he has done so when someone says that he should have known there was going to be a new zoning by-law there which would double the value of the property right after the death, or something of that kind. This happens all the time.

Mr. LINTON: I do not think the executor should feel that he is in any great danger in regard to his non-taxable estate if he has exercised due diligence in declaring the property at what he thought it was worth.

The fact that he may have been wrong does not make him culpable.

Mr. JONES: The point I am making here is that he must be able to show you that he has used due diligence. That executor may have died, for example, and it may be physically impossible for him to come and prove his due diligence, and the liability, therefore, will fall on his estate. These things happen. The question here is, how to release that man from the unjust liability.

Mr. PALLETT: The argument for leaving it out of the non-taxable estates supports the argument for leaving it out of the taxable estates.

Mr. FLEMING (*Eglinton*): Could we let this clause stand? We have spent a good deal of time in regard to this clause and I am sure we have argued it threadbare.

Mr. PALLETT: Could we not carry it, and then if the department decides that something can be done an amendment could be introduced in the committee, or in the house? I do not know that we should hold up the clause.

Mr. FLEMING (*Eglinton*): If the committee is prepared to do that, Mr. Chairman, we will have another look at it. If there is anything that we can do to meet the problem in question, we will have a look at it and bring it back before we leave the bill.

Mr. PALLETT: I think we should pass this clause, Mr. Chairman.

Clause 12 agreed to.

Mr. BENIDICKSON: Mr. Chairman, is this a good place to break off?

The CHAIRMAN: We have three minutes left to finish clause 13.

Mr. BENIDICKSON: I might say that clause 13 is a lot more satisfactory than under the old act.

The CHAIRMAN: It has been suggested that clause 13 be left until tomorrow.

Mr. FLEMING (*Eglinton*): We can then have a fresh start.

The CHAIRMAN: Clause 13 is a bad number to finish in three minutes.

—The committee adjourned.

HOUSE OF COMMONS

First Session—Twenty-fourth Parliament

1958

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: C. A. CATHERS, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

Bill C-37

An Act respecting the Taxation of Estates

TUESDAY, JULY 22, 1958

WITNESSES:

Dr. A. K. Eaton, Mr. Gear McEntyre, Mr. W. I. Linton, Mr. D. S. Thorson.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

61171-5—1

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Regier
Robichaud
Rowe
Rynard
Southam
Taylor
Thomas
Thrasher
Vivian
White
Winch.

Antoine Chassé,
Clerk of the Committee

MINUTES OF PROCEEDINGS

House of Commons, Room 118.

TUESDAY, July 22, 1958.

The Standing Committee on Banking and Commerce met at 3:30 o'clock p.m. The Chairman, Mr. C. A. Cathers, presided.

Members present: Messrs. Allard, Bell (*Carleton*), Benidickson, Brassard (*Chicoutimi*), Cathers, Crestohl, Deschambault, Drysdale, Flynn, Fraser, Gour, Jones, Keays, Lockyer, MacLean (*Winnipeg N. Centre*), Martel, McIlraith, Morton, Nugent, Pallett, Southam, Thomas, Vivian, Winch.

In attendance: Honourable Donald Fleming, Minister of Finance; Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance (on retirement leave); Mr. Gear McEntyre, Deputy Minister, National Revenue, Taxation Division; Mr. W. I. Linton and Mr. A. L. DeWolfe, of the Department of National Revenue; Mr. E. H. Smith, Department of Finance; Mr. D. S. Thorson, Department of Justice.

The Committee resumed consideration of Bill C-37, An Act respecting the Taxation of Estates.

Clauses 13 to 27 inclusive were severally considered and adopted.

During the study of the said clauses Honourable Donald Fleming, Dr. Eaton, Mr. Linton, Mr. Thorson and Mr. McEntyre were questioned.

At 6:10 o'clock p.m. the Committee adjourned to meet again at 3:30 o'clock p.m. Wednesday, July 23rd, 1958.

Antoine Chassé,
Clerk of the Committee.

61171-5—1½

EVIDENCE

TUESDAY, July 22, 1958.
3:30 p.m.

The CHAIRMAN: Order please. Gentlemen we have a quorum now so we will proceed. The minister will be delayed for about ten or fifteen minutes, but he has asked us to carry on. Last night when we adjourned at 10 o'clock we had finished with section 12 on page 18. We are going to commence now to discuss clause 13.

Mr. W. I. LINTON (*Administrator, Succession Duties, Department of National Revenue*): I wonder if I might make a suggestion, Mr. Chairman. Clauses 13, 14 and 15 are all involved and integrated into each other and it may be a little difficult to get the general sense if we deal with them section by section. Would it be helpful if I made an explanatory statement as to what they all do?

The CHAIRMAN: Would you please do that.

Mr. LINTON: For purposes of the payment sections the property that is subject to tax is divided into two parts. One part is the property which passes through the hands of the executor and the other part is the property that is taxable but does not pass through his hands. With regard to the property that does pass through his hands, which is called the included property, he is liable for the tax and this is the tax which is placed on the estate as a debt of the estate. Now, in addition the successors to that property are liable as sureties for the tax applicable to the benefits. So if the department cannot collect from the executor it can collect from the successors. In some cases the executor cannot be reached or there may not even be an executor. In regard to the property that does not pass through the executor's hands the liability on it falls on the successors primarily, but the executor is required to use any property that goes to the same successor from his hands to pay the duty owing by that successor on the property that does not pass through his hands.

The CHAIRMAN: Would you give us a definite example regarding the two things to which you are referring?

Mr. LINTON: Suppose you had an estate which had various assets belonging to the deceased. He appointed an executor and he also left insurance payable to a named beneficiary. The property all but the insurance would be property passing through the executor's hands. The executor would be liable for the duty on all that property as a debt of the estate. Now let us suppose the insurance is payable to the widow, who is also a beneficiary of the estate proper. Then the executor must pay the duty on the widow's insurance from the property in his hands, as far as it will extend, that goes to her and she is liable directly for the duty over and above that, if any.

Mr. JONES: What provision is there made for protecting the executor against property that may pass to a successor but not through his hands, of which he has no knowledge?

Mr. LINTON: He would be expected to inquire about that property, but if he has no knowledge there is a provision in this whereby as long as he has used due diligence in fulfilling his duty, he would not be responsible.

Mr. D. S. THORSON (*Legislation Section, Department of Justice*): Perhaps in answer to your question I could say in addition that the successor would be directly responsible in that case to advise the successor of the bequest and he would of course be liable for the duty in question.

Mr. WINCH: What is the meaning of "due diligence"? I am interested in this question of the insurance angle because it can happen so often. I am speaking from personal experience. I am still named as executor of a number of wills and I have no knowledge of any insurance. What do you mean by "due diligence" as far as the executor of the normal estate is concerned?

Mr. LINTON: He would be expected to inquire into it in making his return of all the assets of the estate. He would be expected to do his best to ascertain all particulars. If insurance or any other asset passed to a successor outside of his control and he had not found out after all due effort there would be no liability on him and there would not, in any case, unless the successor to that property also got property from the executor.

Mr. JONES: Is there a prescribed form of release which the executor could obtain from the successor?

Mr. WINCH: That is the point which I was going to come to. Would it be called a form or is there a provision for the executor to receive from the beneficiaries of an estate an affidavit from them that they had not received anything outside of his knowledge, and file that.

Mr. LINTON: It is questionable whether you need to go that far, but that would be good evidence of due diligence.

Mr. THORSON: If he did that, I think there could be no recourse against him in the event of an asset of that character turning up.

Mr. FLYNN: His own affidavit would still be better.

Mr. LINTON: In many cases that would be the best.

Mr. CRESTOHL: Is there a burden of proof placed on the executor?

Mr. LINTON: He would have to show due diligence if there was such property and he had not pait tax on it. In doubtful cases what it would be would have to be determined by the courts, I suppose, but it is something short of proof.

Mr. CRESTOHL: It seems like a difficult burden of proof for an executor to have to discharge.

Mr. THORSON: I would think not in the average case. In most cases it would be sufficient if the executor established that he paid over the property after having paid the taxes, that he paid it over in good faith after making all inquiries that are normally expected.

Mr. CRESTOHL: Would an affidavit not suffice?

Mr. THORSON: His own?

Mr. CRESTOHL: Yes.

Mr. THORSON: Very probably it would, although there could be circumstances in an individual case where he might be under an obligation to inquire further.

Mr. CRESTOHL: It is obvious that if bad faith is proven then he is certainly delinquent.

Mr. THORSON: Yes.

Mr. CRESTOHL: I think the burden of proof should be shifted from the executor to those who would feel that he was not acting in good faith. It should be up to them to prove bad faith rather than him discharging the burden of good faith.

Mr. WINCH: In regard to the things that come under the purview of an executor in his investigation—he finds there is nothing outside of what he knows and he then passes it on. He then finds that the beneficairies had received something of which he had no knowledge. Would any payment on the estate tax be against the beneficiaries and not against the executor?

Mr. LINTON: That is right, as long as he had made normal inquiries about the said property.

Mr. JONES: Could you just give me that example you used again and perhaps we can clear up this point? It was an example of property passing.

Mr. LINTON: An estate passing partly to a widow and partly to someone else, and in addition the widow getting life insurance payable directly to her.

Mr. JONES: Using that as a basis from which to work, you would imagine from the use of the words "due diligence" that any executor would have to inquire from all the insurance companies.

Mr. LINTON: No, I do not think so. I think we would expect him to inquire of the widow and of the immediate relatives and people concerned in the estate where there was such property. Certainly his diligence would not extend to asking all the insurance companies if they had a policy.

Mr. JONES: I am referring to the insurance companies in his own town or city. From experience in the courts those are the sort of questions that executors are asked by opposing counsel or judges. "Did you inquire whether there was such an insurance policy?", and they go on and say, "Surely it is a simple matter to make inquiries". But I say it is not a simple matter to make such inquiries at all. Yet, the question may come up.

Mr. LINTON: I would think "due diligence" would be discharged far short of inquiries of that nature.

Mr. THORSON: That sort of inquiry given by him. The insurer could be an insurance company carrying on business outside of Canada. Therefore, it would be quite unreasonable to impose an obligation on the executor to inquire of other insurance companies throughout the world.

Mr. JONES: I am not suggesting that in court they would hold that an executor had failed in due diligence by failing to inquire of every company throughout the world, but in a city such as my own which has a population of 80,000, there are a number of insurance companies who operate. It would be quite a burden on each executor of each estate.

Dr. A. K. EATON (*Assistant Deputy Minister, Department of Finance*): Would the insurance companies be required to answer his questions? I would not think they would be required to do that; I do not know. They might in a friendly sort of way, but it would seem to me he would have no power to assert his position, whereas he has vis-a-vis the others of the family. He would have a status there but not with the insurance companies.

Mr. JONES: I would suggest there, Mr. Chairman, that undoubtedly he would take a status if he is called upon to assume a liability and he could assert that status before the court if it came to that.

The CHAIRMAN: Mr. Jones, does not the answer here suffice that if he asked the widow if there were any other policies of insurances and she gave him a negative answer that would suffice as far as due diligence is concerned?

Mr. JONES: I think we have brought this matter sufficiently to the attention of the officials now so they can watch the progress of the act as it works and if they do find problems in this regard an amendment could be suggested. We may find that the legal interpretation may vary considerably from the

interpretation that has been given the committee here. There is no obligation on any court to accept the department's definition of due diligence unless it is written into the act.

Mr. EATON: Did you have that phrase in the old act?

Mr. FLYNN: I think it is the best term you could find. You would have to prove gross negligence to be able to hold an executor liable for the tax.

Mr. JONES: No. Due diligence and gross negligence are not opposing terms.

Mr. BENIDICKSON: Mr. Chairman, I see the minister has arrived and I was waiting to say something.

Hon. DONALD M. FLEMING (*Minister of Finance and Receiver General*): I am sorry I was late but Mr. Botsio, the Ghana Minister of Industry and Commerce was in to see me.

Mr. BENIDICKSON: I think the new features to this particular section indicate the value which outside counsel has given to the administration from the various briefs that have been received. I must reiterated my point we are proceeding a little too hastily because I would like to ask the chairman whether or not he has yet received, or has the minister received what is called Mark II criticism of the Canadian Tax Foundation.

Mr. FLEMING (*Eglinton*): Mark II?

Mr. BENIDICKSON: Just as you would have an aircraft either Mark I or Mark II. Only now in the mail, within an hour or so, have I received what is called Mark II notes, on the estates tax bill.

Mr. FLEMING (*Eglinton*): Are you referring to that document which came in today?

Mr. BENIDICKSON: Yes, we are all busy and we have not time to read these things in great haste, particularly when we receive them about noon time. But I think it just emphasizes my point that only now is it circulated to the public that we are discussing this bill. As suggested only today we are receiving personally certain suggestions from the public. I received another one this morning. As the minister said yesterday he questioned whether or not he would disclose the name of the sender of some advice from one of the trust companies, but I have a letter here from one of the most prominent legal firms in Montreal which has a little reference to section 33 (e).

To tell you very frankly he is referring to Bill 248. In the rush that we are all under I have not been able to study that since receiving it at the post office half an hour ago as to what the new section conceivably could be and its import, but I think many members of this committee are members of this Canadian Tax Foundation. I do not presume to be a paid subscriber myself, but certainly receive and have for some years gratuitously by reason of my former position, I think, most of their publications and only this morning did I receive in the mail their memorandum of July 1958 which is a repetition of most of the complaints put forward to the minister in a letter personally addressed to him.

Mr. FLEMING (*Eglinton*): It is really a summary of the brief they submitted.

Mr. BENIDICKSON: With respect to 248. I only received it today. Now, it may be as a result of some discussions I have had in the last couple of days with members of the Canadian Tax Foundation, or it may be that it is now going to all persons on the mailing list of the Canadian Tax Foundation.

However, I dismiss that because it refers, of course, entirely to an analysis of Bill 248, but in the mail today I received from the Canadian Tax Foundation a copy of details that they have given to their members in which they refer to Mark II comments on the advances in connection with this type of legislation.

Neither the minister nor the chairman can tell me that they have either received it or analyzed it. Certainly I never received it until 11.30 this morning, but I might quote just a few excerpts. This is at least a twelve-page document. It is a revision of the comments they made with respect to Bill 248 having—and I think as expeditiously as you would expect a national body to do—examined the new bill. They say:

"There are many changes—"

The CHAIRMAN: Excuse me, is what you are going to read in connection with what we are discussing now?

Mr. BENIDICKSON: Yes, because I made the point that the amendments that are eliminating criticism in this committee with respect to 13(2), I think the minister will admit, are contrary to the drafts that were submitted to him or to the previous administration by his administrative advisers. They were repeated in many of the briefs we have from the public, this relief to executors under certain circumstances for liability.

I am just saying this is illustrative of the value of consulting not only administrative people who have, I know, a proper regard for the public, of course, but also have a confined knowledge and experience and probably do not appreciate sometimes how certain phraseology in acts is difficult for the public at large. That is the point I am making. This was not in Bill 248.

Mr. FLEMING (*Eglinton*): I would be the first to say, Mr. Chairman, that we are deriving a great deal of benefit from the submissions that were made in the period between January and June and gave a most careful study to all of them.

Mr. BENIDICKSON: And as time goes on I hope to tell the minister where he has improved the act, as I did last night. This particular document indicates, as I intended to suggest, that there is much improvement to Bill 248 but the document asserts on behalf of this very important organization that there is still much in the nature of their criticism that has not been taken care of in the new bill and how are members of this committee to be aware of this if we move in the haste which is indicated.

The CHAIRMAN: Mr. Benidickson, you were not here on Friday; yesterday morning or yesterday afternoon you took up about an hour settling this point and actually I think it was fairly unanimous that we were not going to call witnesses at the present time. Last night you brought it up again and we spent considerable time on it. It was then again more or less defeated and now you are bringing it up again. Now, can we get that settled in your mind because we cannot—

Mr. BENIDICKSON: Mr. Chairman, I do not want to obstruct your committee. On the other hand, I have a role to perform which I think the minister would be the first one to appreciate because he had a similar role for many years and discharged it very aggressively and very efficiently. Even last night I quoted him as a precedent for saying with respect to a certain section of the bill before the committee of this kind that he felt obliged to say that it did not carry his approval at this stage and I am doing the same.

I am not trying to be obstructive, I really do feel that there is unseemly and undue haste in the progress that is attempted to be made in this committee.

Mr. FLEMING (*Eglinton*): Mr. Chairman, that statement should not be allowed to pass unchallenged, the assertion that this committee is proceeding with undue and unseemly haste. That just is not the fact. It just happens, Mr. Chairman, that this is the fourth meeting of the committee on this bill. We were on the bill for an hour and a half last Friday, we were on the bill yesterday afternoon for a meeting that lasted two and a half hours and we were on the bill last evening for a matter of two hours. In other words, we have spent six

hours in the committee so far on this bill and thus far we have dealt with twelve sections. Now, who can say that spending the equivalent of half an hour on each section of the bill thus far is undue and unseemly haste? I am surprised at Mr. Benidickson making a statement like that because it just has no foundation in fact.

Mr. BENIDICKSON: and I have been on a good many committees together and I think if he will look back and examine this question thoroughly he will agree that we have never seen a committee that has proceeded more deliberately than has this one. And if my memory serves me correctly when Mr. Abbott brought in the income tax bill some ten years ago and it was a bigger bill than this, this committee, the Banking and Commerce Committee completed its review of the whole bill in two days of intensive sittings.

This is the fourth meeting now and I do urge, Mr. Chairman, that we do proceed as we have been doing, looking at every clause of the bill, turning it inside out, ransacking it for questions or problems. I think the committee will agree, the officials are here, we have tried to give you all the information, we have tried to give you the arguments which have been used against the publication of this bill, we have also stated the contrary recommendations, we have not tried to sell you a bill of goods; we have tried to give you both sides of the story and with great respect I think Mr. Benidickson's statement is utterly unwarranted and I do respectfully urge that we do proceed with our task.

Mr. BENIDICKSON: Mr. Chairman, may I agree with the minister in that we have sat on committees of this kind many times in the past, but as pointed out yesterday prior to the income tax bill of 1948 to which you referred there was a much longer lapse after referral than has been made possible here.

May I say in addition that it was made clear with respect to the Income Tax Act of 1948 that its provisions did not take effect in so far as the tax-payers were concerned until I think it was January 1 of the following year. The sittings were in June.

Now, that is not typical of what we are discussing now, but for personal integrity may I just say this, that I was a member of the Banking and Commerce Committee in 1948 representing the majority group and Mr. Abbott proposed to introduce in the last stages of the sittings an amendment and may I just say that at that time I took a stand that I feel some members of the government party should take at this time—

The CHAIRMAN: Mr. Benidickson, may I interrupt you? We went through this twice already. Are we going to go through it every day? I thing it is being unfair. You are going back to a bill in which there was a precedent set and there were no witnesses called, and I thing it was well deliberated here yesterday and there was no support for your own idea on this thing and I think we should carry on with the job that we are doing in the way we are doing it.

Mr. BENIDICKSON: Well, in two words, Mr. Chairman, so that new members will not be thinking I am advocating something I was against in 1948, may I say that this volume contains compliments to me from the late Senator Hackett who was then a member of the house and I want to ask here, Mr. Chairman, whether or not any members of the committee besides myself have received or are interested in the Mark II version of the analysis of the Estates Tax Act as put out by the Canadian Tax Foundation.

My proposal was that I would read just a few comments from it. I thought that our original agreement was that we wanted from either the minister or members of the committee to be read into the record excerpts from bodies of that prestige if they would in some way affect our decisions and deliberations here.

Mr. NUGENT: Mr. Chairman, is that not when we come to specific sections? If he has a specific comment on a specific section then he can read opinions into the record, but let us get on with the job. It seems to me Mr. Benidickson's remarks are parallel to a motion in the house which has been debated and been defeated and then he has debated it again and wants to argue it again before the house. I suggest that would be allowing too much leeway and we are better off spending our time going through this clause by clause and he can bring up any specific objections on any specific clauses as we come to them.

Mr. BENIDICKSON: May I point out that this document which reached me this morning indicates that up to clause 13 we have already disposed of several sections when an organization of this repute would have disputed those if it had been given adequate opportunity to look at Bill C-37.

Mr. FLEMING *(Eglinton)*: May I suggest that we go along now and if there are any points that Mr. Benidickson finds are raised in anything he has in his dossier there relative to any particular section that he raise it. I want all those opinions and there should be full discussion.

As to something that has been passed I will be surprised if it is something that has not been before us and touched on here. But we can have a look at that document as to anything it says relative to particular sections and I will be glad if he will show it to me. I will be surprised if it has not already reached my office. I will be glad to have a look at it.

Mr. BENIDICKSON: May I say that although this document says, "There are many changes which will meet with general approval," and that was indicated yesterday. In the next paragraph it says: "But as such it leaves disappointed several points of view which we felt were quite reasonable." And many of them were disposed of yesterday.

Mr. FLEMING *(Eglinton)*: Mr. Benidickson, I made it quite clear that we had not adopted all the suggestions we had received in all the briefs and any people in whose briefs all of their ideas were not accepted are in a position to express regret that all their ideas were not accepted, but the point is we are putting before the committee all the objections put to us on all these clauses we covered up to now and we sought to give the committee the reasons why the government take the responsibility for recommending the adoption of some of these suggestions and for not favouring others. That is the position we are in and if now there is in this document anything that pertains to clause 13 of the bill and Mr. Benidickson wants to sponsor the view that is put forward in that submission I am sure the committee will be glad to hear it. But it should be relevant to the clause under discussion.

Mr. JONES: At this stage to have it in record, it has not apparently penetrated to the committee that there has not been any suggestion at any time that we rush about this bill—we can take all the time we want to in order to discuss it, and that is what the committee, I presume, wants to do. The reason for procedure in this way was set out very clearly at the start in that it is an orderly method of procedure and also gives us the advantage of having Dr. Eaton who has returned for the specific purpose of being before this committee.

Mr. BENIDICKSON: I know Dr. Eaton very well and I know despite his personal interests he would not mind staying for a week after a long period of continuing to put the public interest ahead of his own.

The CHAIRMAN: Well, before we got off on this track Mr. Linton was going over in a general way sections 13, 14, 15, 16 and 17 which all have to do with the payment of tax liability on an executor, and I am going to ask Mr. Linton to continue.

Mr. CRESTOHL: Were we not talking about the "due diligence"? Have you disposed of that?

The CHAIRMAN: That was covered yesterday and in Mr. Linton's general discussion again the question came up.

Mr. BENIDICKSON: We did not pass 13, Mr. Chairman?

The CHAIRMAN: No, not 13. We are considering from 13 to 15 at the present time.

Mr. BENIDICKSON: This is just a prize example of the fact that an administration with the best intentions, a minister and a cabinet can recommend to His Excellency the passage of a certain bill such as they did with respect to 248 and which is lacking all of those features that were drawn to their attention by these outside bodies which are being ignored at the present time.

Mr. JONES: Mr. Chairman, this committee has heard a discussion of these problems and that is the purpose of having a committee so we can go over these problems clause by clause as they are set forth in this bill, and I think the members of this committee have been doing a good job exploring the problems that have been raised by all these members of the public who have brought briefs to the attention of either the committee or the minister.

In the very clauses that we are dealing with now, 13, 14, 15 etc. we have been discussing before the interjection of Mr. Benidickson the problems relating to the words "due diligence", and we might have cleared that matter up by now if we had not had this useless interjection.

Mr. BENIDICKSON: Mr. Chairman, we will have some more suggestions to make.

Mr. CRESTOHL: I do not think observations made here generally are useless. They might be in the opinion of some members of the committee but not in others. We are discussing particular new pieces of legislation, not amending an old one.

Mr. JONES: Well, let us discuss the legislation.

Mr. CRESTOHL: Fine, allow us to do so. I do not know if this committee has had placed before it all the submissions. I admit, Mr. Chairman, as a member of this committee that I do not know all the submissions. I do not pretend to know anything about this difference of legislation. I am anxious to know.

Mr. Fleming (*Eglinton*): Then why did Mr. Crestohl not attend the meetings of the committee? This is the fourth meeting and if Mr. Crestohl had attended the meetings he would have had all this information. We cannot go back and start all over again because a member does not attend meetings.

Mr. CRESTOHL: I am not going back to clause 12, I am at clause 13.

The CHAIRMAN: But, Mr. Crestohl, you have asked us who have presented briefs in this and that has all been gone into at an earlier meeting. Now, you do not expect every member that comes in to go back over past history.

Mr. CRESTOHL: Mr. Chairman, I certainly do not expect that.

The CHAIRMAN: I think I am going to rule that we go on with Mr. Linton.

Mr. BENIDICKSON: Mr. Chairman, I do not want to prolong this. Could I just ask the one question which I think will be a normal one at each meeting; have you since our last meeting received any representations indicating a desire to appear?

The CHAIRMAN: No.

Mr. BENIDICKSON: I just myself indicated from a responsible organization a brief that I had received.

Mr. DRYSDALE: Mr. Chairman, it is probably irrelevant, but I wonder if we could get back to section 13. In bill 248—

The CHAIRMAN: May I interrupt? Before we were going to start with 13 Mr. Linton made a suggestion that he make a general statement before we get into the details of it. It may give us a better understanding of the details with respect to the matter of the liabiliy of the executor.

Mr. LINTON: This deals with two divisions—property in the hands of the executor and property passing outside the Executor, the relevant responsibility for each, of the executors and successors in those two classes of property.

Section 15 provides that where a successor has to pay duty himself on property which is in the nature of an annuity or a term of years or life interest or anything that has any limited time to run, that can be paid in six monthly instalments and it further provides that where a successor is responsible for his own duty on property the deceased owned that was an interest in expectancy, the duty can be paid at any time up to the time the interest in expectancy falls into possession.

I think, Mr. Chairman, that outlines the general structure of these payment sections.

Mr. DRYSDALE: Returning to 248, 14(1), under that clause the executor was liable to pay taxes on property within his possession or under his control as an executor. I notice the word "possession" was omitted in the new section 13(1) and I was wondering what the reason was.

Mr. THORSON: I think the word you find missing will be found in subclause (5) of clause 58. This is the interpretation part of the act.

