

3. 1950

No. 52 of 1947.

In the Privy Council.

UNIVERSITY OF LONDON  
W.C.1.

-8 OCT 1956

ON APPEAL  
FROM THE SUPREME COURT OF CANADA  
INSTITUTE OF ADVANCE  
LEGAL STUDIES

44349

BETWEEN

THE EXECUTORS of the Will of the Honourable Patrick  
Burns, deceased

*Appellants*

AND

THE ROYAL TRUST COMPANY, named in the Will of the  
said Honourable Patrick Burns as Trustee for Burns Memorial  
Trust; THE FATHER LACOMBE HOME at Midnapore;  
THE GOVERNING COUNCIL OF THE SALVATION ARMY  
CANADA WEST; THE TRUSTEES of the fund to be administered  
by the City of Calgary for the benefit of poor, indigent and  
neglected children under the Will of the Honourable Patrick  
Burns; THE TRUSTEES of the fund to be administered for the  
benefit of widows and orphans of members of the Police Force  
in the City of Calgary under the Will of the Honourable Patrick  
Burns; THE TRUSTEES of the fund to be administered for the  
benefit of widows and orphans of members of the Fire Brigade  
of the City of Calgary under the Will of the said Honourable  
Patrick Burns

*Added Appellants*

AND

THE MINISTER OF NATIONAL REVENUE

*Respondent.*

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# In the Privy Council.

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## ON APPEAL

FROM THE SUPREME COURT OF CANADA.

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BETWEEN

THE EXECUTORS of the Will of the Honourable  
Patrick Burns, deceased

*Appellants*

AND

10 THE ROYAL TRUST COMPANY, named in the Will  
of the said Honourable Patrick Burns as Trustee for  
Burns Memorial Trust; THE FATHER LACOMBE  
HOME at Midnapore; THE GOVERNING COUNCIL  
OF THE SALVATION ARMY CANADA WEST; THE  
TRUSTEES of the fund to be administered by the City of  
Calgary for the benefit of poor, indigent and neglected  
children under the Will of the Honourable Patrick Burns;  
20 THE TRUSTEES of the fund to be administered for the  
benefit of widows and orphans of members of the Police  
Force in the City of Calgary under the Will of the  
Honourable Patrick Burns; THE TRUSTEES of the  
fund to be administered for the benefit of widows and  
orphans of members of the Fire Brigade of the City of  
Calgary under the Will of the said Honourable Patrick  
Burns

*Added Appellants*

AND

THE MINISTER OF NATIONAL REVENUE -

*Respondent.*

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# RECORD OF PROCEEDINGS

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No. 1.

NOTICE OF APPEAL from Assessment, 1942.

30 IN RE THE INCOME WAR TAX ACT

and

THE ESTATE OF THE LATE SENATOR THE HONOURABLE  
PATRICK BURNS, of 31 Michael Building, in the City of Calgary,  
in the Province of Alberta, Appellant.

No. 1.  
Notice of  
Appeal  
from assess-  
ment 1942,  
15th April  
1942.

NOTICE OF APPEAL is hereby given from the Assessments bearing  
date the 17th day of March A.D. 1942, wherein a tax in the sum of  
\$1036.95, \$1413.23 and \$7191.34 respectively, including interest, is levied  
in respect of income for the taxation years 1938, 1939 and 1940.

No. 1.  
 Notice of  
 Appeal  
 from assess-  
 ment 1942,  
 15th April  
 1942,  
*continued.*

The following facts are submitted :—

The late Senator the Honourable Patrick Burns, hereinafter referred to as “ the Testator,” died on 24th February, 1937, his only son, Patrick Thomas Michael Burns, for whom he had made provisions under his Last Will and Testament, having predeceased him without issue.

By his said Last Will and Testament, in the event of his said son predeceasing him without issue, the Testator inter alia directed that certain annuities should be paid and certain percentages of the income from his Trust Estate should be paid to nephews and nieces named in the said Last Will and Testament, the percentages payable to nephews 10 and nieces amounting in all to 60% of the balance of the income remaining after paying annuities. By his said Last Will and Testament he further directed that until the death of the last annuitant and the death of the widow of his said son, whichever should last happen, the surplus income after payment of annuities and of the said percentages of income to nephews and nieces should be invested upon the further trust in the names of the Trustees of the said Will “ as part of the capital of my Trust Estate at compound interest.”

By his said Last Will and Testament the Testator further directed that upon the death of the last of the said annuitants or the death of the 20 widow of his said son (which direction applies in this case), the Trustees of his said Last Will and Testament should stand possessed of his Trust Estate with all the accumulations thereof and additions thereto and the whole thereof to hold upon the further trust to distribute the same in certain percentages, 33% of which should be paid and conveyed to The Royal Trust Company for the creation and establishment of a trust to be known as “ the Burns’ Memorial Trust ” and that the net annual income from the said Burns’ Memorial Trust should be paid and distributed annually in equal shares amongst certain charities.

#### REASONS FOR APPEAL

30

This appeal is taken because of the inclusion of the aforementioned 33% of the said revenue as taxable income. It is respectfully submitted that the said 33% of the surplus income accumulates for the benefit of the Burns’ Memorial Trust. The Charitable Institutions entitled beneficially to the said Burns’ Memorial Trust are definitely named in the said Last Will and Testament and were definitely ascertained as beneficiaries at the date of the Testator’s death. In these circumstances, the shares of income and capital vested in the said beneficiaries immediately upon the death of the Testator. (See *Brown v. Moody et al* 1936, D.L.R., Vol. 4, Page 1.) As Lord Macmillan remarks in the case referred to, the mere 40 postponement of the distribution to enable an interposed life-rent to be enjoyed has never of itself been held to exclude vesting of the capital.

It is further respectfully submitted that no question can arise as to the vesting of the Burns’ Memorial Trust and as to the said Trust being anything but a Charitable Institution and as such, free from income tax and that, therefore, the 33% of income being accumulated for that Charitable Institution is exempt from taxation under Section 4 (e) of the Income War Tax Act.

Dated at the City of Calgary, in the Province of Alberta, this 15th day of April, A.D. 1942.

BENNETT, HANNAH, NOLAN, CHAMBERS & MIGHT,

Per ALEX. HANNAH,

Solicitors for the Appellant.

No. 1.  
Notice of  
Appeal  
from assess-  
ment 1942,  
15th April  
1942,  
*continued.*

No. 2.

10

NOTICE OF APPEAL from Assessment, 1943.

IN RE THE INCOME WAR TAX ACT

and

THE ESTATE OF THE LATE SENATOR THE HONOURABLE  
PATRICK BURNS, of 31 Michael Building, in the City of Calgary,  
in the Province of Alberta, Appellant.

No. 2.  
Notice of  
Appeal  
from assess-  
ment 1943,  
8th  
December  
1943.

NOTICE OF APPEAL is hereby given from the Assessment bearing date the 19th day of November, A.D. 1943, wherein a tax in the sum of \$1961.60, including interest, is levied in respect of income for the taxation year 1941.

20 The following facts are submitted :—

The late Senator, the Honourable Patrick Burns, hereinafter referred to as "the Testator," died on 24th February, 1937, his only son, Patrick Thomas Michael Burns, for whom he had made provisions under his Last Will and Testament, having predeceased him without issue.

30 By his said Last Will and Testament, in the event of his said son predeceasing him without issue, the Testator inter alia directed that certain annuities should be paid and certain percentages of the income from his Trust Estate should be paid to nephews and nieces named in the said Last Will and Testament, the percentages payable to nephews and nieces amounting in all to 60% of the balance of the income remaining after paying annuities. By his said Last Will and Testament he further directed that until the death of the last annuitant and the death of the widow of his said son, whichever should last happen, the surplus income after payment of annuities and of the said percentages of income to nephews and nieces should be invested upon the further trust in the names of the Trustees of the said Will "as part of the capital of my Trust Estate at compound interest."

By his said Last Will and Testament, the Testator further directed that upon the death of the last of the said annuitants or the death of the

No. 2.  
 Notice of  
 Appeal  
 from assess-  
 ment 1943,  
 8th  
 December  
 1943,  
*continued.*

widow of his said son (which direction applies in this case) the Trustees of his said Last Will and Testament should stand possessed of his Trust Estate with all the accumulations thereof and additions thereto and the whole thereof to hold upon the further trust to distribute the same in certain percentages, 33% of which should be paid and conveyed to The Royal Trust Company for the creation and establishment of a trust to be known as "the Burns' Memorial Trust," and that the net annual income from the said Burns' Memorial Trust should be paid and distributed annually in equal shares amongst certain charities.

#### REASONS FOR APPEAL

10

This appeal is taken because of the inclusion of the aforementioned 33% of the said revenues as taxable income. It is respectfully submitted that the said 33% of the surplus income accumulates for the benefit of the Burns' Memorial Trust. The Charitable Institutions entitled beneficially to the said Burns' Memorial Trust are definitely named in the said Last Will and Testament and were definitely ascertained as beneficiaries at the date of the Testator's death. In these circumstances, the shares of income and capital vested in the said beneficiaries immediately upon the death of the Testator. (See *Brown v. Moody et al*, 1936, D.L.R., Vol. 4, page 1.) As Lord Macmillan remarks in the case referred to, the mere postponement 20 of the distribution to enable an interposed life-rent to be enjoyed has never of itself been held to exclude vesting of the capital.

It is further respectfully submitted that no question can arise as to the vesting of the Burns' Memorial Trust and as to the said Trust being anything but a Charitable Institution and as such, free from Income Tax and that, therefore, the 33% of income being accumulated for that Charitable Institution is exempt from taxation under Section 4 (e) of The Income War Tax Act.

This notice of Appeal is concurrent with Notice of Appeal dated 14th April 1942 filed in respect of Income Tax Assessment for the years 30 1938, 1939 and 1940, the same facts and argument being submitted in this appeal as in the former appeal.

Dated at the City of Calgary, in the Province of Alberta, this 8th day of December A.D. 1943.

HANNAH, NOLAN, CHAMBERS, MIGHT & SAUCIER,

Per ALEX. HANNAH,

Solicitor for the Appellant.

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No. 3.  
**DECISION of the Minister.**

No. 3.  
 Decision of  
 Minister,  
 5th June  
 1944.

IN THE MATTER of The Income War Tax Act, being Chapter 97 of the Revised Statutes of Canada 1927, and amendments thereto,

AND IN THE MATTER of The Appeal of the Executors of the Estate of the late Honourable Patrick Burns, of the City of Calgary, in the Province of Alberta, hereinafter called the taxpayers, Appellant.

10

DECISION OF THE MINISTER

WHEREAS the taxpayers duly filed Income Tax Returns showing the income accumulating in their hands for the years ended 31st December, 1938, 1939, 1940 and 1941 respectively.

AND WHEREAS taxes were assessed by Notices of Assessment dated the 17th March, 1942 in respect of the years 1938, 1939 and 1940 and dated 19th November, 1943 in respect of the year 1941.

AND WHEREAS Notices of Appeal were received dated 15th April, 1942 in respect of the years 1938, 1939 and 1940 and dated 8th December, 1943 in respect of the year 1941 in which objection is taken to the assessed  
 20 tax for the reasons therein set forth.

The Honourable the Minister of National Revenue having duly considered the facts as set forth in the Notices of Appeal, and matters thereto relating, hereby affirms the said Assessments on the ground that all the income accumulating in the hands of the executors is taxable in their hands under the provisions of Subsection 2 and paragraph (a) of Subsection 4 of Section 11 of the Act; that no part of the said income is the income of any religious, charitable, agricultural or educational institution within the meaning of paragraph (e) of Section 4 of the Act. Therefore on these and related grounds and by reason of other provisions  
 30 of the Income War Tax Act the said Assessments are affirmed.

Notice of such decision is hereby given pursuant to Section 59 of the Act and is based on the facts presently before the Minister.

In accordance with the provisions of Subsection 2 of Section 60 of the Act any further facts, statutory provisions and reasons which the taxpayer intends to submit to the Exchequer Court must be included in a Notice of Dissatisfaction, or statement attached thereto.

Dated at Ottawa, this 5th day of June, A.D. 1944.

40

COLIN GIBSON,  
 Minister of National Revenue.  
 (Signed) Per : C. F. Elliott.  
 Deputy Minister of National  
 Revenue for Taxation.

To : The Executors of the late Senator Patrick Burns,  
 31 Michael Building,  
 Calgary, Alberta.

And to : Messrs. Hannah, Nolan, Chambers, Might and Saucier,  
 600-603 Lancaster Building,  
 Calgary, Alberta.  
 Their Solicitors herein.

No. 3.  
Decision of  
Minister,  
5th June  
1944,  
*continued.*

## NOTICE

Section 65 of the Income War Tax Act provides that after an Appeal has been set out in the Notice of Appeal or Notice of Dissatisfaction may be pleaded or referred to in such manner and upon such terms as the Court may direct and the Court may refer the matter back to the Minister for further consideration.

If on appeal to the Exchequer Court any facts are pleaded or brought before the Court which are not contained in the Notice of Appeal or Notice of Dissatisfaction, then a motion will be made for the Court to refer the matter back to the Minister for further consideration with the request that costs be charged against the taxpayer in respect of all proceedings up to the time of the said motion. 10

No. 4.  
Notice of  
Dissatis-  
faction,  
30th June  
1944.

## No. 4.

### NOTICE OF DISSATISFACTION.

#### INCOME WAR TAX ACT

#### NOTICE OF DISSATISFACTION

In re the Appeal of the Estate of the late Senator, the Honourable Patrick Burns, the address for which Estate is 31 Michael Building, in the City of Calgary, in the Province of Alberta, Appellant, and which Appellant desires that this Appeal be set down for trial. 20

This Notice of Dissatisfaction is filed against the finding of the Minister of National Revenue dated 5th June, 1944, following on appeals which had been filed on behalf of the Estate of the late Senator Burns, as Appellant, against Assessments of Income Tax in respect of the years 1938, 1939, 1940 and 1941, copies of which are appended as Exhibits "A" and "B" hereto, to which is now added a Notice of Appeal in respect of the Assessment of Income Tax for the year 1942 recently assessed, a copy of which is appended as Exhibit "C" hereto.

It is pointed out that in filing the Appeals, the Notices of Appeal have only referred to the balances payable in respect of Income Tax in each of the years appealed against as shown by the respective Notices of Assessment. 30

The Notices of Appeal were filed in the first place against a finding contained in a letter dated 17th March, 1942 from the Inspector of the Income Tax, Income Tax Division, in the City of Calgary, reading as follows :—

" In connection with the disallowance of the portions of the incomes claimed as accruing to the benefit of charitable organizations, it is pointed out that there is no provision in the Will for payments to Charitable Institutions—other than the bequests—until Clause 36 becomes operative. Under Clause 36, the Burns' Memorial Trust 40

takes shape and this is not until the death of the last annuitant or the death of the son's widow, whichever shall last happen. The distribution at such time is to be 67% to known legatees and 33% to the said Memorial Trust Fund. The net annual income of the fund is payable to the designated Charitable organizations."

No. 4.  
Notice of  
Dissatis-  
faction,  
30th June  
1944,  
*continued.*

The decision of the Minister, now received, omitting recitals and concluding matter, reads as follows :—

10 " The Honourable the Minister of National Revenue having duly considered the facts as set forth in the Notices of Appeal and matters thereto relating, hereby affirms the said Assessments on the ground that all the income accumulating in the hands of the Executors is taxable in their hands under the provisions of Sub-section 2 and paragraph (a) of Subsection 4 of Section 11 of the Act ; that no part of the said income is the income of any religious, charitable, agricultural or educational institution within the meaning of paragraph (e) of Section 4 of the Act, therefore, on these and related grounds and by reason of other provisions of the Income War Tax Act, the said Assessments are affirmed."

20 At any hearing in respect of this Notice of Dissatisfaction, the Appellant will submit in evidence, the following material and exhibits :

- (1) The Will of the late Senator Burns, or a copy or copies thereof ;
- (2) The duly audited Annual Accounts of the estate of the late Senator Burns, as passed before the Probate Judge of the Judicial District of Calgary ;
- 30 (3) The Order or copies of the Order of the Honourable Mr. Justice Ewing of the Supreme Court of the Province of Alberta, dated 11th December, 1939, declaring that the bequests for the purposes of charity under the Will of the late Senator Burns, including the bequest for the Burns' Memorial Trust, were good and valid charitable bequests ;
- (4) All notices of Appeal and other matters and evidence which can be properly brought before a Court.

