TAXATION DECISIONS AND RULINGS

Since the May issue of the Canadian Bar Review went to press a number of directives "For Public Circulation" have been received from the Taxation Division of the Department of National Revenue. As promised in that issue those that seem of particular interest to the legal profession are reproduced here in full; the remaining ones are mentioned with a short statement of their effect, so that readers may secure the full text if they wish.

Directive No. 21 of May 16th, 1947, concerns the exercise of ministerial discretion in permitting changes in fiscal periods under the proviso to section 2, subsection (1), paragraph (s) of the Income War Tax Act. In future such changes will be permitted if the District Office is satisfied that they are for business reasons only and not for the purpose of avoiding tax. On May 30th, 1947, Directive No. 30 was issued on the application of section 11A of the Dominion Succession Duty Act, which authorizes a credit against the Dominion tax of the duty payable to certain of the provinces on the same succession. In Directive No. 39 of the 21st of June, 1947, the Taxation Division indicates its position with respect to amounts of tax incurred and remaining unpaid by persons who joined the armed forces and proceeded overseas. The department recognizes its obligation to collect such amounts. However it is intended that collection should not be done in such a way as to interfere with or delay rehabilitation. Only if the cooperation of the taxpayer is not obtained on a plan to liquidate the liability will enforcement proceedings be taken. Directive No. 46 of July 3rd deals with the procedure in applying for approval of a pension plan where past service benefits are involved. In future all applications must be accompanied by an employer's statement and an actuary's certificate in the prescribed form. In addition, where twenty-five lives or more are involved, the cost must be reduced to the extent that any death benefit credits may accrue to the employer. The reduction is to be based on table of mortality and other assumptions as the actuary may deem appropriate. Directive No. 70 of the 16th of August, 1947, contains the provisions of Order in Council P.C. 1046 of March 25th, 1947. By this, the rates of depletion on base and precious metal mines, asbestos mines, gas and oil wells and coal mines are prescribed. Directive No. 71 of August 23rd, 1947, relates to the assessment of members of the medical profession. Certain modifications are made in the Memorandum regarding

Returns of Members of the Medical Profession issued under date of February 1943.

Directives No. 75 and 76 are reproduced in full hereunder:—

Succession Duties — Joint Ownership
(Directive No. 75 of August 28th, 1947)

1. *Joint Ownership*

While Joint Tenancy is dealt with specially by Section 3(1) (e) of the Act, the distinguishing characteristics of this type of ownership, when subject to the equitable presumptions of immediate and postponed advancement and resulting trust, also involve the operation of Section 3(1) (i) in conjunction with Section 3(4) and Section 4. It is also conceivable that a joint tenancy creates a dutiable disposition under Section 3(1) (g) and, if the deceased person provided the whole property, the definition of 'succession' undoubtedly covers the transaction. Where property is held under joint tenancy the whole property vests in the survivor or survivors on the death of one joint tenant, but any one of the tenants can obtain full control of his share during his lifetime by severing the joint tenancy or disposing of it as he thinks fit, whereupon the joint tenancy is severed so far as that particular tenant is concerned. 'Technically, joint tenants are entitled to all which they ever have; and when one joint tenant dies, the other does not succeed to his interest by devolution of law, but remains the sole owner, the property being discharged from the control of the other. It is incident to the very nature of a joint tenancy that until it is severed, the right of survivorship is part of the original estate, it is not that the survivor succeeds to anything from the other.' *Per* Lord Selborne in *Earl of Zetland* v. *Ld. Adv.* (1878), 3 A.C. 505. It is noted from the foregoing that where realty or personalty is bequeathed to two persons as joint tenants, on the death of one joint tenant it can be argued that the succession is derived from the original testator and not from the deceased joint tenant, but Section 3(4) brings the transaction within the Act.

Since the right of survivorship is not a matter of contract but is an incident annexed by law to the joint estate it follows that where there is no severance of the joint tenancy the survivorship exists by the free will of the deceased who by severance could have altered the destination of his share of the property. Under Section 3(4) the taking of an interest by reason of the deceased's failure to exercise a power of disposal such as severance is deemed

to be a succession. In addition the liability to duty is dependent on the extent of the beneficial interest accruing, and is independent of the proportions in which the purchase money was provided unless the extent of the beneficial interests is thereby affected. In the case of personalty, however, it is noted that parol trusts may prohibit the right of severance by a joint tenant who provided none of the property nor enjoyed a beneficial interest therein during the joint lives, and his interest may consist solely of the contingent right to take by survivorship.