Mr. DRYSDALE: I see.

Mr. THORSON: The same clause is carried forward.

Mr. FLEMING (*Eglinton*): That subclause appears on page 47.

Clause 13 agreed to.

On clause 14—payment tax by successor.

Mr. BENIDICKSON: Is there some obligation here on the successor notwithstanding the fact that assessments are under the control of the executor?

Mr. LINTON: Mr. Chairman, the obligation of the successor to property which passes through the hands of the executor is as surety for the payment by the executor, and it is limited to the tax on property which that successor gets.

Mr. BENIDICKSON: That is, he must receive it. I was going to raise the question as to how he could be levied for tax on something which he never received.

Mr. LINTON: He would not, Mr. Chairman, actually receive it. He would have to be entitled to it.

Mr. FRASER: That actually happens under the Income Tax Act. You are sometimes assessed on money that you have not received. This might be a judge's order. You do not receive the money but you are taxed for it just the same in spite of the fact that you have not got it.

Mr. BENIDICKSON: I thought it was laid down that one of the elements of simplification was the avoidance of chasing the beneficiaries and that we were not primarily looking to the successors? I can see circumstances where you would want to hold the successor liable but I am thinking chiefly of circumstances where the successor had received his benefit before the property got into the hands of the executor.

Mr. LINTON: Mr. Chairman, that would only happen presumably where the successor was entitled—apart altogether from the executor—to property

as a donee, perhaps, of a gift, in which case the executor's liability would be confined to any property that went to that successor from the property that the executor had under his control. If that donee got no property through the executor, the executor would have no responsibility for that duty at all.

Mr. BENIDICKSON: This does not appear to be much simpler than it was in the other act except for the consolidation of rates.

Mr. LINTON: If you simplify this to the point of making the executor pay all the duty on everybody's property you get into a very inequitable situation.

Mr. MORTON: I presume, Mr. Chairman, this covers the case where the insurance was given to a preferred beneficiary, such as a wife, which would not go through an executor, as such, and the only way you could do this would be to hold the widow liable for the tax directly?

Mr. BENIDICKSON: I suppose it is allowed under the act for $10,000, or something like that?

Mr. LINTON: That is only freedom to the insurance company to pay without the consent of the department on advice. That does not affect the taxability.

Mr. BENIDICKSON: No, but the value is received by the beneficiary and the executor might be left without the "where with all" to provide the tax.

Mr. LINTON: Yes, but in regard to that kind of a policy, if the payments were made to the widow or other beneficiary the executor would not be liable for any tax on that unless that beneficiary got other property through his hands.

Mr. NUGENT: Mr. Chairman, my interpretation of this section as it now reads is that whether or not the beneficiary actually got the money through the executor, to which he was entitled under the will, in the event the executor failed to pay the tax due, the beneficiary would have to pay it?

Mr. LINTON: That is right.

Mr. NUGENT: Is that correct?

Mr. LINTON: Yes.

Mr. NUGENT: That seems to be a pretty heavy—

Mr. FLEMING (*Eglinton*): There must be secondary liability on the beneficiary. The primary liability is laid on the executor or personal representative, but it cannot be confined to him because you have got to take account of two cases.

First of all, there is the property that passes, that does not pass through the hands of the executor; for instance, an insurance payment going directly to the beneficiary.

The other case is where the executor simply does not pay, and the beneficiary, having received the benefit through the executor, certainly should be obliged to pay.

Mr. NUGENT: What about the case where there is no property passing directly, and everything comes through the hands of the executor but he simply absconds with all the money. We then have the beneficiary of the estate who has received nothing, but is liable to the tax on everything he should have received.

Under this clause, that could happen, could it not?

Mr. LINTON: Mr. Chairman, such a beneficiary's remedy is against the executor to collect his property.

Mr. FLEMING (*Eglinton*): You see, there is no difference there as compared with the Succession Duty Act. The Succession Duty Act today lays the

liability directly on the person who succeeds—the beneficiary. We are not creating a new liability here. There is no new principle of liability created here at all, I can assure the hon. member of that.

Subclauses (2), (3) and (4) agreed to.

On subclause (5):

Mr. BENIDICKSON: What is the reason for this subcause, Mr. Linton?

Mr. LINTON: This is just a piece of machinery, Mr. Chairman, for effectually collecting the tax.

Subclause (5) agreed to.

On subclause (6):

Mr. MACLEAN (*Winnipeg North Centre*): Where does this section differ from the previous section?

Mr. LINTON: Mr. Chairman, you have a lot of new sections in this act. Because of it being an estate tax the structure of the payment provisions is quite different from the Succession Duty Act where the liability is primarily placed on the successor. You have the liability for the estate proper primarily placed on the executor, so, of course, the effectuating provisions will be different.

Mr. MACLEAN (*Winnipeg North Centre*): So all this does then is, in regard to any payment by a successor within the tax, relieve the executor of a corresponding amount?

Mr. LINTON: This is to avoid the possibility of collecting the same tax twice.

Mr. MACLEAN (*Winnipeg North Centre*): Where a successor pays a tax that an executor is liable for he still has his right at common law?

Mr. THORSON: That does not purport to interfere with the rights of an executor, vis-à-vis a successor.

Clause 14 agreed to.

On clause 15—Instalment payments.

Mr. BENIDICKSON: Is there a change here between this and Bill No. 248 in respect to instalment payments?

Mr. LINTON: No, I do not think so, Mr. Chairman.

Mr. BENIDICKSON: I think this is perhaps the proper place to raise a question about the insurance principles. Of course, for capital valuation of a pension or annuity, and using that office administrative rule, it is quite conceivable that a widow would be charged a substantial estate tax based on the life expectancy that she does not enjoy because she dies much sooner than the average life expectancy. Is this the place to raise such a question.

Mr. FLEMING (*Eglinton*): If I might say so, Mr. Chairman, that question was raised and I dealt with it at the proper place.

Mr. BENIDICKSON: I do not think it was dealt with, Mr. Chairman. It was referred to.

Mr. FLEMING (*Eglinton*): It was dealt with in an earlier clause when we were dealing with the question of what is property. We went over the whole matter there. I think we reviewed the subject at some length, Mr. Chairman, indicating that this was a matter on which there had been various submissions with various views put forward.

The argument was put forward that this taxed the same benefit twice; taxed as income and taxed as capital. The reasons were clearly indicated in the respect that this present clause 15 deals with the matter of payments by

consecutive instalments. It does not deal with the question of what is property or how you calculate the value of such a benefit for estate purposes. That was discussed on the earlier clause which was dealt with.

Mr. BENIDICKSON: I think I realize the distinction, but as I recall, the member of the committee raised a question—I think it was Mr. Thomas—and he said that he probably felt obliged to accept the annuity tables in a matter of this kind. I am not so sure that it would be administratively difficult to say that if a widow dies much sooner than the average life expectancy, she therefore has paid an amount of estate tax that should not have been paid.

Mr. FLEMING (*Eglinton*): Are you going to apply the same reasoning and say that if she lives beyond the period of life expectancy, according to the tables, that she should have to pay an additional assessment then?

Mr. BENIDICKSON: No, I would expect a good natured man like you to side with the taxpayer.

Mr. FLEMING (*Eglinton*): My sympathies are always with the taxpayer and that is the reason for a good many of these provisions being in the form in which they appear before the committee, Mr. Chairman.

Mr. CRESTOHL: That is so obvious.

Mr. FLEMING (*Eglinton*): We went over this question, I think, and it was dealt with thoroughly. It certainly does not arise in regard to this present subclause of the bill. This subclause deals simply with the matter of payment of taxes and certain interest. It is not a calculation of value.

Mr. BENIDICKSON: My impression is that you received representations urging that these instalment payment privileges be more lenient. The basis of the arguments of most of the representations, as I recall them, were on behalf of the annuitant or the beneficiary, is that not correct?

Mr. FLEMING (*Eglinton*): Oh, yes.

Mr. BENIDICKSON: Please do not suggest that I am irrelevant then.

Mr. FLEMING (*Eglinton*): You are relevant on this section.

Mr. BENEDICKSON: This is an administrative section for collections.

Mr. FLEMING (*Eglinton*): Mr. Chairman, the point that Mr. Benidickson is raising is the question of whether there should be a re-opening of the assessments of the estate where one of the assessments passing could include in the aggregate net value of the estate, a pension or an annuity which arises on the death of the deceased. We discussed the question as to the calculation of value there, and also this point as to whether a re-assessment is feasible where a widow does not live out the full life expectancy based upon the tables.

I pointed out that in that case, if you are going to be logical, you will have to reassess also in the case where the widow lives longer than the life expectancy imputed to her by the tables.

I also pointed out that if you are going to put an annuity or pension on the same duty basis you are discriminating as amongst the different classes of assessments. I think that view has recommended itelf to the committee.

As to the matter of re-assessing, I pointed out that this re-assessment would arise only on the death of the widow, in the case put. The widow is not going to get any benefit out of that re-assessment. She has passed from this veil of tears by this time. What are you going to do then? Supposing it happens 20 years after the death of the deceased, are you going to take the benefit, in that case, to the estate of the widow and chase her heirs all over?

The additional tax in respect of the pension or annuity payable to the widow has been paid, under the estate tax principle, by the executor. It has been paid out of the estate of the deceased, unless this is one of those cases

where the property has passed, independently of the estate, directly to the beneficiary. Perhaps this has happened long years after the executor has died, and long years after the distribution. Are you going to try to open the whole thing up to determine where any benefit arising from the re-assessment should go?

The widow in practically every case would not have paid it, and in the second place there would be no re-assessment until she is dead. Those are the simple administrative facts of the case.

In the face of that it just did not seem to warrant a re-opening. If you are going to re-open it in the one case, where a widow does not live out her full life expectancy, you will have to re-open it in the other case, where she lives longer than her life expectancy.

Mr. JONES: I suppose an analogy would be the application in regard to real property? A valuation is placed on the property and the tax is computed on that valuation. The property may go down in value or up after the tax has been set.

Mr. PALLETT: Mr. Chairman, what is the departmental practice when you have a restrictive clause about remarriage and the widow remarries?

Mr. LINTON: If we were advised of a remarriage we would re-assess because in the factors which take account of the life expectancy there is no provision for a remarriage.

Mr. BENIDICKSON: Is that supposed to lengthen the life or shorten it?

Mr. FLEMING (*Eglinton*): There is no average on that subject.

Mr. LINTON: There is no provision in here for it. There is a provision allowing the minister to re-assess within four years. That is a factor which is not included in the factors used for the computation. I would think we would re-assess if an application was made within four years.

Mr. BENIDICKSON: In this instance I think we should compliment the minister. This is an extension from four to six years.

Mr. FLEMING (*Eglinton*): Thank you. All compliments are gratefully received, Mr. Chairman.

Paragraphs (a) and (b) agreed to. On subclause (2):

Mr. BENIDICKSON: Is this a repetition of the five per cent that we discussed pretty thoroughly last night?

Mr. LINTON: No, Mr. Chairman, it has nothing to do with that. This is interest charged on delayed payments on interests in expectancy, which interest can be at the rate determined by the minister, and must not exceed five per cent.

Clause 15 agreed to.

On clause 16—Deferment of time for payment in certain cases.

Mr. BENIDICKSON: I think this is another improvement over Bill No. 248 as a result of representation largely from the public. Because the first bill was designed within the previous administration. I must say that I have some knowledge of that. We have narrow views sometimes when we are in an official capacity, but this is something which I think should be commended.

Mr. NUGENT: I am sure we are all pleased to have Mr. Benidickson's approval of this.

Mr. FLEMING (*Eglinton*): Mr. Chairman, I might say there was a slight change made here. This is a minor change, not a major change. I am glad it meets with approval.

Clause 16 agreed to.

On clause 17—Effect of objection or appeal.

Mr. BENIDICKSON: This clause is very stringent. How do you justify these changes in the administrative powers? There may be no liability for tax but the minister may compel a payment well in advance of an adjudication, for instance, on a matter of an appeal. This seems to me rather different than income. This has reference to capital.

Mr. FLEMING: If I may say so, does that not underline the reason why you need a provision like this in this act? Let us take a simple case of appeal; John Jones' estate has been assessed for a sum that his executor considers to be larger than the true tax liability and he wants to appeal. He has his right of appeal but the department says to him, "this appeal may take a long time; we have to be very sure that the appeal is not going to be used to drag out the payments."

Mr. BENIDICKSON: But you get interest after six months.

Mr. FLEMING (*Eglinton*): If you collect it; and then in the meantime some of the asssets on which you are charging him have wasted in value and some of these assets may have disappeared. Therefore, we will say to you you should pay the assessment before you appeal. If you are successful in your appeal you will get your money back; if you are not successful,—all right, you have paid as you ought to pay. I think the reasons here for requiring the appellant in tax appeal proceedings to pay the tax before launching the appeal—what may be a long course of appeals—are stronger in this case than in the case of the income tax.

Mr. BENIDICKSON: The crown may be wrong, and the result is that damage to the taxpayer is done. You cannot retrieve the assets and I do not think capital arrangements are so hard to find, particularly when you control releases. I imagine you control them when there is a dispute.

Mr. LINTON: Mr. Benidickson must be referring to subclause 2, and that is to prevent the situation where capital is being removed from the country. While it is rare, it does happen and we have just been able to get at it in this way.

Mr. FLYNN: Could you not use the provision of section 2 in the case of an appeal if you think the appeal is not serious? Do you not think the rule provided in section 2 would be sufficient if it applied to all cases?

Mr. FLEMING (*Eglinton*): I think an examination of the two clauses of section 17 will make it quite clear they deal with different cases.

Mr. FLYNN: I know.

Mr. FLEMING (*Eglinton*): The first clause deals with your general case where there is an appeal, and you have your stipulation that liability to pay is not affected by entry of an appeal. Clause 2 applies in a specific case. It is a case where in the opinion of the minister a person is attempting to avoid payment of any amount payable by him as tax. That is the situation where in the case mentioned by Mr. Linton your man who is liable is attempting to resort to some subterfuge.

Mr. BENIDICKSON: In the opinion of the minister.

Mr. FLEMING (*Eglinton*): There are provisions in the Income Tax Act that have been there for a long time that are just as rigorous as those, and they have never been objected to.

Mr. BENIDICKSON: Income is more ephemeral than capital, and you are introducing something new.

Mr. FLEMING (*Eglinton*): No, I think the case is stronger here. Once it gets over the border you will never overtake it. Once the capital goes, it is gone for good.

Mr. NUGENT: I am concerned with part I and tying it in with section 23. After the filing of the notice of objection the minister has an opportunity of confirming the assessment or re-assessing. The time limit there is 180 days before they can take an appeal. In case the minister does nothing, I would have thought section 17 (1) might have been a little kinder to the taxpayer. Had there been some requirement the tax would be payable after the minister has replied to a notice of objection. There might be some cases where there is an error in assessment and a notice of objection is put in under section 23. The minister does not have to reply at all and there is not an appeal launchable in that case until 180 days, so I would be happier to see the two tied in where the minister has to give some reply.

Mr. LINTON: Under section 23, if the minister does not reply in the time limit, the case automatically goes to the appeal board.

Mr. NUGENT: That is 180 days; the people could have their money all tied up or not have it available to pay this.

Mr. BENIDICKSON: You would have to sell the property to pay the minister.

Mr. NUGENT: You may have to, whereas if the time required for payment is when the minister replies to the notice of objection, then it gives them a little better chance.

Mr. FLEMING (*Eglinton*): If you did that, you are going to give this taxpayer the benefit of having another six months to pay the tax; that is not fair.

Mr. FLYNN: I suggest the minister may add the same right as provided in subsection 2 of section 17. In the case of an appeal or objection, if the minister is not satisfied with the appeal and the objection is serious, or that the situation endangers the possibility of collecting the payment, that the minister may direct the taxes be paid. I would think the rule that you have to pay when an appeal is launched or when the objection is filed is too stringent.

Mr. NUGENT: The point I am trying to make is that they have ninety days in which to file a notice of objection to an assessment, and if he has it to pay the department does not have to do anything for a further six months. So long as the department does not do anything he cannot bring it on to appeal; he cannot have the matter decided. It goes to appeal after that six months, after the department decides to sit on it. I thought we would be better off if there is some way we could force the department to move a little more quickly. If he is going to have to pay the taxes on assessment and there is no other remedy for him, we should make the department speed up in order that the matter could be decided on an appeal more quickly.

Mr. LINTON: If payment is enforced before the appeal is decided—generally that would not likely happen but it might—if it did happen and he succeeded in his appeal, he gets his money back with interest.

Mr. BENIDICKSON: But it is a lower rate of interest than commercial earnings.

Mr. LINTON: He gets 5 per cent.

Mr. MACLEAN (*Winnipeg North Centre*): Is that the same as the Income Tax Act in regard to overpayment?

Mr. NUGENT: Maybe you could require him to do the same thing by requiring him to give security. But in many cases the actual payment of the cash while the government is able to wait six months without doing anything, might create quite a hardship. Sometimes operating capital is extremely valuable.

Mr. FLEMING (*Eglinton*): I will ask Mr. McEntyre to make a comment on that last suggestion.

Mr. J. GEAR MCENTYRE (*Deputy Minister, Department of National Revenue*): We have this situation in the Income Tax Act. I think the side note

refers to the income tax provision. Very often we have taxpayers who have a serious appeal and who find it very difficult to raise the money to pay the taxes pending the appeal, whereas there are assets available which of course the taxpayer feels they would not otherwise realize unless they had to pay the taxes. In these circumstances, arrangements can be made with the taxation division to provide security or guarantees of some kind pending the outcome of the appeal. This is done quite frequently in the income tax administration, and I feel it would probably work out the same way with respect to the few cases we would have in this new estate tax.

Mr. CRESTOHL: Does the provision of the Income Tax Act allow the giving of security satisfactory to the department, or is it only an act of grace on the part of the department to do that?

Mr. MCENTYRE: It is at the discretion of the department.

Mr. CRESTOHL: There is no provision or any regulation.

Mr. LINTON: It is in this act at section 49.

Mr. MCENTYRE: A similar provision is provided in clause 49 of this bill.

Mr. FLEMING (*Eglinton*): It covers the point that was made.

Mr. CRESTOHL: I would like to raise a further question. Subsection 1 of section 17 speaks of a liability to pay. That is not the compulsion. There is a liability to pay and the department can say a liability exists notwithstanding the fact you launched an appeal. The department can say we want you to pay, or we do not, or we trust you. The second section is the compulsory section. "If you file under section 2 we insist you pay because you use the words "where a person is attempting to avoid payment". Would it not be wiser to use the word "evade"?

Mr. FLEMING (*Eglinton*): It is always a matter of regret when I find myself disagreeing with Mr. Crestohl on a question of legal interpretation. May I quote section 51(2) of the Income Tax Act and you can compare this with the wording of clause 2:

"Where, in the opinion of the minister, a taxpayer is attempting to avoid payment of taxes, the minister may direct that all taxes, penalties and interest be paid forthwith upon assessment."

Mr. CRESTOHL: That still does not confirm or repudiate what I am saying.

Mr. JONES: I think there is a fundamental misconception here as to the meaning of these particular words and if I might draw this to your attention, sir, I think your trouble might clear up. This is what section 17(2) says—"avoid payment of any amount payable." The use of the word "avoid" that you are making in connection with income tax is not to avoid taxes that are payable but avoiding—

Mr. CRESTOHL: If I appeal I am attempting to avoid paying tax which has been assessed against me; when I am evading I am doing something illegal.

Mr. FLEMING (*Eglinton*): May I suggest to Mr. Crestohl, with whom I always enjoy a legal argument, I think Mr. Jones' point is well taken. It is to avoid a tax payable. We have these same words used in legislation such as the Absconding Debtors' Act and similar legislation. The word "avoid" has a well defined meaning and I do not think it is as confined as what Mr. Crestohl was previously arguing for.

Mr. CRESTOHL: The minister will no doubt be interested—I would like to send him some jurisprudence right on this point where higher courts held it is not illegal for a taxpayer to avoid taxation or, I think the words are, to avoid burdensome taxation. It is illegal for him to evade or attempt to evade taxation. That is an obiter dictum by a judge of the Superior Court in Montreal.

Mr. FLEMING (*Eglinton*): Well, here is Mr. Thorson, a very competent draftsman. May I ask Mr. Thorson if there is any difference here between "avoid" and "evade"?

Mr. THORSON: I think perhaps there is some. Evasion is, as you point out, the concept of being an illegal escape from taxation whereas avoidance could mean either a desire to reduce your tax liability or a desire not to evade it but to avoid payment indefinitely. You are not attempting to evade payment of your tax; you are adopting techniques and devices whereby you put yourself out of the reach of the treasury for collection of the tax.

Mr. CRESTOHL: If I do that legally and I succeed in avoiding the application then I have not evaded.

Mr. THORSON: Quite so; I would concede that. The point is avoidance goes beyond evasion and contemplates a situation where a person is adopting deliberate delaying tactics.

Mr. CRESTOHL: You are perfectly right. The reason I raise it is I do not know that section 2 is also covered by the giving of security. If it is then that point is nothing, it is just interpretation.

Mr. FLEMING (*Eglinton*): Section 49 has a point dealing with security, but this would also cover subclause (2).

Mr. LINTON: Well, subclause (2) was mainly designed to prevent people escaping paying taxes that are owing, by removing the assets from the country or something of that kind and security would be no answer to that.

Mr. BENIDICKSON: In view of what Mr. Thorson said why do you not say "avoid or evade"?

Mr. CRESTOHL: And a person has a right to avoid.

Mr. WINCH: I am no lawyer, but I think this is beating around the bush because it says "avoid a tax which is payable." Therefere avoiding is evading when you use the words "tax which is payable."

Mr. CRESTOHL: When is it payable?

Mr. THORSON: I suggest you cannot establish tax evasion under certain circumstances where delaying tactics were being adopted.

Mr. WINCH: On a tax payable?

Mr. THORSON: Yes.

Mr. WINCH: That is why we have so many lawyers in this country on account of terminology.

Mr. NUGENT: Is this meant to put pressure on people who may have an appeal coming and are seeking a legal loophole to avoid the extra tax?

Mr. LINTON: No, the section is designed to prevent people from escaping the proper liability for tax by taking some means of getting themselves or their assets out of the place where they can be reached by suit.

Mr. NUGENT: On that interpretation then the word "evade" is the one that is required.

Mr. THORSON: I suggest not, sir. There would be many circumstances where it would be difficult if not impossible to prove an intention to evade taxation under the act, whereas—

Mr. NUGENT: All this is covered by the opinion of the minister?

Mr. PALLETT: Then it does not matter what word you use when you are relying on the opinion of the minister.

Mr. FLEMING (*Eglinton*): Let Mr. Thorson finish his answer.

Mr. THORSON:—whereas there might be steps taken to safeguard, having regard to the course of conduct of a taxpayer, a man from the thought that he was attempting to avoid the payment of the tax that was payable.

Mr. JONES: Shall we say the incipient taxpayer?

Mr. THORSON: Well, the process dodger.

Mr. GOUR: In that case you have some in 49 here. You could have some mortgage or something any place without forcing that gentleman or that executor to sell some property at that time. He may have some money later.

Mr. FLEMING (*Eglinton*): Quite so, clause 49, if the taxpayer offers security under clause 49 then there would be no occasion to apply the power under subclause (2) of 17.

Mr. GOUR: If we have got something to guarantee, no matter if he goes away as long as he has enough to guarantee the payment.

Mr. FLEMING (*Eglinton*): Quite.

Mr. MORTON: On that point I should like to say it is at the minister's discretion and sometimes as solicitors when we are dealing with tax officials on a lower level we wish there were a few rights on behalf of our clients and I am speaking as a lawyer. Would it be better if in that clause 17 it would say, "every taxpayer be given the opportunity of putting up security"? There and then he has the right of putting up security and it is not left at the whim of the minister's representatives whether he should put up that security.

Mr. NUGENT: Somebody would still have to value the security.

Mr. MORTON: Well, that is all right, securities are something that can be judged, but there are some times when officials on a lower level are not too sympathetic.

Mr. FLEMING (*Eglinton*): This is an authority that the act confers on the minister. It is a matter in which the minister must take the responsibility.

Mr. MORTON: I grant the minister that that is where the minister should accept the discretion, but I think in practice directives are sent out along with the act as to what the officials may do. This sometimes puts the taxpayer at a disadvantage and we sometimes feel if it would not be reasonable and right if it could be written into the act rather than depending on the instructions that come along with the act to the officials in the department and it would be much easier for the taxpayer without prejudicing the rights to collect taxes.

Mr. FLEMING (*Eglinton*): I do not think any honourable member thinks or will suggest that in a case where there is a serious question raised in appeal by the appellant taxpayer and the compulsion of payment at the outset of the appeal proceedings would involve his disposing of some asset of the estate, he may not wish to dispose of and he offers adequate security not only for the cost of the appeal proceedings but for the payment of the taxes with whatever interest or penalties may be payable, surely no one thinks the minister is going to be arbitrary and say in a case like that, "we will not take your security, we will take a hard course and make you dispose of that asset." I do not think anyone thinks that is the kind of enforcement that is going to be given to this section.

Mr. PALLETT: That is on the assumption the present party is going to stay in power a long time.

Mr. BENIDICKSON: I would suggest it is similar to the income tax provisions of managerial discretion.

Mr. FLEMING (*Eglinton*): It is identical in this matter.

Mr. BENIDICKSON: This very kind of discretion, as I remember it, was much criticized and feared by members of the Conservative party when they were not in power.

Mr. FLEMING (*Eglinton*): Well, my friend and those he supported advocated this legislation before.

Mr. BENIDICKSON: Oh, I will confess there are several items in this bill that I have in the past urged and was unsuccessful in advancing. You have done very well in some respects. I regret in so many other things you have not changed it when I thought you would.

Mr. CRESTOHL: I think what we should try to do is to safeguard the taxpayers against some decisions later on when this government perhaps is not in power.

Mr. JONES: You wish to save the country from the Liberals.

Mr. CRESTOHL: However, the point I want to make is this: we have been keeping our eye with respect to subclause (2) on the culprit, the man who really is ordered to pay and we are afraid he will do something to either abscond or dispose of his assets or gamble them away. I think that is what we have been talking about. I think we should, sir, look at the man, at the citizen who does not want to evade paying his taxes but wants to honestly and legally avoid paying his taxes because he feels he does not owe the taxes.