In the Notice of Appeal filed in the first place, it was emphasized that the income which was directed to be accumulated pursuant to the last paragraph of Clause 35 of the Testator's Will was vested for the purposes of the Burns' Memorial Trust, and reference was made to the case of *Brown v. Moody et al*, 1936, D.L.R., Vol. 4, page 1.

40 It is submitted that the Minister erred in disregarding this case because it is a matter of primary importance that it be recognized that the Income to be accumulated in accordance with the directions given in the concluding paragraph of Clause 35 is vested Income and it is submitted that no doubt can exist as to this being the case. All of the percentages of Income payable to Beneficiaries under Clause 35 other than the Memorial Trust, are payable and are being paid now and no cause exists for differentiation between those percentages of Income payable to nephews and nieces and that portion of Income payable into the estate for purposes of accumulation. The matter can be put in another way, viz. : Are the Trustees of Senator Burns' Estate to pay out per-  
50 centages of Income to nephews and nieces as being vested for that purpose

No. 4.  
Notice of  
Dissatis-  
faction,  
30th June  
1944,  
*continued.*

and with regard to the balance of Income paid into the Estate, to take the stand that that portion is not vested? It is respectfully submitted that a proper interpretation of Clause 35 does not permit of any such a construction and it is inevitable that the portion of Income accumulated is vested in the ultimate beneficiaries entitled thereto which include the Burns' Memorial Trust.

It is further respectfully submitted that the questions at issue must be based on the stage when the Trustees are dealing with income of the estate and if that Income is vested on deceased's death, it follows that a portion of the Income belongs to the Burns' Memorial Trust the moment 10 it is available for accumulation.

It is further respectfully submitted that the destination of the funds part of which is accumulated Income pursuant to the provisions of the last paragraph of Clause 35 of Senator Burns' Will, can have no other destination than (1) upon fulfilment of certain contingencies division of the percentages as stated in Clause 36 of the Will (which will include a portion of the Income accumulated) amongst certain beneficiaries and (2) conveyance of that portion of the Trust Estate which is to go to the Burns' Memorial Trust which will also include a percentage of the Income which is accumulated. The Burns' Memorial Trust is an actual factor 20 now in the administration of Senator Burns' Estate and The Royal Trust Company is represented on the Annual passing of Accounts of the estate.

As to the further aspects of the case, it is respectfully pointed out that the essential conditions entitling the Appellant to succeed are present in this case.

Under the Will of the late Senator Burns, the following circumstances exist :—

(1) That the income to be accumulated under the concluding paragraph of Clause 35 is vested now in all of the Beneficiaries entitled thereto. It cannot be that the vesting has taken place in 30 one set of Beneficiaries who are receiving percentages of Income now and at the same time not in the same Beneficiaries and a Charitable Beneficiary as to that portion of the Income to be accumulated until the fulfilment of certain events.

(2) That a portion of the Income so accumulated goes to form capital which eventually is destined for conveyance to The Royal Trust Company for the purposes of a Charitable Institution.

(3) That a charitable institution is created by Senator Burns' Will and does exist now to be known as the Burns' Memorial Trust and under which The Royal Trust Company will only administer 40 the Income as received by it and pay it out to the various charitable bequests named in Clause 36 of Senator Burns' Will. The provisions of paragraph (e) of Section 4 of the Income War Tax Act are thus capable of being satisfied.

In the course of discussions on the Appeal, reference has been made to the following cases: *Barnardo's Home National Incorporation Associations v. Inland Revenue Commissioners*, 1921, 2 A.C. (1) and 90 L.J.K.B. 545, *Peter Birtwhistle Trust and the Minister of National Revenue*, 1938,

Ex. C.R. 95 ; 1939, S.C.R., 125 and 1940 A.C. 138 ; and *Cosmans Trustees v. Minister of National Revenue*, 1941, 2 D.L.R. 218 and 1941, 3 D.L.R. 224.

No. 4.  
Notice of  
Dissatis-  
faction,  
30th June  
1944,  
*continued.*

It is respectfully submitted that as regards the *Barnardo* case, the present case is readily distinguishable from that case. In the *Barnardo* case, what was being dealt with, was a gift of residue which could not pass to beneficiaries until the residue passing to the beneficiaries could be actually determined. The case presents a very different set of circumstances from those present in the case being dealt with. This is not a case where a beneficiary or beneficiaries is or are entitled to a bequest, 10 the full benefit of which can only be ascertained when an estate is finally wound up. Percentages of income available are known each year and the ultimate destination of capital and income is clearly specified and what takes place is an accumulation and postponement of the division of capital until certain events have been fulfilled.

Even in delivering Judgment in the *Barnardo* case, Viscount Findlay comments that no Trust had been created in favor of the residual beneficiary, whereas in the present case, every disposition under Senator Burns' Will is made subject to Trusts for specific purposes of which none is clearer than the Trust for the setting up of the Burns' Memorial Trust. 20 See also Lord Atkinson's remarks in the same case indicating the different principles which would have been applied had the bequest in the *Barnardo* case been specific and had vested.

Regarding the *Birtwhistle* and *Cosman* cases, again it is submitted these are readily distinguishable from the present case if only in respect of one outstanding feature. In neither the *Birtwhistle* nor *Cosman* cases, was there a Charitable Institution created. The directions in the Wills in these cases were for the Trustees to accumulate the estate for a certain period of time and then to pay out the estate for the benefit of beneficiaries more or less at large.

30 In the present case, we have a charitable institution established under the Will, to be administered by The Royal Trust Company and to be known as the Burns' Memorial Trust.

It is further respectfully submitted that no question can exist as to the Burns' Memorial Trust being other than a Charitable Institution. It fulfils all the requirements needed by law for the establishment of a Charitable Institution. In addition, the Honourable Mr. Justice Ewing has held that the objects of the Burns' Memorial Trust are good and valid charitable bequests.

40 It is further respectfully pointed out that Section 11 of the Income War Tax Act cannot be resorted to, to determine the destination of the income. Section 11 provides only as to the incidence of the income tax and should be strictly construed accordingly.

All of which is respectfully submitted.

(Signed) ALEX. HANNAH,

Of Counsel for the Appellant.

Calgary, Alberta,  
30th June, 1944.

No. 5.  
Reply of  
Minister,  
28th July  
1944.

No. 5.

REPLY of the Minister.

IN [THE MATTER of The Income War Tax Act, being Chapter 97 of the Revised Statutes of Canada, 1927 and amendments thereto

AND IN THE MATTER of The Appeal of Estate Honourable Patrick Burns, of the City of Calgary, in the Province of Alberta, hereinafter called the taxpayer, Appellant.

REPLY OF THE MINISTER

Notice of Dissatisfaction with the Decision of the Minister affirming 10  
the Assessments levied upon the Appellant for the years 1938, 1939, 1940  
and 1941 having been received, and security for costs having been duly  
furnished as required by Section 61 of the said Act, and the facts and  
reasons submitted in support of the Appeal having been further and fully  
considered, the Honourable the Minister of National Revenue replies  
thereto as follows :—

(1) Denies the allegations contained in the said Notice of Appeal  
and Notice of Dissatisfaction in so far as they are incompatible with the  
allegations of his Decision.

(2) Affirms the Assessments as levied. 20

Notice of such affirmation is hereby given pursuant to the provisions  
of Section 62 of the Income War Tax Act.

Dated at Ottawa, this 28th day of July, A.D. 1944.

COLIN GIBSON,  
Minister of National Revenue.  
Per : C. F. Elliott,  
Deputy Minister of National  
Revenue for Taxation.

To : Messrs. Hannah, Nolan, Chambers, Might and Saucier, 30  
Barristers,  
600-603 Lancaster Building,  
Calgary, Alberta,  
Its Solicitors herein.

No. 6.

ORDER of the Registrar of the Exchequer Court to file Pleadings.

*In the  
Exchequer  
Court of  
Canada.*

IN THE EXCHEQUER COURT OF CANADA  
Before the Registrar in Chambers

No. 6.  
Order of  
Registrar  
to file  
Pleadings,  
25th April  
1945.

IN THE MATTER of The Income War Tax Act,

and

IN THE MATTER of The Appeal of the Estate of Honourable  
Patrick Burns, of the City of Calgary, in the Province of  
Alberta, Appellant,

10

and

THE MINISTER OF NATIONAL REVENUE, Respondent.

Upon the application of the solicitor for the Respondent and upon  
reading a letter of Consent of counsel for the Appellant,

1. IT IS ORDERED that formal pleadings be filed in this cause.

2. IT IS FURTHER ORDERED that the Statement of Claim of  
the Appellant be filed within thirty days from the date of service of this  
Order upon the Appellant's Solicitor after entry thereof, and that within  
the said period a copy of such Statement of Claim be served upon the  
Deputy Minister of National Revenue for Taxation or other responsible  
officer of the Income Tax Division of the Department of National  
Revenue.

20

3. IT IS FURTHER ORDERED that the Statement in Defence  
on behalf of the Minister of National Revenue shall be filed and served  
within twenty days from the date of service of the Appellant's Statement  
of Claim.

4. IT IS FURTHER ORDERED that the reply, if any, of the  
Appellant be filed and served within fourteen days after the service of  
the Statement in Defence on the said Appellant.

5. IT IS FURTHER ORDERED that no further pleadings shall be  
filed thereafter without the consent of the Court or Judge thereof.

30

Dated at Ottawa, this 25th day of April, A.D. 1945.

(Sgd.) ARNOLD W. DUCLOS,

Registrar.



## STATEMENT OF CLAIM.

*In the  
Exchequer  
Court of  
Canada.*

No. 7.  
Statement  
of Claim,  
16th May  
1945.

1. The Honourable Patrick Burns, late of the City of Calgary, in the Province of Alberta, Rancher, Deceased, died on or about the 24th day of February, 1937, in the City of Calgary aforesaid.

2. On the 4th day of May, 1937, the Last Will and Testament and one Codicil of the said Honourable Patrick Burns was proved and registered in the District Court of the District of Southern Alberta, Judicial District of Calgary, and the administration of all and singular the property of the said Deceased was granted by the said Court to Michael John Burns, 10 Business Manager, The Right Honourable Richard Bedford Bennett, King's Counsel, and Alick Cochrane Newton, Broker, all of the City of Calgary aforesaid, the Executors and Trustees named in the said Will, the other Executors named therein having predeceased the Testator.

3. By deed of appointment dated the 7th day of March, 1939, the said Executors and Trustees, in the exercise of the powers given and conferred on them by the said Last Will and Testament and Codicil, duly appointed Alexander Hannah, of the City of Calgary aforesaid, one of His Majesty's Counsel, to be a Trustee of the said Last Will and Testament and Codicil, and the said The Right Honourable Richard Bedford Bennett 20 subsequently was duly discharged from his office as Executor and Trustee.

4. Patrick Thomas Michael Burns, the only son of the said Testator, predeceased the said Testator, leaving a widow but no lawful issue.

5. By paragraph 20 of the said Will, the said Testator gave and bequeathed unto the institution known as "The Children's Shelter" and carried on under the auspices of the City of Calgary aforesaid Fifty 4% Non-Voting, Non-cumulative, Redeemable Preference Shares in the Capital Stock of Burns Foundation Limited, having a par value of \$5,000.00 and provided that in the event of no such institution existing the bequest thereby made should be used either to provide the nucleus 30 of a fund for establishing such an institution or the nucleus for the establishment of a fund to be administered by the said City for the benefit of poor, indigent and neglected children.

6. By Paragraph 21 of the said Will, the said Testator gave and bequeathed unto any fund established for the benefit of widows and orphans of members of the Police Force of the City of Calgary aforesaid, 50 of the said shares, and provided that in the event that no such fund had been established, the bequest thereby made should be used to provide the nucleus for the establishment of such a fund.

7. In and by paragraph 22 of the said Will, the said Testator gave 40 and bequeathed unto any fund established for the benefit of widows and orphans of members of the Fire Brigade of the City of Calgary aforesaid, 50 of the said shares, and directed that in the event of no such fund having been established, the bequest thereby made should be used to provide the nucleus for the establishment of such a fund.

8. In and by paragraph 28 of the said Will, the said Testator gave, devised and bequeathed all the rest, residue and remainder of his real



and personal estate, property and effects unto his said Trustees upon trust to pay his funeral and testamentary expenses and debts, the cost of a burial plot and monument, religious services, and estate and succession duties and taxes.

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9. In and by paragraphs 29 and 30 of the said Will, the said Testator directed that his said Trustees should stand possessed of the balance of the said rest, residue and remainder, which, with the income and accumulations thereof is therein referred to as his "Trust Estate," upon further trust and out of the net annual income therefrom to pay certain  
10 annuities to certain annuitants, as therein more particular provided, and to invest the surplus of such annual income as part of the capital of his Trust Estate.

No. 7.  
Statement  
of Claim,  
16th May  
1945,  
*continued.*

10. In and by paragraph 35 of the said Will, the said Testator further directed that if his said son should predecease him without leaving lawful issue but leaving him a wife surviving, subject to the provisions therein before contained for the payment of annuities, his said Trustees should stand possessed of his said Trust Estate, including the accumulations thereof, and additions thereto, upon further trust :

(a) To allow the widow of his said son during her lifetime the  
20 use, occupation and enjoyment of a residence, to pay annually all the taxes imposed thereon, premiums for fire insurance and repairs.

(b) Out of the income to be derived from his said Trust Estate to pay to the said widow an annual income of \$15,000.00 during her life.

11. In and by the said paragraph 35 the said Testator further directed his said Trustees to hold his said Trust Estate and to appropriate sufficient of the same to insure an annual income therefrom sufficient to pay the said annuities then outstanding, and to hold the said Trust Estate,  
30 including the accumulations thereof and additions thereto by reason of the deaths of annuitants or otherwise, until the death of the last of the said annuitants or the death of the said widow, whichever should last happen, and subject to prior payment of the said annual income of \$15,000.00 per annum to the said widow during her life, upon further trust to pay specified percentages aggregating 60% of the net annual income derived from his said Trust Estate to various nephews and nieces of the said Testator named therein.

12. In and by the said paragraph 35, the said Testator further directed that until the death of the last of the said annuitants or the death of the said widow, whichever should last happen, his said Trustees  
40 should invest the surplus of such annual income as part of the capital of his said Trust Estate at compound interest.

13. In and by paragraph 36 of the said Will, the said Testator further directed that upon the death of the last of the said annuitants or the death of the said widow, whichever should last happen, the said Trustees should stand possessed of his said Trust Estate, with all accumulations and additions, to distribute the same as follows :—

(a) 67% thereof to certain nephews and nieces of the said Testator named therein ; and

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Statement  
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16th May  
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*continued.*

(b) The balance of 33% unto The Royal Trust Company for the creation and establishment of a trust to be known as the "Burns Memorial Trust" to be administered by it as Trustee and the net income therefrom to pay and distribute annually in equal shares thereof amongst certain charities.

14. The said last-mentioned charities named in the said Will were :—

(1) The Father Lacombe Home at Midnapore in the said Province.

(2) The branch of the Salvation Army having its headquarters at the City of Calgary aforesaid. 10

(3) The said Children's Shelter.

(4) The said fund established for the benefit of widows and orphans of members of the Police Force of the City of Calgary.

(5) The said fund established for the benefit of widows and orphans of members of the Fire Brigade of the City of Calgary.

15. By Order of the Honourable Mr. Justice Ewing dated the 11th day of December, 1939, in Action No. P2431 in the Supreme Court of Alberta, Judicial District of Calgary, it was ordered amongst other things that according to the true construction of the said Will the said paragraphs thereof numbered 20, 21 and 22 respectively constituted good 20 and valid charitable bequests.

16. In and by the said Order it was further ordered that according to the true construction of the said Will, under that portion of the said paragraph numbered 36 thereof providing for the creation and establishment of the said Burns' Memorial Trust the said gifts of income therefrom to the said charities were good and valid charitable bequests.

17. At the date of the death of the said Testator and at the date of the said Order there was no institution existing in the said City of Calgary known and administered as a Children's Shelter, or carried on under the auspices of the said City, no fund had been established for the 30 benefit of widows and orphans of members of the said Police Force nor of the said Fire Brigade, and the said last-mentioned Court directed that a scheme should be settled in each case by the solicitors representing the various parties, subject to the approval of the Court.