2. *Joint Contributions*

Section 3(1) (e) provides that a succession is deemed to include the disposition of property held under joint tenancy except that part contributed by the survivors. In addition it is provided that where the joint tenancy is created by another person the interests of the deceased and the survivor or survivors are deemed to be equal. In view of the other provisions of the Act affecting joint ownership this statutory provision cannot be considered as dealing exclusively with joint tenancies and can only be read as relating to joint contributors. In the case of contributions claimed by a wife, savings out of housekeeping allowances, or by keeping boarders and the like are considered to be the husband's property. See *Rioux* v. *Rioux*, 53 O.L.R. 152; *Blackwell* v. *Blackwell*, [1943] 2 All E.R. 579.

3. *Express Trusts*

Property appearing in the joint names is frequently the subject of an express or implied trust, thus indicating that it is not held in true joint ownership. If a trust is proved to exist, the liability of the property to taxation is determined accordingly. (Explanatory Brochure)

4. *Equitable Presumptions*

In the case of a joint tenancy if there is no express trust or agreement defining the beneficial interests they are determined according to well-known equitable principles. These are the presumption of resulting trust and the presumption of advancement.

5. *Presumption of Resulting Trust*

'Where a person purchases property in the name of another or in the names of himself and another jointly, or gratuitously transfers property to another or himself and another jointly,

then, unless there is some further intimation or indication of intention at the time to benefit the other person, the property is, as a rule, deemed in equity to be held on a resulting trust for the purchaser or transferor. In all these cases [of resulting trust] . . . the beneficial interest in the property . . . results or reverts to the disposer or purchaser of the property, or, in the case of his previous death, to his representatives.' (Halsbury's Laws of England (Hailsham Ed.), Vol. 33, pp. 142, 149; see also *Dyer* v. *Dyer* (1788), 2 Cox 92). This presumption may be displaced by the presumption of advancement (*Dunbar* v. *Dunbar*, [1909] 2 Ch. 639), or it may be rebutted by evidence of a contrary intention drawn from the parties' acts and declarations contemporaneous to the transaction (*Standing* v. *Bowring* (1885), 31 Ch.D. 282).

6. *Presumption of Advancement*

Where the deceased caused property to be placed in the joint names of himself and his wife or child, or a person to whom he stood *in loco parentis*, the presumption is that he intended such persons to benefit thereby and the presumption of resulting trust is displaced. (See *Dunbar* v. *Dunbar*, *supra*, *Standing* v. *Bowring*, *supra*, and *Fowkes* v. *Pascoe*, 44 L.J. Ch. 367.)

Since this presumption involves the possibility of immediate enjoyment of the property by the survivor on the creation of the joint tenancy the effect of Sections 3(1) (c) and 3(1) (d) of the Act must be taken into account. Under S. 3(1) (c) absolute gifts made more than three years before the death do not attract duty, but if there is a reservation of benefit to the deceased then the gift creates a claim for duty no matter when it was made. In view of the nature of joint tenancy the deceased retains a benefit during his lifetime but there may also be concurrent enjoyment of income by the survivor or survivors. This problem is met by the application of concessions related to the presumptions as to whether the advancement is immediate or postponed. It seems clear from *Dunbar* v. *Dunbar*, *supra*, that in the case of realty advancement is presumed to be immediate in the absence of express provision in the conveyance. Without the necessity of inquiry the immediate effect is recognized and hence, if the joint realty was created more than three years before the death, a moiety is exempted as a gift under Section 3(1) (c). If created within three years duty is charged in respect of the whole as being part gift and part devise. In the case of personalty the husband or father is presumed to be entitled solely to the beneficial interest during the joint lives, and, in the absence of evidence

as to actual division of income, the wife or child is entitled only if surviving. (*Eykins Trusts* (1877), 6 Ch. D. 115; *Fowkes* v. *Pascoe, supra*). Evidence of severed enjoyment must show enjoyment of income from the property separate and apart from the deceased on the basis of legal and enforceable right. A mere parol agreement that the survivor should be entitled to a share, or the payment of income into a joint bank account, or its use for joint living expenses, or the voluntary payment by the provider of sums intended to represent a share of the income will not suffice. Thus in the case of personalty the passing of the whole property is treated as dutiable in the absence of satisfactory evidence as to separate enjoyment.