Now, I am sure the minister will admit there is a great difference. Mr. Thorson admits there is a very serious difference. I would not like to see John Citizen, who honestly feels he has a good appeal, tarred with the same brush as the culprit. I think we should be very careful in our wording and whilst the minister will exercise a discretion in one way as well as he will in another and no one is suggesting he will abuse that discretion I still think we should give the benefit of the doubt to the citizens who will honestly think they should not pay their tax. I think they should be given the right by appeal to avoid taxation.

Mr. FLEMING (*Eglinton*): Oh, they have the right.

Mr. CRESTOHL: Of course they have the right but they are tarred with the same brush as the culprit whom we suspect will abscond when you use the very word "avoid" and not "evade."

Mr. LINTON: Mr. Chairman, have we not got a difference here between the avoiding or evasion of the liability for taxes and avoidance and evasion on the payment of taxes? This is only for the payment of taxes which has been imposed, the tax has been determined and imposed.

Mr. BENIDICKSON: It is obligatory to collect those taxes?

Mr. LINTON: It is in some cases, yes.

Mr. BENIDICKSON: I would trust the minister as a matter of fact, believe it or not, although he had some doubts in past years. But is it obligatory under subclause (1) to have this tax paid on the property or on anything else you have?

Mr. LINTON: Subclauses (1) and (2) are not too closely related. Subclause (1) contemplates a situation where an appeal has been taken and the machinery here exists to collect the taxes without waiting for the appeal. I submit that is necessary because appeals could be taken simply as delaying tactics on frivolous grounds. Normally security can be accepted, and normally would be accepted. Subclause (2) on the other hand has no relation to appeals necessarily. There may be an appeal pending, or there may not. This primarily relates to a situation where the collection of the tax is in danger, or is in jeopardy either because the people owing it are about to move out of the country or the assets on which it is imposed are about to be moved out of the country.

Mr. BENIDICKSON: You have experienced this quite frequently?

Mr. LINTON: Not "quite frequently", no, but often enough to realize that it must be covered.

Mr. JONES: To put it shortly, Mr. Chairman, to avoid payment of any amount payable a person liable would have to place himself or the assets outside the jurisdiction of Canadian courts. That is the only way he could do this. He could, of course, destroy the assets.

That is the sole situation with which clause 17, subclause (2) is concerned.

Mr. CRESTOHL: That does not quite folow. I see the point you are trying to make, but it is only payable when there is a final judgment.

Mr. JONES: He could not avoid payment on it if he retained the assets in a form where the authorities could seize them if he refused to pay. Therefore, if he keeps the assets in being then the clause will not come into function. If he keeps them in this country that will not happen.

Mr. BENIDICKSON: Is there very much a man could dispose of in value today without the consent of the department? I would assume that if there was litigation pending the release or consent would be withheld.

Mr. LINTON: Yes, the consent machinery is the prime protection. It is possible to hold considerable quantities of property in a form that does not require a consent—cash is the main obvious example, and securities in bearer bonds and securities in nominees' names.

Mr. CRESTOHL: I see a bit of an invasion upon the legal rights of a citizen to legal procedure. This is not a serious invasion, but I see a bit of an invasion there. What Mr. Linton has pointed out is quite correct. We have here the amount determined. In an invasion there is no amount, the man is just trying to avoid taxation, and avoid payment. Here you have an amount determined. I think you sort of dampen and impede somehow—I cannot find the exact shade of meaning—his right to have his day in court.

Mr. LINTON: Oh, no, Mr. Chairman, because he still has the right of appeal.

Mr. CRESTOHL: I realize that, but you say he has to pay his money in advance.

Mr. BENIDICKSON: He may have to sacrifice his capital assets. When you suspect an evasion then I would certainly urge the minister to do his utmost to make him pay a deposit or something.

Mr. FLEMING (*Eglinton*): Mr. Chairman, between these clear limitations, which are evident in clause 17, of the powers that are confered in section 49, I think hon. members can feel that there is every consideration given to the rights of the individual taxpayer.

Clause 17 agreed to.

Mr. BENIDICKSON: Do you think you still have a discretion Mr. Chairman?

On clause 18—Tax as debt of estate.

Mr. BENIDICKSON: Is there any priority here over other creditors as a result of this clause? Are there any new priorities?

Mr. LINTON: No, Mr. Chairman.

Clause 18 agreed to.

On clause 19—Interest.

Mr. BENIDICKSON: Is that the same right as in the old act?

Mr. LINTON: Yes, Mr. Chairman.

Mr. CRESTOHL: Mr. Chairman, has there ever been an explanation given—there must have been, I am sure—as to why when the taxpayer has to pay interest on the arrears of taxes, it is five per cent, or whatever it is, but when the government has to repay him for overpayments on his money he only recovers two per cent, or three per cent?

Mr. FLEMING (*Eglinton*): Yes, Mr. Chairman. The explanation has been given many times. I gave it in the House of Commons just ten days ago.

Clause 19 agreed to.

On clause 20—Delay in filing return.

Mr. BENIDICKSON: Here we have another sort of arbitrary assessment under ministerial authority. This may be new. Subclause (3) says:

"— to be fixed by the Minister" Is subclause (3) comparable to the present Succession Duty Act? You say here "new in part". Is this "to be fixed by the Minister" similar to the old act?

Mr. LINTON: That is not the same provison as the old act, no.

Mr. BENIDICKSON: I have not got my red book here with me. Would you read the old comparable provision into the record. This looks fairly arbitrary. I do not know if this was here all the time.

Mr. FLYNN: I do not understand the difference between (1), (2) and (3).

Mr. LINTON: This is subclause (3) you are referring to. That is a lower penalty than in the old act. It is worded differently but under the old act the penalty was 100 per cent of the duty.

Mr. FLYNN: Does this mean that in all cases of an evasion or attempt to evade, the penalty is fixed by the minister?

Mr. LINTON: Within these limits.

Mr. FLYNN: Yes, but is there any other provision? There are two other cases: failing to file a return and failing to give some information, but this subclause (3) refers only to the evasion or attempt to evade. That is quite strange.

Mr. WINCH: Why should the minister have the power to decide between 25 per cent and 50 per cent? Is that not a matter for the courts to decide?

Mr. NUGENT: This makes the minister judge and jury.

Mr. BENIDICKSON: This is not in effect in all cases because there is an appeal, and I am sure if you made a personal appeal to the minister he would consider it and spend time on it.

Let us face this; nine times out of ten it is a decision that has been arrived at by the officials, under the minister, who have over a period had some quarrel with the other side. The minister is human and he knows his officials and has great confidence in them. They prepare a recommendation for him. We are all human.

Is it not possible that the officials have been in conflict with the potential taxpayer, and with all the tolerance which they might have developed over the years, might they not—

Mr. WINCH: Where is the appeal under subclause (3) of clause 20?

Mr. FLEMING (*Eglinton*): I think there are two points that should be made clear. In the first place any assessment of this penalty under subclause (3) is subject to appeal. That meets the entire point Mr. Winch was making about the rights of the court to determine. This is subject to appeal.

Mr. WINCH: Where does it say that, I cannot find it.

Mr. FLEMING (*Eglinton*): Wait until we come to the appeal section.

Mr. BENIDICKSON: Give us the number right now.

Mr. WINCH: I can find the appeals in substance, and everything else, but I cannot find an appeal on a penalty in regard to a person who has willfully atempted to avoid payment. I do not find that wording under the appeals section.

Mr. FRASER: Clause 23 covers the appeals.

Mr. WINCH: Not in this respect.

Mr. FLEMING (*Eglinton*): The other point I wanted to make was this: this is the language of section 17 of the Dominion Succession Duty Act which has been in effect for the last 17 years.

> Where any person required to file a statement pursuant to section 16 omits to disclose any property included in a succession that should

have been so disclosed, the person filing the statement is liable to pay to the Receiver General of Canada as a penalty an amount equal to 100 per cent of the amount of the duty levied in respect of the succession to such property, but in any proceedings to recover such penalty the executor is not liable thereto if he establishes to the satisfaction of the court that his omission to disclose the property was not intentional.

This is intended to be a relieving provision.

Mr. BENIDICKSON: Who decided the penalty under that act?

Mr. FLEMING (*Eglinton*): It was set here automatically at 100 per cent.

Mr. THORSON: The hon. member asked for the reference on the appeals. It is clause 22, subclause (1) paragraph (b) "of the amount payable by that person as tax, or as interest, or penalties."

Mr. CRESTOHL: I think one of the saving words of the section is the word "willfully".

Mr. BENIDICKSON: Who decides what "willfully" is?

Mr. LINTON: That would be subject to appeal if the minister gave a wrong decision.

Mr. CRESTOHL: Subject to appeal to the Exchequer Court or the tax appeal board?

Mr. FLYNN: In the case of clause 21, the penalty is imposed by a court and a judge.

Mr. LINTON: Subclause (1) of clause 20 assesses the penalty.

Mr. FLYNN: It is not determined by the minister, it is determined by the court?

Mr. LINTON: No, sir.

Mr. FLYNN: Every person who fails to file a return of information as and when required by section 11 is liable to a penalty of $10 for each day of default, but not exceeding $1,000. Where does it say that it is the minister?

Mr. LINTON: The machinery, Mr. Chairman, is that the penalty would be assessed by the department—by the minister—and the taxpayer would have the right of appeal on the penalty, like any other assessment, to the appeal board or the Exchequer Court, or both.

This is subject to appeal before the courts under clause 22.

Mr. BENIDICKSON: Could Mr. Linton please read into the record the present comparable provision to clause 20, subclause (1)?

Mr. PALLETT: Mr. Flynn is talking about clause 20, subclause (1).

Mr. LINTON: 52 (1):

> Every person failing to deliver the statement required by section 16 is liable to a penalty of ten dollars for each day of default which elapses after the time limited for delivering such statement, but such penalty shall not in any case exceed one thousand dollars.

It has different wording but the same effect.

Mr. BENIDICKSON: At the beginning of subclause (2) you start out by saying, "New in part". What are the differences here?

Mr. LINTON: I think you will understand from the explanatory note. The old corresponding clause is a bit long.

Mr. BENIDICKSON: Would you read it into the record?

Mr. LINTON:

> (2) Every person failing to complete the information required on the forms prescribed by the Minister for reporting the particulars required by section 16 is liable to a penalty of $10 where the aggregate net

value of the property the subject matter of the succession does not exceed fifty thousand dollars, and to a penalty of a hundred dollars where the aggregate net value exceeds fifty thousand dollars.

The amount is now on a sliding scale up to $1,000.

Mr. FLYNN: I am not convinced that subclauses 1 and 2 give the right to the minister to levy that penalty.

Mr. LINTON: If you go back to clause 12—

Mr. FLEMING (*Eglinton*): Subclause 5 says: "The minister may at any time assess, tax, interest or penalties under this part ...." He has to have that power in any tax legislation.

Mr. FLYNN: Under the Income Tax Act there are some penalties levied by the minister and some determined by the courts. It seems to me that the court ought to decide.

Mr. CRESTOHL: With respect to section 3, I would like to say a complimentary word to the draftsmen. Here the proper language is used—"anyone who evades or attempts to evade the amount payable".

Mr. FLEMING (*Eglinton*): I was waiting for you to make a comment on that.

Mr. CRESTOHL: You know I will never disappoint you.

Mr. FLYNN: Are you making a compliment to the draftsman or yourself?

Mr. CRESTOHL: The draftsmen.

Clauses 20 to 22 inclusive agreed to.

On clause 23—Appeal.

Mr. NUGENT: Here the taxpayer has 90 days in which to file a notice of objection. It seems to me that the department should be able to consider his notice of objection within the same length of time.

Mr. LINTON: It is comparatively easy for a taxpayer to say he objects to an assessment. He need not give any great detail, but to answer that objection requires the obtaining of large numbers of documents and sometimes actual investigations and discussions. It takes much more time to settle it than to make the objection.

Mr. NUGENT: When an assessment is made by the minister and that person decides he wants to appeal he has only 90 days.

Mr. LINTON: But that 90 days runs from the end of the 180 days.

Mr. NUGENT: The 90 days may run from the day of assessment instead of 180 days after the minister has confirmed assessment.

Mr. LINTON: But you have a period of 90 days in which they can appeal. There is 180 days in which the minister can do something about it. That period is also open to them to gather the facts on their case and they then have another 90 days after that.

Mr. NUGENT: The point is, having been waiting for the minister to assess and finalize the assessment, they have no means of knowing whether or not there is going to be an appeal. That 180 days is not going to be used in searching the documents and preparing for an appeal which may never take place.

Mr. LINTON: If they are seriously in doubt on their assessment they will obviously use all the time they have to gather all they will need. It is much easier for the person appealing to have intimate knowledge of the matters and to gather his information than it is for the department which has to come to it from the outside.

Mr. NUGENT: The point I am making is that the minister might give a notice of reassessment which might be the first intimation which the taxpayer has that he is going to have to pay much more tax than he thought he should,

and after that notice is sent him he has 90 days in which to consider his appeal, whereas the department can wait 180 days if they like before deciding upon reassessment. I do not think that the department should be able to put the taxpayer in the position of having to make the decision in half the time which they may have for that decision.

Mr. LINTON: There is a need for much discussion in most of these appeals, discussion with the taxpayer. The 180 days is not only to enable the department to gather its side of the case but is also to enable them to have discussions on matters at issue. No time will be taken up in discussion during the taxpayer's 90 days.

Clauses 23 and 24 agreed to.

Mr. BENIDICKSON: Mr. Chairman, this seems to be rather a good time to have a break. We have been at it for about two hours. However, I was going to ask, in view of the fact that the brief which I made reference to earlier is new in that it is unlike the other briefs to which we referred, whether or not you would accept it. It is from the Tax Foundation. I can give you my assurance that they would be glad to have it presented. It is based on an analysis of the new bill.

Secondly, I have an analysis, not on Bill 240 but an analysis on Bill C-37, signed by Mrs. Finlayson of the Canadian Committee on the Status of Women. It seems to me that many of the points which we have already covered—

Mr. FLEMING (*Eglinton*): Is this a new submission?

Mr. BENIDICKSON: Yes. It refers not to an analysis of Bill 248.

Mr. FLEMING (*Eglinton*): What is the date of it?

Mr. BENIDICKSON: It was just received this morning, Mr. Chairman, signed by Mrs. Finlayson who is President of the Canadian Committee on the Status of Women. The title is "Estate Tax, Bill C-37". I would think that members of the committee, even if it is not printed, would probably like to have it available in order that they would be able to have a look at it.

I do not know whether or not this is something which might go in as an appendix to the minutes or whether the chairman might decide that it should be duplicated as was done during the 1948 discussions on the income tax bill in respect of any presentation from a reorganized organization that came forward.

Mr. FLEMING (*Eglinton*): May I suggest that this committee will, I am sure, appreciate the assistance of material of this kind. If there is anything in it that has not already been before us I am sure the committee would be glad to have it. Perhaps it could be handed to the committee and if it is not too bulky perhaps it could be engrossed for distribution. If it goes into the appendix we probably would not see it for two weeks.

Mr. BENIDICKSON: I thought that perhaps you would not want me, as a private member, to have it duplicated and distributed.

Mr. FLEMING (*Eglinton*): Is it very bulky?

Mr. BENIDICKSON: The manuscript of the Canadian Tax Foundation is probably a dozen pages and half of it is complementary. The other brief is only two pages. Would the minister like to have a look at it.

Mr. FLEMING (*Eglinton*): I was going to suggest that the committee might go on to six o'clock as we did yesterday. I think that Mr. Benidickson is about to suggest that we should adjourn and should not sit tonight. If he is going to make the suggestion that we do not sit tonight that would have a bearing on whether or not we are going on now.

Mr. BENIDICKSON: I was not going to make that suggestion.

Mr. FLEMING (*Eglinton*): I will have to be in the house this evening, but I am sure I am not necessary here with all the officers here to give the explanations.

Mr. FRASER: You are the only one who said you are not necessary. We think you are.

Clauses 25 and 26 agreed to.

On clause 27—Listed securities.

Mr. BENIDICKSON: I move we adjourn.

Mr. FLEMING (*Eglinton*): Yesterday we sat until six o'clock.

Mr. BENIDICKSON: Two hours is a normal sitting.

The CHAIRMAN: At our earlier organization meeting we said we would sit from 3:30 until 6 o'clock, and I would like to carry on.

Mr. WINCH: Do we have a quorum, Mr. Chairman?

The CHAIRMAN: Yes; if no one runs out.

Mr. BENIDICKSON: I am sorry, but I am rather curious to see what is going on in the private members legislation between 5 and 6 o'clock.

The CHAIRMAN: We are on clause 27.

Mr. BENIDICKSON: Clause 27 is, of course, a very important clause. I wonder if somebody would outline to the committee the representations which were made from some of these important organizations in respect of valuation, as it was in Bill 248, and outlined what changes, if any, have been made.

Mr. LINTON: There were a number of representations to the effect that valuation rules, generally, should not be included. This is one set of recommendations to which no agreement was given.

Mr. BENIDICKSON: What were the representations? The minister assured us that they would be outlined to the committee when requested.

Mr. LINTON: This is the one on clause 53(1) from the Trust Companies Association of Canada:

> Is it the intention of the section that securities on which published quotations are available shall be valued at the closing price or quotation? There is no definition of the term 'closing price or quotation'. We recommend that the term 'closing price or quotation' should be defined specifically so that persons administering estates will know exactly how to value securities. This section makes no allowance for valuation of large holdings of securities which are difficult to market. This can result in substantial hardship. We recommend that this section be amended to provide some relief in this situation.

Mr. BENIDICKSON: The minister might comment and indicate why it was felt undesirable to proceed with some of these recommendations.

Mr. LINTON: On the point of carrying on, we did not believe that it could be defined any more clearly than it is in the section. In respect of the valuation of large holdings, that has been a difficult question in respect of succession duty taxation for years.

Mr. BENIDICKSON: Large holdings; yes.

Mr. LINTON: This is referring to the so-called blockage problem. It was felt, in relation to quoted securities, that the quotation is the best test of value which you can get. If you depart from that, you get into an unreal world.

Mr. BENIDICKSON: I understand that Ontario has some different practice. What is it? Is it that they do not accept as absolute the last stock quotation?

Mr. LINTON: To a degree, but generally I think their practice is the same. There is a departure in this section in that where the deceased controlled the corporation then the quoted price will not govern.

Mr. FRASER: May I ask on what do you determine the value of the stock? Is it the value at the date of death?

Mr. FLEMING (*Eglinton*): Yes.

Mr. FRASER: Is that always the case? I have heard of cases where the security is valued at so much and perhaps a year or two years later they come back and say it is worth much more.

Mr. LINTON: No. The valuation date is always the date of death. It may be that it is a privately held company in which case investigation has to take place to establish what the valuation is, and one of the factors which might come into consideration would be the realization made at a later date, but only in so far as that realization indicated a value existing at the date of death. The date of death throughout determines the value effective.

Mr. JONES: What are the arguments for an alternative valuation date?

Mr. LINTON: Many of the briefs recommend the use of an alternative valuation date. The only jurisdiction I know of which does it is the United States, which allows a one-year alternative date, one year after the date of death. Any alternative date tends to delay both the assessment and the administration of the estate and that is an undesirable feature from the executor's point of view.

Mr. FLEMING (*Eglinton*): In regard to this matter of the alternative date, you can approach it in two ways. Suppose you take a year. The valuation shall be that of the date of death or a year later. Somebody has a choice; presumably it is the taxpayer. You hold up the assessment a full year. So he has his choice; if the property has gone up in value in the year he will choose the date of death. If it has gone down he will choose a year later. Or you could have another situation where you say we will give him a year for the purpose of determining value. That means any time in the year the taxpayer can say, "well this particular stock has reached bottom and therefore we will choose this date." I would suggest the advantage rests with the taxpayer in picking the alternative date. Here we have a well established rule. It has been in effect throughout the whole lifetime of the Dominion Succession Duty Act. You have the same rule precisely in the various provincial succession duty laws and we can see no reason to depart from it. The various representations we received seeking the alternative date are based on the foundation that "you are writing a new law, let us give the taxpayer this additional advantage." I think in principle there are very good reasons for sticking to a rule which has been as well established and has not I think any unsoundness in principle attached to it. If you are going to make reductions in taxes, if you wanted to ease the burden of taxation, I do not think that is the way to do it; if you want to do that, the way to do it is pretty obvious.

Mr. CRESTOHL: Could we ask you what it is?

Mr. FLEMING (*Eglinton*): I will tell you some time, Mr. Crestohl.

The CHAIRMAN: Does clause 27 carry?

Mr. BENIDICKSON: No. I wonder if we could not probably receive in a little fuller form the representations that were made respecting listed securities, 47(1) from say somebody like the Tax Foundation on the matter of blockage. I think they recommended the crown might be affected by manipulated transactions. What was your feeling?

Mr. LINTON: We thought that the crown was best protected by the section as it is. I will read the remarks of the tax foundation.

> It is somewhat surprising that this bill does not recognize 'blockage' and manipulated though quoted securities. The proviso to section 2(1)(a) of the Ontario Succession Duty Act should be adopted. For years administrative officials in the branch have resisted attempts to persuade

them to apply blockage on the basis that it would constitute an embarrassing precedent having regard to past practices. The branch should also take note of the fact that in connection with closely held though listed stocks transactions appearing from time to time are relatively no guide to the real value of the securities, being 'put through' transactions.

Mr. Chairman, with regard to the reasoning which was supposed to have governed the use of this principle in the past, it is not that it would constitute an embarrassing precedent in relation to the past but the belief that it is the best test of value. If you have trading in the market place the best test is the trading that takes place. It is conceivable you may say to break the market, but rarely is this so. The only practicable way to deal with this valuation of listed securities is to use the traded prices.

The CHAIRMAN: Does clause 27 carry?

Mr. BENIDICKSON: Subclause (2), Mr. Chairman, will you call that?

Mr. LINTON: Subclause (2) is one of the departures which perhaps is implied as being proper in this brief. This state that the quoted price will not govern when the holding being valued represents control or represents control with members of the family. In that case the value is often more than the quotation for minority holdings and sometimes it might be less in a stock where a manipulated market existed and there, there might be a good case for it being worth less than the quoted price.

Mr. BENIDICKSON: Well, of course, this refers to blood relationship and I have seen one or two instances where despite blood relationship there have been arm's length transactions and I think this matter of control, either to hold a majority of the shares or any other manner by blood relationship, should provide for some appeal or some rebuttal.

Mr. LINTON: Mr. Chairman, all these matters would be subject to appeal.

Mr. BENIDICKSON: Under what section?

Mr. LINTON: Under the appeal of assessment section, clause 22, I think it is.

Mr. BENIDICKSON: Because the Canadian Tax Foundation did indicate where a father probably disposed of his interest in the business for full value or gave control of his interest in the business to, say, his sons and it ended up that he had lost control at full value and as far as his estate was concerned they could not possibly utilize all the shareholdings remaining in the estate at a pro rata proportion of the breakdown value of the company. They were no longer in control and while there was blood relationship the minority shareholdings were practically frozen. What can you do about that situation under the present bill?

Mr. LINTON: Well, you have to consider the problem in relation to the situation where the holders are not at odds with each other and without some rules it is always contended that everyone is in a minority, at odds with everyone else and generally speaking the shareholders together in a corporation will get together for their own mutual benefit. There could be cases where that is not so, but in the vast majority of cases it is done.

Mr. BENIDICKSON: If in fact it is not so, what right has the estate, the executor to advance facts either to the administration or to a court to convince them that minority shares should be valued under majority shares even though there is a blood relationship between the shareholders?

Mr. LINTON: It would be a question of fact to be established.

Mr. NUGENT: I just wondered if Mr. Benidickson could produce some of this valuable advice from the Canadian Tax Foundation or somebody else as to how to fix up this section rather than merely poking holes in it. It may not

be perfect and maybe this would be the time to bring forward some constructive criticisms.

Mr. BENIDICKSON: I think that is a job for the committee, with combined effort. I think there is a growing dissatisfaction in the community about arbitrary arm's length rules on the part of the administration without any ability to appeal or rebut the presumption. Now, the Canadian Tax Foundation has this to say.

> It should be possible under either act to present a case to show the minister that relationship by blood alone does not necessarily mean that the related persons are not in fact dealing with each other at arm's length. With respect to this subsection it should be appreciated that even in the most closely knit family association the blood tie has little or no bearing upon the relationship of the related parties. A father may be in business with two sons and as a result of strenuous bargaining between the father on the one hand and the sons on the other control of the company may pass from the father to the sons at a price and the price might be just as good as it would be between strangers. Having parted with control the father's ability to cause the company to be wound up so as to obtain for him or for his estate a pro rata share of the profits available for the shareholders upon the winding up control disappears.

In other words, the estate cannot exercise a breakdown value of that and yet as I read it is there a presumption that if there is blood relationship, no matter how proper or accurate the consideration upon having transferred that there is a discretion based on a majority holding.

Mr. LINTON: There are two points about this. Subclause (2) of clause 53 does not do anything beyond this. All subclause (2) of clause 53 does is say the quoted price will not apply when control is held in this way.

I am sorry, I have the old act. Clause 27 (2), which is the one we are discussing now, that does not do anything except take out of the quotation-governance clause a company which the deceased or his family controls. No. 28 (1), however, does something of the nature of what is suggested.

Mr. FLEMING (*Eglinton*): I think if I may say so, Mr. Benidickson is jumping the gun here a bit. Certainly by 27 (2) all it does is to say that the rule in 27 (1) does not apply in the case where the securities are dealing with a corporation controlled by the deceased or members of his family or where there is no recorded trading in the securities concerned. It just says 27 (1) does not apply in that case. Surely it is a later clause which Mr. Benidickson wants to rest his point on.

Mr. BENIDICKSON: Of course I am under the same difficulty, I am referring to notes which have a nomenclature that refers to the old bill.

Mr. LINTON: Perhaps we can relate those. I was also in the same difficulty. Section 27 (2) represents 53 (2) of the old one, and 28 (1) is 54 (1) of the old one.