18. Pursuant to the said Order, a scheme for the administration of a fund to be administered by the City of Calgary for the benefit of poor, indigent and neglected children under the said Will was duly settled, and amongst other things Trustees of the said fund were thereby appointed.

19. Pursuant to the said Order, a scheme for the establishment and 40 administration of a fund to be administered for the benefit of widows and orphans of members of the Police Force in the City of Calgary aforesaid was duly settled, and amongst other things Trustees of the said fund were thereby appointed.

20. Pursuant to the said Order, a scheme for the establishment and administration of a fund to be administered for the benefit of widows and orphans of members of the Fire Brigade of the City of Calgary aforesaid under the said Will was duly settled, and amongst other things Trustees of the said fund were thereby appointed.

21. In and by the said Order, it was further ordered that the said schemes be approved and carried into effect.

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22. The said Trustees were advised by their solicitors that 33% of the said income accumulating in the said Estate as aforesaid accumulates for the benefit of the said Burns' Memorial Trust, that the charitable institutions beneficially entitled to the said Burns' Memorial Trust were definitely named in the said Will and definitely ascertained as beneficiaries at the date of the said Testator's death, so that the shares of income and capital thus bequeathed to the said beneficiaries vested immediately upon the death of the said Testator, and therefore the said 33% of income being accumulated as aforesaid was exempt from taxation by virtue of Section 4 (e) of the Income War Tax Act.

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Statement  
of Claim,  
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*continued.*

23. The said Trustees duly filed Income Tax Returns for the Appellant pursuant to the said Act for each of the years 1938 to 1942, both inclusive, in accordance with said advice of their solicitors.

24. The said 33% of the said income of the Appellant in each of the years in question was as follows :—

	1938	—	\$3,497.32
	1939	—	3,846.67
20	1940	—	6,632.00
	1941	—	8,835.83
	1942	—	8,993.92

25. By Notices of Assessments pursuant to the said Act and dated the 17th day of March, 1942, the Appellant was assessed for income tax, including interest, in respect of income for the respective years as follows :

	1938	—	\$1,036.92
	1939	—	1,413.23
	1940	—	7,191.34

26. By Notice of Assessment pursuant to the said Act and dated the 19th day of November, 1943, the Appellant was assessed in respect of income for the year 1941 in the further sum of \$1,961.60, being the balance alleged to be owing, including interest.

27. By Notice of Assessment pursuant to the said Act and dated the 12th day of June, 1944, the Appellant was assessed in respect of income for the year 1942 in the further sum of \$2,024.69, being the balance alleged to be owing, including interest.

28. Appeals were duly taken on behalf of the Appellant against each of the said assessments in accordance with the provisions of the said Act.

29. By his decision dated the 5th day of June, 1944, the Respondent affirmed the said assessments for each of the years 1938 to 1941, both inclusive, on the grounds that all the income accumulating in the hands of the Executors is taxable in their hands under the provisions of Subsection (2) and paragraph (a) of subsection (4) of Section 11 of the said Act ; that no part of the said income is income of any religious, charitable, agricultural or educational institution within the meaning of paragraph (e) of Section 4 of the said Act.

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30. On the 30th day of June, 1944, Notice of Dissatisfaction pursuant to the said Act on behalf of the Appellant was duly mailed to the Respondent.

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Statement  
of Claim,  
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*continued.*

31. By Order of this Honourable Court dated the 25th day of April 1945, it was ordered that the formal pleadings be filed in this cause, and the times for filing the same were duly specified therein.

WHEREFORE THE APPELLANT CLAIMS :

(1) Judgment to the effect that the said 33% of income is not liable to taxation by virtue of the Income War Tax Act ; and

(2) The costs of this appeal.

10

Dated at the City of Calgary, in the Province of Alberta, this 16th day of May, 1945.

J. J. SAUCIER,  
Counsel for the Appellant.

No. 8.  
Statement  
of Defence,  
24th  
August  
1945.

No. 8.

STATEMENT OF DEFENCE.

In answer to the Appellant's Statement of Claim filed herein, the Respondent :—

1. Admits paragraphs 1, 2, 3 and 4 thereof ;

2. Denies each and every allegation contained in paragraphs 5, 6, 7 20 8, 9, 10, 11, 12, 13 and 14 thereof and further says that the Last Will and Testament of the Honourable Patrick Burns alleged in paragraph 2 is to be interpreted by the Court ;

3. Denies each and every allegation contained in paragraphs 15, 16, 17, 18, 19, 20 and 21 thereof, and further says that the force and meaning of the Order of the Honourable Mr. Justice Ewing referred to in the said paragraphs are for the determination of this Court in so far as it affects the relationship of the parties hereto, and further says that the said Order is not binding upon this Court herein ;

4. Denies each and every allegation contained in paragraph 22 30 thereof and further says that the said allegations are not relevant or material to the issues herein ;

5. Denies each and every allegation contained in paragraph 23 thereof and further says that the income tax returns as filed by the Appellant relating to the matters before this Honourable Court are those copies of which were filed in the records of the Court pursuant to section 63 of the Income War Tax Act ;

6. Denies each and every allegation contained in paragraph 24 thereof ;

7. Admits paragraph 25 thereof ;

8. Admits paragraph 26 thereof and further says that the sum of \$1,961.60 represents the balance due on tax assessed at \$12,681.89 plus interest of \$230.52 to the date of assessment ;

9. Denies each and every allegation contained in paragraph 27 thereof and further says that the assessment in respect of income for the year 1942 is not before this Honourable Court and is not relevant or material to the issues herein ;

10 Admits paragraph 28 in so far as it relates to the assessments in respect of income for the years 1938, 1939, 1940 and 1941 and otherwise denies each and every allegation contained therein ;

11. Denies each and every allegation contained in paragraph 29 thereof and further says that the Decision of the Minister filed herein speaks for itself ;

And in further answer to the whole of the Appellant's Statement of Claim, the Respondent says :—

12. That pursuant to the Last Will of the said Honourable Patrick Burns, the said Executors and Trustees were required to invest 40 % of the income of the Estate, after certain payments to the testator's daughter-in-law and other annuitants, in the years 1938 to 1941 both inclusive as part of the capital of the Estate at compound interest ;

13. That the said 40 % of the income of the Estate in the years 1938 to 1941 both inclusive disposed of as so provided constituted income accumulating in trust for the benefit of unascertained persons or persons with contingent interests as contemplated by section 11 subsection (2) of the Income War Tax Act ;

14. That the said 40 % of the income of the Estate in the years 1938 to 1941 both inclusive disposed of as so provided constituted income received by an Estate or Trust and capitalized as contemplated by section 11 subsection (4) paragraph (a) of the Income War Tax Act.

Without prejudice to the foregoing and in further answer to the whole of the Appellant's Statement of Claim, the Respondent says :—

15. That the Royal Trust Company as trustee of the Burns' Memorial Trust referred to in the said Last Will of the Honourable Patrick Burns was not in the years 1938 to 1941, both inclusive, a charitable institution within the meaning of section 4 paragraph (e) of the Income War Tax Act ;

16. That no part of the said 40 % of the income of the Estate as aforesaid could be received by the Royal Trust Company as trustee of the Burns Memorial Trust in the years 1938 to 1941, both inclusive ;

17. That pursuant to the Last Will of the Honourable Patrick Burns, upon the death of the last of the annuitants or at the death of his daughter-in-law, whichever shall last happen, the amount paid or conveyed to the Royal Trust Company for the creation and establishment of the Burns' Memorial Trust will constitute the capital of the Burns Memorial Trust ;

18. That the beneficiaries of the Burns' Memorial Trust could not during the years 1938 to 1941, both inclusive, receive any part of the

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income of the said Estate nor can they ever receive any part of the income of the Estate relating to those years ;

19. That none of the beneficiaries of the Burns' Memorial Trust is a religious, charitable, agricultural or educational institution or a Board of Trade or Chamber of Commerce within the meaning of section 4, subsection (1), paragraph (e) of the Income War Tax Act.

**WHEREFORE THE RESPONDENT CLAIMS :**

- (a) That the assessments herein be affirmed ;
- (b) That the Appellant be ordered to pay any unpaid portions of the said assessments with interest as provided by the terms of 10 the said Act ;
- (c) That the Appellant be ordered to pay the costs of this action ;
- (d) Such further and other relief as to this Honourable Court may seem just and proper.

Dated at Ottawa, this 24th day of August, A.D. 1945.

Solicitor for the Respondent.

No. 9.  
Agreement  
on Facts,  
4th October  
1945.

**No. 9.**

**AGREEMENT ON FACTS.**

Counsel for the parties at the hearing of the above matter before the 20 Exchequer Court of Canada, sitting at Calgary, Alberta, on the 4th day of October, 1945, agree that the facts hereunder stated, and the documents hereunder referred to, shall be admitted in evidence without formal proof, namely :—

1. That the late Senator Burns (hereinafter referred to as "the Deceased ") made and executed his last Will and Testament January 15th, 1932, and a Codicil thereto on the 4th day of March, 1933, at Calgary, in the Province of Alberta.

2. That the Deceased died at Calgary aforesaid February 24, 1937, and on May 4, 1937, the said Will and Codicil were duly probated in the 30 District Court of the District of Southern Alberta, Judicial District of Calgary.

3. The principal beneficiary under the said Will was a son of the Deceased, Patrick Thomas Michael Burns, who predeceased the Deceased, leaving him surviving a widow Millicent Burns (hereinafter referred to as "the Widow ") and no issue. Both prior and subsequent to the death of the Deceased the Widow dealt with her interest in the estate of the Deceased as follows :

In or about March, 1936, an application was made to the Supreme Court of Alberta by John Burns and J. Howard Kelly, and upon that 40

application the applicants were, by Order of the said Court made Mar. 11th, 1936, appointed joint guardians of the estate of the Deceased, as therein set out, on the ground of his then incapacity due to age and ill-health.

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In or about December, 1936, the Widow applied to the said guardians for an allowance. The said guardians thereupon applied to the Supreme Court of Alberta for its direction as to the said demand, whereupon the Court, the Honourable Mr. Justice Ewing presiding, on December 21, 1936, made an Order as follows :

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Agreement  
on Facts,  
4th October  
1945,  
*continued.*

10 (a) reciting the previous Order appointing guardians, that the evidence showed the Deceased still to be incapable of managing his property but that if competent he would make an allowance to the Widow for her life, that the Widow desired to assure herself of permanent maintenance and future security, and by her counsel had undertaken to quit claim, remise, release, assign, waive and surrender unto the Deceased or his personal representatives any and all claims under policies of insurance on the life of her deceased husband and any and all claims she might then or at any time in the future have under the last Will and Testament of the Deceased, and to execute such further assurances of such waiver and surrender  
20 as the joint guardians might reasonably require ;

(b) that upon the execution by the Widow of such releases and further assurances as might be agreed upon among the parties or settled by the Court the joint guardians were authorized to pay to the Widow an allowance of \$350.00 per month during her lifetime, beginning in the month of January, 1937, and monthly thereafter to be secured as in the said Order set out.

Following the making of the said Order of December 21, 1936, the Widow executed a release dated January 18, 1937, of all claims under the said life insurance policies and under the Will of the Deceased, and  
30 entered into an indenture of settlement dated January 22, 1937, with the said joint guardians and The Royal Trust Company, securing to the Widow the said payments.

Following the death of the Deceased, the Widow, under date June 21, 1938, entered into an indenture with the Executors and Trustees of the estate of the Deceased, which recited that notwithstanding the matters referred to in the two preceding paragraphs the Widow had asserted a claim to the benefits provided for her under the Will of the Deceased and that the said Executors, in order to avoid litigation and provide for a final settlement of all matters in dispute between the Widow and the said  
40 Executors and Trustees, agreed to pay to the Widow the sum of \$150.00 per month during her lifetime, and that such settlement had been approved by the Supreme Court of Alberta. The said indenture provided that the said settlement of January 22, 1937, was binding on the said Executors and Trustees and upon the Widow ; that the Widow should be paid the sum of \$150.00 per month during her lifetime and generally confirmed the releases given by the Widow.

The said payments of \$150.00 per month are provided for by the said Executors and Trustees in the same way as all the annuities referred to in the Will of the Deceased.

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4. As at the date of the death of the Deceased there were in existence persons entitled to all the specific legacies (excepting, however, 200 shares of P. Burns Foundation Limited) set out in Paragraph 7 to 26 of the Will, save that as provided in the Will schemes had to be directed by the Court as hereinafter referred to with respect to the legacies referred to in Paragraphs 20, 21 and 22 of the Will. All of the said specific legacies were transferred by the Executors to those entitled on or before the 24th day of February, 1939. As at the date of the death of the Deceased the following annuitants were entitled to the annuities provided for them in Paragraph 30 of the Will, Subparagraphs (g) to (m), any annuitants not mentioned having pre-deceased the Deceased: 10

William James Burns (payable one year after the death of the Deceased) .. .. .	\$1,800.00
Ada F. Holliday .. .. .	1,200.00
Christina Currie (died 1941) .. .. .	600.00
Mary E. Kelly .. .. .	600.00

5. These annuities were paid as follows:—

February 24, 1937, to February 24, 1938 .. .. .	\$2,400.00
February 24, 1938, to February 24, 1939 .. .. .	4,200.00
February 24, 1939, to February 24, 1940 .. .. .	4,200.00 20
February 24, 1940, to February 24, 1941 .. .. .	4,200.00
February 24, 1941, to February 24, 1942 .. .. .	3,750.00 .

The only charge, by way of annuities, on the estate of the Deceased, other than the foregoing, is an annuity of \$1,800.00 per annum payable to the Widow as hereinbefore set out. This annuity of \$1,800.00 per annum in addition to the sum of \$4,200.00 per annum to which the Widow is entitled under the settlement above referred to.

6. In or about December, 1939, an application by the Executors and Trustees of the Will of the Deceased, was made to the Supreme Court of Alberta, and an Order was made therein by the Honourable Mr. Justice Ewing as follows:— 30

(a) that Paragraphs 20, 21 and 22 of the Will of the Deceased constituted good and valid charitable bequests, and

(b) that under that portion of Paragraph number 36 of the said Will the gifts of income therein mentioned to (i) The Father Lacombe Home at Midnapore, Alberta, (ii) the Branch of the Salvation Army at Calgary, Alberta, (iii) the Children's Shelter carried on under the auspices of the said City of Calgary, (iv) the fund established for the benefit of widows and orphans of members of the police force of the said City, and (v) the fund established for the benefit of widows and orphans of members of the Fire Brigade of the said City, were all good and valid charitable bequests, 40

(c) that it appearing that at the date of the death of the Deceased, and at the date of the making of the Order there was no such Children's Shelter, and no fund established for the benefit of widows and orphans of members of either of the said Police Force or Fire Brigade the Court directed a scheme as in the said Order set out, and directed that the shares constituting the specific legacies referred to in the said Paragraphs 20, 21 and 22 of the said Will should be delivered to the Trustees constituted under the said schemes. 50



7. The accounts of the Executors and Trustees have been filed with and approved by the District Court of the District of Southern Alberta, Judicial District of Calgary, as follows :—

February 24, 1937, to February 24, 1938	..	Order June 20, 1938
February 24, 1938, to February 24, 1939	..	Order June 22, 1939
February 24, 1939, to February 24, 1940	..	Order May 22, 1940
February 24, 1940, to February 24, 1941	..	Order Apr. 22, 1941

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The Royal Trust Company was served, in each case, with notice of the passing of the said accounts.

10 8. In case Counsel for the Appellant is unable at the hearing to produce oral evidence on the questions whether the Father Lacombe Home at Midnapore, Alberta, and/or the Branch of The Salvation Army at Calgary, Alberta, are religious or charitable or educational institutions, Counsel shall have the right to adduce evidence by way of affidavit, subject to the right of Counsel for the Respondent to cross-examine thereon, and such affidavits and cross-examination shall, subsequent to the hearing, be placed before the Court as a part of the evidence in these proceedings. In case Counsel for the Respondent desires, subsequent to such cross-examination, to adduce further evidence as to the status of the said organizations or either of them, such Counsel shall have the right to do so by way of affidavit, subject to the right of Counsel for the Appellant, to cross-examine thereon, and such affidavits and cross-examination shall likewise be filed with the Court as evidence in these proceedings.