Although a wife may advance her husband or a mother her child, the advancement must be proved, there being no legal presumption in favour of it (*Mercier* v. *Mercier*, [1903] 2 Ch. 98; *Re Mailman*, [1941] S.C.R. 368).

7. *Beneficial Interests*

Where the presumption of resulting trust arises, the beneficial interest remains with the deceased. Where there is a presumption of immediate advancement and the wife or child dies first, then on that death a claim for duty exists under Section 3(1) (i) in respect of a moiety of the joint property, the wife or child being considered to have been all along in beneficial possession. Where the advancement is presumed to be postponed there is no claim for duty on the prior death of a wife or child, the interest having failed before becoming an interest in possession.

8. *Evidence Affecting Presumptions*

'If a man causes the conveyance to be made to his wife, the relationship implies a consideration and the law presumes that the conveyance was intended as an advancement by him, and the presumption is that there is not a resulting trust as between them.' *Hyman* v. *Hyman*, [1934] 4 D.L.R. 532, referring to *Thornley* v. *Thornley*, [1893] 2 Ch. 229; *Dunbar* v. *Dunbar, supra*, *McLeod* v. *Curry*, [1923] 4 D.L.R. 100, 54 O.L.R. 205; *Johnson* v. *Johnson* (1926), 31 O.W.N.; and to *McManus* v. *McManus* (1876), 24 Gr. 118, *per* Moss J. at p. 124: 'No one who has watched the administration of justice in our Courts will doubt the wisdom of a rule declaring that, if under certain circumstances a plaintiff is to be exempt from the necessity of producing written evidence of a trust in his favour, he shall at least establish its existence by verbal testimony of a clear, satisfactory and convincing character

. . . by bringing forward clear, distinct and precise testimony by presenting a case not resting upon a very nice balance of conflicting statements, by producing, in short, proofs little, if at all, inferior to a written document in their efficacy'. In *Hyman* v. *Hyman*, Hughes J. continued as follows: 'The appellant was apparently a man used to extensive dealings in property, and it would have been very simple for him to have had his solicitor draw the conveyance in trust, or draw some document to evidence such a complicated understanding as he alleges . . . Considering the whole case, we are of opinion that the appellant has failed to bring forward "clear, distinct and precise testimony" of any trust in his favour.'

In *Warren* v. *Gurney*, [1944] 2 All E.R. 472, the facts showed that a father purchased a home in his daughter's name, retaining the title deeds. Subsequently he signed a document entitled 'my wish' directing the house to be divided among his three daughters on his death. After he died the daughter claimed to be entitled to the house as owner under an advancement and demanded the title deeds, against which it was argued that there was a resulting trust. It was held that the document, being in the nature of a subsequent declaration by the alleged donor, was only admissible if the declaration was against the donor's interest, but that the contemporaneous declarations of the alleged donor were sufficient to rebut the presumption of advancement even if they stood alone. Of these the most important were that it appeared the father stated he bought the house because the daughter and her prospective husband were in need of a place and the husband-to-be was to pay for it, the deceased retaining the title deeds as security. An editorial note to the report of this case states that 'It was observed by Knight-Bruce, V.C., in *Scawin* v. *Scawin* (1841), 1 Y.& C. Ch. Cas. 65, that the retention of title deeds by a father is not conclusive to rebut the presumption of advancement arising from purchase of property in the name of a child, although they are "sinews of the land" in Coke's words. Here, however, there were contemporaneous declarations of the father which, taken together with the retention of the deeds, are held sufficient to rebut the presumption.'

In *Hirschorn* v. *Evans, Barclay's Bank, Ltd., Garnishees*, [1938] 2 K.B. 801, E's wife had given him a legacy received by her to use in his business. Later they opened a joint account at the Bank. It was held that the opening of a joint account was not of itself sufficient to show that the money belonged solely to the husband.

9. *Summary*

Property in joint names attracts duty as follows:

(a) All property transferred or purchased by the deceased within three years of the death, regardless of beneficial interests.

(b) All property transferred or purchased by the deceased more than three years before the death except (1) the aliquot share of realty which by concession is considered during the joint lives to have belonged to the survivor beneficially in possession; and (2) the share of personalty reflected by income which during the joint lives was separately enjoyed by the survivor as of right. No exemption of the deceased can be claimed where the survivor's interest was undefined or unenforceable, or where there was no income as in the case of current bank accounts.