Mr. BENIDICKSON: I just raise the point on both sections, is it an irrebuttable thing?

Mr. FLEMING (*Eglinton*): No, that is not the effect of 27 (2). All that 27 (2) says with respect to the security of a class I have mentioned is that their value is not determined in the manner determined by 27 (1). That is all it says.

The CHAIRMAN: Clause 27, subclause (2) carried?

Agreed to.

Subclause 3 agreed to.

Mr. BENIDICKSON: Well, I will not repeat my previous remarks which I recognize are relevant now under the new bill to clause 28 (1). On that the Canadian Certified Accountants' Association have complained on that section in the old bill.

The CHAIRMAN: Are you talking of clause 28 now?

Mr. BENIDICKSON: Yes. I quote from the brief of the Canadian Institute of Certified Public Accountants. They complain:

> There is no discretion whereby the minister can recognize and make allowance for a special situation. It seems most unreasonable that property owned by a deceased person should be valued, taking into account property owned by other people. It is only the property owned by the deceased that is being taxed. Therefore we feel that such property should be valued on its own.

Mr. LINTON: Well, Mr. Chairman, I would agree with that, but the section does not do that. What the section does is to value only the deceased's holdings, to not make any allowance of a discount because he is a minority holder if he is only a minority in the family. It does not value in his case the holdings of anybody else. Then perhaps this submission is based on a misconception of what the section does.

The CHAIRMAN: Which brief are you reading, Mr. Benidickson?

Mr. BENIDICKSON: The chartered accountants' brief.

Mr. FLEMING (*Eglinton*): That point was considered and the view that Mr. Linton has expressed is the view that was taken of it, I might say, Mr. Chairman.

Mr. LINTON: We do not think clause 28 does what the accountants thought it did in the old bill.

Mr. BENIDICKSON: I do recall from personal experience an instance where there were relations in a company and I saw a situation where second or third cousins had a minority interest and there was an attempt to consider that it was a controlled family organization. Under the definition here, of course, that would not be blood relationship so that it does not affect that, but it gave me a very clear illustration of how after death, even though a deceased had been a participant in a corporation, if the majority holders of stock had hold of that stock and had control of it they could very well say, "We have not the slightest interest in declaring dividends in so far as the holding of the estate is concerned."

Mr. LINTON: In a closer relationship let us imagine that victimization is to take place. The estate, though it may lose the immediacy of dividends, its interest in the corporation is positively more than any receipt of dividends. He would still have an interest in the break-up value.

Mr. BENIDICKSON: The estate would have an interest in the break-up value, but on the other hand it is the dollar value at the date of death. Who in the dickens would want to pay that if they saw that the majority of other shareholders were not interested, and they probably even had control of the transfer of stock? If they did not want to pay dividends, who in the world would be bothered with a minority interest if it seemed to be the will of the majority shareholders, for their own purposes, not to declare them?

Mr. LINTON: Not infrequently the majority shareholders will buy in the minority.

Mr. BENIDICKSON: Yes, but I have heard it expressed in this regard that they wanted that stock just as much as they wanted a second hole in the head.

Mr. CRESTOHL: What valuation would you possibly place on the minority? How would you assess its value?

Mr. FLEMING (*Eglinton*): This is a question of fact in each case. There is a right of appeal on the part of the taxpayer if he is not satisfied with the policy.

Mr. NUGENT: Mr. Chairman, I am afraid you lost me someplace in this because the explanatory note says the minority shareholder will be treated as one of the controlling group shareholders.

The wording of line 19 says that the stock shall be, for the purpose of this act, determined as though it belonged to the controlling group.

Mr. BENIDICKSON: That is just the point of the protest.

Mr. LINTON: The protest, Mr. Chairman, was that the main stock of the whole group would be valued on the deceased's death. It is only the stock of the deceased that will be valued, but as part of the group represented by the family holdings.

Mr. NUGENT: I do not think it means that.

Mr. LINTON: Oh yes, there is a great difference. A deceased might own 20 shares out of 100 shares, and the rest his family owned. The difference is whether you are valuing, 100 or 20, but you are only valuing 20. Some of these briefs assume that you are valuing 100, not valuing the 20 as part of the 100.

Mr. NUGENT: It seems to me that they would object to the principle that they should be valued as part of the group merely because the other shareholders were related.

Mr. LINTON: I do not think that is the meaning of the brief.

Mr. NUGENT: My own objection to it at the moment is that they must be valued with the whole group, under this clause, whereas they might be at arm's length despite the relationship. That interpretation might give a different value to the shares, depending on all the other circumstances.

I would have thought the department would have been on safer ground to have used the word "may" in there instead of the word "shall".

Mr. LINTON: In that case you would leave a great discretion with the minister.

Mr. BENIDICKSON: I think that is the proper thing to do in this case. I would leave the illustration with you of a father divesting himself of the major control, but still controlling some minor shares. After his death, in view of the fact that the sons had paid full consideration for the shares that they had acquired from him, they were not interested in what was done with respect to the estate holdings of the minority stock.

Mr. CRESTOHL: Would you hesitate to give the minister a discretion in this matter?

Mr. LINTON: That is really a matter of policy.

Mr. NUGENT: It seems to me that blood relationship should be only one of the factors to be considered in whether or not this particular minority block of shares is acted upon in conjunction with the others thereby becoming more valuable.

Mr. LINTON: This, of course, Mr. Chairman, is a very difficult thing to prove. It is always alleged, or almost always alleged.

Mr. NUGENT: This section, the way it reads now, shows the blood relation as being a fact, you cannot argue it. Once you prove blood relationship that block of shares automatically becomes part of the controlling block and has to be valued as such.

I would think that there are factors to be taken into consideration.

Mr. BENIDICKSON: They might even have been enemies, or very bad friends.

Mr. CRESTOHL: That block of shares might be worthless.

Mr. BENIDICKSON: It might be sterilized by that fact.

Mr. CRESTOHL: The widow who is left with the block of stock has absolutely nothing and yet she may be called upon to pay succession duty because it is valued in relatioin to the—

Mr. BENIDICKSON: That breakdown only, or some other—

Mr. CRESTOHL: Which may not take place for years, yet she has no money to pay the taxes.

Mr. LINTON: This case might happen, but you say that she is worth nothing; if she is a shareholder of the company she has an interest in the company.

Mr. BENIDICKSON: I can conceive of a case where it would be worth absolutely nothing, or very little, shall I say. There might be bad feeling in the company among the blood relations. The stock has a certain breakdown value, but no dividends are going to be declared; there is no longer anybody participating on a salary basis in the company so there is no reward there.

A stranger first of all would be timid to get into the thing, and secondly there might be something in the incorporating section saying that a transfer could not be made without the consent of the shareholders.

Mr. CRESTOHL: I can cite you an actual case. We once took proceedings to try to wind up a company in order to get the minority shareholder some value for his holdings and we could not get them to wind it up. He is still sitting with his shares and getting no dividends. He may sit holding them for years.

The CHAIRMAN: How can you administer what you are trying to do?

Mr. BENIDICKSON: By some provision in the act that gives the court, or the minister, or somebody else, some discretion to look at the facts and decide that they are unfair and at arm's length, but not to presume that they are not.

Mr. FLEMING (*Eglinton*): I think you are creating a very serious administrative problem if you are going to take out of the act a provision of this kind. You are going to leave this open to all kinds of abuse. The only alternative that is offered is that you give a discretion to the minister.

In this particular case, I should think that would have to be, if you are going in that direction, a very wide open discretion, the kind of discretion that has been—

Mr. BENIDICKSON: Let us try the courts.

Mr. FLEMING (*Eglinton*): It would have to be the kind of discretion that this parliament in by-gone years found objectionable in taxing legislation.

You will recall that one of the reasons that the income tax legislation was brought into being a decade ago was the fact that strong objection was being taken, in parliament, to so many discretions existing under the old Income War Tax Act.

If that is the only alternative that is offered to the language of this clause then I am afraid it is open to some strong doubts.

Mr. BENIDICKSON: I could advocate another one: it would be left to the court to decide on a matter of fact as to whether or not such a situation exists.

Mr. FLEMING (*Eglinton*): You could not force everyone to go to court to get a determination of value. That would be placing a very heavy burden on any taxpayer, let alone the department.

You have a provision for appeal where there is an appeal against assessment, and where an assessment does not represent a proper evaluation.

You see, the element of discretion destroys any possibility of appeal because, if the discretion is vested on the minister, no court is going to interfere with the minister exercising his discretion.

Mr. BENIDICKSON: Could we not say that the fact could be determined by the court as it always was determined by the court? We have jurisprudence in this regard. The court could decide as to the fact, prior to the statute saying that it is presumed that people of certain relationship are not at arm's length.

Mr. FLEMING (*Eglinton*): Does that mean you are going to send the department or the taxpayer to court to determine the value of the stock before assessment? You would never get assessment made in some of these cases, and you would be imposing an intolerable burden on the taxpayer, not to mention the department.

Mr. CRESTOHL: Value frequently is what reliable value is. Assume that a widow is left as a minority shareholder and has not got very much more. The department comes along and says we value it at so much and in the light of the other shares we assess you so much. All she has are the share certificates and she has no money. Would it not be fair for her to say, here, take my share certificates and if and when you can realize on them, then realize on them; you cannot take from me more than I have; I am giving you my shares, hold them for six years.

Mr. FLEMING (*Eglinton*): I beg of Mr. Crestohl not to put the government in the securities business.

Mr. CRESTOHL: No. The government is quite secure as it is.

The CHAIRMAN: Is clause 28 agreed to?

Mr. CRESTOHL: No. Let us discuss it a little more.

Mr. BELL (*Carleton*): I move that we adjourn until 3:30 tomorrow.

—The committee adjourned.

HOUSE OF COMMONS

First Session—Twenty-Fourth Parliament

1958

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: C. A. CATHERS, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

including Third Report to the House

Bill C-37—An Act respecting the Taxation of Estates

WEDNESDAY, JULY 23, 1958

WITNESSES:

Dr. A. K. Eaton, Mr. Gear McEntyre, Mr. W. I. Linton,
Mr. D. S. Thorson.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

61230-9—1

STANDING COMMITTEE ON BANKING AND COMMERCE

Chairman: C. A. Cathers, Esq.,

Vice-Chairman: Yvon Tassé, Esq.,

and Messrs.

Allard	Gour	Nugent
Allmark	Horner (*Jasper-Edson*)	Pallett
Asselin	Jones	Pascoe
*Bell (*Carleton*)	Jung	Pickersgill
Benidickson,	Keays	Regier
Brassard (*Chicoutimi*),	Lockyer	Robichaud
Cardin	MacLean (*Winnipeg North Centre*)	Rowe
Chevrier	Macnaughton	Rynard
Chown	Macquarrie	Southam
Coates	MacRae	Taylor
Creaghan	Martel	Thomas
Crestohl	Martin (*Essex East*)	Thrasher
Deschambault	McIlraith	Vivian
Drysdale	More	White
Dumas	Morris	Winch.
Flynn	Morton	
Fraser		

*Replaced by Mr. Horner (*The Battlefords*) on July 24, 1958.

Antoine Chasse,
Clerk of the Committee.

ORDER OF REFERENCE

THURSDAY, July 24, 1958.

Ordered,—That the name of Mr. Horner (*The Battlefords*) be substituted for that of Mr. Bell (*Carleton*) on the Standing Committee on Banking and Commerce.

Attest

LEON J. RAYMOND,
Clerk of the House.

61230-9—1½

REPORT TO THE HOUSE

THURSDAY, July 24, 1958.

The Standing Committee on Banking and Commerce begs leave to present its

THIRD REPORT

Your Committee has considered Bill C-37, An Act respecting the Taxation of Estates and has agreed to report it with the following amendments, namely:

Clause 7

Page 10, line 35, after the word "section" insert the following:
64, 78 or

Clause 9

Page 16, line 19, delete 39 and substitute 38 therefor.

Clause 12

Page 17, strike out lines 39 and 40 and substitute therefor the following:

(5) The Minister may at any time assess tax, interest or penalties under this Part or notify in writing any person by whom any return is filed that no amount is payable as tax under this Part in respect of the death of the deceased, and may

Page 18, strike out lines 1 to 6 and substitute therefor the following:

(b) Within four years from

(i) The date of an original assessment or notification that no amount is payable as tax under this Part in respect of the death of the deceased, or

(ii) The date any property is disposed of under a disposition or agreement described in paragraph (1) of subsection (1) of section 3,

In any other case,

reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require".

Clause 28

Page 27, strike out lines 19 to 21 and substitute therefor the following:

That belonged at that time to the deceased shall, unless it is established that the deceased and such one or more other persons were persons dealing with each other at arm's length, be determined for the purposes of this Part, as though each such share so belonging to the deceased formed part of a group of shares

Clause 38

Page 32, strike out lines 21 to 24 and substitute therefor the following:

Effected on the life of the deceased or payable under an annuity contract in respect of the death of the deceased, and any policy of insurance or annuity contract in which the deceased had an interest shall be deemed to be situated in the place

Clause 57

Page 43, line 39, after the word "prescribing" insert the following:

The nature of

A copy of the Minutes of Proceedings and Evidence relating to the above mentioned Bill is appended hereto.

Respectfully submitted,

C. A. CATHERS
Chairman.

(*Note: Second Report concerned private bills*)

MINUTES OF PROCEEDINGS

House of Commons, Room 118,
WEDNESDAY, July 23, 1958.

The Standing Committee on Banking and Commerce met at 3:30 o'clock p.m. The Chairman, Mr. C. A. Cathers, presided.

Members present: Messrs. Allard, Allmark, Asselin, Bell (*Carleton*), Benidickson, Cathers, Creakhan, Crestohl, Deschambault, Drysdale, Flynn, Fraser, Gour, Jones, Lockyer, MacLean (*Winnipeg N. Centre*), Macquarrie, MacRae, Martel, Morton, Nugent, Rynard, Southam, Tasse, Thomas, Vivian, White.

In attendance: Honourable Donald Fleming, Minister of Finance; Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance (on retirement leave); Mr. Gear McEntyre, Deputy Minister, National Revenue, Taxation Division; Mr. W. I. Linton and Mr. A. L. DeWolf, of the Department of National Revenue; Mr. E. H. Smith, Department of Finance; Mr. D. S. Thorson, Department of Justice.

The Committee resumed consideration of Bill C-37, an Act respecting the Taxation of Estates.

Clauses 28 to 60 were severally considered and adopted with some amendments.

The Preamble and the Title were also adopted and the Bill ordered to be reported to the House with the following amendments:

Clause 7

On motion of Mr. Bell (*Carleton*), seconded by Mr. Drysdale,
Page 10, line 35, after the word "section" insert the following
64, 78 or

Clause 9

On motion of Mr. Bell (*Carleton*),

Page 16, line 19, delete 39 and substitute 38 therefor.

Clause 12

On motion of Mr. Bell (*Carleton*), seconded by Mr. Jones,

Page 17, strike out lines 39 and 40 and substitute therefor the following:

(5) The Minister may at any time assess tax, interest or penalties under this Part or notify in writing any person by whom any return is filed that no amount is payable as tax under this Part in respect of the death of the deceased, and may

Page 18, strike out lines 1 to 6 and substitute therefor the following:

(b) within four years from

(i) the date of an original assessment or notification that no amount is payable as tax under this Part in respect of the death of the deceased, or

(ii) the date any property is disposed of under a disposition or agreement described in paragraph (6) of subsection (1) of section 3,

in any other case,

reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require.

Clause 28

On motion of Mr. Nugent, seconded by Mr. Bell (*Carleton*),

Page 27, strike out lines 19 to 21 and substitute therefor the following:

that belonged at that time to the deceased shall, unless it is established that the deceased and such one or more other persons were persons dealing with each other at arm's length, be determined for the purposes of this Part, as though each such share so belonging to the deceased formed part of a group of shares

Clause 38

On motion of Mr. Bell (*Carleton*), seconded by Mr. Jones,

Page 32, strike out lines 21 to 24 and substitute therefor the following:

effected on the life of the deceased or payable under an annuity contract in respect of the death of the deceased, and any policy of insurance or annuity contract in which the deceased had an interest shall be deemed to be situated in the place

Clause 57

On motion of Mr. Nugent, seconded by Mr. Bell (*Carleton*),

Page 43, line 39, after the word "prescribing" insert the following:

the nature of

At the conclusion of the Proceedings the Minister, Honourable Donald Fleming, thanked the Committee for its work on the Bill, and in turn the Chairman expressed the gratitude of the Committee to the Minister and his officials for their valuable assistance.

At 6:00 o'clock p.m. the Committee adjourned to the call of the Chair.

Antoine Chasse,
Clerk of the Committee.

EVIDENCE

WEDNESDAY, July 23, 1958.
3:30 p.m.

The CHAIRMAN: Order. Gentlemen, we will proceed with section 28 on page 27.

Mr. BENIDICKSON: Mr. Chairman, have you received any further representations?

The CHAIRMAN: I received a brief from the Canadian Chamber of Commerce and they said if there is any further information we wish they would be glad to send a representative.

Mr. BENIDICKSON: I think all members of the committee received that brief. It is now percolating down to the public that we are sitting and the sections which we have chiefly dealt with are the ones to which they are referring.

Mr. BELL (*Carleton*): Does that refer to section 28?

Mr. BENIDICKSON: They indicate they have seen Bill C-37 and they would like to come before the committee if they could be of any help.

Mr. BELL (*Carleton*): That is the brief dated May 7.

Mr. BENIDICKSON: It is a letter to all members of the committee.

The CHAIRMAN: It is dated July 22 and addressed to all the members "Gentlemen".

Hon. DONALD M. FLEMING (*Minister of Finance and Receiver General*): May I have the permission of the committee to refer to a letter I received today. I mentioned to the committee—I think on Tuesday—I had a call from the general manager of one of the trust companies saying that he wanted to acquaint me with his views on several of the provisions of the bill. I think the committee understood that I would bring this matter to it if there was any new point raised in the letter apart from those already discussed.

I received this letter at noon today. I can say quite quickly that there are five points raised in it. I think that there is nothing new in any of then but perhaps the committee would like me to mention them.

The first point is in relation to section 9 of the bill. The writer says:

> 1. This section deals with the deduction from the dominion duty by virtue of some part of the duty paid by a decedent domiciled in a prescribed province. Let us take a specific example. A man dies domiciled in Ontario with all his assets situated outside the prescribed province. Let us assume that these assets have a situs in the province of Manitoba, by reason of their being fully registered bonds of that province. Under these circumstances, while the full duty will be paid to the provincial government of Ontario there will be no rebate on the dominion duty. But, however, if instead of registered bonds of the province of Manitoba the decedent had exactly the same securities but in bearer form, situated in the province prescribed, then the assets would be considered to be in the prescribed province and there would therefore be the proper proportion of the Ontario duty deducted as rebate on the dominion duty. It is strongly recommended that there be no distinguishment of situs on property anywhere in Canada. Also, the rules of situs as set

out in the act are not necessarily the same as the principles laid down by the courts over long periods of time, and thus will be very confusing and perhaps be a source of unnecessary litigation.

This point was dealt with quite fully when we were on this clause. Mr. Linton went over these points, but perhaps the committee would wish to have comment on this objection and on the example that is put forward by the writer of the letter. Could Mr. Linton be heard on that point.

Mr. W. I. LINTON (*Administrator, Succession Duties, Department of National Revenue*): That is true. The two points are that the test of whether a provincial credit is allowable depends on the situs of the property, whereas in the Succession Duty Act it depends on whether the province taxes the asset; and secondly, that the rules will differ from the common law rules to some degree.

To take the second point first, one of the reasons why they do differ is to avoid confusion and not to create it, and it is hard to see how the rules would be a source of unnecessary litigation.

On the first point there will certainly be a difference in the credits granted as between the two acts, and the placing of the credit on the basis of situs is related to the tax-sharing arrangements with the province, on which you heard Dr. Eaton speak at an earlier stage.

Mr. FLEMING (*Eglinton*): The second point reads as follows:

> 2. Perhaps with certain specific individuals in mind, the new estates tax bill brings into the taxation value of an estate foreign real estate. I will not stress this point as it has been dealt with in the brief, but to cure certain cases a law of general application, as is contemplated, may have serious repercussions on the tax laws of other countries and thus discourage investment in the growth of Canada by foreign investors.

That point was also raised and we dealt with it specifically. Dr. Eaton made a comment on that. I do not know whether the committee wishes any further comment on it, but we dealt with that point very specifically.

The third point reads:

> The combined impact of succession duty and income tax on surplus of companies, lump sum payments of annuities on the death of the annuitant, premium commission funds of life insurance agents, etc., involve double taxation. I have in mind a company that has a total worth of $1 million, made up of $200,000 capital stock and $800,000 surplus. This company is owned by an individual who has very few outside assets, and on his death it will be necessary to realize on the assets of the company to pay succession duty on say $1 million, of which $800,000 will be subject to income tax at a high rate so that in effect the surplus of $800,000 will only net $400,000. The tax is levied at the value of $1 million instead of the proper value of $600,000.

May I suggest, Mr. Chairman, that Mr. McEntyre be asked to make a comment on this point.

Mr. J. Gear MCENTYRE (*Deputy Minister, Department of National Revenue*): Mr. Chairman, this has been a problem that has been coming up over a number of years and for that reason a special provision was enacted in the Income Tax Act to try to cure the situation that arose when the majority shareholder of a company died and there is accumulated surplus in the company.

Part II of the Income Tax Act provides that the company may elect and pay a tax of 15 per cent on the surplus as it existed in 1949, which would in effect free that surplus or that portion of the existing surplus for distribu-

tion to shareholders, tax free, usually in the form of the issuance of preferred shares or something of that kind, which could then be redeemed on the death of the brief shareholder and would make funds available to his estate to pay the duty.

Then with respect to the accumulated surplus between 1949 and the date of death or subsequent to 1949 there is provision that the 15 per cent tax can be paid to free a portion of the surplus equivalent to the amount of dividends actually paid out by the company year by year. Therefore, this problem has been recognized and I think the cure has been provided in the Income Tax Act.

Mr. FLEMING (*Eglinton*): The fourth point reads as follows:

> 4. The act does not provide for the issuance of a certificate of discharge. It also states that the minister may re-open for additional taxation at any time further taxable assets are discovered, even by way of gifts during the three-year period. The effect of these two sections is to place an intolerable burden on an executor in that he never can distribute the estate as he does not receive a clearance certificate.

I would like to make the comment that I think in writing this particular paragraph the writer has overlooked the change that has been made in the present Bill C-37 as compared with Bill 248. Now the liability rests on the executor only where he has failed to exercise due diligence. I think that point is overlooked in that clause and is the answer to that clause.

Mr. FLEMING (*Eglinton*): The final point is, Mr. Chairman:

> In view of the fluctuation of the market and the time elapsed between the date of death and the date of realization of assets, some consideration should be given to alternative valuation date, say six months after the date of death. You will remember the Wilder Estate.

We dealt with this subject very specifically yesterday. We examined the same suggestion which had been made as to the alternative date and I think the committee came to the conclusion, as we did in the revision of Bill 248, that the difficulties in the way of offering the taxpayer an alternative date are very great.

The final comment in the letter reads thus, Mr. Chairman, after stating the five points I have read:

> While there are other points that are also important, I realize that in a letter of this kind one cannot add much more without in effect repeating the brief.

He is referring there to the brief submitted several months ago on behalf of the Trust Companies' Association, which was very carefully considered.

> It is my sincere wish to be as helpful as possible to any governmental officials in carrying through the new principles of the Estate Tax which when changed in some respects and clarified as to language will stand out as an excellent piece of legislation.

Mr. BENIDICKSON: Would the chairman read for the record, since we seem to be following this practice, the letter which has been received by him from the Canadian Chamber of Commerce?

The CHAIRMAN:

> I am enclosing a submission which the chamber made to the Minister of Finance last May regarding Bill 248. As you will note, this submission deals in considerable detail with the terms of the former

bill because the matter of estate taxation is of considerable interest to the members of the chamber and indeed can have quite an impact on the economy generally.

It will be noted that Bill C-37 that you are presently examining, implements a number of the suggestions made by the chamber in the attached brief. We are appreciative of this reflection in the new bill of the chamber's submission.

There are still, however, a number of provisions of major importance which have not found their way into Bill C-37. I refer particularly to the general recommendations that appear on pages 4 and 5 of the enclosed brief relating to pension and death benefits, alternate valuation date and marital exemption. The reference to pensions and similar income rights is expanded on page 14, section 16(1)(a).

We would urge consideration of these provisions on the committee and if we can usefully contribute to your discussions, we should be glad to have representatives from the chamber appear before you.

Mr. FLEMING (*Eglinton*): The points made there, Mr. Chairman, are all points that the committee have already examined very carefully.

One of them is the matter of community of property. Another is the matter of taxation on annuities and pensions, which has already been dealt with. The third is the alternative date of valuation which we have dealt with. I think all of these points have been very thoroughly considered and examined already.

If I may, Mr. Chairman, refer to another matter. When we were on page 17 of the bill, in clause 12, subclause (5), which carried over to the top of page 18, the point arose in regard to assessment. It is in respect to the subject of the right to assess at a later date without limitation of time in cases where no notice of assessment had been issued where it was obvious there was no tax payable.

I was asked to look into this subject further. We carried the clause but I gave the committee assurance we would look into that matter again to see if there was anything we could do to meet the views put forward by some hon. members of the committee. I have come forward with an amendment which I think may be of assistance in meeting the point.

Perhaps Mr. Bell would move this amendment, Mr. Chairman, after it is read, and we could have an exposition of the change from Mr. Linton and Mr. McEntyre.

Mr. BELL (*Carleton*): I would move:

That Bill C-37, An Act respecting the Taxation of Estates, be amended

(*a*) by striking out lines 39 and 40 on page 17 thereof and substituting therefore the following:

"(5) The Minister may at any time assess tax, interest or penalties under this Part or notify in writing any person by whom any return is filed that no amount is payable as tax under this Part in respect of the death of the deceased, and may"

and

(b) by striking out lines 1 to 6 on page 18 thereof and substituting therefor the following:

"(*b*) within four years from

(i) the date of an original assessment or notification that no amount is payable as tax under this Part in respect of the death of the deceased, or

(ii) the date any property is disposed of under a disposition or agreement described in paragraph (1) of subsection (1) of section 3,

in any other case,

reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require."