9. That the taxable income submitted by the Appellant, the taxable income as assessed by the Department, and the amount disallowed by the Department during the years 1938 to 1941 inclusive, are as follows :

30	Taxable Income		Amount disallowed	
	Per		by	
	Department	Estate	Income Tax	Department
1938 ..	\$10,597.94	\$ 9,199.01	\$ 1,398.93	
1939 ..	11,656.57	7,809.90	3,846.67	
1940 ..	20,096.97	14,382.57	5,714.40	
1941 ..	26,775.24	18,118.03	8,657.21	
	<u>\$69,126.72</u>	<u>\$49,509.51</u>	<u>\$19,617.21</u>	

The amounts disallowed by the Income Tax Department represent 33% of 40% of the net income of the estate. These amounts are claimed as proper deductions by the estate on the ground that they have accrued to the credit of an ascertained beneficiary or ascertained beneficiaries which are charitable institutions.

This view is not accepted by the Income Taxation Department.

10. In each of the years 1938 to 1941 inclusive of the total net income of the estate 60% thereof was paid out by cheque to the nephews and nieces named in Sub-paragraphs (a) to (e) inclusive of Paragraph 35 of the Will, as found on pages 31 and 32 thereof, and the remaining 40% was transferred by book entry by the Executors from the estate income account into the estate capital account as shown on the accounts filed as exhibits.

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The books of account of the Executors show that they have made no segregation or allocation of the said 40% of the net income as between the individuals entitled to 67% thereof under Paragraph 36, Sub-paragraph (a) of the Will, and the party or parties entitled to the remaining 33% thereof under the last paragraph of the said Paragraph 36.

Counsel for the parties and for The Royal Trust Company request that The Royal Trust Company be made a party plaintiff to this action and that the Court make an Order appointing The Royal Trust Company to represent the class of beneficiaries entitled pursuant to the terms of the Will to the said 33% and that the Court determine all the rights of all the parties with respect to income involved in this Appeal. 10

The parties agree that nothing herein shall preclude any of the parties hereto from objecting to the relevancy or materiality of any of the facts stated or documents referred to herein.

Dated at Calgary, Alberta, this 4th day of October, 1945.

E. J. CHAMBERS,  
Counsel for the Appellant.

H. W. RILEY,  
Counsel for the Respondent.

GEO. H. STEER, 20  
Counsel for The Royal Trust Company.

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Reasons for  
Judgment  
of His  
Honour  
J. C. A.  
Cameron,  
Deputy  
Judge, 9th  
January  
1946.

No. 10.  
**REASONS FOR JUDGMENT.**

HIS HONOUR J. C. A. CAMERON (DEPUTY JUDGE)

This case has to do with four appeals from assessment made in respect of the Appellant's income for the years 1938, 1939 and 1940, dated March 17, 1942, and in respect of the income for the year 1941, dated November 19, 1943.

Notices of Appeal were duly given and the Decision of the Minister in respect of all said assessments was delivered on June 5, 1944, and is in part as follows : 30

The Honourable the Minister of National Revenue having duly considered the facts as set forth in the Notices of Appeal, and matters thereto relating, hereby affirms the said Assessments on the ground that all the income accumulating in the hands of the executors is taxable in their hands under the provisions of Subsection 2 and paragraph (a) of Subsection 4 of Section 11 of the Act ; that no part of the said income is the income of any religious, charitable, agricultural or educational institution within the meaning of paragraph (e) of Section 4 of the Act. Therefore on these and related grounds and by reason of other provisions of the Income War Tax Act the said Assessments are affirmed. 40

The Appellant served Notice of Dissatisfaction on June 30, 1944, and by the reply of the Minister, dated July 28, 1944, the said assessments were affirmed and these appeals now follow.

The Appellants are the present executors of the estate of the late, the Honourable Patrick Burns, late of the City of Calgary, who died on the 24th day of February, 1937. On May 4, 1937, probate of his Will, dated January 15, 1932, and of a Codicil dated March 4, 1933, was granted. The Will is a lengthy one and Exhibit 2 is a certified copy thereof. A chief beneficiary named in the Will was his son who, however, predeceased the testator, leaving a widow but no issue. By reason of these facts it is not necessary to consider many of the clauses in the Will, but careful attention must be given to a number of its provisions.

At the trial, by consent, I added The Royal Trust Company as party appellant; and pursuant to application made at the trial and upon filing of consents later I added as additional appellants the five organizations and funds hereinbefore named, in order that all parties interested in the appeal should be before the Court. Such consents have now been filed.

Substantial testamentary provision was made for the widow of the testator's son, but, prior to the testator's death, an order was made by Mr. Justice Ewing, of the Supreme Court of Alberta, on December 21, 1936, on the application of the then guardians of the testator, which provided for a monthly payment of \$350.00 to the son's widow during her lifetime upon her releasing all her interest in her husband's life insurance policies and waiving any benefits to which she might be entitled under the Will of the testator. Such a release was executed on January 18, 1937. In order to take care of this liability the executors have appropriated the sum of \$145,000.00, which has been administered separately from the general estate. Following the death of the testator a further and final settlement was made with the son's widow which provided for an additional monthly payment to her of the sum of \$150.00 during her lifetime in consideration of certain releases, etc., and this was approved by the Court on June 21, 1938. This last mentioned amount is provided for by the executors out of the general revenue of the estate in the same manner as the other annuities later to be referred to.

All the specific legacies in the Will were paid or transferred by the executors on or before February 24, 1939, and it is understood that all succession duties and debts were duly paid.

By paragraph 20 of his Will, the testator bequeathed to the Children's Shelter at Calgary certain Preference Shares of a par value of \$5,000.00, and provided that if there were no such institution, the bequest should be used as a nucleus of a fund for establishing such an institution, or alternatively, for the establishment of a fund to be administered by the City for the benefit of poor, indigent and neglected children.

By Section 21 a similar bequest was made for a fund for the benefit of Widows and Orphans of Members of the Police Force of the City of Calgary, and by paragraph 22 a similar bequest was made for the benefit of Widows and Orphans of Members of the Fire Brigade of the City of Calgary.

It appears that at the time of the testator's death no such institutions as those referred to were in existence but by order of Mr. Justice Ewing,

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of the Supreme Court of Alberta, dated December 11, 1939, and filed as Exhibit 8 herein, schemes for the establishment and administration of each of the said funds were established and approved and trustees thereof appointed. It is understood that the bequests above referred to have been paid to such trustees.

By paragraph 30 of his Will the testator directed "that my trustees shall stand possessed of 'My Trust Estate' and the income therefrom and all parts thereof, UPON FURTHER TRUST" and then followed gifts of certain annuities. Some of the annuitants predeceased the testator and one has since died and the funds necessary to meet the remaining 10 annuities are provided out of the general income from the Trust Estate. These annuities directed by the Will and the second annuity payable to the son's widow, total a relatively small portion of the total income from the Trust Estate.

Paragraph 35 of the Will contains a further direction that in the event of the testator's son having predeceased the testator, or should he survive the testator, but die without leaving lawful issue, but leaving a wife surviving (as was actually the case) and subject to the provisions therein-before mentioned as to the payment of annuities, the trustees should stand possessed of the Trust Estate, including the accumulations thereof and 20 additions thereto upon further trusts:

(a) To allow the use of a residence and the upkeep thereof to his son's widow, and

(b) to pay her an annuity of \$15,000.00.

Both of these provisions are now of no effect due to the settlements made with the said widow as heretofore mentioned. Following these provisions for this son's widow the testator in said paragraph 35 further provided:

AND FURTHER DIRECT my Trustees to hold "my Trust Estate" and to appropriate sufficient of the same or of the investments thereof to insure an annual income therefrom sufficient to 30 pay and discharge the Annuities then outstanding and hereinbefore given and bequeathed by this my Will, and to hold "my Trust Estate," including the accumulations thereof and the additions thereto by reason of the deaths of Annuitants or otherwise until the death of the last of the Annuitants to whom I have bequeathed Annuities by this my Will or the death of the widow of my said son, Patrick Thomas Michael Burns, whichever shall last happen and subject to prior payment of the said annual income of Fifteen Thousand Dollars (\$15,000.00) per annum to the widow of my said 40 son during all the days of her life which she shall survive my said son and during the period aforesaid, UPON FURTHER TRUST TO PAY:

and then followed provision for payments to certain nephews and nieces aggregating 60% of the net annual income derived from his Trust Estate. Distribution of these percentages has been made in each of the years referred to. The final sentence in paragraph 35 is important and is as follows:

"AND, until the death of the last annuitant to whom I have bequeathed an Annuity by the terms of this my Will, or the death

of the widow of my said son, whichever shall last happen, to invest the surplus, if any, of such annual income in the names of my trustees as part of the capital of ' my Trust Estate ' at compound interest."

From the above it will be seen that 40% of the net surplus income of the Trust Estate is to be accumulated until the death of the last annuitant or of the son's widow whichever shall last occur.

Paragraph 36 of the Will is as follows :

10 " AND I FURTHER DIRECT that upon the death of the last of the annuitants to whom I have bequeathed annuities in this my Will or the death of the widow of my said son, whichever shall last happen and if my said son, Patrick Thomas Michael Burns, shall have predeceased me, or having survived me, shall have died without leaving lawful issue, that my Trustees shall stand possessed of ' my Trust Estate ' with all accumulations thereof and additions thereto and the whole thereof to hold UPON FURTHER TRUST to distribute the same as follows :— "

20 Subsection (a)—This section provides for distribution to the persons therein named of 67% of the corpus of the estate then remaining and need not be dealt with in further detail. Then follow in paragraph 36 the clauses which are particularly relevant to this matter :

AND UPON THE FURTHER TRUST to pay and convey the rest, residue and remainder of " my Trust Estate " unto The Royal Trust Company for the creation and establishment of a Trust to be known as the " Burns Memorial Trust " to be administered by it as Trustee at its office in the City of Calgary, in the Province of Alberta, and the net annual income therefrom to pay and distribute annually in equal shares thereof amongst the following :—

30 (1) The Father Lacombe Home at Midnapore, in the Province of Alberta.

(2) The Branch of the Salvation Army, having its Headquarters at the City of Calgary, in the Province of Alberta.

(3) The Children's Shelter carried on under the auspices of the said City of Calgary, towards which I have bequeathed Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) by this my Will.

40 (4) To the Fund established for the benefit of WIDOWS AND ORPHANS OF MEMBERS OF THE POLICE FORCE OF THE CITY OF CALGARY, towards which I have bequeathed Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) by this my Will.

(5) To the Fund established for the benefit of WIDOWS AND ORPHANS OF MEMBERS OF THE FIRE BRIGADE OF THE CITY OF CALGARY, towards which I have bequeathed Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) by this my Will.

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This last clause of paragraph 36 therefore provides for the final distribution of 33% of the corpus of the Trust Estate remaining in the hands of the executors at the date of death of the last of the annuitants or of the son's widow, whichever shall last occur. Certain of the annuitants and the son's widow are still alive.

For the Appellants it is contended that 33 per cent. of 40 per cent. of the income accumulating in said estate in each of the said years accumulates for the benefit of the Burns Memorial Trust and that the Burns Memorial Trust is a charitable institution; that the institutions beneficially entitled to the Burns Memorial Trust were named in the Will and 10 definitely ascertained as beneficiaries at the date of the testator's death; that the shares of income and capital so bequeathed to the said beneficiaries vested immediately upon the death of the said testator, that they are charitable institutions and therefore the said 33% of 40% of the income being accumulated as aforesaid was exempt from taxation by virtue of Section 4 (e) of the Income War Tax Act, which is as follows:

Section 4. The following incomes shall not be liable to taxation hereunder:

(e) The income of any religious, charitable, agricultural and educational institution Board of Trade and Chamber of Commerce, 20 no part of the income of which inures to the personal profit of or is paid or payable to any proprietor thereof or shareholder therein.

It is also to be noted that by the order of Mr. Justice Ewing, dated 11th of December, 1939 (Exhibit 8) it was ordered that according to the true construction of the last Will and testament of the deceased the legacies contained in paragraphs 20, 21 and 22 of the said Will constituted good and valid charitable bequests; and further, that under that portion of paragraph 36 of the said Will by which the remaining 33% of the 30 residue of the Trust Estate was payable to the Royal Trust Company for the creation and establishment of a trust to be known as the Burns Memorial Trust and for the distribution of the income to The Father Lacombe Home, the Salvation Army, the Children's Shelter, the funds established for the benefit of Widows and Orphans of Members of the Police Force and the Fire Brigade of the City of Calgary, were good and valid charitable bequests.

The organizations known as The Father Lacombe Home at Midnapore and the branch of the Salvation Army at Calgary, were in existence at the time of the testator's death. It was admitted by all parties that the executor's accounts for each of the said years were duly filed in the proper 40 Court and approved of; copies of these accounts and orders are filed as Exhibit 9.

In the Statement of Agreed Facts filed at the hearing, paragraph 10 is as follows:

In each of the years 1938 to 1941 inclusive of the total net income of the estate 60% thereof was paid out by cheque to the nephews and nieces named in Sub-paragraphs (a) to (e) inclusive of paragraph 35 of the Will, as found on pages 31 and 32 thereof, and the remaining 40% was transferred by book entry by the

Executors from the estate income account into the estate capital account as shown on the accounts filed as exhibits. The books of account of the Executors show that they have made no segregation or allocation of the said 40% of the net income as between the individuals entitled to 67% thereof under Paragraph 36, Sub-paragraph (a) of the Will, and the party or parties entitled to the remaining 33% thereof under the last paragraph of the said Paragraph 36.

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10 In order to succeed the appellants must come within the provisions of Section 4 (e) (supra). They must show not only that the amounts in question in each year are income but also income of charitable institutions as described in the sub-section.

“Income” is defined in Section 3.1. as “annual net profit or gain or gratuity . . . directly or indirectly received by a person . . .” “Person” is defined in Section 2.1. (h) as:—

“ ‘person’ includes any body, corporate and politic, and any association or other body, and the heirs, executors, administrators and curators, or other legal representatives of such person, according to the law of that part of Canada to which the context extends.”

20 I am satisfied that the Burns Memorial Trust and the five organisations which will eventually benefit by the income from the Burns Memorial Trust fund, when established, are “persons” within the meaning of the above definition.

30 In this Court it was held in the case of *Capital Trust Corporation et al v. Minister of National Revenue* (1) that the Income War Tax Act assesses income for the year in which it is received, irrespective of the period during which it is earned or accrues due. This judgment was affirmed in the Supreme Court of Canada (2). But as pointed out by Davis J. at p. 196 Section 11 had no application to the facts of that case inasmuch as it related only to income of a beneficiary or trust. This section relates to income from estates or trusts and provides that income for any taxation period includes income accruing to the credit of a taxpayer whether received by him or not during such period. The words “accruing to the credit of” would seem to imply that the amount is actually made available for disposal by the taxpayer. Section 2.1. (k) defines taxpayer as including any person whether or not liable to pay the tax.

40 Does the “income” here sought to be declared exempt from taxation partake of the nature or characteristics of income as defined in the Act? The Act provides for a scheme of taxation based on the annual net profit or gain. Section 9 is the charging section and provides for the levy upon the income during the preceding year (i.e. calendar year). Section 11 (1) refers to the taxation period—the calendar year.

An estate is a “person” within the definition contained in Section 2 (h). It is therefore taxable upon its income but may charge as proper deductions amounts paid to or which accrue to or are credited to any beneficiary and such amounts are then taxable in the hands of the beneficiaries; but in the event of such beneficiary being such an institution as is described in Section 4 (e) no tax would be payable by such recipient.

(1) (1936) Ex. C.R. p. 163.

50 (2) (1936) C.L.R. (Supreme Court) p. 192.

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In the instant case it is manifest that none of the income in question in any of the relevant years was paid to or received by the beneficiaries but was accumulated. Was it then received indirectly or did it accrue to the beneficiaries? Reference is made to the case of *St. Lucia Usines and Estates Company v. St. Lucia Colonial Treasurer* (1) where Lord Wrenbury said at p. 512 "The words 'income arising or accruing' are not equivalent to the words 'debts arising or accruing.' To give them that meaning is to ignore the word 'income.' The words mean 'money arising or accruing by way of income.' There must be a coming in to satisfy the word 'income'."

10

(1) (1924) A.C. p. 508.

In the present case so far as the beneficiaries are concerned there was no "coming in" in any of the relevant years and there was no "arising or accruing by way of income." The Burns Memorial Trust will never receive it as income but as corpus; and the five named beneficiaries will never receive the income for any of the relevant years in any form. They will merely receive shares in the income earned on such corpus at some time in the future. The income in question for the years mentioned will never, as income, be available for any charitable institutions. It has been capitalised in accordance with the terms of the Will.