(c) Property *not* purchased or provided by the deceased only to the extent to which the deceased was legally entitled in possession to ownership, enjoyment or income of the joint property, or was competent to dispose of it, including the moiety of realty which by concession is considered to be subject to immediate advancement.

10. *Joint Bank Accounts*

While joint bank accounts are subject to the foregoing principles respecting joint property the fact that the bank requires the parties to sign a printed deposit agreement form introduces an additional factor which has received judicial consideration in recent years. While the terms of the agreement form vary as between the different banks, it now seems clear that this variation should not be given as much significance as might appear from an inspection of the forms.

In *Re Mailman*, [1941] 3 D.L.R. 449, the deceased transferred her bank account into the joint names of herself and her husband, the form signed by them providing that the parties agreed with the Bank and each other that the moneys might be withdrawn by either of the signatories, that the bank was authorized to accept the cheque of either as a sufficient acquittance for a withdrawal, and that the death of one or more should not affect the right of the survivors to withdraw moneys. The wife alone drew on the account in her lifetime for household expenses. The Supreme Court held there was nothing in the deposit agreement

form to displace the presumption of resulting trust and the husband was not entitled to the account by survivorship.

In *Niles* v. *Lake*, [1947] 2 D.L.R. 248, the deceased opened a joint account with her sister, the agreement form being much more far reaching in its terms than the one considered in the *Mailman* case. This form provided that all moneys then or thereafter deposited in the joint account should be the joint property of both with right of survivorship, that each transferred to both jointly and to the survivor all moneys so deposited and that the bank was authorized to accept the cheque of either as a sufficient acquittance for a withdrawal. The deceased operated the account herself, the sister making neither deposits nor withdrawals or knowing anything about it. It was held again by the Supreme Court, reversing the Court below, that although the sister may have become the legal owner of the account by survivorship she held it on a resulting trust for the deceased's estate, Taschereau J. stating 'Something more than a mere transfer is required to destroy the presumption of resulting trust and an intimation of such an intent must appear in the document itself, or as a result of evidence which reveals the intention to benefit the transferee.'

These two cases deal with circumstances where the presumption of resulting trust is predominant. When this presumption is displaced by the presumption of advancement the strength of the latter presumption must be given full consideration. Thus in *Mathews* v. *National Trust Co.*, [1925] 4 D.L.R. 775, it has been stated that 'The rule as it is to be applied in the circumstances of this case seems to be this: the transaction itself—the deposit by a husband in the names of himself and his wife—raises a presumption of an intention to create a joint tenancy with all its incidents including the incident of beneficial ownership by the survivor.'

In *Freeman and Wooten* v. *Johnston*, [1942] 1 D.L.R. 502, the joint account was in the names of husband and wife and the agreement form was similar to that used in *Niles* v. *Lake*. Each drew on the account for his or her personal use. It was held that parol evidence for the purpose of showing that the husband never intended to create a joint tenancy in the deposit moneys was inadmissible as being an attempt to contradict and vary the clear legal effect of the terms of the written agreement; and the widow took the account by survivorship. In referring to the *Mailman* case, Plaxton J. remarked: 'In such a case there is a legal presumption that there was no intention on the part of the wife to divest herself of her exclusive ownership and control of

the deposit money and make her husband a joint tenant thereof when she opened the joint account . . . The present case relates, on the other hand, to deposit accounts opened by the husband in the names of himself and his wife; and in such case, there is a legal presumption in favour of an intention to create a joint tenancy in the deposit money.'

In all of the foregoing cases the point at issue was whether or not the joint accounts should pass by survivorship. It seems to have been clearly decided that although the joint deposit agreements might pass the legal title they are not sufficient, *per se*, to overcome the presumption of resulting trust in the absence of admissible evidence to show beneficial interest and separate enjoyment by the survivor as of right during the joint lives. However, where the presumption of advancement is involved, there are good grounds to consider that the agreement entered into by the husband or father serves at least to strengthen the presumption of postponed advancement and to establish more firmly the right of the wife or child to take by survivorship at death. However it may be established by conclusive evidence that the opening of the account was only for the sake of convenience in the handling of the husband's or father's affairs, although it should be noted that the right to take the account by survivorship may have been an element of the convenience contemplated by the deceased when opening the account.