Mr. FLEMING (*Eglinton*): Mr. Chairman, perhaps I could just say a word about the changes that have been made here.

The change in the first part—that is in (*a*)—consists of an addition. In other words, where in the bill now it is provided that the minister may at any time assess, it is now provided as well that he may notify in writing any person by whom no return is filed that no amount is payable as tax under this part.

In other words, in cases where he does not issue a notice of assessment because no tax is payable, we now intend to add a provision that in that case he may notify anyone in writing by whom the tax is not payable that no tax is payable.

Mr. CRESTOHL: Does that mean the four years begins to run?

Mr. FLEMING (*Eglinton*): Now, we come to the second part, (b). Where formerly a four-year limitation was applied from the date of the original assessment or the date any property is disposed of, it will also apply now in the case where a modification is sent that no amount is payable as tax under this part in respect of the death of a deceased.

If I can clarify that one stage further: there is still no notice of assessment in the proper sense of that word in a case where there is no tax payable, but in that case we propose to add a provision that the minister may issue a notice in writing to that individual. It will not be a notice of assessment. When he does issue that notice in writing, so far as the four-year limitation is concerned, it has the same effect as in the case where the notice of assessment is issued.

Mr. CRESTOHL: Is there any indication of when that notification must be issued after the death? Assuming the minister does not choose to send that notification, that there is no tax payable, for a year or two after death that means that the heirs will then lose the benefit of two years of the four-year period.

Mr. FLEMING (*Eglinton*): That is true with a taxable estate, too, Mr. Crestohl.

Mr. CRESTOHL: Yes.

Mr. FLEMING (*Eglinton*): But this is opening up something of a new procedure in order to give the estate that is not taxable the benefit of the four year limitation. That is the point which was raised yesterday by Mr. Jones and Mr. Drysdale.

Mr. CRESTOHL: That is perfectly right. The remedy you suggest is a good one.

Mr. FLEMING (*Eglinton*): And may I add also in any case where any taxpayer makes a request for such a notice the department will issue it and in that case the department would say: "Well, all right, you file a return". You would have to have a return filed, but in that case the notice in writing will be issued on request.

Mr. FRASER: May I ask a question? The wording is "may notify". Well, anyone that sent in would he not notify everyone that sent in, or would it be left up to him?

Mr. LINTON: We would propose as a matter of routine in a non-dutiable estate when it had been regarded by the department as being non-dutiable, send this notice at the same time as the release of the estate as a normal part of routine.

Mr. FRASER: It will go out in every case?

Mr. FLEMING (*Eglinton*): This is setting up a new bit of machinery for the benefit of the taxpayer and the non-taxable estate.

Mr. FRASER: I just wondered if that word "may" was the right word in there. He may or may not.

Mr. JONES: There are circumstances, Mr. Chairman, that might arise, I think all committee members will agree—which would make it undesirable for such a section to be made mandatory. I think discretion should be left there. I certainly welcome the change that has been made; it certainly improves the situation.

Mr. FLEMING (*Eglinton*): Thank you very much.

The CHAIRMAN: It has been moved by Mr. Bell and seconded by Mr. Jones, you have heard the amendment—agreed?

Amendment agreed to.

Mr. CRESTOHL: Mr. Chairman, while talking on this section I presume despite the fact that I was not here when it was originally discussed in principle I suppose we have opened up the discussion when we are amending it, and perhaps I can go back to it. Would you be good enough to state how this question of fraud will be determined in 5(a)—"has made any misrepresentation or committed any fraud"?

Now, would it be the unilateral decision of the department to say "in our judgment this man has made a misrepresentation or has committed fraud" or will it only be after a complaint has been made and a conviction secured?

Mr. FLEMING (*Eglinton*): There is no conviction necessary. It is the duty of the minister to assess and this is one of the things which must be taken into consideration by him in carrying out that duty. But for the taxpayer there is always the right of appeal.

The CHAIRMAN: We were discussing section 28 on page 27. Does 28 carry?

Mr. NUGENT: Mr. Chairman, I am still concerned over the fact that this section in its present wording would allow a minority shareholder related to someone else, even though they are at arm's length, to be treated as though the shares he held were part of the controlling interest in a firm or company, which might subject him to an inflated value.

I am most unhappy at that thought that despite facts which he might easily prove and might easily be provable he is still to be unable, under the present wording, to escape being put into a higher bracket.

Mr. FLEMING (*Eglinton*): Mr. Chairman, we would welcome any concrete suggestions that may help us to find a way out of this problem. It was very clearly outlined in the committee yesterday. We have been giving further consideration to it as I promised the committee yesterday we would. Here are some of the practical difficulties. You see, if you take the clause out altogether you have not got anything here to deal specifically with a situation of that kind. What is another alternative? To remove the blood relationship as the factor that by virtue of this clause puts the parties in the position of not being at arm's length?

Well, are you going to substitute some other standard? If so, what?

If you do not set up at any other form of test and you simply say the parties are not at arm's length, do you leave that to be determined as a question of fact

when the facts are in virtually every case completely within the knowledge of the party and the department has not got a chance in arriving at a determination of fact.

Now, there is the problem. If hon. members are not content we will be glad to hold this over from today's meeting until tomorrow's, and will welcome any concrete suggestions that hon. members may have. Mr. McEntyre can probably make a comment on any of these alternatives to the difficulties we are up against here which I think hon. members can see.

Mr. NUGENT: Well, I would suggest, Mr. Chairman, that if there is a specific provision there whereby the estate could prove that despite the blood relationship the shares were not treated or controlled in such a manner and were in fact unrelated minority shares even if the onus was on the shareholders to prove it you will make an inescapable conclusion in law.

Mr. FLEMING (*Eglinton*): Would this meet the situation, Mr. Chairman? I take it what he is suggesting is that the presumption that blood relationship does put the parties in the position of not being at arm's length might be regarded as a rebuttable presumption only rather than a presumption at law, and we might have the provisions standing on this basis, that if there is blood relationship, it may remain open to the parties notwithstanding that fact to establish—it will be up to them to satisfy the minister or upon appeal the board or court—that the parties were in fact dealing at arm's length.

Would that meet the point?

Mr. NUGENT: That is right.

Mr. FLEMING (*Eglinton*): If it is thought that would meet the point I certainly do not want to stand hard and firm on anything here. I think hon. members realize there is a real difficulty here and we want the help of the committee in writing the most fair and workable clause that we can.

Mr. CRESTOHL: Mr. Chairman, there was a remark yesterday that I should not put the department into the bond business. This I have no intention of doing but it might be an equitable way of dealing with shares that whilst the minority shareholder owns them they are of no value at all in the way of dividend distribution or in the way of any voting rights. They have no rights at all and yet those shares in the light of the majority shares may have a genuine value, but the deceased who held the majority shares actually leaves the estate nothing at all.

My suggestion is where such a situation develops if the department would consent to become the custodian of those shares until such time as they are sold or taken up by the majority shareholders, then the department is able to put a real value, an actual value on those shares in so far as they can be related to the estate.

I realize the difficulty but I think the department could be custodians and it might do the prejudiced minority shareholders some good if the minority shares went to the department as a custodian of those shares. It will certainly protect the minority shareholders and liquidate them in a year or two, three, or four and you have the real value of those shares.

Mr. FLEMING (*Eglinton*): I hope the committee will not propose to put the Department of National Revenue or the minister or the deputy minister of national revenue in that position. They should not be put in the position of being custodians of an estate. This is something brand new. I hope that suggestion will not be pressed.

Mr. JONES: It would be an infringement on civil rights in any event.

Mr. FLEMING (*Eglinton*): It is not as though the department is like the public trustee of the provinces and he is not the officer to take on that duty.

Mr. CRESTOHL: That might be perfectly true but at the same time the department is putting a tax on those shares at death. They are putting a value and a tax on those shares which the minority shareholder cannot pay. He has not got the money.

Mr. FLEMING (*Eglinton*): I think, Mr. Chairman, I will ask the committee to let the tax gatherer deal in money and not put him into the securities business.

Mr. CRESTOHL: I will not dispute the question. It is just a suggestion.

Mr. FLEMING (*Eglinton*): May I ask if an amendment along the lines indicated would meet with the wishes of the committee? Mr. Benidickson was one of those who raised the point yesterday. I trust the suggestion made by Mr. Nugent which I tried to restate might meet the point he raised.

Mr. BENIDICKSON: I think any move is desirable because, as you see it, you think under certain circumstances the crown has no chance.

I think that as this bill is drafted the taxpayer has no chance regardless of the fact as to whether or not they are at arm's length.

This is one of the important sections referred to in the brief of the chamber of commerce which the chairman has. It is to be found at the bottom of page 21. Would the chairman please put it on the record. They refer in the old bill to section 53 (2) and section 54 which are section 27 (2) and section 28 in the new bill respectively.

Mr. FLEMING (*Eglinton*): Mr. Linton has it here. Perhaps he might read it, Mr. Chairman.

Mr. LINTON:

> As to sub-section 53(2) and 54 it does not appear that the needs of the crown require that facts be disregarded. These sections require certain minority interests to be valued as though forming part of a majority interest even where the minority shareholder is demonstrably not part of a family connected controlling group. Regardless of the relationship between shareholders, the position of a minority shareholder is seldom enviable and even less enviable is the position of the estate of a deceased minority shareholder.
>
> Surely it is necessary to provide a rule, it could be established as a rebuttable presumption—leaving the burden of proof on the shareholder in question to prove that he was in fact at arm's length with the other shareholders.
>
> The council does not favour the disregard of facts to fit deemed administrative needs and recommends that "fair market value" be the sole criterion.

Mr. JONES: I suggest that the clause be worked on.

Mr. FLEMING (*Eglinton*): If that idea is acceptable, we might go on then, and Mr. Thorson will bring us an amendment of the point.

The CHAIRMAN: Does clause 29 carry?

Mr. BENIDICKSON: This is new. The comment of the tax foundation on the old section which has been carried forward is, that this is another result of the determination of the branch to win by statute what it was unable to win in the courts.

Mr. LINTON: There is some truth in that. The situation that is endeavoured to be covered here is one where a family group so arrange their affairs that the older members hold indebtedness of one kind or another,—be it debentures, notes, or something of that kind—which have very long maturity dates at no interest, with the provision however that they can be redeemed at any time that the corporation which is set up for this purpose decides to do so.

The case to which the member has referred decided that they had to be valued as if they could not be collected until the so-called due date. This clause simply proposes that this sort of security will be valued as if it was due at the date of death, thus eliminating only the long term.

Mr. CRESTOHL: Will Mr. Linton explain? Suppose there is what might be generally considered as a bad debt which is outstanding at the time of death, but which was one of those debts in which there was blood relationship to the deceased, but which nevertheless was a bad debt.

He does not want to pay it or cannot pay it. Does that mean that the debt too would be assessed and determined as taxable?

Mr. LINTON: Only on the value which it had at the date of death. If it is a bad debt at the date of death, it has no value and would be worth nothing. Thus it will be valued as due at the date of death and not in the year, for example, 2000 A.D.

Mr. CRESTOHL: It is a debt, but you do not speak of bad debts here. A bad debt is one where a person is able to pay but just does not want to pay.

Assuming that a blood relation owes $5,000 to the deceased, and has owed it for ten years, but the creditor does not want to sue him or to press him. The debtor just does not want to pay.

Mr. LINTON: Is the debt in question a long term one, or is it something just owing today? This would do nothing for the latter.

Mr. CRESTOHL: It would not be taxable under those circumstances.

Mr. LINTON: Not if it is not collectable.

Mr. CRESTOHL: It is just an accelarated rate of maturity.

Mr. LINTON: That is right.

Mr. CRESTOHL: And the date of maturity is the date of death.

Mr. LINTON: That is right.

Mr. BENIDICKSON: Would this not depend on whether or not the debt carries some interest liability to credit to the estate?

Mr. LINTON: If it is an interest bearing liability it would probably not be depreciated anyway by the term, because if it was a reasonable interest rate, the term would not be a discounting factor.

The CHAIRMAN: Does clause 29 carry?

Clause agreed to.

Clause 30.

Mr. CRESTOHL: Oh, Mr. Chairman, I have one more question on clause 29. Am I right in concluding that a debt which is past due is not affected by this?

Mr. LINTON: That is right.

Mr. CRESTOHL: It only concerns a debt which has not yet matured?

Mr. LINTON: That is right; that is the only place it would have any operation.

The CHAIRMAN: Does clause 30 carry?

Clause agreed to.

Clause 31.

Mr. CRESTOHL: Mr. Chairman, I would like to have an explanation about clause 30. Would Mr. Linton explain clause 30 especially in reference to a wife and to what extent can she use this fund for her own purposes, and when does it revert back into the estate?

Mr. LINTON: This would have nothing to do with the validity of any gift or use made of it by the donee.

One of the things this is introduced to correct is the valuation of gifts as of the date of death, when the donee has already disposed of the property.

Heretofore under the Succession Duty Act, if a gift was made which became taxable, the subject matter of the gift was valued at the date of death, even though the donee had disposed of it.

So you could have a situation where the donee sold something at a certain price which, after he sold it, apreciated in value, and he became taxable on the appreciation.

Mr. FLEMING (*Eglinton*): I think that after reflection Mr. Crestohl will realize that this is a more equitable rule and one which is, I think, bound to be of more assistance to the taxpayer than to allow the old rule to remain as it was.

The CHAIRMAN: Does clause 30 carry.

Clause agreed to.

Clause 31.

Mr. BENIDICKSON: Was this in the old bill?

Mr. LINTON: No.

Mr. BENIDICKSON: Would you mind explaining it?

Mr. FLEMING (*Eglinton*): Do you mean the act, or 248?

Mr. BENIDICKSON: 248.

Mr. LINTON: This is introduced to overcome the situation whereby a deceased person has made a gift of shares of a private company and has then arranged that the private company will issue bonus shares to all its shareholders pro rata, so that the shares he has given then become a smaller proportion of the issued capital than they were at the date of gift, in effect reducing the value of the gift since the only thing that can be taxed is the property given.

Perhaps I can give an example. A man in a private company might give 1,000 shares of its stock to his son. The company then issues to its shareholders bonus shares of an equal amount, so that the son then has 2,000 shares. But, his 2,000 shares have the same value after they are issued that 1,000 shares had before; yet without this section only 1,000 shares at the new value would value of the donation.

Mr. FLYNN: Is not the case covered by the preceding section?

Mr. LINTON: I do not think so, Mr. Chairman, because the donee has not disposed of his shares. He has only got bonus shares in addition. Capitalization of the company in these situations is not altered. The issued number of shares to the shareholders is altered, but the capitalization is the same. So no exchange of one thing for another has occurred.

Mr. FLYNN: You have in mind only the change in value resulting from the changing of the proportion of the shares held by the company.

Mr. LINTON: Precisely.

The CHAIRMAN: Is clause 31 agreed to?

Clause 31 agreed to.

On clause 32—shares of controlled corporation where beneficiary of insurance policy.

Mr. LINTON: Perhaps we should say on clause 32 that this is part of the reconstruction of bill 248 in relation to insurance.

Mr. FLYNN: There is a lot of criticism of the old one.

Mr. LINTON: Yes, and this is here to provide that the new insurance taxing principle does not result in anything taxed as insurance under the appropriate sections coming into the value of shares too. It ensures that certain property does not get taxed twice.

Mr. BELL (*Carleton*): It is a relief section.

Mr. LINTON: Yes.

Mr. FLEMING (*Eglinton*): Changes made with respect to insurance have been cordially welcomed on behalf of the life insurance underwriters association and life officers association.

The CHAIRMAN: Is clause 32 agreed to?

Clause 32 agreed to.

Clause 33 agreed to.

On clause 34—Persons domiciled outside Canada.

The CHAIRMAN: This is part II now.

Mr. FLEMING (*Eglinton*): Mr. Chairman, this brings us now to part II. We leave now the case of the person who has died, domiciled in Canada. Part II is confined entirely to the case of the person who dies domiciled outside of Canada, but who at the date of his death had property in Canada. This bill changes the basis of taxation of property of that kind.

In line with the conception of the estate tax, we are now proposing that we take all of that property in Canada and, instead of treating it as it was treated before, which gave rise to filing returns and showing the total property, the world-wide property, of the deceased, before levying on the portion of it located in Canada, the plan of part II is to take that property in Canada as an entity and without allowing deductions or exemptions to subject it to a flat 15 per cent tax. We think that is equitable. We think it is simple. We think it is the sort of thing that may help to encourage capital coming into Canada, because it provides any foreign investor with complete knowledge in advance of his total tax liability on death with respect to assets that on his death are located in Canada. It is a straight 15 per cent tax on the gross value of the Canadian property.

There is one change that has been introduced, since bill 248, and this again is for the relief of the taxpayer in this case. It was mentioned the other day that we are now allowing deductions of encumberances. That was not provided for in bill 248 and that was one of the cases in which there were representations. Perhaps you would like to have a word from Doctor Eaton on this conception of the new type of tax of the property located in Canada.

Mr. A. K. EATON (*Assistant Deputy Minister, Department of Finance*): Perhaps I could say just a few words on that. Essentially it is introducing into the estate tax the principle that we follow in the income tax. This can be regarded, if you like, as a codification or introduction of uniformity into our tax system. On income tax a person resident in Canada pays on his world income at graduated rates. Non-resident persons are taxed at a flat 15 per cent. There are no deductions or exemptions. It is an impersonal tax,—that is, just a flat rate. You could almost call it an excise tax, to just chop off 15 per cent of that income going out of the country. I might say historically that Canada has been one of the countries that adopted that system, and you will find it pretty universal throughout the world. All countries are now giving up the idea of taxing the residents of another country on a personal basis, that is, making a person resident in Canada, file an income tax return in France and instead are adopting the system of chopping off or deducting at a flat rate and letting the country of residence tax on the total income.

Now that principle is being followed here in the estate tax. They are not proposing to have any interest in the status of the non-resident dependant

or how large the estate is or whether they make charitable contributions and so on. We say "Here, there is a property situated in Canada, that is being protected by Canadian laws. That man does not live in Canada; he does not have any taxation status here. It is just that some of his property is situated in Canada." So that the law says, "We will treat is impersonally just as it is, in fact, the personal capital property within the country"; and appropriate to that kind of status is a flat rate tax rather than a graduated tax. That is the general principle on which this was adopted, and adds, as the minister says, a great deal of simplicity and certainty to the system.

Mr. BENIDICKSON: Do we follow in the matter of domicile in respect to the wife in tax matters, in the usual way, that a wife takes the domicile of her husband.

Mr. FLEMING (*Eglinton*): Yes, the matrimonial domicile is the domicile of the husband.

Mr. BENIDICKSON: Will we be considering any revision of domicile for those who have alternative residence. Some concern was expressed with respect to a resident of Canada who was not domiciled in Canada and what the effect might be under the change in this new form of estates duty. But, now it has been suggested to me that there is a very substantial reward now open to any woman who might marry some agreeable person in the West Indies, change her domicle, and if she was very wealthy would find that it was very much to her advantage to do so. But, it would not necessarily change her style of living in some other way.

Mr. BELL (*Carleton*): Would it be to her advantage or to the new husband's advantage?

Mr. FLEMING (*Eglinton*): Marriage might be quite a price to pay for any tax advantage you get in that case, Mr. Benidickson. But, if I may say, Mr. Chairman, if she wants to beat the Canadian law there are ways that she could do it without resorting to marriage for that purpose.

Mr. CRESTOHL: That might be too high a price to pay.

Mr. FLEMING (*Eglinton*): I hope I will not be asked to indicate what those other methods are.

Mr. BENIDICKSON: That seems to me to be a very simple one and would save her hundreds of thousands of dollars of tax, in wealthy cases, by simply changing domicile.

Mr. JONES: But in order to benefit by it she will have to die.

Mr. FLEMING *(Eglinton):* She will not get any benefit out of it.

Mr. BENIDICKSON: Everybody is concerned about conserving an estate for certain purposes. It would be to her advantage from that point of view.

Mr. FLEMING *(Eglinton):* If she wanted to take up a foreign domicile.

Mr. BENIDICKSON: She does not have to move her residence. She changes her domicile by reason of marriage to someone in the West Indies.

Mr. FLEMING *(Eglinton):* If she wanted to defeat the estate tax on her death. In the present situation of the succession duty, there are ways that she could do it. I do not think that the law can prevent it, no matter how we try. It is just the situation. If anyone wants to resort to a move of that kind it can be done. Fortunately, so far as we are aware it has not been attempted.

Mr. BENIDICKSON: This is a completely new principle in the matter of taxation in respect to a foreign domiciled person. The rate is so low that it provides a new thought with respect to avoidance of tax, still controlling the assets up until the time of death. It is not as easy to utilize this in the case of a male person but it looks easy in the case of a female.

Mr. FLEMING *(Eglinton)*: In the case which Mr. Benidickson cites it could not apply to a married person.

Mr. BENIDICKSON: No; not in the way I put it. However, if they are domiciled in Canada, I think you are encouraging people to change their domicile and leave.

Mr. FLEMING *(Eglinton)*: No; I do not concede that for a moment. Does anyone seriously suggest that a woman, with a Canadian domicile and some estate, is going to marry someone with a foreign domicile simply for the sake of acquiring thereby an automatic change in her domicillary status?

Mr. CRESTOHL: She does not have to marry to change her domicile.

Mr. FLEMING *(Eglinton)*: That was the case given; she acquires the husband's domicile because under the law the domicile is the domicile of the husband. I cannot imagine any woman, particularly one of independent means, who is going to marry and take unto herself a husband just for the sake of acquiring a change of domicile.

Mr. CRESTOHL: There might be other reasons.

Mr. FLEMING *(Eglinton)*: I think there would have to be in a case like that. I just cannot imagine such a case arising.

Mr. FLYNN: What about the Ontario and Quebec taxes on property left by a person domiciled outside? They do not have the same system. I understand that the tax is charged upon the whole estate. Would not the result of this new system be an incentive to people to reside in provinces other than Ontario and Quebec?

Mr. LINTON: I do not think so. There is a provision in clause 37 for a credit in regard to provincial taxes.

Mr. FLYNN: Yes; but just the same if you use 15 per cent and are allowed only half of this 15 per cent—

Mr. LINTON: Yes.

Mr. FLYNN: —that is not a big deduction on the tax payable to Quebec or Ontario. I do not mean to say that we have to consider this, but would that not be an effect of the new system?

Mr. FLEMING (*Eglinton*): That is possible in the case where the provincial tax rate on the estate is higher than the effective new federal rate.

Mr. FLYNN: It is likely to be.

Mr. FLEMING (*Eglinton*): Well, it might or it might not be, depending on the circumstances. You see you are taking the aggregate property intact without deduction or exemptions; you are taking off encumbrances but are not allowing any exemptions or deductions. It may well be that there are not too many of those cases where the effective federal rate is going to be appreciably lower than the provincial rate; but, if it is, well, it is just lower, that is all. We are not attempting to tell the provinces how they ought to legislate in these situations.

Looking at the interest of Canada as a whole, we think there are advantages in this type of tax, obvious advantages from the administrative point of view. The simplicity of it is a commendation from the administrative point of view. From the point of view of the taxpayer it is of advantage to him not only in terms of the levy on his estate, the simplicity of it, but we think it may help to encourage the inflow of foreign capital into this country because of the fact that anybody coming in knows clearly in advance precisely what liability he is incurring under our federal estate laws in this country.

Mr. FLYNN: I am not discussing the principle. However, I thought it might have this effect, or the effect of forcing the provinces to change their system of taxation on property left by persons outside of these provinces.

Mr. EATON: The United States are allowed a tax credit, on their law, against taxes paid to Canada. Usually it is a matter of indifference, the amount of tax paid to a foreign government on a piece of property. It will usually be absorbed by his liability back home. It would not make much difference to the United States taxpayer whether he puts his money in here or his own country.

Mr. LINTON: The credit they would get at home would vary since they would get a credit on their net tax. It may be of interest to know that the average effective rate under the Succession Duty Act of a foreign estate is about 14 per cent.

Mr. CREAGHAN: Would the minister explain why we did not carry into part II the relief in clause 33 for quick succession? I can visualize a case, where in respect of people living abroad, the inheritance might go to the widow and she could not obtain the relief under clause 33, because the last word is "part" rather than "act".

Mr. FLEMING (*Eglinton*): That is quite so. Mr. Creaghan's interpretation of clause 33 is true. No provision is made for relief in the event of quick succession in the case of property in Canada owned by a person domiciled abroad because here we are dealing with a flat 15 per cent levy on the assets in Canada without allowing any deductions or exemptions. It is a simple comprehensive impost of 15 per cent in every one of these cases. We could not, we felt, start introducing some of the advantages which are extended to the taxpayer in the case of estates of persons dying domiciled in Canada if you are going to introduce the concept of a new type of tax with respect to property in Canada of persons domiciled abroad at the time of death.

Mr. CREAGHAN: I thought that if we did introduce it perhaps foreign countries would give the same privilege to our citizens who might earn assets abroad.

Mr. FLEMING (*Eglinton*): If at any time in the future there are negotiations working to a new convention, and there is any indication of willingness on the part of other countries to have such a mutual provision, then it could be considered.

Mr. CRESTOHL: I wonder if Mr. Linton would explain, in clause 34, the fourth line as compared to the second last line of the first paragraph, referring to the aggregate value of taxable property? In the one case he uses the language "aggregate value" and in another case "aggregate net value". I think the intention is also, in the fourth line, that an estate tax shall be paid as hereinafter required upon the aggregate net value.

Mr. LINTON: The idea in the first part is establishing the aggregate value for the purpose of this part II tax and the last part of the subclause is simply describing what is taxable by reference to the aggregate net value in the other part of the act.

Mr. CRESTOHL: Would it prejudice the section if you included the words "aggregate net value" in the fourth line?

Mr. LINTON: Yes, because I think in the Part I it is the value after deducting debts and the basic principle here is that the debts, with the one exception mentioned, are not deductible, nor personal exemptions, either.

Mr. CRESTOHL: I do not quite follow that.