20

I am, therefore, of the opinion that the income here assessed in the hands of the executors is not "income" of such an institution as is referred to in Section 4 (e) of the Act. (Reference may be made to the case of *Inland Revenue Commissioners v. Blackwell*, later referred to.)

In my view of my finding as above it might not be necessary to deal with other matters raised by the Appellants and Respondent but they are of importance and should, I think, be considered.

Are the ultimate beneficiaries of this portion of the income charitable institutions such as are referred to in Section 4 (e)? The Royal Trust Company to which the accumulated corpus will eventually be turned over is obviously not a charitable institution. It is merely the trustee of a fund and will invest it and turn over the income therefrom in equal proportions to the five named organisations. The trust which it administers is admittedly a charitable trust but that is not the same as a charitable institution. Reference may be made to the case of *Minister of National Revenue v. Trust and Guarantee Company* (1) where Lord Romer stated at p. 149 "had the Dominion Legislature intended to exempt from taxation the income of every charitable trust nothing would have been easier than to say so."

30

(1) (1940) A.C. p. 138.

In the same case consideration was given to the words "charitable institution." At p. 149 it is stated:—

"It is by no means easy to give a definition of the word institution that will cover every use of it. Its meaning must always depend upon the context in which it is found. It seems plain for instance from the context in which it is found in the sub-section in question that the word is intended to connote something more than a mere trust."

40



Counsel for the appellants urged on me strongly that applying this text to the instant case something more than a mere trust here existed—that it was also a “Memorial Trust” to do honour to a well known Westerner and having charitable objectives and that therefore it was a charitable institution.

Lord Romer in continuing his judgment said further :—

10 “ In view of the language that has in fact been used, it seems to their Lordships that the charitable institutions exempted are these which are institutions in the sense in which boards of trade and chambers of commerce are institutions, such, for example, as a charity organisation society, or a society for the prevention of cruelty to children. The trust with which the present appeal is concerned is an ordinary trust for charity. It can only be regarded as a charitable institution within the meaning of the sub-section if every such trust is to be so regarded, and this, in their Lordships’ opinion is impossible. An ordinary trust for charity is, indeed, only a charitable institution in the sense that a farm is an agricultural institution. It is not in that sense that the word institution is used in the sub-section.”

20 In my view the fact that the charitable trust is also designated as a memorial trust does not make the Burns Memorial Trust a charitable institution. The word “Memorial” is merely descriptive of the fund. The Burns Memorial Trust is nothing more than a name attached to a fund ; it is not a charitable institution. The fund in due course will be the source of income for five organizations but neither the fund nor its trustees has any charitable functions. It is in no sense an organization devoted to charitable purposes. It is merely a name descriptive of the character of a certain fund naming its founder, honouring his memory, and indicating that it is a trust. It falls far short of being a charitable institution. It holds no assets and distributes no funds, all these functions being performed by The Royal Trust Company. Everything that is to be done in connection with the administration of the 33 % of the residue is to be done by The Royal Trust Company and nothing is to be done by the Burns Memorial Trust. It is clearly a name and nothing more. The fact that the trust is to be administered in perpetuity, does not, I think, make it an institution, such as is contemplated in the section, any more than it would be if established for a specific number of years.

40 See also the case of *Cosman’s Trustees v. Minister of National Revenue* (later referred to) in which it was held that the Nova Scotia Trustees of a fund established by a Will did not constitute a charitable institution within the meaning of Section 4 (e) so as to render the income exempt from taxation.

The Appellants alternatively argue that the five organizations which will eventually receive the income from the Burns Memorial Trust are charitable institutions. It is true that they are the organizations which will be paid the income of the trust. But holding as I have done that no part of the income for any of the relevant years will at any time reach the beneficiaries as income, it is quite unnecessary for me to determine this point and I make no finding in regard thereto.

50 A further argument of the Appellants was that this income vested in the persons entitled to it a morte testatoris and I was referred to the well

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known case in the Privy Council of *Brown v. Moody* (1). I doubt very much whether the principles there laid down are applicable in the instant case inasmuch as the intervening annuities constitute a charge on all the estate, principal as well as income, and it is conceivable that the executors might have to use all the interest and even resort to the principal at some later date to meet them. The beneficiaries, therefore, had no absolute right in the Trust Estate until the death of all the annuitants and the son's widow. (See *Bowen v. Inland Revenue Commissioners* (2).) And, while it could be said that they have an interest in the income of the years in question inasmuch as it may eventually form part of the *corpus* of the trust, no part of that income will ever be received by them in any form. 10

(1) (1936) 2 A.E.R. p. 1695                      (2) (1937) 1 A.E.R. 607 at 612.

The question of vesting or non-vesting of the income in the five named organizations is in my view of no importance in this case because of my finding that the income in the years 1938 to 1941 was not income of a charitable institution in any of those years. Upon that question it is therefore quite unnecessary to pass any opinion.

Reference may be made to the case of *Inland Revenue Commissioners v. Blackwell* (3) where Rowlatt, J., said :—

“The first point which Mr. Latter makes is that it does not 20 matter whether the interest which the eldest son takes under the Will is vested or contingent, because, even assuming that this specific bequest is vested in the eldest son, just as the shares in the residue are vested in all the children under the other part of the Will, still, inasmuch as there is a trust to accumulate a fund during the infancy of the eldest son, subject to a power to the trustees to apply such sum as they think proper for his maintenance, the part of the income which is accumulated is not the income of the minor. It is a very important point, but I have come to the conclusion that he is right. It is perfectly true to say, as Mr. Harman did, that in a 30 case of that kind the income must come to the infant in the end if the interest which he takes is a vested interest; but in my judgment it will not come to him as income; it will come to him in the future in the form of capital. The trustees are directed to accumulate the surplus income, and they are bound to comply with that direction and to accumulate it. It is income which is held in trust for him in the sense that he will ultimately receive it, but it is not in trust for him in the sense that the trustees have to pay the income to him year by year while he is an infant. All the minor can get while he is an infant is such amount as the trustees allow 40 for his maintenance. I think that view of the case is supported by what was said in *Inland Revenue Commissioners v. Wemyss* (1924) S.C. 284; 61 S.L.R. 262. In my judgment it is fallacious to look into the future and say: This fund that is being accumulated is for his benefit and he will get it all. What you have to do is to ask, whether the surplus income that is accumulated is the annual profits and gains of the year of this infant now? I do not think it is.”

(3) (1924) 2 K.B. p. 351.

For the same reason I shall not deal with another argument of the 50 appellants, namely, that while the executors did not in fact appropriate

any portion of the trust estate for the purpose of meeting the annuities as may seem to have been required by the Will, that actually they did so in substance. This submission was based on the judgment of the Appellate Division of the Supreme Court of British Columbia in *Hamilton v. Hart* (1). That judgment indicated that where there was a duty to appropriate, the estate should be administered as though it had been appropriated although in fact the executor had not done so. It is to be observed, however, that paragraph 30 of the Will is the one which provides, inter alia, for payment of the annuities and the direction there to the trustee is "And I further direct that my trustees shall stand possessed of my Trust Estate and the income therefrom and all parts thereof UPON FURTHER TRUST." That is in fact what the trustees have done.

(1) (1919) 2. W.W.R. p. 164.

They have appropriated the entire estate for the purpose of meeting the annuities. I must assume that they were quite entitled to do so in view of the above instructions, notwithstanding the later direction to appropriate as stated on page 31 of the Will (Exhibit 2).

The annuities created by the Will are charged on all the income and corpus of the Trust Estate ; and the annuity of the son's widow established by the Court is a charge against the net income of the estate. In the case of *Blake-Berry v. Geen* (1) Farwell J. said : " *Prima facie* when residue is given subject to annuities, the annuities are charged on the whole of the residue." This judgment was affirmed in the House of Lords (2).

The respondent also relies on Section 11 (4) (a) as follows :

" Income received by an estate or trust and capitalized shall be taxable in the hands of the executors or trustees or other like persons acting in a fiduciary capacity."

The last paragraph in clause 33 of the Will is as follows :

" And until the death of the last annuitant to whom I have bequeathed an annuity by the terms of this my will or the death of the widow of my said son, whichever shall last happen, to invest the surplus, if any, of such annual income in the names of my trustees as part of the capital of ' my Trust Estate ' at compound interest."

The terms of Section 11 (4) (a) are very clear and unambiguous, and, so far as I am aware, permit of no exception. The general scheme of the Act is to tax all incomes (save as excepted in the Act) in the hands of the recipients. This Sub-section provides for the taxation in the hands of the trustees of capitalized income. This section itself in my view is a complete answer to the appellants' claim in respect of the years 1940 and 1941, the section having been added to the Act in 1940.

(1) (1937) 1 A.E.R. 742. (2) (1938) 2 A.E.R. 362.

Counsel for the Respondent admitted that for the years 1938 and 1939 he could not succeed on this point as the section then read.

The respondent further relies on Section 11 (2) of the Act which in part is as follows :

" Income accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests shall be taxable in

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the hands of the trustee or other like person acting in a fiduciary capacity, as if such income were the income of a person other than a corporation . . . ”

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As pointed out by the late President of this Court in *McLeod v. Minister of National Revenue* (1) (affirmed in the Supreme Court of Canada) (2), the general scheme of the Act is to tax all incomes save such as are specially exempted. Section 11 (1) makes it clear that the beneficiary of a trust is liable to tax on income accruing to his credit whether received or not during the taxation period. Subsection 2 was meant apparently to make clear where income should be taxed when it was accumulating for unascertained persons or for persons with contingent interests or in other words where it was not accruing annually to the credit of known beneficiaries. And he used these words, p. 110 :

(1) (1925) Ex. C.R. 105 at 110.                      (2) (1926) S.C.R. 457.

“ I think the words ‘ contingent interests ’ were intended to cover the case where no person had a present and ascertained interest, in the income for any taxation period . . .

Further the words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonize with the subject of the enactment, and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion in which they are used, and the object to be attained. If there are circumstances in the Act showing that the phraseology is used in a larger sense than its ordinary meaning, that sense may even be given to it. Maxwell on Statutes at page 95. In dealing with matters relating to the general public, statutes are presumed to use words in their popular sense. If the object of an enactment had reference to the subject of wills, or the distribution of property, the word “ contingent ” might possibly be construed to have a different meaning than the same word would have in a general statute, such as is under consideration, where it should, I think, be construed in a popular and not technical sense.”

I have no doubt that the income accumulated by the Trustees in the year in question, and which, unless it is used in later years for the purpose of meeting annuities, will form part of the fund, the income on which will be distributed by the Trustees of the Burns Memorial Trust for the benefit of poor, indigent and neglected children, and for the benefit of widows and orphans of members of the Fire Brigade and of the Police Force of the City of Calgary, is income accumulating in trust for the benefit of unascertained persons. Reference may be made to the case of *Cosman's Trustees v. Minister of National Revenue* (1) affirmed in the Supreme Court of Canada (2) ; and the *Birtwistle* case (*Minister of National Revenue vs. Trust and Guarantee Co.*) (3). Further I do not think that liability for the tax under Section 11 (2) of the Act can be avoided by intervening a body of trustees between the executors of a testator's will and the ultimate beneficiaries of a charitable trust created under that will.

(1) (1941) 2 D.L.R. 218.    (2) (1941) 3 D.L.R. 224.    (3) (1940) A.C. 138.

There remains for consideration therefore only a question as to whether for the years 1938 and 1939 the income which was said to have accumulated for the benefit of the Father Lacombe Home and the branch of the Salvation Army at Calgary is liable to tax. It must be kept in mind that the prior annuities are charged on the whole of the net estate—both principal and interest—and that there is always the possibility that the executors in order to meet the annuities might have to resort to part or all of the accumulated income. In the *McLeod* case (supra) Newcombe J. said in the Supreme Court of Canada, p. 470,—

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of His  
Honour  
J. C. A.  
Cameron,  
Deputy  
Judge, 9th  
January  
1946,  
*continued.*

10           “ It is uncertain at present who is to have or enjoy the income, and it is for that very state of uncertainty that I think the clause, in its application to this case, is intended and apt to provide . . . In a sense of course all beneficiaries of a trust are ascertained when the trust is created, because it is essential that they shall be capable of ascertainment from the provisions of the trust ; but, where the income is to accumulate and become payable in the future, and the ascertainment of the beneficiaries is subject to events which may happen in the interval, the beneficiaries are, nevertheless for the purpose of the statute, unascertained.”

20           It would therefore seem that even these two organizations are “ unascertained persons ” within the meaning of section 11 (2).

I have reached the conclusion therefore that the income of the Appellant in the years 1938–1939, now in question, was subject to tax under the provisions of section 11 (2).

It follows from what I have stated above that all of the income received by the Appellant in each of the years 1938, 1939, 1940 and 1941, and which is the subject of these appeals, is subject to tax.

30           The appeal is therefore dismissed. The costs of all parties appearing on the appeal will be payable by the estate of the Honourable Patrick Burns, deceased, forthwith after taxation ; the costs of the executors to be taxed on a solicitor and client basis.

Judgment accordingly.

(Sgd.) J. CHAS. A. CAMERON,

Deputy Judge.

Ottawa,  
January 9, 1946.

*In the  
Exchequer  
Court of  
Canada.*

No. 11.  
Formal  
Judgment,  
9th  
January  
1946.

No. 11.

**FORMAL JUDGMENT.**

The appeal of the Appellants herein under the provisions of the Income War Tax Act from the Decision of the Minister of National Revenue, dated the 5th day of June, A.D. 1944, confirming the assessments made upon the Appellant in respect of the years 1938, 1939, 1940 and 1941 having come on for hearing before this Court at the City of Calgary, in the Province of Alberta, on the 5th day of October, A.D. 1945, in the presence of counsel both for the Appellants and Respondent; UPON READING the papers and documents filed with the Court as required by the said Act and the pleadings filed; AND UPON HEARING the evidence adduced and what was alleged by counsel aforesaid; the Court was pleased to direct that the cause should stand over for judgment and the same coming on this day for judgment; 10

THIS COURT DOTH ORDER AND ADJUDGE that the said appeal be and the same is hereby dismissed, the costs of all parties appearing on the appeal to be paid by the Estate of the Honourable Patrick Burns, deceased, forthwith after taxation; the costs of the Executors of the Will of the Honourable Patrick Burns, deceased, to be taxed on a solicitor and client basis. 20

By the Court,

Arnold W. Duclos

Registrar.

Approved.

E. J. CHAMBERS.

Counsel for the Executors of the Will of the Honourable  
Patrick Burns, deceased.

G. H. STEER,

Counsel for The Royal Trust Company.

*In the  
Supreme  
Court of  
Canada.*

No. 12.  
Notice of  
Appeal, 4th  
February  
1946.

No. 12.

**NOTICE OF APPEAL.**

30

TAKE NOTICE that the Appellants intend to appeal and do hereby appeal from the judgment of the Honourable Mr. Justice Cameron rendered herein on the 9th day of January, 1946.

Dated at Ottawa this 4th day of February, 1946.

E. F. NEWCOMBE,

Ottawa Agent for the Solicitor for  
the Appellants.

No. 13.

## REASONS FOR JUDGMENT.

CORAM : THE CHIEF JUSTICE, KERWIN, HUDSON, RAND and ESTEY, JJ.

The Judgment of the Chief Justice, Kerwin and Hudson, JJ., was delivered by KERWIN, J. :—

The executors of the Will of the Honourable Patrick Burns and other parties added in the Exchequer Court Appeal from a Judgment of that Court dismissing an appeal from the decision of the Minister of National Revenue confirming the assessments to income tax made upon the executors in respect of the years 1938, 1939, 1940 and 1941, under the provisions of the Income War Tax Act. The testator died February 24th, 1937, having made his last Will and Testament and a codicil thereto, probate of which was duly granted. It is unnecessary to refer to the codicil or to set forth all the provisions of the Will or the agreements made with the widow of the testator's son. Suffice it is to say that taken in conjunction with certain orders made by the Courts of the Province of Alberta where the testator was domiciled, the Executors, in the events that have transpired, were directed to act as follows, and proceeded accordingly in the administration of the large estate left by the deceased.