This Directive does not apply to estates of persons domiciled in the Province of Quebec.

Succession Duties — Canada-United Kingdom Agreement Act, 1946
(Directive No. 76 of August 28th, 1947)

Referring to Memorandum SD. 3 (1946-47), the following instructions are issued for the purpose of giving effect to applications for credits under the above Agreement in the estates of persons dying domiciled in Canada. It may be said that for the most part the procedure corresponds closely to that in effect in dealing with similar credits under the United States Convention.

The Agreement having been entered into for the avoidance of double taxation, credits are only granted in cases of items of property subject to double taxation, one Government taxing on the basis of domicile and the other Government on the basis of situs.

Personalty wherever situated which is included in an inter vivos settlement governed by British Law is chargeable with

British Estate Duty when the property passes on the death of a life tenant domiciled outside Great Britain, e.g., in Canada, and this affects both the amount and rate of duty on property situated in Great Britain. Under our Act, however, such personalty even though the life tenant died domiciled in Canada would not be charged with Succession Duty, in cases in which the life tenant was not himself the settlor. In these cases, therefore, there is no double taxation.

There is no change in the imposition of tax in the estates of persons dying domiciled in Canada or in the treatment of Real Estate. Article V(1) provides for a credit against Canadian Duty for Estate Duty paid to Great Britain or Northern Ireland on property deemed to be situated in either of the two mentioned countries, in respect of which duty has also been paid to Canada. To obtain this credit, the applicant must complete SD. 1-UK in quadruplicate. The applicant must forward three copies in the case of Great Britain, to the Controller, Estate Duty Office, Inland Revenue, Rayners Lane, Harrow, Middlesex, England, and in the case of Northern Ireland to the Controller, Estate Duty Office, Ministry of Finance, Tailway Street, Lisburn, Northern Ireland. The Controller, in either case, will forward two certified copies to the Deputy Minister of National Revenue (Taxation), who in turn will forward one copy to the District Office concerned.

You will observe that under Article VIII of the Agreement its operation can be extended as may be necessary to any or all of Great Britain's colonies, overseas territories, protectorates or territories in respect of which it exercises a mandate or trusteeship which imposes duties substantially similar in character to those which are the subject of the Agreement. At the present time the Agreement applies only to Great Britain and Northern Ireland, but our Forms SD. 1-UK have been designed in a general manner to embrace any territories which Great Britain may deem necessary to include on notice to us.

From the information already on your file and the information on Form SD.1-UK you will be able to prepare a statement of the credit to be allowed on Form SD. 20-UK and the Schedule attached thereto. This should be done in triplicate as follows:

SD. 20-UK

This form must not be completed until the assessment of duty and all adjustments have been approved by Head Office.
Item 1. Insert the total duty as finally determined.

Item 2. Insert total estate or similar duty paid to country of situs. The rate of conversion of funds should always be shown.

Item 3. The gross value to be inserted here is the gross value as finally determined and used in the final assessment of duty. This is the total value of the assets after deducting from any particular asset any lien, charge or encumbrance thereon. In those cases where specific charges have been improperly shown among the general debts and have not been adjusted in our assessment, the necessary adjustment must be made in order to arrive at the proper amount to be inserted.

Item 4. Insert here the total amount of the debts as finally allowed exclusive of liens, charges and encumbrances against any particular assets.

Item 5. Insert here the aggregate net value as finally determined. (Item 3 minus Item 4).

Item 6. In the space provided immediately above Item 6 each item of property appearing in Item 5 of SD.1-UK must be listed. The values to be shown, the total of which constitutes Item 6, are the values determined by Canada for Succession Duty purposes in Canadian Funds and not the values determined by the United Kingdom which appear in Item 5 of SD.1-UK. These Canadian values are those determined after deduction of any liens, charges or encumbrances against any of the property listed.

Item 7. Except in cases of abatement the fraction to be inserted here is:

(Gross Property of Country of Situs (Item 6) less *realty and specifics of Country of Situs*) x *Debts (Item 4)*

Gross Property wherever situate (Item 3) less realty and all Specifics.

The word 'specifics' as used in the fraction above in this memorandum, and Form SD.20-UK and Schedule, means all property which passes direct to a successor without change of character such as bequests of particular property, insurance and annuities payable to a named beneficiary, joint property passing to the survivor, property forming part of a trust created by the deceased prior to death and passing in accordance with the terms of the trust, and gifts inter vivos.