Mr. BENIDICKSON: Mr. Chairman, we have seen that there is some lure already for wealthy Canadians, by reason of the non-existence of death duties in certain jurisdictions, to leave Canada. It seems to me we have two distinctly new features in this bill. One, we are taxing real estate outside of Canada, which is a new departure; and we are taxing non-Canadian domiciled people, foreign domiciled people, at 15 per cent.

It seems to me this is a further inducement to people who probably have not succumbed so far to that lure to give it greater thought if their holdings of foreign real estate in such an area are now substantial and they still propose to retain other Canadian assets. Both those accounts are an encouragement to that person to change their domicile.

What does Dr. Eaton think about that?

Mr. EATON: As to the feature regarding the taxing or inclusion in the estate of foreign real estate, I do not know whether that could be regarded as a factor which would operate.

Mr. BENIDICKSON: I am assuming that real estate is in a jurisdiction where the death duties are either low or non-existant.

Mr. EATON: I do not know. I have not considered that too fully, but I do assert this: in the absence of that provision for taxing real estate only in a jurisdiction where there are no loopholes you have left an unconscionable loop-hole in your law.

That is to say, a person in Canada can borrow money; with that money borrowed in Canada he can purchase real estate. The money borrowed in Canada becomes a debt against his estate in Canada, which reduces the amount taxable in Canada and he is not taxable on that asset which he has acquired by creating a debt in Canada.

Mr. BENIDICKSON: We have discussed that on the other one. But here is a second point: the man still finds reason to have substantial Canadian assets, but if he is not domiciled in Canada he is going to find it rather attractive, the estate will have a low death duty of 15 per cent. That, coupled with the fact that he does hold the real estate anyway in this area with low death duties, might just spur him on to change his domicile.

Mr. JONES: Mr. Chairman, perhaps Dr. Eaton might consider this: what would be the difference between the case Mr. Benidickson has cited and that of a person who simply sells his Canadian assets before death?

Mr. BENIDICKSON: Here is a person who has reason to retain his Canadian assets.

Mr. JONES: There are many ways in which you can arrange for the sale of your assets and get the advantage of them—surely, by arrangements with people in other countries—and still defeat the Succession Duty Act, or the Estate Tax Act.

Mr. EATON: I might comment a little further on this. There is greater incentive under the present law for changing domicile and avoiding a great big tax than there is for changing domicile and only avoiding a 15 per cent tax under this new act.

—(Discussion off the record)

Clause 34 agreed to.

On clause 35—Computation of aggregate value:

Mr. BENIDICKSON: This has been redesigned to meet a number of objections?

Mr. FLEMING (*Eglinton*): Yes, this has been designed to meet the point raised in a good many of the briefs.

Clause 35 agreed to.

On clause 36—Computation of tax:

Mr. CRESTOHL: Clause 36—I am just a little puzzled about that, Mr. Linton. Here we have a taxing section. Fifteen per cent of the aggregate value of that property. It is 15 per cent of the aggregate net value of the property.

Mr. LINTON: In this part of the act that term "aggregate net value" has not been used, but in 35 it says that in computing "aggregate value" there shall be a deduction for certain specific debts. So, to compute this aggregate, after you take those debts off, the amount that is left is the amount on which the 15 per cent is applied.

Mr. CRESTOHL: When a person is faced with 36 it would not prejudice the position of the department if you had there "15 per cent of the aggregate net value of the property."

Mr. LINTON: Then, Mr. Chairman, I think you would have to reconstruct the preceding section in order to make the aggregate net value the amount on which the tax is applicable, which it is not as it is constructed now.

Mr. CRESTOHL: I am not at all clear on it. I do not know why.

Mr. LINTON: What you would have to do is say in 35, for the purposes of arriving at "aggregate net value", there should be deducted this sort of thing and then aggregate net value would flow in here.

Mr. CRESTOHL: It may be the same result, but I think it would be clearer.

Mr. THORSON: The same result. We tried to avoid using exectly the same term as employed in part 1 just to avoid confusion in that section; so there would not be a confusion that aggregate net value meant the same thing in the two different parts, because it does not.

Mr. MORTON: Well, Mr. Chairman, there is some confusion because generally speaking we speak of an aggregate value as a general meaning. I wonder if it would save confusion if you just said "aggregate value as defined in the sections preceding", and that would save any confusion.

Mr. FLEMING (*Eglinton*): I think that would be superfluous and redundant, Mr. Chairman.

Clause 35 is perfectly clear and I think the two sections can be read together in determination of liability. I do not see how any possible ambiguity or uncertainty can arise as to the meaning of these clauses.

Mr. CRESTOHL: Except that it requires some study.

Mr. FLEMING (*Eglinton*): That is a good thing.

Mr. CRESTOHL: Excuse me, Mr. Chairman, but you are being consulted and want to tell someone what the tax will be, what are you going to say? How are you going to answer a person that the tax will be 15 per cent of the aggregate value of your estate provided you establish your aggregate value by the sections which precede section 36? I think that should be avoided where possible.

Mr. FLEMING (*Eglinton*): Surely the standard process is the correct process. Mr. Crestohl is consulted as to the tax liability in this case of a person dying domiciled abroad. He takes down the act and it says, section 36 says that the tax payable under this part in the case of deceased persons dying domiciled abroad, is 15 per cent of the aggregate value of that property.

Mr. CRESTOHL: You look at the marginal notes "computation of taxes".

Mr. FLEMING (*Eglinton*): No, the marginal note is not invoked for interpretation. So now the client says: Well, what is the aggregate value of the property? This section does not define the aggregate value of the property.

You look to the other sections for the determination of the aggregate value of property. Surely that is a standard basis of approach to this question.

It is the same thing under the Income Tax Act where you have got the expressions "income" and "taxable income". You do not find a complete code in that clause.

Mr. CRESTOHL: I do not remember the wording in the Income Tax Act but here I mean other members have practiced law as many of us have and if you are consulted you look at the computation of taxes. You do not read through the entire act to be able to answer a question off the cuff. You look up "computation of taxes" and you read 36, and if 36 would refer you back to 35, what aggregate value is then I can understand as it somewhere refers you back.

I think the suggestion made by the hon. gentleman over there was a practical one.

Mr. FLEMING (*Eglinton*): But you are dealing here with the aggregate value of that property. Speaking of marginal notes, all the reader of the statute needs do is look opposite 35, "computation of aggregate value", and there he has got the full code for determining aggregate value. We cannot repeat it in 36. The beauty of 36 is that it is a simple statement and the one expression that requires interpretation is clearly defined in 35.

The CHAIRMAN: Does clause 36 carry.

Clause agreed to.

Clause 37. Did you have some questions there, Mr. Benidickson?

Mr. BENIDICKSON: No.

Clause 37 agreed to.

On clause 38—Situs of property.

Mr. MACLEAN (*Winnipeg North Centre*): On this question of situs, Mr. Chairman, some of the members have pointed out some of these rules set down here vary quite definitely from the common law approach. Could we have some comments?

Mr. LINTON: Yes, as we said in regard to the rules in section 9 that is very true, they do. One reason they do is to make the operation of this part of the act easier both for the department and particularly for the taxpayer as the common law rules depend on a great many factors that are hard to ascertain, and difficult to apply. The result of these rules is that a great deal of property becomes taxable in Canada which would not if the common law rules were used and that principle was determined in negotiation of the tax treaties with the other countries which these rules follow very closely. Each of these treaties with foreign countries has situs rules in it. They are not all quite the same but these rules follow the general pattern very closely.

Mr. FLEMING (*Eglinton*): I think all who have had occasion to deal with the Succession Duty Act in their professional practices will have been faced with difficulty time without number over this question of determination of situs of property and you go and read all the authorities and sometimes even they are not too clear.

There have been some determinations in recent years that seem to the reader to suggest that there has been quite a development in the thinking of the courts in regard to the judicial determination of situs.

In approaching this new legislation it was felt that it would be of advantage to the taxpayer to lay down a series of statutory provisions governing the determination of situs of the various kinds of property and there everybody has the law stated, I think, clearly, ever so much more simply than it is possible to ascertain it through reference to the long line of judicial decisions.

This will have the advantage of clarity and simplicity and we think will help to reduce the amount of litigation that has arisen over determination of situs of property.

Mr. MACLEAN (*Winnipeg North Centre*): I think it is quite clear. I think it is an improvement.

Mr. FLEMING (*Eglinton*): That was the purpose behind it, Mr. Chairman.

Mr. Chairman, there is one change that I would like to introduce if I may in (g) on page 32. This is in relation to money deposited with an insurance company and again it arises out of the changes that have been made with reference to Bill No. 248 in respect of insurance.

Perhaps Mr. Bell would move it, Mr. Chairman.

Mr. BELL (*Carleton*): Moved that Bill C-37, an act respecting the taxation of estates, be amended by striking out lines 21 to 24 on page 32 thereof and substituting therefor the following:

> effected on the life of the deceased or payable under an annuity contract in respect of the death of the deceased, and any policy of insurance or annuity contract in which the deceased had an interest shall be deemed to be situated in the place

Mr. BENIDICKSON: What is the purpose of the amendment?

Mr. LINTON: The purpose of the amendment is to insure that the rule applies on third party contracts held by the deceased which the rule as unamended very doubtfully covered.

Mr. BENIDICKSON: I think it runs through the briefs that this particular section, (g), as previously drafted is one where the new situs would be at variance with most of your tax conventions.

Mr. LINTON: I think that is true, Mr. Chairman, and the result of it is that insurance policies in Canadian companies owned by persons domiciled outside Canada will not be taxable. Under the Succession Duty Act there is a specific exemption for them.

Mr. BENIDICKSON: It is not taking out of taxes anything that has not been out before, it is just necessary because of the new form of the act?

Mr. LINTON: It may take out of the taxes a very small amount of assets, not insurance policies proper but certain kinds of agreements where the amount is payable in Canada.

Mr. BENIDICKSON: Mr. Chairman, in view of the fact that practically all the briefs I have read seem to oppose the departure from the common law rules and in view of the fact we are doing so without any jurisdiction in two large provinces that do their own taxing with respect to death, I am going to have to say "on division". I would like to have a look at it.

Mr. FLEMING (*Eglinton*): I think Mr. Benidickson in saying that should be aware that this amendment we are putting up now is asked for and supported by the insurance companies.

Mr. BENIDICKSON: I am not referring to paragraph (g) but the whole section.

The CHAIRMAN: It has moved by Mr. Bell (Carleton) and seconded by Mr. Jones. You have heard the amendment. All those in favour?

Amendment agreed to.

Does clause 38 as amended carry?

Mr. BENIDICKSON: On division.

Clause 38 agreed to on division.

Mr. FLEMING (*Eglinton*): Before we move to a consideration of clause 39, may I say that we now have the draft of an amendment to clause 28, as we discussed earlier. Could we take that amendment at this point? Mr. Thorson drafted this amendment which has been submitted to Mr. Nugent who feels that it covers the point.

Perhaps Mr. Nugent would like to move this amendment, Mr. Chairman.

Mr. NUGENT: I move that Bill C-37, "an act respecting the taxation of estates", be amended by striking out lines 19 to 21 on page 27 thereof and substituting therefore the following:

> —that belonged at that time to the deceased shall, unless it is established that the deceased and such one or more other persons were persons dealing with each other at arm's length, be determined for the purposes of this part as though each such share so belonging to the deceased formed part of a group of shares.

Mr. FLEMING *(Eglinton)*: The new words, Mr. Chairman, are:

> —unless it is established that the deceased and such one or more other persons were persons dealing with each other at arm's length,—

Those are the saving words that have been added.

The CHAIRMAN: It has been moved by Mr. Nugent that clause 28 of Bill C-37 be amended in this manner.

Mr. BENIDICKSON: That seems to be quite an improvement, Mr. Chairman. I wonder if we could keep this section open in order to see what progress we make in regard to the act itself?—We may or may not be able to finish it.

Mr. FLEMING *(Eglinton)*: I was hopeful, Mr. Chairman, that we could dispose of this clause. It has been discussed very thoroughly. Mr. Thorson has drafted this amendment with the view of having it dealt with now while the matter was still fresh in our minds.

Mr. Benidickson, it will not take more than a moment to look it over. The additional words in clause 28 are:

> —unless it is established that the deceased and such one or more other persons were persons dealing with each other at arm's length,—

That means that it now lies within the power of the persons described in section 28—notwithstanding the existence of blood relationship—to prove that they were persons dealing with each other at arm's length. It is simple, and clear. I think Mr. Thorson is to be commended on having drafted this amendment in a form that is so simple and clear.

Mr. CREAGHAN: Mr. Chairman, would Mr. Thorson or the minister consider that a definition of "arm's length" should be included in the interpretation section, or are we going to take a chance on the Income Tax Act?

Mr. THORSON: It would be surprising to me if you wanted to have the provisions of the Income Tax Act imported holus-bolus in this section.

Mr. CREAGHAN: I am sure we would not, and that is why I wondered if we should have a special interpretation.

Mr. THORSON: I suggest to you that this would assume the ordinary common law meaning of the expression "dealing at arm's length".

That expression here has not been given any more sophisticated definition than has been provided for by common law itself.

Mr. CREAGHAN: Do you think that interpretation will be adopted by the Department of Justice for the next 20 years?

Mr. FLEMING *(Eglinton)*: The answer is definitely yes, Mr. Chairman. There would certainly be no right on the part of a court to incorporate a statutory definition contained in the Income Tax Act in this regard when parliament itself has not seen fit to incorporate that statutory definition in enacting this bill.

Amendment to clause 28 agreed to.

On clause 39—Administration of act.

Mr. MACLEAN (*Winnipeg North Centre*): In regard to the words "— commissioner for administering oaths or taking affidavits." the appointment of a commissioner of oaths is, of course, a provincial appointment?

Mr. THORSON: Not necessarily, sir. There are some commissions issued by the federal government.

Mr. MACLEAN (*Winnipeg North Centre*): They are issued under the federal government authority?

Mr. THORSON: Yes.

Causes 39 to 41 inclusive agreed to.

On clause 42—Person leaving Canada or removing property.

Mr. BENIDICKSON: What difficulties have been experienced here that give rise to clause 41?

Mr. THORSON: It was thought, Mr. Chairman, this was a more appropriate provision than any provision in the old act. This is similar to a similar provision in the Income Tax Act.

Mr. BENIDICKSON: It is similar to the Income Tax Act, I agree, but I have heard so much protest on occasion about some of the harshness of the provisions of the Income Tax Act that I am a little surprised that some people would be in favour of bringing some of these provisions into another tax act, particularly when it has respect to capital, and not something a little more fleeting, like income.

Mr. LINTON: In this area, Mr. Chairman, is the place where a change was made from Bill 248. It lightened some of these things so I think that answers the point.

Mr. FLEMING (*Eglinton*): To meet the conscientious qualms of the minister, I might say Mr. Chairman, but they do not apply on this clause.

Mr. BENIDICKSON: The minister approved Bill 248—or introduced it.

Mr. FLEMING (*Eglinton*): I asked for everybody's comment on it.

Clauses 42, 43 and 44 agreed to.

On clause 45—inspection:

Mr. BENIDICKSON: What does this mean in subclause (b); what are the practical applications going to be? (b) states "if it appears to him that an offence under this act has been committed". How slender a thing constitute an offence?

Mr. LINTON: An offence defined somewhere as such.

Mr. BENIDICKSON: Is that referred to in the definition section at the end?

Mr. THORSON: One of the offences expressly constituted by the act itself.

Mr. LINTON: Clause 51 sets out a list of what are offences.

Clause 45 agreed to.

On clause 46—transfer of property by executor.

Mr. FLYNN: It is practically the same principle as before.

Mr. LINTON: Yes, the same principle.

Mr. FLEMING (*Eglinton*): There is nothing new in principle in that clause.

Clause 46 agreed to.

On clause 47—consent to transfer:

Mr. FLEMING (*Eglinton*): There are some new provisions here that greatly ease the provisions of the existing law. Perhaps Mr. Linton will say a word about the changes that have been made. There are changes here also as compared with Bill 248, all in the direction of giving greater ease to the taxpayer and the executor who is managing the estate and wishes ready access to the insurance or bank account for immediate purposes.

Mr. LINTON: Yes, Mr. Chairman. Certain classes of property under the Succession Duty Act, notably insurance proceeds can be paid without the consent of the minister up to $1,500 per policy. Under Bill 248 this was raised to $10,000 per company and then in this bill it was raised again to $11,500 per company. Certain other classes of property, notably bank accounts, can be so paid up to an amount of $500 in the Succession Duty Act and this has been raised to $1,500. In addition to these changes, there are small changes in increasing the classes of property that fall under this $1,500 limit.

Clause 47 agreed to.

On clause 48—consent to open or remove:

Mr. FLEMING (*Eglinton*): There is no change in substance here, Mr. Chairman. It is a well established procedure in regard to opening up depositories, consents to open and remove contents.

Mr. BENIDICKSON: What about subsection 3?

Mr. FLEMING (*Eglinton*): On page 39?

Mr. BENIDICKSON: Yes.

Mr. LINTON: It has been broadened.

Mr. BENIDICKSON: Is it as wide as we can make it? Are we still allowing some restrictions that are not of much advantage to the tax collector?

Mr. FLEMING (*Eglinton*): Our feeling was—and we studied it carefully in the light of representations and briefs submitted—we were going here as far as we could go in allowing removal of contents of boxes, documents and deeds, which are not strictly necessary to retain to prevent a transfer or disposition of property.

Mr. BENIDICKSON: What about a marriage contract which I understand in Quebec is rather a useful document—or an insurance policy? How could you get insurance proceedings without a release from these companies? They know the law.

Mr. FLEMING (*Eglinton*): In the case of an insurance policy you could not allow a removal without a specific consent.

Mr. LINTON: I do not think so because you might have a policy taken out by a person with a company which was not doing business now in Canada for one thing.

Mr. FLEMING (*Eglinton*): I think it would be dangerous to allow removal of things like insurance policies. But this clause widens the classes of documents which can be removed from the boxes without a specific consent to remove contents.

Mr. LINTON: With regard to the marriage contract, that is always a notarial deed and so the copy that may be in the boxes can easily be replaced with another copy. Anyone with a marriage contract will need more than one before he finishes with an estate anyway.

The CHAIRMAN: Does clause 48 carry?

Mr. BENIDICKSON: In regard to subclause (4), what increases, if any, in benefits are provided compared to the old Succession Duty Act?

Mr. LINTON: I will read, if you like, the offence and penalty clause from the Succession Duty Act.

Mr. BENIDICKSON: What is the number of it?

Mr. LINTON: Section 51, subsection (3).

Mr. FLEMING (*Eglinton*): It is referred to in the note.

Mr. LINTON:

> Every person who fails to comply with this section is guilty of an offence and for each offence is liable to a penalty not exceeding $1,000, and an amount not exceeding the amount of duty levied on or with respect to the properties contained in the safe, compartment of a safe or vault, or safety deposit box, opened or removed in contravention of this section, but such penalty does not apply when the minister is satisfied that the contravention of this section was not wilfull and occurred through ignorance of such death.

Mr. FLEMING (*Eglinton*): The maximum still remains the same, at $1,000, but you have still that provision for an additional sum computed in reference to the value of the property.

Mr. THOMAS: There is no reference to the tax that might be due. This reads as if it was an account not exceeding the aggregate value of any property mentioned.

Mr. LINTON: Not exceeding the value of the property. If somebody transfers property in contravention of this section, they incur the liability for this to the extent of the property they transfer.

Mr. FLEMING (*Eglinton*): In regard to the $1,000, there is no increase.

Mr. THOMAS: Does that mean the government can confiscate the aggregate amount of the property that was removed?

Mr. FLEMING (*Eglinton*): Yes, it could mean that.

Mr. THOMAS: Or the value of the tax on it?

Mr. BENIDICKSON: The representations in the brief—

Mr. FLEMING (*Eglinton*): This one I should point out is a penalty imposable not by the Department of National Revenue, but only by the court. This is not one of those penalties that the department, the tax gatherer can impose. This is one that only the court can impose in a court proceeding.

Mr. THOMAS: It looks rather drastic though.

Mr. FLEMING (*Eglinton*): It only states a maximum. The court is not obliged to impose the maximum.

Mr. LINTON: He may have defeated the whole collection of the tax by his action here.

Mr. NUGENT: I think the maximum could be larger in the case of very large estates.

Mr. BENIDICKSON: The only alternative would be whether it should be the mandatory fine stated here plus the aggregate amount of the property or the amount of taxes payable.

Mr. LINTON: The tax payable on the estate might be a great deal higher than the value of the property lost and this might be the only property the crown can proceed against. You might even have collusive action by some people who own safety deposit boxes or rent them. They are not all in the hands of the banks. You could have the whole collection of the imposed tax defeated by letting these assets go and I do not think the limit should be less than the value of the property released.

Mr. FLEMING (*Eglinton*): It is a maximum. It is up to the court to determine within that maximum what should be the principal penalty for the offence.

Mr. NUGENT: Is there no penalty for default in paying a fine?

Mr. THORSON: This is governed by the standard summary convictions procedure under the Criminal Code.

Mr. BENIDICKON: Do you have many worrying experiences of somebody going to a safety deposit box before the death of anybody having an interest in that box is known?

Mr. LINTON: Yes we have strong suspicions that happens because a number of boxes when you get to them are strangely empty.

Mr. BENIDICKSON: I was astonished when we read about the odd break-in of a trust company to realize the tremendous amounts of stocks which seem to be in bearer form and I was wondering if there was no device we could use to prevent that?

Mr. FLEMING (*Eglinton*): It may be a point in relation to the penalty clause here. There is no reason for taking a light view of the removal of property where that removal constitutes an offence.

Mr. CRESTOHL: To what extent is the penalty mandatory on a judge? He can impose a penalty of not less than $100 and he can impose a penalty between $100 and $1,000. But is it mandatory that you can impose an amount equivalent to the property involved?

Mr. FLEMING (*Eglinton*): Oh no.

Mr. THORSON: That is the maximum.

Mr. FLEMING (*Eglinton*): The word "liable" in subclause (4) governs (a) and (b). There is no mandatory provision there. There is just the standard provisions of any penalty clause of any statute and they are governed by the summary convictions procedure of the Criminal Code.

Mr. BENIDICKSON: What is the comparable penalty for offences under the Income Tax Act?

Mr. FLEMING: (*Eglinton*): You have not a comparable offence under the act.

Mr. BENIDICKSON: You have an offence.

Mr. FLEMING (*Eglinton*): You have not one which you could compare with this.

Mr. BENIDICKSON: There is something there that the judge can impose a fine and something in relation to the taxes.

Mr. THORSON: Perhaps Mr. Benidickson has reference to the provision in the other act that has been deleted from this bill providing that the court has no power to impose less than the minimum specified and no power to suspend sentence.

Clauses 48, 49 and 50 agreed to.

Does clause 51 carry?

Mr. FLYNN: You have about the same thing in the Income Tax Act. It seems to me that the minister should make up his mind and proceed only under section 20 or 51(3). I see here that after having assessed the penalty under section 20, he can proceed under section 51 paragraph 3.

Mr. FLEMING (*Eglinton*): Mr. McEntyre the deputy minister will answer your question.

Mr. MCENTYRE: The provision of that clause 51(3) is necessary in order to prevent the minister being able to impose both the penalty and at the same time proceed to charge the offender under the summary conviction procedure.

In this case, if a penalty is to be imposed, it must be imposed before the offence goes to court and a judge has to pass on it. So that in such a case the judge in imposing sentence under summary conviction would be aware of the penalty already imposed by the minister. Therefore it prevents the minister after they have gone to court on the offence and sentence has been passed from being able to impose additional penalties beyond what the judge had imposed.

Mr. FLYNN: I agree, but is there not the possibility that after the minister has assessed a penalty, he might think that he could charge more. Then he has a chance to go to court—just as if a judge might have a chance to correct his own judgement.

Mr. MCENTYRE: In that case the court would be aware of the penalty imposed by the minister and presumably the judge would give weight to that when passing sentence.

Mr. FLYNN: He certainly would!

Mr. NUGENT: This could be used in the way of blackmail, should a person argue too much about the assessment or the penalty. You could tell him: in addition to this, we can charge you under section 51(3), and you could use that as a threat.

Mr. FLYNN: Just as under the Income Tax Act, it seems to me to be wrong.

The CHAIRMAN: Does clause 51 carry?

Clause agreed to.

Does clause 52 carry?

Mr. BENIDICKSON: How innocent a thing is a deceptive statement? Supposing an executor makes such an error as describing somebody as a widow, assuming that the couple were married, but the relations perhaps in effect were not, or something of that kind. It is true that there is a benefit derived. Is that deceptive?

Mr. FLEMING (*Eglinton*): No. The wording connotes wilful deception.

Mr. BELL (*Carleton*): Would you not have to show intent?

Mr. FLEMING (*Eglinton*): Oh yes. There has to be mens rea in any of these cases.

The CHAIRMAN: Does clause 52 carry?

Clause agreed to.

Does clause 53 carry?

Clause agreed to.

Does Clause 54 carry?

Mr. FLEMING (*Eglinton*): This is just to apply to officers, directors or agents of the corporation the same liability which attaches to the corporation itself under the act.

The CHAIRMAN: Clause agreed to.

Does clause 55 carry?

Clause agreed to.

Does clause 56 carry?

Mr. BENIDICKSON: Both clauses 54 and 55 have to do with additional transfer of penalties under the administrative procedure, being something that we have not heretofore had in the administration of succession duty.

Mr. FLEMING (*Eglinton*): If you are speaking of clause 55, it is new. It imports the provisions of section 136 of the Income Tax Act in so far as applicable in relation to procedure, evidence and other matters that are set out therein.

These are not substantive provisions. They are provisions in relation to procedure and evidence.

Mr. BENIDICKSON: I was thinking of clause 54 as well.

Mr. FLEMING (*Eglinton*): Clause 54 contains a principle to be found both in the criminal code and in a great many other statutes. It applies to the officers, directors and agents of the corporation the same liability which attaches to the corporation for an offence wherein such an officer, director or agent directed,

authorized, assented to, or acquiesced in or participated in the commission of the offence. I think those are clear words, and I think there is no unfair liability imposed on any individual there in the light of words like those.

The CHAIRMAN: Does clause 56 carry?

Clause agreed to.