After payment of specific legacies, the executors referred to as "my Trustees," were to hold the balance of the estate, referred to as "my Trust Estate," in trust to pay certain annuities and (paragraph 35) "to appropriate sufficient of the same or of the investments thereof to insure an annual income therefrom sufficient to pay and discharge the Annuities then outstanding and hereinbefore given and bequeathed by this my Will, and to hold 'my Trust Estate' including the accumulations thereof and the additions thereto by reason of the deaths of Annuitants or otherwise until the death of the last of the Annuitants to whom I have bequeathed Annuities by this my Will or the death of the widow of my said son, Patrick Thomas Michael Burns, whichever shall last happen and upon further trust to pay": named nephews and nieces a total of 60% of the net annual income. Upon the death of the last of the annuitants or of the son's widow, the trustees were (paragraph 36) to stand possessed of "'my Trust Estate' with all accumulations thereof and additions thereto and the whole thereof to hold upon further trust to distribute" 67% thereof among named nephews and nieces "AND UPON THE FURTHER TRUST to pay and convey the rest, residue and remainder of 'my Trust Estate' unto The Royal Trust Company for the creation and establishment of a trust to be known as the 'Burns Memorial Trust' to be administered by it as trustee at its office in the City of Calgary, in the Province of Alberta, and the net annual income thereof to pay and distribute annually in equal shares thereof among the following :—

(1) The Father Lacombe Home at Midnapore in the Province of Alberta.

(2) The branch of the Salvation Army, having its Headquarters at the City of Calgary, in the Province of Alberta.

(3) The Children's Shelter carried on under the auspices of the said City of Calgary.

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(4) The Fund established for the benefit of Widows and Orphans of Members of the Police Force of the City of Calgary.

(5) The Fund established for the benefit of Widows and Orphans of Members of the Fire Brigade of the City of Calgary."

The residue to be conveyed to the Royal Trust Company for the purposes mentioned thus represents 33% or 40% of the income of "my Trust Estate."

In each of the years 1938 to 1941 inclusive, the annuities and the sums due the widow of the testator's son under the agreements with her were paid and 60% of the total net income of the estate was paid to the nephews and nieces entitled thereto, and the remaining 40% of the net income was transferred by book entry by the Trustees from the Estate Income Account into the Estate Capital Account. The Trustees made no segregation or allocation of this 40% of the net income as between the individuals entitled ultimately to 67% thereof under paragraph 36 and the Royal Trust Company to which is to be paid and conveyed eventually the remaining 33%.

The Trustees filed income tax returns for each of the years 1938 to 1941 inclusive but the Department disallowed for each year a certain sum claimed by the Trustees as deductible from the taxable income. Each deduction represented 33% to 40% of the net income of the estate for that year. These amounts are claimed as proper deductions by the estate and by the added parties, who are the Royal Trust Company, the Lacombe Home the Governing Council of the Salvation Army Canada West, and the trustees of the three Calgary Funds. The basis of the claim is that even if these amounts are taxable under certain provisions of the Income War Tax Act (which is denied) they have accrued to the credit of an ascertained beneficiary or ascertained beneficiaries which are charitable institutions and are, therefore, exempt under section 4 (e) of the Act:—

"(e) The income of any religious, charitable, agricultural and educational institution, board of trade and chamber of commerce, no part of the income of which inures to the personal profit of, or is paid or payable to any proprietor thereof or shareholder therein."

It should be stated that by an Order of the Supreme Court of Alberta, dated December 11th 1939, the gifts of income to the Lacombe Home, the Salvation Army, the Children's Shelter, the Fund established for the Benefit of Widows and Orphans of Members of the Police Force of the City of Calgary and the Fund established for the Benefit of the Widows and Orphans of Members of the Fire Brigade of the City of Calgary were declared to be good and valid charitable bequests. By the same Order, after reciting that it appeared that there was no institution existing in Calgary known and administered as a Children's Shelter or carried on under the auspices of the City, that no fund had been established for the benefit of widows and orphans of Members of the Police Force of the said City, and that no fund had been established for the benefit of the widows and orphans of Members of the Fire Brigade of the said City, schemes were approved for the setting up and administration of funds for "The Trustees for Poor, Indigent and Neglected Children of the City of Calgary,"



“ The Trustees for Widows and Orphans of the Police Force of the City of Calgary,” and “ The Trustees for Widows and Orphans of the Fire Brigade of the City of Calgary ” and provision was made in each scheme for the appointment of trustees for the several purposes.

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According to the evidence, the Lacombe Home is conducted as part of the charitable work carried on by Les Sœurs de Charité de la Providence, and the work of the Salvation Army in Calgary falls under the jurisdiction of the Governing Council of the Salvation Army Canada West. They are religious or charitable organisations and, for the purposes of this present discussion, I will assume that the other three funds mentioned in the Will and for which trustees were set up by the schemes approved by the order are also charitable organizations within the meaning of section 4 (e) of the Act as expounded by the Privy Council in the *Birtwhistle* case, *Minister of National Revenue v. Trust and Guarantee Co.* [1940] A.C. 138. The difficulty in the appellants' way in seeking exemption under this clause is that the income in question is not the income of any of these bodies. They are not to receive it at any time from any one but only the income on the capitalised sums from the Royal Trust Company. It is not income to them at all within the scope of the Act, particularly Section 3, and is not “ income accruing to the credit of the taxpayer ” within subsection 1 of section 11 :—

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“ The income, for any taxation period of a beneficiary of any estate or trust of whatsoever nature shall be deemed to include all income accruing to the credit of the taxpayer whether received by him or not during such taxation period.”

Mr. Steer argued that as by paragraph 35 of the Will the Trustees were to “ appropriate ” sufficient of “ my Trust Estate ” to insure an annual income sufficient to pay the annuities, it should be taken in equity as having been done, leaving the balance of the annual income to be divided 60% and 40% and that, therefore, the 40% was vested—as to 67% thereof in the named beneficiaries, and as to 33% in the five bodies mentioned above or, in the alternative, in the Burns Memorial Trust. As to the five bodies, the mere fact of charities being entitled to income does not give them the right to demand payment of the corpus, *Halifax School for the Blind v. Chipman* [1937] S.C.R. 196. As to the Burns Memorial Trust, I agree with the trial Judge that it is merely a name for a fund to be administered by the Royal Trust Company and that Company is nothing more than a trustee as was the Council of Colne in the *Birtwhistle* case. The income in question does not belong to it beneficially and, like the Council of Colne, it is not a charitable organization.

The claim for exemption therefore fails but it is still necessary for the respondent to show that the estate is taxable in respect of the income in question. He seeks, first of all, to hold the trustees taxable under subsection 2 of section 11 :—

“ Income accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests shall be taxable in the hands of the trustee or other like person acting in a fiduciary capacity, as if such income were the income of a person other than a corporation, provided that he shall not be entitled to the exemptions provided by paragraphs (a) (d) (e) and (i) of subsection

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one of section five of this Act, and provided further that should more than one such trust be created, substantially all the assets of which are received from one person (whether or not administered by the same or different trustees) and be so conditioned as to fall in ultimately in favour of one beneficiary, class or group of beneficiaries, then the income of the several trusts shall be taxed as one trust in the hands of such one of the trustees as the Minister may determine."

on the ground that the income is "accumulating in trust for the benefit of unascertained persons." In the *Birtwhistle* case the Privy Council 10 held "the subsection applies in every case where income is being accumulated in trust for the benefit of unascertained persons whether those persons will or will not ultimately take a vested interest in such income and whether they will or will not ever become entitled to specific portions of it. In the present case the accumulated interest in the hands of the respondents as trustees will in the year 1948 have to be handed over to the Municipal Council of Colne as trustees in trust to be applied for the benefit of the aged and deserving poor of that town. Such aged and deserving poor are without any question persons, and equally without question they are unascertained. The case therefore, seems to fall within 20 the very words of the subsection."

The trial judge was of opinion that the Lacombe Home and the Salvation Army were "unascertained persons" but I am unable to agree. Les Sœurs de Charité de la Providence and the Salvation Army are bodies corporate and politic as mentioned in section 1 (h) of the Act:—

"(h) 'person' includes any body corporate and politic and any association or other body and the heirs executors administrators and curators or other legal representatives of such person, according to the law of that part of Canada to which the context extends"

and they are ascertained. I quite agree that the interposition of trustees 30 between executors and ultimate beneficiaries cannot avoid the liability to taxation under subsection (2) of section 11 as this was distinctly held in the *Birtwhistle* case but the Lacombe Home and the Salvation Army are not trustees in any sense. Each organisation uses its funds generally to help the poor and afflicted but the income under discussion is accumulating in trust for their benefit and not for the ones under their care. It is true that in the *Birtwhistle* case the accumulated income was to be handed over by the Trust and Guarantee Company to the Municipal Council to be used by the latter for the benefit of aged and deserving poor of Colne, while here the Royal Trust Company is to hand over merely a 40 share of the income on the income in dispute to the two bodies. The income is still accumulated in trust for their benefit to the extent of their shares.

I agree, however, that the income is accumulating in trust for the benefit of unascertained persons so far as the gifts of income thereon to the other three funds are concerned. The trustees of each of these funds are merely trustees to apply the gifts, according to the approved scheme, to the benefit of (a) poor, indigent and neglected children, (b) widows and orphans of members of the Calgary Police Force, (c) widows and orphans of members of the Calgary Fire Brigade. Such trusts fall clearly 50

within the decision in the *Birtwhistle* case and the judgment of this Court in *Cosman's Trustees v. Minister of National Revenue* (1941) 3 D.L.R. 224. While it is not their income, it is income accumulating in trust for their benefit since they are entitled to a share of the income thereon.

The respondent then contends that subsection (4) of section 11 applies to the income for 1940 and 1941. From 1934 to 1940 this subsection read :—

“ Dividends received by an estate or trust and capitalized shall be taxable income of the estate or trust.”

10 Counsel for the respondent, before the trial judge and before this Court, did not attempt to succeed on this point for the years 1938 and 1939 under this wording of the subsection so that we are free from the responsibility of construing it and of considering whether to the extent that dividends may have entered into the income of “ my Trust Estate,” part of the 33% or 40% of the income for the years 1938 and 1939 are taxable. However by chapter 34 of the 1940 Statutes the above section 4 was repealed and the following enacted in lieu thereof and made applicable to income of the 1940 taxation period and fiscal periods ending therein and to all subsequent periods :—

20 “ 4. (a) Income received by an estate or trust and capitalised shall be taxable in the hands of the executors or trustees, or other persons acting in a fiduciary capacity.

(b) Income earned during the life of any person shall when received after the death of such person by his executors, trustees or other like persons acting in a fiduciary capacity be taxable in the hands of such fiduciary.”

Mr. Steer contended that this was not a true charging subsection as no provision was made as to the appropriate rates of taxation, and he pointed out that it was only in 1941, by section 19 of Chapter 18, that 30 paragraph (c) was added :—

“ (c) Income taxable under the provisions of this subsection shall be taxed as if such income were the income of a person other than a corporation provided that no deduction shall be allowed in respect of the exemptions provided by paragraphs (c) (d) (e) (ee) and (i) of subsection one of section five of this Act.”

In my view this clause was added *ex abundanti cautela*. In *Holden v. Minister of National Revenue* (1933) A.C. 526 the Privy Council decided that subsection (2) of section 11 as it then stood was a valid charging provision. It is true that the words “ as if such income were the income 40 of an unmarried person ” appeared therein but I have no doubt that no other conclusion would be arrived at under the present wording of that subsection “ as if such income were the income of a person other than a corporation ” since their Lordships had no difficulty in deciding as they did, although there was nothing to indicate that the unmarried person was to be a person who was not a householder and without dependents. Clause (a) of Section 4 being a true charging provision, its terms are too clear to admit of any doubt that where, as here, income is received by an estate and capitalised it is taxable in the hands of the trustees.

50 It is contended in the respondent's factum, but was not argued that the definition of “ person ” in section 1 (h) is wide enough to include

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executors and trustees and that, therefore, income accumulating in trust in the hands of trustees and capitalised can be taxed under section 9 This argument misconceives the meaning of section 1 (h) and the whole tenor of the Act. "Person" is stated to include the heirs, executors, administrators and curators or other legal representatives of such person, but this has no bearing upon the question of taxation of post mortem income accumulated in trust by executors, administrators or other legal representatives including trustees. If such income is not caught by Section 11 it is not covered.

The income for the years 1940 and 1941 from which the Lacombe 10 Home and the Salvation Army would receive two-fifths of the income thereof in due course is, therefore, covered by subsection (4) of section 11 leaving only two-fifths of the income for the years 1938 and 1939 from which these institutions are ultimately to receive the income free from taxation. The appellants have succeeded in part. They should receive one half of their costs of the appeal to this Court and there should be no costs in the Exchequer Court.

(B) Rand,  
J.

RAND, J. : The controlling fact in this controversy is the direction to accumulate and to capitalise until the death of the annuitants the portion of the net income intended for the five charities. At that time, 20 the whole of the capital, including the added increments is to be paid over to the trustee of the Burns Memorial Fund to hold in perpetuity and to distribute the annual income among those entitled. Under that provision the accumulations never belong to nor come into the possession of the charities ; they represent solely the growth of the capital which ultimately becomes the principal from which the income benefits to the charities arise.

For that reason I think it impossible to say that the accumulations are the income of charitable institutions and they are not then within the exemption of section 4 (e) of the Income War Tax Act. Likewise 30 they are not income "accruing to the credit of the taxpayer whether received by him or not during such taxation period" within section 11 (1).

In support of this view of "income" to the ultimate beneficiary the decision of Rowlatt, J. in *I.R. Com. v. Blackwell* (1924) 2 K.B. 351 was cited ; but Mr. Steer pointed out that the Court of Appeal in dealing with this case in (1926) 1 K.B. 392 expressly abstained from passing on the rule laid down ; and that in *I.R. Com. v. Pakenham* (1927) 1 K.B. 594 Rowlatt, J. expresses doubts that his former view was sound. But there is an essential difference between the factual basis of the *Blackwell* decision and that here. 40

There, the accumulated income would go ultimately to a beneficiary ; and it was held that even if the interest of the son was vested, a postponement during minority of payment over would prevent the accumulations from being his "income." Here, as I have stated, the beneficiaries never become entitled to receive the annual increments in any form and the purpose of accumulation is to capitalise them for a subsequent enjoyment of income from them only.

Are they "income accumulating for the benefit of" unascertained persons or of persons with contingent interests within section 11 (2) ?

The plain meaning of that language is, I think, that the accumulation, when completed, passes in its entirety to the persons entitled; and that transmission is the benefit contemplated. Here in a sense the accumulations are for the "benefit" of the charities in the future increased income from increased capital. But the word cannot, in my opinion, be extended to that indirect and remote advantage. If it were, the subsection would be duplicated in respect of capitalisation of income for unascertained persons or for contingent interests, by subsection 4 unless it is said as I think it impossible to say, that subsection 4 does not apply to capitalisation when such persons or interests are involved. It would seem, moreover, to be contradictory to say that these annual increments are not income either under 4 (e) or 11 (1) because they never reach the beneficiaries and yet to treat their accumulation as "income" of the same beneficiaries under 11 (2). To do that would be to distinguish between "income of" a beneficiary and "income accumulating for the benefit of" a beneficiary. They are not, therefore, "for the benefit of" these charities whatever may be the latter's interest in them.

10

There remains subsection 4, and this seems to me to be designed to meet precisely the case we have here, that of capitalisation of accumulating income. Subsections 1 and 2 of the section distribute the cases of income to ascertained or unascertained persons with vested or contingent interests which at some stage passes to them as income; subsection 4 deals with the capitalisation of income regardless of its ultimate destination.

20

The difficulty, however, facing the respondent is that of the adequacy of the charging language. Paragraph (a) was enacted in 1940 and paragraph (c) only in 1941 and the question is whether under (a) alone the charge is sufficiently provided. The paragraph is as follows:—

30

"Income received by an estate or trust and capitalised shall be taxable in the hands of the executors or trustees or other like persons acting in a fiduciary capacity."

40

On what basis is that taxation to be calculated? Is an "estate or trust" to be a person or a corporation and in either case what if any exemptions are to be allowed? Subsection 2 cannot be resorted to because it deals with different subject-matter and conditions to which it is limited and there is no other section that can be called in aid. In the presence in the Act of several scales of taxation how can we find in that initial provision a guide to the measure of charge which the legislation intends? I think the provision incomplete, it is casus omissus and for the years in question up to and including 1940, inoperative. For the year 1941, however it is applicable to the income in question. I would, therefore, allow the appeal and reduce the assessments of income for 1938, 1939 and 1940 by the amounts so accumulated respectively. The 1941 assessment on these items should be made under subsection 4 of section 11. The appellant should recover three-quarters of the costs in both courts.