Item 8. The amount to be inserted here is Item 6 less Item 7.

Schedule to SD. 20-UK

As the duty under the Dominion Succession Duty Act is charged in respect of each succession the credit is similarly calculated.

It will be seen from the first column of the Schedule that each succession will be broken down into four categories, and totals only entered in each category. Even though country of situs realty is a specific it must appear opposite 'Country of Situs Realty', Item 'W'.

Column A. The distribution to appear here is the distribution of the aggregate net value used for the final assessment of duty re-arranged in each succession into the categories indicated in the first column.

Column B. In each succession repeat Item 'Z' in Column A.

Column C. In this column Item 8 is distributed among the successions as follows:

Those items in 'W' and 'X' in each succession in Column A which are included in Item 8 are repeated in this column. The remainder of Item 8 is divided among the successions in the proportion that the amount in Column B in each succession bears to the total of Column B and the result applicable to each succession is inserted in Item 'Z' in this column.

Column D. Insert in this column for each succession the total succession duties as finally determined in respect thereof. In cases where provincial credits are allowed under Section 11A the amount to be shown would be the net Dominion Duties after allowing provincial credits. The provincial credits should be pro-rated against the Dominion Succession Duty succession by succession.

Column E. The amount to be inserted for each succession in this column is the result of:

$$\frac{\text{X + Z in Column C}}{\text{X + Y + Z in Column A}} \times \text{Col. D}$$

Column F. The amounts to be inserted for each succession here are amounts that bear the same ratio to Item 2 as each item in the succession in Column C bears to the total of Column C.

Column G. The total of 'X' and 'Z' in Column F in each succession is inserted in Column G. It may be noted that the amount arrived at here is that required by the ratio in Article V(1) in that it bears the same ratio to the total estate duty in the succession as the value of the United Kingdom property taxed by Canada in the succession bears to the value of the property taxed by the United Kingdom in the succession.

Column H. The credit for each succession to be inserted in this column is the amount for each succession shown in Column G unless it exceeds the amount shown for the succession in Column E, in which case the amount shown for the succession in Column E is to be inserted.

We have dealt with the case of a particular property where Canada imposes duty by reason of the domicile of the deceased and the other Government by reason of the situation of the property. (This applies whether the property passes under a will or by devolution or under an inter vivos settlement.)

Article V Paragraph 3 applies only where duties on personal property situated *in a third country* are imposed by Great Britain on the ground that the property was included in a British settlement, and by Canada on the ground of domicile. The relief under this paragraph is designed to eliminate the *lower* of the two duties, British and Canadian, and it is divided between the two countries in the ratio of their respective charges of duty on the doubly taxed property. Thus in the case in which the British Government charges the equivalent of $5,000.00 duty, the Canadian Government charges $2,500.00 duty, on property which is situated in neither country, the two countries between them will give credit amounting to $2,500.00 (the lower of the two duties) as follows:

British proportion of the Credit: $\frac{5,000}{7,500} = \frac{2}{3}$

Canadian proportion of the Credit: $\frac{2,500}{7,500} = \frac{1}{3}$

The British Government will therefore allow a credit of $\frac{2}{3}$ of $2,500 against the duty of the equivalent of $5,000 and the Canadian Government will allow $\frac{1}{3}$ of $2,500 against its duty of $2,500.

SD. 20-UK is used in its entirety to determine the Canadian duty on the property in the third country, also to apportion the United Kingdom duty over the individual successions, and to

find the lesser of the two duties. When the results are obtained the lesser of the two duties is proportioned in accordance with the above formula against total and accordingly each succession. The fractional part representing the Canadian credit is then shown under Item 'H', being the result of —

$$\frac{\text{Column E}}{\text{Column E + Column G}} \times \text{(lesser of Columns E and G)}$$

In cases where there is property subject to duty in Great Britain and Canada, and also other property subject to duty in Great Britain, Canada and a third country, it will be necessary to segregate the property into those two classes and prepare separate Forms SD. 20-UK.

The object of Article V, Paragraph 4, is to ensure that the duty of each contracting Government is calculated after taking into account any relief, remission, etc., of duty for which the taxation code of either makes provision, but before taking account of any credit under this Agreement.