Mr. BENIDICKSON: In sub-caluse (2), what are we doing? This is new. Why have we not asked for it before?

Mr. LINTON: We have an agreement with other countries now. But they were negotiated by means of international negotiations and were "effectuated" by overriding acts.

The CHAIRMAN: Does clause 56 carry?

Clause agreed to.

Does clause 57 carry?

Mr. NUGENT: I am worried about paragraph (b) which reads as follows:

> 57.(1) (b) prescribing the evidence required to establish facts relevant to assessments under this act;

There seems to me to be quite a loophole here whereby, if under some assessment—if the case went to court, and the court ruled as to certain evidence that the department did not have sufficient evidence to establish their point of view, then all the department would have to do would be to bring in a regulation.

In prescribing that evidence as sufficient for their purposes, they might reverse the court's decision for future effect. It looks to me to be a pretty broad sort of power to give.

Mr. THORSON: This has to do with the obvious mechanics of establishing the value of a piece of property, whether by word of mouth or by a statement which would be sent into the department, or in certain other cases not relating to value, the evidence might be in the form of an affidavit.

This is a specific minimum requirement which would be needed to "effectuate" the mechanics of assessments.

Mr. NUGENT: I think some sort of wording to that effect might be necessary to put in here because even after studying the act a great deal it does seem to me that it could be interpreted now to mean that they could broaden it much more than that.

Mr. THORSON: A similar provision is contained in the Income Tax Act today.

Mr. NUGENT: I have never been quite convinced that the Income Tax Act is perfect.

Mr. FLEMING (*Eglinton*): Is there any case where, in the power to make regulations in reference to the terms and in prescribing the evidence required to establish the facts relevant to assessments, the act has been found to be capable of abuse? It is the same under the Income Tax Act.

Mr. THORSON: Take for example evidence required to establish the state of health. There you might require a certificate of some sort. Now, on appeal, it would be quite open for you to establish it in whatever manner the court required.

Mr. NUGENT: If a regulation made by this department required it to be established in a certain way, I wonder whether it would be open to a court to allow it to be established in another way?

Mr. THORSON: You would be in a position on appeal to go into the facts alleged in the affidavit.

This is merely to acquire the original document in the first place.

Mr. FLEMING (*Eglinton*): In the revision of 248 we reduced the power of the governor in council to make regulations. We could put in one of the clauses here.

Under the present Succession Duty Act the minister has the power to make regulations deemed necessary for the carrying of this act into effect;

(a) prescribing forms and providing for the use thereof;

(b) prescribing the amount, form and manner in which security shall be furnished;

(c) prescribing what rule, method and standard of mortality and of value, and what rate of interest shall be used in determining the value of annuities, terms of years, life estates, income, and interests in expectancy; and . . .

so on.

I do not think this language can be regarded as as broad as the language in the Succession Duty Act.

Mr. NUGENT: The explanation given calls for the words "prescribing the type of evidence", instead of the nature of evidence required.

Mr. FLEMING (*Eglinton*): I would be quite prepared, Mr. Chairman, to accept Mr. Nugent's suggestion, or one in line with it, and to insert after the word "prescribing", the word, "the nature of".

Mr. THORSON: That would put the matter beyond doubt. That is the interpretation that would be given to it by a court, in any case, I suggest.

Is clause 57 agreed to as amended?

Mr. BENIDICKSON: On paragraph 2—

The CHAIRMAN: Mr. Nugent moved an amendment.

Mr. NUGENT: To line 39 of page 43 of paragraph (b) deleting line 39 and substituting "prescribing the nature of the evidence required to establish facts".

The CHAIRMAN: Moved by Mr. Nugent and seconded by Mr. Bell. Is the amendment agreed to?

Amendment agreed to.

The CHAIRMAN: Is clause 57 agreed to?

Mr. BENIDICKSON: On subparagraph II, is not this an unusual provision, to provide this retrospective feature. First of all it has to be published in the Canada Gazette. That is quite usual; "but when so published a regulation shall, if it so provides, be effective with reference to a period before it was so published."

Mr. LINTON: The matter provided for is the gap that might occur between the making of the regulation and the time when it is published.

Mr. BENIDICKSON: Can you indicate to me some other reasons for publishing a regulation in the Canada Gazette?

Mr. THORSON: Yes, the Income Tax Act.

Mr. BENIDICKSON: Again, the Income Tax Act.

Mr. CRESTOHL: Do you not think you should limit the delay in how far back you can go?

Mr. THORSON: I should point out that this is, in many cases, beneficial to the taxpayer. In order to date the regulation back, to give it effect back to a dealth that occurred in the interval Mr. Linton spoke of.

Mr. CRESTOHL: It can also be reversed.

Mr. LINTON: There are not many regulations in this act that can govern anything.

Mr. THORSON: Regulation-making powers by and large, as Mr. Fleming pointed out, are confined to those matters that are necessarily incidental to the mechanics of the administration of the act.

Mr. FLEMING (*Eglinton*): I think it will be agreed that there is very little room for making regulations left in this act, or for the exercise of discretion. The whole tenor and tone of this bill is all aginst that sort of thing.

Mr. CRESTOHL: I agree with you.

The CHAIRMAN: Is clause 57 agreed to as amended?

Clause 57 as amended agreed to.

On clause 58—Definitions.

Mr. CRESTOHL: (c) is new corporations. The initial wording is "Corporation controlled by the deceased means, a corporation that, at the time in respect of which the expression is being applied, was controlled, whether through holding a majority of the shares of the corporation or in any other manner whatever, by the deceased or by any other person on behalf of the deceased". Can you illustrate, for example, in what other manner a man can control a corporation, other than by his shareholdings?

Mr. LINTON: He might control it by holding 45 per cent of the shares when no other stockholder owns more than 1 per cent. That is taking an extreme case. Although, he himself would not have the majority of the shares, he might control it by controlling a corporation which in turn controlled it.

Mr. FLEMING (*Eglinton*): There are many cases.

Mr. THORSON: A parent and a subsidiary.

Mr. LINTON: This provision would be subject to appeal and review by the courts as to whether what the minister deemed to be control in his assessment, was in fact, control.

Mr. BENIDICKSON: I was going to ask why you have introduced (e).

Mr. FLEMING (*Eglinton*): We did have that opened up earlier. Further, Mr. Thorson referred to the introduction of this definition of "disposition". Perhaps Mr. Thorson can review that again.

Mr. THORSON: The change is, of course, a reference to where the one transaction or a number of transactions are effected for the single purpose of the disposition. So, the disposition in effect is not defeated by the fact that it appears in the form of two separate parallel legal documents.

Mr. CRESTOHL: "(f) Employee includes an officer". That means an officer of the corporation.

Mr. THORSON: Yes.

Mr. CRESTOHL: Could a director not be an employee?

Mr. THORSON: By virtue of this, "employee" is defined as including an officer. "Officer" is a defined expression—on the next page. There is a paragraph there.

Mr. BELL (*Carleton*): It includes a director.

Mr. FLEMING (*Eglinton*): That is clause (m).

The CHAIRMAN: Is there anything on page 45?

Mr. BELL (*Carleton*): It even includes a member of the House of Commons.

The CHAIRMAN: Is there anything on page 46?

Mr. BENIDICKSON: The definition of "child" has been extended.

Mr. CRESTOHL: As it grows older?

The CHAIRMAN: Is clause 58 agreed to?

Clause 58 agreed to.

Clause 59 agreed to.

Clause 60 agreed to.

The CHAIRMAN: Shall the title carry?

Title agreed to.

The CHAIRMAN: Does the preamble carry?

Preamble agreed to.

The CHAIRMAN: Is the bill agreed to?

Bill agreed to.

The CHAIRMAN: Shall I report the bill as amended?

Agreed to.

Mr. FLEMING (*Eglinton*): Mr. Chairman, perhaps you will allow me to express my thanks to you and to the committee for the very thorough job that you have done in these fine meetings of the committee in reviewing this legislation. If I may say so, the committee has done a very workman-like job on this bill and I think it can be said that all of these provisions, some of them quite difficult, have been turned inside out by the committee. I point to the amendments that have been introduced which are going to be, we believe, beneficial. I would like to express my thanks to the committee for the work which the members have done on the bill, Mr. Chairman.

The CHAIRMAN: On behalf of the committee, Mr. Minister, I would like to thank you and your officials for your cooperation in getting this bill through.

—The committee adjourned.

HOUSE OF COMMONS

First Session—Twenty-fourth Parliament

1958

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: C. A. CATHERS, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

Bill S-10—An Act to amend the Loan Companies Act,
Bill S-11—An Act to amend the Trust Companies Act,
including Fourth Report to the House thereon.

TUESDAY, AUGUST 19, 1958.

WITNESS

Mr. K. R. MacGregor, Superintendent of Insurance.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

61234-1—1

REPORT TO THE HOUSE

TUESDAY, August 19, 1958.

The Standing Committee on Banking and Commerce has the honour to present the following as its

FOURTH REPORT

Your Committee has considered the following bills and has agreed to report them without amendment:

Bill No. S-10, An Act to amend the Loan Companies Act.

Bill No. S-11, An Act to amend the Trust Companies Act.

A copy of the minutes of proceedings and evidence relating to the above is approved hereto.

Respectfully submitted,

C. A. CATHERS,
Chairman.

MINUTES OF PROCEEDINGS

House of Commons, Room 268,

TUESDAY, August 19, 1958.

The Standing Committee on Banking and Commerce met at 9:30 o'clock a.m. The Chairman, Mr. C. A. Cathers, presided.

Members present: Messrs. Benidickson, Cathers, Deschambault, Flynn, Fraser, Howard, Jones, Keays, Lockyer, Martel, McIlraith, More, Morris, Pallett, Pascoe, Regier, Robichaud, Rynard, Southam, Tassé, Thomas, Vivian.

In attendance: The Honourable Donald Fleming, Minister of Finance. Mr. K. R. MacGregor, Superintendent of Insurance. Also, Mr. C. F. Mackenzie, General Manager, Canada Permanent Mortgage Corporation, Mr. H. E. Langford, Managing Director, Chartered Trust Company, and Mr. Jules E. Fortin, Secretary-Treasurer, The Dominion Mortgage and Investments Association.

On motion of Mr. Fraser, seconded by Mr. Morris,

Ordered:—That pursuant to the Order of Reference of Thursday, June 19, 1958, the Committee print, from day to day, 750 copies in English and 200 copies in French of its Minutes of Proceedings and Evidence relating to the deliberations of the Committee on Bill S-10 and Bill S-11.

The Committee considered the following bills:

S-10, An Act to amend the Loan Companies Act.

S-11, An Act to amend the Trust Companies Act.

Mr. Fleming made a brief statement to the Committee, and Mr. MacGregor was called and questioned.

The Committee first took into consideration Bill S-11, An Act to amend the Trust Companies Act.

Clauses 1 to 15 inclusive of the said bill were severally considered and agreed to. The Preamble and Title of the said bill were also agreed to and the bill ordered to be reported to the House without amendment.

The Committee then considered Bill S-10, An Act to amend the Loan Companies Act.

Clauses 1 to 15 inclusive were severally considered and agreed to. The Preamble and Title of the said bill were also agreed to and the bill ordered to be reported to the House without amendment.

At the conclusion of the proceedings the Chairman thanked Mr. MacGregor for his valuable assistance to the work of the Committee.

At 11:00 o'clock a.m. the Committee adjourned to the call of the Chair.

Antoine Chasse,
Clerk of the Committee.

EVIDENCE

TUESDAY, August 19, 1958.
9:30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum; we will come to order.

Mr. Fleming will be here with us for a few minutes and I am going to ask him to introduce the bill. However, before we commence, I should say we have with us Mr. MacGregor of the Department of Insurance on my left, Mr. Jules Fortin of The Dominion Mortgage and Investments Association; Mr. H. E. Langford, General Manager and Managing Director of the Chartered Trust Company and Mr. C. F. Mackenzie, General Manager of the Canada Permanent Trust Company. They are here to answer any questions that we might have. Now, I am going to call upon the minister to give us a brief explanation of the two bills. Have you any preference which one we take first?

Hon. Donald F. FLEMING (*Minister of Finance*): No.

The CHAIRMAN: The two are fairly well interlocking.

Mr. FLEMING (*Eglinton*): Thank you, Mr. Chairman.

Happily, it will be very brief.

In the house in the debate on second reading I made a statement reviewing the purposes and features of these two bills and I think I can add nothing useful this morning. The two bills are parallel; indeed, their features are largely the same. There are four purposes and effects to each of the bills; and I think with that, Mr. Chairman, if you wish to hear Mr. MacGregor dealing in detail with the four items in each bill, I need say no more,—unless there are any questions which members would wish specifically to address to me rather than to Mr. MacGregor.

The CHAIRMAN: We will call upon Mr. MacGregor to outline what these two bills have for us.

Mr. K. R. MACGREGOR (*Superintendent, Department of Insurance*): Mr. Chairman, Mr. Minister, honourable members: As the minister pointed out upon second reading of these bills, although there are several clauses in each bill, there are really only four points of any significance. The other clauses are in the main incidental and arise because of cross references to some one or more of these four points in other sections of the acts.

I am in the hands of the committee as to the procedure that you wish me to follow. I shall be glad to go through the bill clause by clause in numerical order or, if you wish, I shall deal with each of the four main points and when so doing mention the other clauses that are related to each point.

Mr. FLEMING (*Eglinton*): Might I make a suggestion, Mr. Chairman. I think the points arise fairly logically and if the sections were called one by one—I think for instance that the first several sections lend themselves to treatment under one point—if that meets with the approval of the committee.

The CHAIRMAN: Yes, I think that would be the best way. Let us start off and go through them.

Mr. MACGREGOR: I would suggest then that the committee might look at Bill S-11, first, being a bill to amend the Trust Companies Act.

I may say that the clauses in Bill S-10 are almost identical with those in Bill S-11. There are only two small differences and I shall mention them as we go through each bill.

Clauses 1 and 2 agreed to.

On clause 3—model bill.

Mr. MACGREGOR: Clause 3 stems from a proposed change in the procedure for filing annual statements with the government. The main clauses relating to this proposed change are 9, 11 and 15. Clause 13 is incidental. When the Trust Companies Act was first passed in 1914 there was no provision for supervision, but there was a requirement in the act that each trust company must file financial statements annually with the minister. Consequenly, ever since 1914 the general procedure required to be followed in reference to the filing of annual statements was to send it to the minister. In 1920 the Trust Companies Act and the Loan Companies Act were each amended to require the Superintendent of Insurance to inspect Dominion trust and loan companies annually. However, there was no change made at that time in the requirements for filing annual statements. There are, however, penalties imposed for the late filings of those statements. At present the penalty is $20 per day; and I may say that in practice these penalties are strictly enforced. As an administrative convenience it would be simpler if these annual financial statements were required to be filed in the Department of Insurance rather than with the minister. At the present time they are sent directly to him and are then relayed to the department. We have had a good deal of experience in the department in the filing of annual statements. We supervise more than 400 insurance companies, and the procedure under the Insurance Act is to require the companies to file their statements in the department.

The proposed change in this respect, therefore, in each of these bills, is to adopt the same procedure for filing financial statements as respects loan and trust companies as has obtained for a great many years in the case of insurance companies.

By Mr. Pallett:

Q. You are discussing section 11?—A. Clauses 9 and 11 are the main clauses relating to this proposed change. Clause 9, if I may skip ahead, mentions a report that the auditors must file. There are in fact two reports required to be filed annually at the present time. The main financial statement is compiled and filed by the company itself and the main clause relating to that statement is clause 11. In addition, however, the company's auditor must file a report at present with the minister in the same way as the annual statement is filed. The auditor's report is referred to in clause 9.

The proposed change, therefore, is that both the auditor's report referred to in clause 9 and the financial statement prepared by the company, which is referred to in clause 11, will hereafter be filed in the department rather than with the minister.

Perhaps, before going back to clause 3, I might make an additional comment concerning these financial statements. Again, when each of these acts was passed in 1914, the form of the financial statement to be filed by the company was set forth in detail in a schedule to the act. It still appears there in schedule "B". However, there has always been a section in each act authorizing and empowering the minister to change that form as he might think desirable, either in respect of a particular company or in respect of companies generally, so as to elicit additional desirable information.

I may say that over the years the form of the annual statement as it appears in schedule "B" to each act has in fact been changed many times to the point where it now bears very little resemblance to the form in schedule "B". We have found from experience in supervising several hundred insurance companies that it is necessary to revise the form of annual statements from time to time, and the procedure adopted in the Insurance Act for a very long

time has been simply to authorize the minister to determine the form and to make changes from time to time as he might think fit and desirable.

Consequently, it is now being proposed in this bill that the same procedure be adopted in respect to the determination of the form of the annual statement. The same procedure would be adopted for trust and loan companies as for insurance companies. In other words, the obsolete form as it now appears in schedule "B" would be deleted from the act and clause 11 would authorize the minister to determine the nature of the form of statement from time to time.

Mr. FLEMING (*Eglinton*): May I interrupt, Mr. Chairman, to ask you to excuse me. There is a cabinet meeting going on now and I do not think I am serving any very useful purpose here this morning. If you could excuse me, Mr. Chairman.

Mr. FRASER: We like to see you here.

Mr. FLEMING (*Eglinton*): I like to be here.

The WITNESS: I apologize for the length of the explanation in reference to clause 3, which is incidental.

Looking at clause 3, it will be noticed that the underlined words are "the schedule". All that is being done in clause 3 is to delete the reference to schedule "A" and refer instead simply to the schedule. At the present time schedule "A" sets forth a model bill for the incorporation of a new company; schedule "B" sets forth the form of the annual statement. If schedule "B" is repealed as now proposed in reference to the form of the annual statement, there will only be one schedule left setting forth the model bill and that is recognized in clause 3. The new wording is "the schedule" instead of "schedule "A".

Clause 3 agreed to.

On clause 4—General meeting.

By Mr. Benidickson:

Q. On clause 4 I am a little surprised to see the elimination of any minimum capital. As I recall Mr. MacGregor's testimony in connection with the insurance companies' incorporation, while there might be a minimum I think he has always urged the committee that there should be more than the minimum in not only capital but in subscribed capital. While the minimum, I realize, in the existing acts would not be adequate to satisfy very many members of the committee at this time, it was enough to start a business today, and I am surprised to see the complete elimination of it.—A. Clauses 4 and 5 relate to the initial capital required for the incorporation of a new trust company. Clause 4 relates to the minimum amount of capital required to be subscribed and paid before the provisional directors may call the first general meeting of the shareholders; in other words, the first organizational meeting.

Clause 5 relates to the minimum amount of capital that must be subscribed and paid before the company may commence business. As Mr. Benidickson has pointed out, at the present time there are minima amounts prescribed in the act for this purpose. These minima amounts were inserted in the act originally in 1914, and they have not been changed since then.

Under the Trust Companies Act, as it stands at present, there must be at least $150,000 of capital subscribed, and at least $50,000 paid before the provisional directors may call the first general meeting of the shareholders.

In the case of loan companies, the minimum subscribed is a little less; it is $100,000. But the minimum paid is the same as for trust companies, namely, $50,000. Before either a new trust company or loan company may commence business the present acts require that at least $250,000 capital must be subscribed, and at least $100,000 paid.

Naturally, these amounts having been set in 1914 are rather out of date under present day conditions. It is almost unthinkable that a new trust company should start business these days with a subscribed capital of only $250,000 and a paid capital of only $100,000.

I might say that there are not many new trust or loan companies being incorporated these days. There has been only one loan company incorporated by parliament in the last 25 years. That company was the Gillespie Mortgage Corporation, in 1955.

The original purpose of loan companies was, of course, to provide mortgage money, and they obtained their funds by borrowing through the issuance of debentures, sometimes, years ago, in the United Kingdom, but now in Canada only. Loan companies also accept money on deposit, and these funds are then loaned to a substantial degree on the security of real property. Of course, nowadays, there are many other financial institutions providing mortgage money, too,—more particularly the life insurance companies and the banks.

The Gillespie Mortgage Corporation, being the recently incorporated company I referred to a moment ago, was incorporated in 1955 for a rather special purpose. It was, in fact, incorporated mainly to operate as a mortgage correspondent, as it is called. In the United States it is a quite common practice for life insurance companies to get some other organization to process the mortgage loan and, after it is all arranged and the money advanced, to purchase the loan from that other organization, which is called a mortgage correspondent.

I do not want to get off on a long path about this one particular company. The point I wish to make is that the only loan company incorporated in the last 25 years was incorporated for that particular purpose, to act as a mortgage correspondent mainly for some United States life insurance companies which desired to lend on the security of real property in Canada, but did not want to set up a mortgage organization for that purpose in Canada.

In the trust company field there have been only four new trust companies incorporated by parliament in the last 25 years; and only one of those four companies is presently in business.

Two companies were incorporated in 1945, the Ottawa Valley Trust Company and the Trust Company of America. Dealing with those two first which were incorporated in the same year, the Trust Company of America was merged with the Administration and Trust Company in 1950, and the Ottawa Valley Trust Company was merged with the Toronto General Trusts Corporation in 1952.

In 1956 a third new trust company was incorporated, the Interprovincial Trust Company, and it has not yet commenced business. It is still in the process of organization. More recently still, the Investors Trust Company was incorporated at the last last session of parliament, in 1957, and it has just commenced business. The latter company is associated with the Investors Syndicate.

I just mention these facts to draw attention to the relatively few new companies of these kinds that are being incorporated in recent times. It is a very difficult task to start a trust company, and the trend in recent years has, I think it can accurately be stated, been for the smaller trust companies to experience difficulty in making sufficient earnings to "butter their bread", so to speak. Many of the smaller trust companies, provincial and dominion, have been taken over by larger trust companies in recent years.

Getting back now to the capital required to start a new company, my personal opinion is that a subscribed and paid capital of at least $1 million is required and is appropriate for most new trust companies starting business today. There are, however, always special circumstances where it might be

desired to incorporate a trust company for a particular purpose, and a smaller capital would be appropriate and could be justified. So also in the case of loan companies. A company of the kind I referred to a moment ago, the Gillespie Mortgage Corporation, incorporated for its particular purpose, to act as a mortgage correspondent, does not need as much capital. It obtains its funds in the main from the banks, makes the mortgage loans, and as soon as they are made and finalized they are sold to insurance companies. Thus this company's funds are always revolving. It does not need much capital.

Now, it may seem that another course might have been followed, instead of removing all these minima amounts of capital which have now become obsolete. Another course might have been to double them, or treble them, or quadruple them. The difficulty in following that course is that it results in a very inflexible situation. If one prescribes unduly large amounts of capital, then it virtually precludes the incorporation of a company for a particular purpose where a smaller amount might be quite appropriate and quite justifiable, and in fact might be desirable.

On the other hand, if one simply doubled the present minima amounts, then those prescribed amounts would tend to become the standard, and persons desiring to incorporate a company would point to the amounts in the act and with justification say that apparently they are all that are expected, and that they should be enough.

In the insurance field where there have been many new companies incorporated, more particularly fire and casualty companies, no minimal amounts have been prescribed in the acts.

The amounts are left to be prescribed in each company's special act of incorporation.

Of course insurance, loan and trust companies can only be incorporated by special act of parliament; so that in every case the sponsors must come to parliament and describe their situation and make their case, so to speak.

Thus, in no sense, would the elimination of these minimal amounts take away from parliament the right or duty to scrutinize and fix or determine the minimal amounts of capital.

There are so few of these companies being incorporated now, that it seems desirable that the minimal amounts in each case should be set out in the special act in the full light of the circumstances of each case. Consequently the proposal in the bill is to delete the obsolete amounts which were originally prescribed in 1914, and leave it to each special act to specify the minimal amount which must be subscribed and the minimum to be paid before the first organizational meeting is held, and also before the company may commence business.

By Mr. Regier:

Q. May I ask how many trust companies and how many loan companies are at the present time under your supervision? I realize most of them are provincial.—A. Both loan and trust companies may of course be incorporated either by parliament or by any of the provinces.

At the present time there are five loan companies licenced under the Loan Companies Act.

Q. Would you be good enough to give us their names?—A. Yes sir. I thing it would be best to give them to you in alphabetical order, lest I give offence to any particular company.

1. Canada Permanent Mortgage Corporation, head office, Toronto, Ontario.

2. Eastern Canada Savings and Loan Company, head office, Halifax, Nova Scotia.

3. Gillespie Mortgage Corporation, head office, Vancouver, B.C.
4. The Huron and Erie Mortgage Corporation, head office, London, Ontario.
5. International Loan Company, head office, Winnipeg, Manitoba.

Then, with respect to trust companies, at the present time there are eleven licensed under the Trust Companies Act.

Incidentally, I noticed upon second reading of the bill that some question was raised whether the number is ten or eleven. I can readily explain that difference.

The eleven which are presently licensed are as follows:

1. The Canada Permanent Trust Company, head office, Toronto, Ontario.
2. The Canada Trust Company, head office, London, Ontario.
3. Chartered Trust Company, head office, Toronto, Ontario.
4. Commercial Trust Company Limited, head office, Montreal, Quebec.
5. The Eastern Trust Company, head office, Halifax, Nova Scotia.
6. Guaranty Trust Company of Canada, head office, Toronto, Ontario.
7. Investors Trust Company, head office, Winnipeg, Manitoba.
8. The Premier Trust Company, head office, Toronto, Ontario.
9. Prudential Trust Company Limited, head office, Montreal, P.Q.
10. The Sterling Trusts Corporation, head office, Toronto, Ontario.
11. The Western Trust Company, head office, Winnipeg, Manitoba.

The explanation for the apparent discrepancy between the number 10 and the number 11 mentioned stems from the status of the last-mentioned company, namely, the Western Trust Company.

Earlier this year the stock of the Western Trust Company was acquired by the Guaranty Trust Company so that at the moment the Western Trust Company is a wholly owned subsidiary of the Guaranty Trust Company of Canada.

Under the Trust Companies Act the Western Trust Company can only remain in that status as a subsidiary for a period not exceeding two years, unless the treasury board extends the period.

So, at or before the end of two years, the purchasing company, in this case the Guaranty Trust Company must, by agreement, take over all of the assets and all of the liabilities of the Western Trust Company, So, briefly, the Western Trust Company is now in the process of being merged with the Guaranty Trust Company.