50

ESTEY, J.: The appellants are the executors of the Will of the Honourable Patrick Burns who died February 24th 1937. Their contention is that the Minister of National Revenue was in error in disallowing certain deductions (on the basis that the items of income deducted were non-taxable) made by them in the income tax returns filed in this estate for the years 1938, 1939, 1940 and 1941. The Minister's disallowance was upheld in the Exchequer Court.

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After directing certain specific devises and bequests the Will provides for the conversion into money of the residue from which funeral testamentary and other specified expenses should be paid and then "my Trustees shall stand possessed of the balance of the said rest residue and remainder with the income and accumulations thereof herein referred to as 'my Trust Estate' upon further trust to invest and out of the net annual income therefrom and from all parts of 'my Trust Estate' to pay annually" certain annuities. After payment of these annuities the will provides "and to invest the surplus, if any, of such annual income in the names of my Trustees as part of the capital of 'my Trust Estate' 10 at compound interest."

The Will then directs "my Trustees to hold 'my Trust Estate' and to appropriate sufficient of the same or of the investments thereof to insure an annual income therefrom sufficient to pay and discharge the Annuities and to hold 'my Trust Estate' including the accumulations thereof and the additions thereto by reason of the deaths of Annuitants or otherwise until the death of the last of the Annuitants to whom I have bequeathed Annuities by this my Will or the death of the widow of my said son . . . whichever shall last happen" and during that period to pay from the net annual income to specified nephews and nieces 60% of that income and 20 "to invest the surplus, if any, of such annual income in the names of my Trustees as part of the capital of 'my Trust Estate' at compound interest." This surplus is the 40% "of the net income of the estate" referred to in para. 9 (hereinafter quoted) of the Agreed Statement of Facts.

The Will then provides that the residue of "my Trust Estate" shall be distributed "upon the death of the last of the annuitants to whom I have bequeathed annuities in this my Will or the death of the widow of my said son, whichever last shall happen." This distribution shall be upon the basis of 67% to specified beneficiaries, and 33% thereof shall be 30 paid and conveyed "unto The Royal Trust Company for the creation and establishment of a Trust to be known as the 'Burns Memorial Trust' to be administered by it as Trustee at its office in the City of Calgary, in the Province of Alberta, and the net annual income therefrom to pay and distribute annually in equal shares thereof amongst the following :—

"(1) The father Lacombe Home at Midnapore in the province of Alberta.

"(2) The Branch of Salvation Army, having its Headquarters at the City of Calgary in the Province of Alberta.

"(3) The Children's Shelter carried on under the auspices of the said City of Calgary, towards which I have bequeathed 40 Fifty (50) 4% non-voting, non-cumulative redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) by this my Will.

"(4) To the Fund established for the benefit of Widows and Orphans of Members of the Police Force of the City of Calgary, towards which I have bequeathed Fifty (50) 4% non-voting non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) by this my Will.

"(5) To the Fund established for the benefit of Widows and Orphans of Members of the Fire Brigade of the City of Calgary 50

towards which I have bequeathed Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) by this my Will.”

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In each year after all payments were made there was a surplus of income which has been invested in compliance with the terms of the Will “in the names of my Trustees as part of the capital of ‘my Trust Estate’ at compound interest.” The surplus invested as capital has in each year increased the *corpus* of “my Trust Estate” to be divided 67% and 33% as above indicated.

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10 At the hearing before the Exchequer Court the parties filed an agreed statement of facts para. 9 of which reads as follows:—

“9. That the taxable income submitted by the Appellant the taxable income as assessed by the Department and the amount disallowed by the Department during the years 1938 to 1941 inclusive are as follows:—

		Taxable Income per Department	Estate	Amount Disallowed by Income Tax Department
20	1938 ..	\$10,597.94	\$9,199.01	\$1,398.93
	1939 ..	11,656.57	7,809.90	3,846.67
	1940 ..	20,096.97	14,382.57	5,714.40
	1941 ..	26,775.24	18,118.03	8,657.21
		<u>\$69,126.72</u>	<u>\$49,509.51</u>	<u>\$19,617.21</u>

The amounts disallowed by the Income Tax Department represent 33% of 40% of the net income of the estate. These amounts are claimed as proper deductions by the estate on the ground that they have accrued to the credit of an ascertained beneficiary or ascertained beneficiaries which are charitable institutions. This view is not accepted by the Income Tax department.

30 The issue here to be determined: is 33% of the income realized from the investment of 40% of the income—being the surplus after paying in each year 60% thereof to the nephews and nieces—subject to income tax?

40 It is agreed that in each of the years 1938 to 1941 inclusive 60% of the net income was paid out to the specified nieces and nephews and the executors, by book entry, transferred the remaining 40% from the estate income account into the estate capital account. The executors made no segregation or allocation of the net income from the said 40% as between the individuals entitled to 67% thereof and the parties entitled to the remaining 33% thereof.

The appellants' contention is that income derived from the 33% is not taxable because (a) the “Burns Memorial Trust” is a charitable institution and as such not taxable within the meaning of Section 4 (e) or alternatively the income accrued to the credit of The Royal Trust Company, or in the alternative to the five named ascertained beneficiaries

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or in the further alternative to the Salvation Army and Lacombe Home which are ascertained beneficiaries and therefore, under section 11 (1), the individual beneficiaries and not the executors are taxable with respect thereto.

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The Crown on the other hand contends that neither section 4 (e) nor 11 (1) apply because the income in question was received by the executors and used by them to make certain payments and invest the surplus as part of the capital of "my Trust Estate." At the time of distribution 33% of the residue of "my Trust Estate" will be paid over to The Royal Trust Company not as income but as capital. The Royal Trust Company will receive it as capital and hold it in trust and pay the income therefrom to the specified charities. In other words that neither The Royal Trust Company as trustee nor any of the beneficiaries will ever receive any portion of the amounts in question as income and therefore they cannot be taxed nor be granted an exemption with respect to income which they never received. Further, that the trustees are liable under section 11 (2) in that the beneficiaries are unascertained and if not, then they are liable under Section 9. 10

Section 4 (e) of the Income War Tax Act reads :

"4. The following incomes shall not be liable to taxation hereunder :— 20

(e) The income of any religious, charitable, agricultural and educational institution, board of trade and chamber of commerce, no part of the income of which inures to the personal profit of, or is paid or payable to any proprietor thereof or shareholder therein."

The money is paid to The Royal Trust Company "for the creation and establishment of a Trust to be known as the 'Burns Memorial Trust' to be administered by it as Trustee at its office in the City of Calgary, in the Province of Alberta, and the net annual income therefrom to pay and distribute annually in equal shares thereof" amongst the five specified beneficiaries. It is not nor could it be successfully contended that The Royal Trust Company is a charitable institution within the meaning of section 4 (e) but it is contended that the "Burns Memorial Trust" is a charitable institution. 30

An order made and issued out of the Supreme Court of Alberta under date of December 11th 1939, declared all of these gifts, "good and valid charitable bequests." Such a declaration, however, does not conclude the issue. In order to be exempt under section 4 (e) it must be "the income of any . . . charitable . . . institution." A somewhat similar question was dealt with in *Minister of National Revenue v. Trusts and Guarantee Co.* [1940] A.C. 138, where, speaking on behalf of the Privy Council, Lord Romer, at p. 149 stated : 40

"That it is a charitable trust no one can doubt. But their Lordships are unable to agree that it is a charitable institution such as is contemplated by s. 4 (e) of the Act. It is by no means easy to give a definition of the word 'institution' that will cover every use of it. Its meaning must always depend upon the context in which it is found. It seems plain, for instance, from the context in which it is found in the subsection in question that the word 50



10

is intended to connote something more than a mere trust. Had the Dominion Legislature intended to exempt from taxation the income of every charitable trust, nothing would have been easier than to say so. In view of the language that has in fact been used, it seems to their Lordships that the charitable institutions exempted are those which are institutions in the sense in which boards of trade and chambers of commerce are institutions, such, for example as a charity organisation society or a society for the prevention of cruelty to children. The trust with which the present appeal is concerned is an ordinary trust for charity. It can only be regarded as a charitable institution within the meaning of the subsection if every such trust is to be so regarded, and this, in their Lordships' opinion, is impossible. An ordinary trust for charity is, indeed, only a charitable institution in the sense that a farm is an agricultural institution. It is not in that sense that the word institution is used in the subsection."

The appellants submit the discussion of the word "institution" in *Mayor of Manchester v. McAdam* [1896] A.C. 500, where at p. 511 Lord Macnaghten after pointing out that "institution" is a "little difficult to define" continues:

"It is the body (so to speak) called into existence to translate the purpose as conceived in the mind of the founders into a living and active principle."

They contended that the testator had two purposes in mind, (1) to benefit the five named beneficiaries and (2) to perpetuate the name of the benefactor. They contend that the phrase "Burns Memorial Trust" gives to the trust "the perpetual memorial idea" and this provides what Lord Romer requires by his words "something more than a mere trust" and therefore the "Burns Memorial Trust" is a charitable institution. This phrase perpetuates the name of the benefactor in association with this trust but does not make it a perpetual charitable trust. If the words "to be known as the 'Burns Memorial Trust'" are deleted from para. 36 of the Will which provides for this trust neither the permanency of the trust, the management and disposition thereof nor the position of the beneficiaries would be in any way affected. It is a perpetual charitable trust upon the construction of the Will quite apart from these words under the authority of the *Halifax School for the Blind v. Lewis Chipman* [1937] S.C.R. 196.

Further, all the work in connection with this fund is to be performed by The Royal Trust Company as trustee. That company receives from the trustees the fund "for the creation and establishment of a Trust to be known as the 'Burns Memorial Trust' to be administered by it as Trustee" and "to pay and distribute annually" the income amongst the five beneficiaries. It is a perpetual charitable trust fund the income from which is used for charitable purposes through the medium of the five beneficiaries. There is nothing to be performed in connection with this trust by the "Burns Memorial Trust" nor is there a body or entity which could be described as an institution styled the "Burns Memorial Trust."

Under both of the foregoing discussions of the word "institution" there is contemplated a body or entity functioning to attain some charitable

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purpose. Moreover, the will creating this perpetual charitable trust not only does not contemplate that the "Burns Memorial Trust" will be such an institution, but specifically states that the trust is to be "known as the 'Burns Memorial Trust'."

Indeed, from all its relevant provisions, the Will indicates that the testator, in using this phrase intended to give to the trust a name that would embody a memoir of its founder. In its legal significance it is but the name of the trust, and I am therefore in agreement with the conclusion of the learned Judge of the Exchequer Court that these words are "a name attached to a fund," and that under this Will the "Burns Memorial Trust" 10 is not an institution as contended by the appellants.

The appellants further submit that the situation here created is identical with that which would have existed had the testator provided for the creation of a "Burns Memorial Corporation" or a "Burns Memorial Trust Corporation" with general charitable objects and then have directed that this money should be paid to that Corporation for charitable purposes. If a corporation so constituted could upon an examination of its nature and purpose be held a charitable institution, the conclusion suggested by the appellant might follow. That would be a situation entirely different 20 from that which here obtains where a capital sum of money is given to a corporation that is not a charitable institution to create and administer a trust fund to be known as the "Burns Memorial Trust."

Moreover, and quite apart from the foregoing, because this income is received and applied by the executors as above indicated, even if the "Burns Memorial Trust" could be construed as an institution, there still remains the fact that the income as income is never paid to or received by the "Burns Memorial Trust." That trust will not be created until the residue of "my Trust Estate" is distributed some time in the future. At that time the fund will be paid as capital, not as income, to The Royal Trust Company to create the trust known as the "Burns Memorial Trust." 30 It therefore cannot be construed as "the income of any . . . charitable . . . institution" within the meaning of section 4 (e) and is not entitled to the benefit of the exemption therein provided for.

On the same basis, that as income it is never received by any of the beneficiaries, the appellants' submission that the income is that of the five named beneficiaries cannot be supported.

Then with respect to the appellants' contention that the executors are not taxable because the income here is "income accruing to the credit of the taxpayer whether received by him or not during such taxation period." 40

"11.—(1) The income, for any taxation period of a beneficiary of any estate or trust of whatsoever nature shall be deemed to include all income accruing to the credit of the taxpayer whether received by him or not during such taxation period."

It is not contended that the income is year by year received by The Royal Trust Company or the "Burns Memorial Trust" or the five beneficiaries, but that it is "income accruing to the credit of" either The Royal Trust Company or the "Burns Memorial Trust" or the five beneficiaries within the meaning of section 11 (1).

In order to come within the terms of this section, it must be "income accruing to the credit of the taxpayer." As income it is never paid, nor is it intended that it should ever be paid, to the Royal Trust Company, the "Burns Memorial Trust" or the five beneficiaries. It is year by year added to and made part of "my Trust Estate" and at the time of distribution thereof it is paid to The Royal Trust Company as capital to be retained and used by it to create a perpetual trust fund ("Burns Memorial Trust"). It is only after the creation of this trust fund that the beneficiaries will receive income which this capital fund will earn and that is the only income that under the terms of the Will these beneficiaries will receive. A somewhat similar provision came before the Privy Council in *St. Lucia Usines and Estates Co. v. St. Lucia (Colonial Treasurer)* [1924] A.C. 508, where Lord Wrenbury at p. 512 speaking on behalf of the Privy Council, stated:—

10

"The words 'income arising or accruing' are not equivalent to the words 'Debts arising or accruing.' To give them that meaning is to ignore the word 'income.' The words mean 'money arising or accruing by way of income.' There must be a coming in to satisfy the word 'income.' This is a sense which is assisted or confirmed by the word 'received' in the proviso at the end of s. 4, Sub.s. 1."

20

Their Lordships pointed out that "it does not follow that income is confined to that which the taxpayer actually receives" and illustrated this statement by reference to deduction of income at the source and as it is arrived at by business men and others in the preparation of their balance sheets and profit and loss accounts.

Moreover the view expressed by Lord Wrenbury in the *St. Lucia* case appears particularly applicable because of the definition of "income" in section 3 (1) of the Income War Tax Act:—

30

"3. (1) For the purposes of this Act 'income' means the annual net profit or gain or gratuity, whether ascertained and capable of computation as being wages, salary, or other fixed amount or unascertained as being fees or emoluments or as being profits from a trade or commercial or financial or other business or calling directly or indirectly received by a person from . . ."

This definition makes it clear that the income must be "directly or indirectly received" and with respect to cases coming under section 11 (1) it is there provided "whether received by him or not during such taxation period." This is further emphasized by Mr. Justice Newcombe:

40

"If the income be accruing to the credit of an ascertained person who is the beneficiary of an estate or trust the taxation of it is provided for by the first sentence of the section; but, whatever may be the meaning of 'taxpayer' in the context income which by the terms of the trust he may never receive cannot be said to be accruing to his credit and therefore such income is not that of the testator's children or grandchildren within the intent of that clause" (*In re McLeod v. The Minister of Customs and Excise* [1926] S.C.R. 457 at p. 470).

This income is never received by any of the foregoing beneficiaries within the meaning of section 11 (1) and cannot therefore be "income accruing to the credit" of any of them under that section.

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The first of the respondent's contentions is that this income is received by the trustee and is "accumulating in trust for the benefit of unascertained persons" and therefore the appellants are taxable under section 11 (2).

"11. (2) Income accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests shall be taxable in the hands of the trustee or other like persons acting in a fiduciary capacity, as if such income were the income of a person other than a corporation . . ."

The express provisions of section 3 (1) defining "income" for the purposes of this Act are clearly applicable to both subsections (1) and (2) 10 of section 11, more particularly as there is no effort to otherwise define that word in section 11. In 11 (2) it is the income "accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests" that is dealt with. Therefore the income which is here accumulating must some time be "directly or indirectly received" as income in order to come within the definition of section 3 (1). Without repeating the considerations already mentioned, it is abundantly clear that no part of the trust fund, or specifically that part of it that the respondent seeks to tax, is income that will ever be received as such by the beneficiaries who it is now contended are unascertained persons. It 20 will never reach them as either income or capital. It will be added to "my Trust Estate" a part of which will be the capital of the perpetual charitable trust provided for and only a share of the income from that trust will the beneficiaries ultimately receive.