The effect of Paragraph 4 in a case involving taxation of personal property by three countries including Great Britain and Canada is illustrated by the following examples. In each of them it is assumed that duty is imposed by Great Britain on the ground that the property is included in a British settlement and by Canada on the ground of domicile, and that the property was situated in a third country. In the first example the property is taken to be situated in a country (Erie) with which Great Britain has but Canada has not a double taxation agreement; in the second example the situation is taken to be in the United States of America, with which both Great Britain and Canada have a double taxation agreement. In both examples the duties are expressed in Canadian dollars.

Example 1.	Great Britain	Canada	Eire
Gross charge	25	15	5
Eire credit allowed in accordance with Art. V(4)	5	—	—
Net charge	20	15	5
Apportioned under Article V(3)—$15.00			
Canada 15: (20 + 15) = 3/7	—	6-3/7	—
Great Britain 20: (20 + 15) = 4/7	8-4/7	—	—
	11-3/7	8-4/7	5

Example 2.	Great Britain	Canada	United States
Gross Charge	35	25	5
U.S. Credit allowed in accordance with Art. V(4)	5	5	—
	30	20	5
Apportioned under Article V(3) — $20.00			
Canada 20: (20 + 30) = 2/5	—	8	—
Great Britain 30: (20 + 30) = 3/5	12	—	—
	18	12	5

In both of the examples the sum of the three net duties is equal to the highest of the th ree gross duties after allowance o all credits.

After ascertaining net charges of duty, the Schedule to SD. 20-UK is prepared by using the net amount so ascertained, first for Canadian duty under Column D and secondly for British duty under Column F.

Adjustment Procedure

A credit under the Agreement does not constitute a change in the assessment of duty. Therefore, an amended SD. 7 will not be issued in connection with the credit. Internally, however, the credit is treated generally in the same way as an adjusted assessment. One copy of SD. 20-UK and Schedule thereto should be submitted to Head Office along with the ordinary adjustment SD. 20 on an SD. 6A. These credit adjustments must not be included on an SD. 6A with other adjustments. A new numbering series of SD. 6A's will not be opened to deal with these credit adjustments but any SD. 6A dealing with credits will be identified with a stamp which will be provided by Head Office.

Refunds resulting from credits will be handled in the same manner as any other refunds.

The original and triplicate of SD. 20-UK and Schedule thereto will be retained by the District Office until the approval of Head Office is obtained. When the adjustment is approved the original copy will be sent to the estate representatives, along with the cheque if a refund is involved.

Claim for a credit or refund in respect of succession duty paid must be made within the period of six years of the date of

death of a deceased or from the date of falling into possession of the reversionary interest as the case may be.

The Agreement came into force on November 6, 1946, and is given a retroactive operation to estates of persons dying after December 31, 1944, providing application is made.

All details in connection with the exchange of information between the two countries are being handled by the Head Office for each country.

J. S. FORSYTH

Ottawa

THE PERFECT JUDGE

I have sought out two judges, perfect in speech, excellent in character, skilled in penetrating the innermost thoughts of men, and acquainted with the procedure of the palace and the laws of the Court. — HARMHAB, KING OF EGYPT, 1100 B.C.

Among the relics of legal lore assembled by Dean Wigmore in his *Panorama of the World's Legal Systems* is the ancient Egyptian "Edict for Judges" from which the above sentence is quoted. As a standard for selection of judges, it can hardly be improved upon even after three thousand years. Analyzed reworded, its requirements for a judge are these:

1. *General education.* "Perfect in speech" refers not to legal learning, but to pre-legal and extra-legal education, especially along literary lines.

2. *Character.* This is desirable everywhere, but utterly essential in judicial office. Justice, says our dictionary, is "the principle or practice of dealing up-rightly and equitably with others; rectitude; integrity".

3. *Knowledge and understanding of human nature.* It was this ability to penetrate the innermost thoughts that enabled King Solomon, another ancient judge, to render his famous judgment awarding a baby to the woman who was willing to give it up rather than have it killed and divided between the two claimants.

4. *Knowledge of legal procedure,* and,

5. *Knowledge of substantive law.* There are those who argue that only the other qualifications are important, and that the judge can pick up his law from the briefs or from his law clerks. Granting that a judgment by an honest man unlearned in the law would be preferable to one from a rogue with legal training, it is still true, as it was thirty centuries ago, that the bench deserves and should have the finest legal minds that the bar affords. The judicial system that does not get them should be overhauled with that object in view. (Journal of the American Judicature Society, Volume 30, Number 6, April, 1947.)