Q. At whose request was this amendment made, and has the superintendent of insurance had cases of applications made to him on the assumption that the provisions would be all that could be required, and he has had to advise against the application? In other words, has the existence of the act and the clause of the act as it now stands, proved to be an embarrassment to him in the past number of years, or why is it being done?—A. I suppose it may appear, because of the relatively small number of companies being incorporated, that it cannot be a very important point. I may say, however, that we have had many discussions with persons proposing to start a trust company.

I am afraid that many of them, lacking experience in the trust field, have not appreciated the difficulties, and have not appreciated the need for much more substantial capital than is presently required in the act.

It is correct to say that we have discouraged several persons from starting companies. It has been an embarrassment that, at present, the act requires a paid capital of only $100,000 since we have felt, rightly or wrongly, that the minimum capital should be $1 million in most cases.

I might go back a little further still and say that in 1945, when two of these four trust companies were incorporated, the Ottawa Valley Trust Company and the Trust Company of America, the minimum subscribed capital and the paid capital in each of these cases was nearly $500,000.

In other words, they did put up more than the minimum required by the act; but each of these companies found its path too difficult to continue in business; and as I mentioned, each was taken over by another larger and better established company.

More recently the two newest trust companies, the Investors Trust Company and the Interprovincial Trust Company, each put up $1 million capital.

I think that each might have started with less, had it not been for the discussions that we had with the interested parties.

We, in the department, felt that the minimum capital in each of these cases should be $1 million, and the sponsors agreed to apply for a bill with that minimum in it, notwithstanding the very much lower minimum mentioned in the act.

In answer to your question, Mr. Regier, it is correct to say that the very small minimum presently required has been an embarrassment.

The CHAIRMAN: Clauses 4 and 5 agreed to. You have already covered Clause 6.

The WITNESS: Clause 6 is incidental to this amendment.

The CHAIRMAN: Clause 7 agreed to.

By Mr. Fraser:

Q. There are a number of these companies whose shares have a par value of less than $100 at the present time?—A. Yes sir that is correct; but there is a section in each act that authorizes the splitting of shares.

Q. Yes?—A. Subject to appropriate authorization at a special general meeting of the company.

The practice has been to incorporate companies with shares having a par value of $100. But it is true that some of the companies incorporated many years ago, have, under the authority of that section of the general act, reduced the par value of their shares to $20 or $10.

Q. And they did not have to come back here?—A. That is correct. There is authority contained in the general act to do it.

The CHAIRMAN: Clauses 6, 7 and 8 agreed to. We have already covered clause 9. Clause 9 agreed to. Clause 10?

By Mr. Benidickson:

Q. This is the most important section of the bill. May we hear something about it? I am particularly interested to get information as to how many of these companies now have borrowings very near to ten times their capital reserves?—A. Clause 10 relates to the socalled borrowing powers of these companies.

Under each act the expression "borrowed money" has a rather particular meaning. The expression includes not only money borrowed from the banks, for example, or through a bank overdraft; it also includes, in the case of loan companies, by definition, monies accepted from the public by way of deposits, and also money borrowed from the public through the issuance of debentures.

In the case of trust companies, the expression "borrowed money" by definition includes deposits accepted from the public and monies accepted in trust from the public, the repayment of which is guaranteed by the trust company.

Trust companies have three main kinds of funds: they have their own funds, represented by their paid capital, their surplus, and their reserves; and they have unguaranteed trust monies, represented by estates and trusts of all kinds. In this field, the company administers the trust. It does not guarante that the trust moneys will remain at 100 per cent of their initial value. The company follows the directions of the trust. These are called unguaranteed trust monies, viewed from the point of view of the trust company.

The third main kind of funds are what are called guaranteed trust monies, being monies accepted in trust by way of deposits or for investment; but the trust company guarantees the repayment of the principal or of the principal and interest as the case may be, so that the person putting up such funds is assured that he will get back 100 cents on the dollar in every case.

The CHAIRMAN: Your question was what companies, Mr. Benidickson?

By Mr. Benidickson:

Q. Yes. How much utilization by our federal companies of the ten times rule is now being made?—A. To refer briefly to this third class, I mentioned that these guaranteed trust monies, comprise deposits, monies accepted in trust, covered by guaranteed investment certificates issued by trust companies, and debentures issued by loan companies.

Since the repayment of these monies is guaranteed, it is not unnatural that some limit has been placed in each of these acts on the volume of this kind of monies that the companies may accept.

I would like to clarify one point, however. It may seem at first glance, as if the rule in this respect in the act may authorize a company to borrow money subject to these limits and perhaps spend the money. There is no situation of that kind at all in this field. Where a trust company accepts deposits or accepts money in trust for investment and guarantees repayment of it, such moneys when taken by the trust company must be kept separate from all other moneys, separate from its own funds and unguaranteed trust moneys; such moneys must be invested in the ways, and only in the ways, in which the act authorizes the company to invest them, mainly in first grade bonds or first mortgages. So this rule in reference to the so-called borrowing powers of a company may be said to define the capacity of the company to accept moneys in this way, and ensures that its own funds sitting beside them shall provide an adequate safety margin, an additional safety margin, over and above the investments, that those funds themselves give rise to.

In the Loan Companies Act as originally passed in 1914, companies were empowered to accept moneys on deposit or to issue debentures in the aggregate not exceeding four times their unimpaired capital and reserves. That limit was raised to six times in 1927 and to ten times in 1948. In the case of trust companies the original limit was five times in 1914, seven times in 1931 and ten times in 1947.

The present proposal is to enlarge their capacity to accept moneys of this kind so that in the aggregate such moneys do not exceed twelve-and-one-half times the company's unimpaired paid capital and reserves.

Again I apologize for the length of this explanation before answering your specific question as to how many companies are at present near the existing borrowing limit of ten times the paid up capital and reserves. There are two trust companies that have been pretty close to the ten times limit in the last year or two, the Guaranty Trust Company of Canada and The Eastern Trust Company. As a matter of fact, each of these companies at the end of 1957 slightly exceeded the ten times limit—not willfully, but they got into that

position because of the decline in the market values of their securities in 1957. Because of that decline, they had to put up an investment reserve. Consequently, their unimpaired and free reserve were reduced and so also their borrowing limits which are related directly to their paid up capital and free reserves. In the case of each of these two companies we naturally discussed their position with them and when their licences were renewed on April 1, they were each in a position where their total borrowed moneys were less than ten times their paid capital and reserves.

By Mr. Benidickson:

Q. Were these investments in substantial part federal or provincial bonds?—A. To a substantial extent, yes. It is a matter of opinion how large the capacity of these companies should be to accept moneys on deposit and to guarantee the repayment of moneys in this way, or to issue debentures in the case of loan companies. At the present time the ten times rule insures that the company's capital and free reserves will always be at least 10 per cent of the aggregate volume of this kind of money. The proposed extension to twelve-and-a-half times would mean that hereafter every company would have to have in the form of unimpaired paid capital and free serve at least 8 per cent of the total volume of deposits and borrowed moneys of other kinds.

In the field of provincial companies—and some of the largest companies are provincially incorporated—there is no limit in the province of Quebec, although in the main I believe the Quebec provincial companies have by practice kept their borrowed money within about ten times the paid capital and reserves. In Ontario there is a limit of ten times in reference to loan companies but no limit in reference to Ontario trust companies.

Q. Are both the Royal Trust Company and the Montreal Trust Company incorporated in Quebec?—A. Yes.

The CHAIRMAN: Will clause 10 carry?

By Mr. Regier:

Q. No. You mentioned two companies that had in part of the year at least exceeded the limit. I realize when they get near the maximum they cannot regulate as accurately as all that. I have particular reference now to the Guaranty Trust Company, as I happen to know a little of its operations. They may have gone overboard a bit and offered too high an interest rate and thereby obtained more money than they expected to obtain on deposit, found themselves in this position and had to revise in order to accept further deposits on certain of their offerings. Would that be part of the cause, Mr. MacGregor?—A. I could not say that was the main cause; I do not believe it was. The main cause of that company exceeding the ten times limit was the rapid decline in the market values of securities. Of course, it is a matter of company policy as to the kind of deposits they may wish to accept. Some deposits in large amounts may be very temporary. You might call it "hot" money in one sense—in the sense that the depositor might wish to withdraw it after a very short time.

I may say that under the act all deposits are deemed to have been received so that at least thirty days' notice is required.

Q. How high an interest rate did Guaranty Trust Company offer at one time? In 1957, was it 4½ per cent?—A. On its deposits or guaranteed investment certificates?

Q. On its 5-year deposit program?—A. I would guess 4-¾, but I cannot remember accurately. If you wish, I can obtain the figure for you.

Q. Do you think it was a bit high and would cause a flow of money towards that company?—A. It would naturally do so if the rate offered were above that offered by its competitors. It is almost bound to, but a company can readily regulate the amount of money it wishes to take by changing its interest rate. I do not think that the Guaranty Trust Company offered a higher rate than some other trust companies for similar kinds of money.

Q. I realize that. What I had in mind was that the Guaranty Trust Company has almost obtained the reputation of a chartered bank in regard to reliability, and therefore to compare it with some smaller less known trust companies is hardly fair. You almost have to begin to compare it with the regular institution. The other point I wish to raise—I take it from this it is a clear indication that the capital base of Canadian trust companies and/or the number of companies in existence has not kept pace with the expanding population and the expanding level of our economy, and that has forced upon us from time to time the need to revise this ratio. Is that not a fair assumption to make?—A. I think the trend in recent years has been for the larger trust companies to grow larger and for the smaller ones to find it increasingly difficult to operate at a satisfactory profit. I would also think or say that these extensions in the so-called borrowing capacity of the companies have been made in the light of their history and experience too. Much has been learned, even since 1914, about the manner in which they conduct their business in these respects. In the case of banks, if one examines the return of the chartered banks to the Minister of Finance, it will be noticed there that their borrowings run up to perhaps eighteen, nineteen or twenty times their paid capital and reserves in the aggregate, on the average, as compared with the proposed twelve-and-a-half times here. There is, however, no statutory limit applicable to the banks.

Q. What I had in mind particularly was the reason or the need. Why does this need arise for the changes? Is it not a fact that our economy and our population have grown and the base of our trust companies has not grown in accordance with that and, therefore, as the economy expands there is a need?—A. I think that is correct. These companies are encouraging savings. They are acting as deposit banks in that respect.

Q. Now, in that case would you agree that it would be a very healthy thing if these companies broadened their capital base and increased their capitalization rather than to continue building a larger superstructure upon a narrow capital base. To use an example, one insurance company which was incorporated many years ago—and I believe all the capital investment ever was $68,000—and yet that board of directors which, in the main, are still the owners of its original $16,000, rule over a dominion of $7 million of the people's money, which I think even Mr. MacGregor will admit is far too narrow an equity. Would not ways and means to broaden the base be preferable to continually revising this figure?—A. I would say that both have been done. Many of these trust companies have enlarged their capital structure in order to enlarge their borrowing capacity. However, it is a matter of opinion how far the borrowing capacity of these companies should be permitted to expand. My personal opinion is that this is about as far as it is desirable to go. It may be that conditions in the future will indicate otherwise, but I doubt it. The present proposal ensures that capital and reserves will always constitute 8 per cent of this kind of money; or looking at it another way, it ensures that the capital and surplus and all guaranteed funds could shrink by one over thirteen-and-a-half, or by 7½ per cent, and the depositors and others would still be assured one hundred cents on the dollar. It is, of course, a matter of judgement how wide that protective margin should be.

We have seen declines in the market values of securities in recent years of five or six points. Of course, these companies do not ordinarily invest all their funds in bonds and stocks; some invest in real estate mortgages—and the market value of mortgages does not decline like the market value of bonds and stocks. One may counter that mortgages are less liquid than bonds and stocks. That is true, but under present conditions mortgages are much more liquid than they used to be. They are practically all on an amortized basis whereby they are repaid monthly, so that mortgage funds are revolving at all times; there is substantial money coming in as well as going out. In addition, there is a market for mortgages now through Central Mortgage and otherwise that did not exist ten or fifteen years ago.

It is a matter of judgment whether the limit should be 12½ times, 15 times or 10 times. My personal opinion is that 12½ times is justifiable and is safe, but at the present time I think it ought not to go higher.

Q. Mr. Chairman, I read this in another place, but is the report in Hansard correct, Mr. MacGregor, that you desire to retain the 10 times ratio, the companies ask for 15 times, and so you arrived at the compromise of 12½?—A. No, that is not quite correct. I noticed that statement.

Q. Yes, it appeared in *Hansard*.—A. The question put to me and to which I think this answer was intended to relate was, which is safer the present 10 times or the proposed 12½? Naturally I said that 10 times is safer and the original 4 times rule was safer still. It is true, however, that the companies asked for an extension of the limit to 15 times.

Q. Have you ever recommended to any of these companies that they increase their share capital?—A. Oh yes, sir.

Q. Have any of these companies ever failed to implement your recommendation in that regard?—A. Well, I should not like to be misunderstood on that point. We have not had to suggest an increase in capitalization in order to safeguard the position of the depositors. We have had to say to some companies: "If you want to go on extending your deposit business and guaranteed investment certificate business, you will have to get more capital", as that is the only way you can do it under the Act. We have suggested an increase and companies have sometimes accepted it; more frequently, it was done on their own because they desired to expand their business and that is the only way they can do so. Increases have taken place in several instances, including the Guaranty Trust Company of Canada, the Chartered Trust Company and the Eastern Trust Company.

Q. In other words, it has two purposes—it protects the company in case of sudden decline in the bond market—A. It protects the depositors particularly.

Q. —and also it allows for expansion of their activities?—A. Yes.

Q. And the companies prefer this method of spreading out their share base. I can understand their reluctance to spread their share base because there is quite an accumulation of these shares among certain people, and those who own them do not like to invite other people to come in and share in what money they feel their own original investment has earned?—A. I think that is determined largely by the economic conditions existing at the time. If a new issue of shares were made, they would be offered on a pro rata basis to the existing shareholders. That would be the only fair way to do it.

Mr. BENIDICKSON: The market looks at the former price and the present value.

By Mr. Pallett:

Q. Mr. Benidickson mentioned a couple of Quebec trust companies. Have you any information there of the shares outstanding against the reserves?—

A. These figures are approximate, but I believe they are quite accurate—the Royal Trust Company at the end of 1957 had total borrowed moneys of $80 million and they had paid capital, surplus and reserves of $11,400,000.

In the case of the Montreal Trust Company their total borrowed money was $70 million, and their capital and reserves were $10,400,000.

By Mr. Benidickson:

Q. Give us the figures in respect of the larger ones in Ontario, such as the National Trust Company and the Toronto General Trust Company?—A. National Trust in Ontario had borrowings of $65 million, paid capital and reserves of $7,000,000.

The Toronto General Trust Corporation had total borrowings of $58 million, paid capital and reserves of $6,800,000.

I would, however, make a comment in relation to those figures. Provincial trust companies in Ontario and Quebec, which embrace the four you have asked about, all publish their financial statements on the basis of book or amortized values for all bonds. Consequently I would say off-hand that the figures I have given for paid capital and free reserves should probably be reduced to make them comparable with the figures published for dominion companies. It seems likely that at the end of 1957 additional reserves would have been required to bring the book values of the bonds of these provincial companies down to their market values, and that has been done in the case of dominion companies, but I do not think it has been done in the case of provincial companies.

Q. And they use amortized values for stock?—A. No, just for bonds.

Q. Just government bonds?—A. No, all bonds not in default—corporate bonds, municipal bonds, and so on.

Clauses 10 and 11 agreed to.

On clause 12—Definitions.

By Mr. Regier:

Q. This is the amortized value rather than market value?—A. That is correct, sir.

Q. Could we have an explanation of this?—A. Clause 12 relates to the maximum value at which bonds may be carried in the balance sheet of a loan or trust company.

At the present time the only reference to the basis of valuation for bonds and stocks in the act is in the obsolete schedule B. The act is silent on how bonds and stocks shall be valued but in the schedule there is a line at the foot of "assets" which says "not exceeding the market value", or words to that effect. Consequently, up to date the practice of the companies has been in the first instance to compile their balance sheets carrying their bonds and stocks in at their book values. Technically, under the act the schedule implies that they shall be carried at values which in the aggregate do not exceed their aggregate market values. Sometimes the aggregate market values may be larger than the aggregate book values; sometimes they may be smaller. As a conservative practice—I did not mean that in any political sense—

By Mr. Pallett:

Q. That is the only way to have it. —A. As a conservative practice we have encouraged the companies where the aggregate market value exceeds the aggregate book value to ignore the excess, but where the aggregate market value is lower than the aggregate book value we have required them to put up a reserve in the liabilities to cover the deficiency.

The amortized value of a bond may briefly be described as its cost price adjusted from year to year so as to reach par value at maturity. Sometimes the amortized value is referred to as the investment value because if a company buys a bond at 102 or at 95 and holds it until maturity it will of course, ordinarily get 100 cents on the dollar at maturity, and until that time the bond yields a certain effective rate of interest on the original investment.

These companies are not, in the main, active market traders. They receive moneys on deposit and take such moneys and invest them mainly in bonds or loan them on real estate mortgages. They are not active traders and in the ordinary course the bonds are held until maturity, at which time they will receive 100 cents on the dollar if the bond does not go in default, or if they are not required to liquidate it before the maturity date.

If any one must sell a bond, certainly its market value is its realizable value, but these companies ordinarily do not have to sell their bonds unless the company is in a shaky financial condition and has to be taken over by another company. If it were in that position, market values alone would be the determining factor, because in our experience when one company has to be taken over by another company the purchasing company will have regard for the existing market value and nothing else.

In the case of fire and casualty insurance companies where the nature of the business involves substantial catastrophe hazards and there are wide fluctuations in their experience, those companies may have to sell their securities to pay their claims and, of course, market values are the only values that one could justify for balance sheet purposes.

By Mr. Lockyer:

Q. Do we have much experience with that kind of casualties in the companies?—A. We have about 350 fire and casualty companies registered with the department at the present time.

Q. But I mean, are these companies not entirely stable and sound in their managements?—A. The scope and nature of the liabilities of fire and casualty companies are essentially different, of course, from the nature of the liabilities of loan and trust companies. The liabilities of the former, that is, fire and casualty companies, are subject to much wider fluctuations. The liabilities of trust and loan companies are really quite stable, being essentially debt, like debentures, deposit money, etc.

Q. That is exactly what I mean. These companies you have are well managed companies?—A. That is so, sir. It is the nature of the liabilities that justifies the application of the theory of amortized values.

In the case of, say, life insurance companies which have long-term liabilities, their business is very stable, and to a substantial extent that applies also to loan and trust companies in respect of the nature of their liabilities. As far as the amount of the liability is concerned, it is just debt, and the only hazard, as I see it, in the case of loan and trust companies is the hazard of the demands that might be made upon the companies by depositors to withdraw their money. The risk there is that if loan or trust companies were subject to a run, for example,—depositors wanting all their money, then it is conceivable that the company might have to sell its bonds in order to get the money to pay off its depositors.

By Mr. Fraser:

Q. But then, Mr. Chairman, would not they have that 30 days' grace, because most of the trust companies have that?—A. That is right in the act, Mr. Fraser, that is correct.

By Mr. Lockyer:

Q. But what I am trying to point out is that these companies are so stable and well managed there is not likely to be a lack of confidence and, consequently, a run?—A. I believe that is true. Experience has shown they have not had to meet any large runs of that kind. The theory in clause 12, or in the change proposed by clause 12, is that these securities will be held to maturity and will be paid off at 100 cents on the dollar, that, in the case of government bonds, dominion or provincial, there is no risk of any intrinsic depreciation as there might be in the case of a mortgage bond, or certain other bonds. I might say that over the years we in the department perhaps are naturally inclined to the conservative side of things. Our difficulties arise when companies get into trouble, and our job is to keep them out of trouble, or to do what we can in that respect.

The CHAIRMAN: Does clause 12 carry?

By Mr. Morris:

Q. When you speak of market value and make reference in this new section to discretionary power to set that within 60 days, could you tell us what theoretical circumstances you have in mind in suggesting that—in what theoretical circumstances you may require 60 days?—A. That reference, sir, relates to the determination of market value, and it is copied, I might say, from the Insurance Act.

It is necessary for the department every year to publish a book on market values of all securities held by insurance, loan and trust companies for use by the companies in compiling their statements as at December 31.

Now, naturally, the companies desire to get that book as soon after December 31 as they can because until they get it they cannot complete their annual statements, and yet they are required to file them under penalty for delay at least by March 1.

The only real reason for the 60-day provision is to authorize the department to use values as at any date not earlier than November 1, simply as a practical measure to enable us to get on with the publication of the book for use at the end of the year.

If there were substantial changes in market values between November 1 and the end of the year, we might use a later date. In the past we have generally used November 1 in preparing the book, but I might say that last year, when values were changing very quickly in the early weeks of November, we decided to wait until November 22. We could not postpone it any longer and still get the book out in time. In any case, by that time the market had pretty well stabilized and flattened out.

I would like to say one further word about amortized values. One might ask: what has prompted this particular proposal at this particular time?—why was it not made five years ago or ten years ago?

At the end of 1956 the Bank of Canada for the first time published its own financial statement using amortized values for dominion and provincial bonds; and by order in council at the end of 1956 the schedule in the Bank Act was altered so as to require or at least permit—first to require and then to permit the chartered banks to fill their statements at the end of 1956 so that dominion and provincial bonds would be reflected in the balance sheets at values which in the aggregate did not exceed their amortized values.

A similar order in council was passed in reference to the Quebec Savings Banks at or about the same time, that is, around the end of 1956; and at the spring session of parliament in 1957 when the Quebec Savings Bank Act was being amended in other respects, the schedule in the Act was changed at

that time to confirm what had previously been authorized by order in council, briefly, to authorize this method of valuation for dominion and provincial bonds.

The department of insurance has nothing to do with the practices of the chartered banks, or the Quebec Savings Banks, or the Bank of Canada, but to the extent to which the loan and trust companies are doing a similar kind of business, namely, a deposit type of business, I think it is only reasonable that a similar method of valuation should be permitted to the loan and trust companies with respect to the same kinds of securities. So this proposal has been brought about really by changes in the practices of the Bank of Canada, the chartered banks, and the Quebec Savings Banks within the last year and a half or two years.

Q. When you say dominion and provincial bonds you mean also guaranteed bonds?—A. Yes, but not perpetuals—just redeemable securities. So far as the department of insurance is concerned, we have been market minded for many years. While I believe this is a justifiable change in procedure, and is a reasonable thing to do in the circumstances, our dim approach to things makes us still believe that market values must be very carefully considered at all times, and it is certainly our intention to keep a close eye on the market value position of every company.

I might say too that this section still requires the market value of all bonds, including dominion and provincial, to be shown in every statement even though they may not be carried in the balance sheet.

By Mr. Regier:

Q. I have only one other concern. Mr. MacGregor, will this amendment, coupled with clause 9 or clause 10, make it more difficult for the Minister of Finance and the government to control the monetary policy?—A. No sir, I do not think it will make any difference.

Clause 13, to 15 inclusive agreed to.

The CHAIRMAN: Shall the schedule carry?
Agreed to.

The CHAIRMAN: Shall the Model Bill carry?
Agreed to.

The CHAIRMAN: Shall the title carry?
Agreed to.

The CHAIRMAN: Shall the preamble carry?
Agreed to.

The CHAIRMAN: Shall I report the bill?
Agreed to.

By the Chairman:

Q. Now, Mr. MacGregor, is there any important difference in the other bill?—A. There are no important differences. Each bill has 15 clauses, but they are not identical. In the trust companies bill just considered, clause 2 has no counterpart in the loan companies bill.

In clause 2, if the hon. members would refer back to it again, you will notice there is one word underlined—"calling". The only reason for that amendment was to change the word "description" to "calling" in reference to the provisional directors. "Calling" is the word used in the Loan Companies Act and seems much more appropriate.

In the loan companies bill clause 6 has no counterpart in the trust companies bill. Clause 6 relates to the possible reduction in the capital of a loan company if its capital is impaired, and heretofore the act has said that the

capital must never be reduced below $250,000 because that was the minimum amount specified in the act for a company to commence business.

The proposed amendment would prescribe that in the case of a reduction of capital it must never be less than the amount required by law to commence business, which would be the amount required by the general act if the company was incorporated before this amendment or below the minimum required by the company's special act, if incorporated after this amendment.

The CHAIRMAN: I was going to ask if this bill, the Loan Companies Act, be approved in the same way as the trust companies bill.

Mr. PALLETT: How about calling it by clause? It will only take about 30 seconds, just for the record.

Clauses 1 to 15 inclusive, agreed to.

The CHAIRMAN: And the model bill, shall it carry?

Agreed to.

The CHAIRMAN: Shall the preamble carry?

Agreed to.

The CHAIRMAN: Shall the title carry?

Agreed to.

The CHAIRMAN: Shall I report the bill?

Agreed to.

The CHAIRMAN: Would somebody move regarding the printing of 750 copies in English and 200 copies in French of the minutes of proceedings and business relating to the deliberations of the committee on Bills S-10 and S-11?

Mr. FRASER: I so move.

Mr. MORRIS: Seconded.

By Mr. Morris:

Q. Mr. MacGregor, I do not know the rules now, the bell has not yet gone, and whether you wish to record this. What has been the experience of default under clause 89 of the Trust Companies Act, and clause 97 of the Loan Companies Act? This has to do with the filing of annual reports?—A. Under each act as at present, loan companies and trust companies are required to prepare a statement and forward it to the minister on or before March 1, and if it is not despatched on or before March 1, a penalty of $20 for each day's delay is imposed against them. The determining date is the date of mailing in the case of loan and trust companies which introduces some difficulty; sometimes postmarks are not very clear. In the case of insurance companies, it is the date of receipt in the Department that counts.

The loan and trust companies are very prompt. Some of the insurance companies, more particularly reinsurance companies which do not get their data from the ceding companies early, have sometimes not been able to meet the deadline, but it is a rare occurrence when a loan or trust company is late at all.

The CHAIRMAN: Thank you very much, Mr. MacGregor. We will adjourn.

The committee adjourned.