That the funds we are hereby concerned with will create a perpetual charitable trust, the principal of which will remain always intact and only the income therefrom will ever be received by a beneficiary, distinguishes this case from *Minister of National Revenue v. Trusts and Guarantee Co.* [1940] A.C. 138, where Lord Romer speaking on behalf of the Privy Council stated at p. 148 : 30

"In the present case the accumulated interest in the hands of the respondents as trustees will in the year 1948 have to be handed over to the municipal council of Colne as Trustees in trust to be applied for the benefit of the aged and deserving poor of that town. Such aged and deserving poor are without any question persons, and equally without question they are unascertained."

In that case the income was "accumulating in trust for the benefit of unascertained persons," and at a specified time was "to be applied for the benefit of the aged and deserving poor." Ultimately these unascertained persons received the income there in question and that is a requisite if 40 income as defined in 3 (1) is to be taxed under section 11 (2). Under the Burns will, as already pointed out, the income sought to be taxed will never be "directly or indirectly received" by any person or persons unascertained or otherwise. It cannot therefore be taxed under section 11 (2).

In 1940 Parliament amended Section 11 by repealing subsection 4 (a) and inserting a new 4 (a) reading as follows :—

"11. (4) (a) Income received by an estate or trust and capitalised shall be taxable in the hands of the executors or trustees, or other like persons acting in a fiduciary capacity." 50

Section 11 is a charging section : *Holden v. Minister of National Revenue* [1933] A.C. 526. When in section 11 (2) Parliament imposed a new tax it specified the rate. The tax there imposed was upon "income accumulating in trust for the benefit of . . ." while section 11 (4) (a) deals with "income received by an estate or trust and capitalised" which is different in character and may be quite different in result. Nor do I find any words which indicate an intention either that the rate specified in 11 (2) be made applicable to both subsections, or to adopt any other rate specified in the statute. Without a rate or determinable amount there can be no impost. A tax is defined as "an impost, a tribute imposed upon the subject" : "Wharton's Law Lexicon," 14th ed., 978. Therefore in the enactment of this subsection 4 (a) a factor essential to the imposition of a tax is omitted and the result is that no tax is imposed.

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Parliament in the following year 1940-41 R.S.C. 18 s. 19 added section 11 (4) (c) :—

"(c) Income taxable under the provisions of this subsection shall be taxed as if such income were the income of a person other than a corporation, provided that no deduction shall be allowed in respect of the exemptions provided by paragraphs (a) (d) (e) (ee) and (i) of subsection one of section five of this Act "

and by section 32 of the same Act this provision was made applicable to the income of the 1941 taxation period.

" 32. Sections one, two, four, five, six, seven, nine, ten, eleven, twelve, seventeen, nineteen, twenty, twenty-one, twenty-four, twenty-five and twenty-six of this Act shall be applicable to income of the 1941 taxation period and fiscal periods ending therein and of all subsequent periods."

It therefore follows that with respect to the 1941 period the executors are under section 11 (4) (a) and (c) liable for the tax with respect to the income here in question.

The respondent's second contention is that quite apart from the provisions of section 11 (2) the appellants are liable under the provisions of Section 9 for all of the years in issue. Section 9 in part reads :—

" 9.—(1) There shall be assessed, levied and paid upon the income during the preceding year of every person . . . "

The word " person " is defined in section 2 (h) :—

" 2. (h) ' person ' includes any body corporate and politic and any association or other body, and the heirs, executors, administrators and curators or other legal representatives of such person, according to the law of that part of Canada to which the context extends : "

Sections 9 and 11 are both charging sections and the language used indicates that under these sections Parliament imposes a tax upon entirely different persons. Section 9 (1) provides for the assessing, levying and paying upon income during the preceding year of every person other than a corporation or joint stock company, and 9 (2) deals with the corporation and the joint stock company. The income tax is here imposed upon the person, corporation or joint stock company per se even though that tax may be assessed, levied and collected from their " heirs, executors, administrators, curators or other legal representatives."

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Court of  
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Section 11 charges an income with respect to that earned by the estate or trust and imposes the tax upon either the party administering the estate or trust, or the beneficiary. The amendment of 1940-41 was a further step in the attainment of that end and provided for a tax not previously imposed.

Under the provisions of these sections it follows that prior to the amendment of section 11, when in 1940-41 the above quoted section 11 (4) (c) was passed, no tax was imposed upon the trustees with respect to the income here in question. In the result the amounts here in question were not taxable in the years 1938, 1939 and 1940 and therefore were 10 improperly disallowed by the Crown, while in 1941, because of the enactment of 11 (4) (c) the amount in that year was taxable and the deduction properly disallowed.

The judgment appealed from should be so varied and the appellants should have three-fourths of their costs throughout.

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No. 14.

**FORMAL JUDGMENT.**

No. 14.  
Formal  
Judgment,  
26th  
October  
1946.

The Appeal of the above-named Appellants from the Judgment of the Exchequer Court of Canada, pronounced in the above cause on the ninth day of January in the year of our Lord one thousand nine hundred and 20 forty-six, having come on to be heard before this Court on the seventeenth, twentieth and twenty-first days of May in the year of our Lord one thousand nine hundred and forty-six, in the presence of counsel as well for the Appellants as for the Respondent whereupon and upon hearing what was alleged by counsel aforesaid ; this Court was pleased to direct that the said Appeal should stand over for Judgment and the same coming on this day for Judgment.

**THIS COURT DID ORDER AND DECLARE** that two-fifths of the income in question herein being that proportion from which the Lacombe Home and the Salvation Army are ultimately entitled to the interest 30 thereon, are free from income tax for the years 1938 and 1939.

**AND THIS COURT DID FURTHER ORDER AND ADJUDGE** that the said appeal should be and the same was allowed to that extent, and that the said judgment of the Exchequer Court of Canada should be and the same was modified accordingly.

**AND THIS COURT DID FURTHER ORDER AND ADJUDGE** that the said Respondent should and do pay to the said Appellants one-half of their costs incurred on their appeal to this Court and that there be no costs in the Exchequer Court of Canada.

(Sgd.) PAUL LEDUC, 40  
Registrar.

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No. 15.

ORDER granting Special Leave to Appeal to His Majesty in Council.

*In the  
Privy  
Council.*

AT THE COURT AT BUCKINGHAM PALACE

The 3rd day of July, 1947

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. HALL

VISCOUNT ADDISON

MR. MATHERS

MR. SECRETARY CREECH JONES

No. 15.  
Order  
granting  
Special  
Leave to  
Appeal to  
His Majesty  
in Council,  
3rd July  
1947.

10 WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 1st day of July 1947, in the words following, viz. :—

20 “ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Appellants in the matter of an Appeal from the Supreme Court of Canada between the executors of the will of the Honourable Patrick Burns deceased ; The Royal Trust Company named in the Will of the Honourable Patrick Burns as Trustee for Burns Memorial Trust ; the Father Lacombe Home at Midnapore ; the Governing Council of the Salvation Army Canada West ; the Trustees of the Fund to be administered by the City of Calgary for the benefit of poor indigent and neglected children under the Will of the Honourable Patrick Burns ; the Trustees of the fund to be administered for the benefit of widows and orphans of members of the Police Force in the City of Calgary under the Will of the Honourable Patrick Burns ; and the Trustees of the Fund to be administered for the benefit of widows and orphans of members of the Fire Brigade of the City of Calgary under the Will of the Honourable Patrick Burns Appellants and the Minister of National Revenue Respondent setting forth (amongst other matters) : that the Petitioners desire special leave to appeal from a Judgment of the Supreme Court dated the 22nd October 1946 which allowed but only in part the Petitioners' Appeal from a decision of the Exchequer Court dated the 9th January 1946 on the extent of the liability of the first Appellants under the Income War Tax Act for income tax for the years 1938, 1939, 1940 and 1941 : that two of the Judges in the Supreme Court would have allowed the Petitioners' Appeal in respect of 1938, 1939 and 1940 in its entirety but the majority held that the Petitioners' Appeal succeeded only as to 30 two-fifths of the amount in controversy in respect of the years 1938 and 1939 ; that all the Judges held that the Petitioners' Appeal failed in respect of 1941 and their decision unless reversed will also govern the tax liability of the first Appellants for all years subsequent to 1941 : that the case raises important questions on the construction of the Income War Tax Act and on the status as charities of the Burns Memorial Trust set up under the will of Patrick Burns

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*In the  
Privy  
Council.*

No. 15.  
Order  
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Special  
Leave to  
Appeal to  
His Majesty  
in Council,  
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*continued.*

(a Senator of Canada who died on the 24th February 1937) of the Salvation Army of the Father Lacombe Home and of the trustees of three funds under the will for the administration of which schemes were approved in 1939 by the Supreme Court of Alberta : that the Petitioners submit that by virtue of Section 4 (e) of the Income War Tax Act (Revised Statutes of Canada 1927 chapter 97 with relevant amendments) the income in question in this case is not liable to taxation : that the Petitioners further submit that the views of the minority of the Supreme Court that irrespective of the Petitioners' claim for exemption under Section 4 (e) of the Income War Tax Act nevertheless for the years 1938, 1939 and 1940 there was no provision in the Act under which the income in question was taxable is to be preferred to the view of the majority : And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Judgment of the Supreme Court dated the 22nd October 1946 and to make such further or other Order as to Your Majesty in Council may seem fit :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 22nd day of October 1946 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

“ AND Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER. 40

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## Exhibit No. 2.

Exhibit.

## WILL of the Hon. Patrick Burns.

2.  
 Will of the  
 Hon.  
 Patrick  
 Burns  
 deceased,  
 15th  
 January  
 1932.

THIS IS THE LAST WILL AND TESTAMENT of me, PATRICK BURNS, of the City of Calgary, in the Province of Alberta, Rancher.

2. I REVOKE all former Wills, Codicils and Testamentary Dispositions by me at any time heretofore made and declare this only to be and contain my last Will and Testament.

3. I NOMINATE, CONSTITUTE AND APPOINT my nephew MICHAEL JOHN BURNS, of the City of Calgary, in the Province of Alberta, Business Manager, my son and only child, PATRICK THOMAS MICHAEL BURNS my friends, THE RIGHT HONOURABLE RICHARD BEDFORD BENNETT, of the City of Calgary, aforesaid, King's Counsel, WILLIAM JOHN WILSON, of the City of Vancouver, in the Province of British Columbia, Capitalist, and ALICK COCHRANE NEWTON, of the City of Calgary, aforesaid, Broker, who and the Survivors or Survivor of them and their or his Successors or Successor, whether a Body Corporate or an individual, and whether appointed by the continuing and surviving Trustees, or under the provisions of The Trustee Act of the Province of Alberta, or any other Statute in that behalf, are included in the expression  
 10  
 20 " my Trustees " wherever the same hereinafter appears, to be the Executors and Trustees of this my Will.

4. I GIVE AND BEQUEATH to my said son, PATRICK THOMAS MICHAEL BURNS, absolutely, all my household furniture, furnishings, equipment and effects of every kind, nature and description whatsoever, pictures, prints, curios, objects of Art, plate, silver, china, glass, books, clothing, wearing apparel, jewellery and all groceries, fuel and other consumable stores, provisions and supplies which shall be in, about and upon the dwelling-house and premises and garages owned or occupied or used by me at the date of my death, in the City of Calgary and situate  
 30 upon the lands hereinafter described in Clause 6, of this my Will, being all the contents of such dwelling-house and garages, excepting ready money securities for moneys, deeds, contracts or other legal instruments and documents and any chattels hereby or by any Codicil to this my Will specifically bequeathed to any person.

5. I GIVE AND BEQUEATH to my son, Patrick Thomas Michael Burns, all automobiles owned by me at the time of my death, whether located in the garages situate on the lands immediately hereinafter described or elsewhere.

6. I GIVE AND DEVISE Lots Twenty-nine (29) to Thirty-two (32)  
 40 inclusive, in Block Seventy (70), and Lots Ten (10) to Thirty-three (33) inclusive, the East five (5) feet of Lot Thirty-four (34), and that portion of the lane in Block Eighty-eight (88), which lies to the East of a straight line drawn from a point on the Northern boundary of Lot Thirty-four (34), in said Block Eighty-eight (88), distant Twenty (20) feet East from the Western boundary of said Lot, to a point on the Southern boundary of said Lot Ten (10), distant Twenty (20) feet East from the Western boundary of said Lot Ten (10), all in said Block Eighty-eight (88), as said Lots and

*Exhibit.*  
 —  
 2.  
 Will of the  
 Hon.  
 Patrick  
 Burns  
 deceased,  
 15th  
 January  
 1932,  
*continued.*

Blocks are shown upon a Map or Plan of part of the City of Calgary aforesaid, of record in the Land Titles Office for the South Alberta Land Registration District as Plan A 1 Calgary, with the dwelling-house, offices, garages, buildings, gardens and ornamental and other grounds, fixtures and appurtenances thereto appertaining and belonging, unto my Trustees without their being in any event subject to impeachment for waste or the loss or destruction thereof UPON TRUST :—

(a) To hold the lands and premises hereinbefore described for the use, occupation and enjoyment of my said son, Patrick Thomas Michael Burns, until he shall have attained the age of 10 forty (40) years, PROVIDED HOWEVER that my Trustees with the consent of my said son, prior to his attaining the said age of forty (40) years and if my said son so desires, upon my Trustees purchasing lands with a suitable residence in substitution therefor may sell the lands and premises hereinbefore described and the proceeds of such sale except to the extent that these may be required to purchase lands and premises in substitution for the same, shall be paid into and be dealt with as part of " my Trust Estate " as the same is hereinafter created and defined, and UPON FURTHER TRUST to hold the lands and premises substituted for the lands 20 and premises hereinbefore described for the use, occupation and enjoyment of my said son, until he shall have attained the said age of forty (40) years and upon my said son attaining the said age of forty (40) years, then UPON FURTHER TRUST to convey the lands and premises hereinbefore described or the lands and premises substituted therefor to my said son as his own property absolutely ; and

(b) UPON THE FURTHER TRUST that in the event of my said son, Patrick Thomas Michael Burns, dying prior to his attaining the said age of forty (40) years leaving him a wife surviving, to hold 30 the lands and premises hereinbefore described or any lands and premises substituted therefor during the lifetime of my said son for the use, occupation and enjoyment of the widow of my said son, during all the days of her life which she shall survive him and PROVIDED FURTHER that if the lands and premises hereinbefore described shall not have been sold during the lifetime of my said son, my Trustees may in their uncontrolled and unfettered discretion sell the lands and premises hereinbefore described upon purchasing, arranging for or choosing a residence which in their opinion is suitable for the use, occupation and enjoyment of the widow of my 40 said son, during all the days of her lifetime which she shall survive him, and the proceeds of such sale, except to the extent that these are required to purchase suitable lands and a residence for the use, occupation and enjoyment of the widow of my said son, in substitution for the lands and premises hereinbefore described, shall be paid into and be dealt with as part of " my Trust Estate " as the same is hereinafter created and defined, and UPON FURTHER TRUST to hold the lands and premises substituted for the lands and premises hereinbefore described for the use, occupation and enjoyment of the widow of my said son all the 50 days of her lifetime which she shall survive him and upon the decease of the widow of my said son, UPON THE FURTHER

TRUST to sell and dispose of the lands and premises hereinbefore described, if then unsold, or any lands and premises substituted therefor and furniture and furnishings, if any, provided for the same and to pay the proceeds of such sale into "my Trust Estate" as hereafter created and defined to be dealt with as part thereof.

*Exhibit.*

2.

Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

7. I GIVE AND BEQUEATH to my niece, Barbara Ellen McGhee, wife of Patrick McGhee, presently residing at Brechin, in the Province of Ontario, Two Hundred (200) 4% non-voting, non-cumulative redeemable Preference shares in the capital stock of Burns Foundation (Limited) 10 having an aggregate nominal or par value of Twenty Thousand Dollars (\$20,000.00). AND I DIRECT that in the event of the death of the said Barbara Ellen McGhee, prior to the date of my decease, leaving lawful issue, such issue shall take, and if more than one equally between them, the said Two Hundred (200) Preference shares in the Capital Stock of Burns Foundation (Limited) to which his or her deceased mother would have been entitled under the terms of this my Will had she survived me. AND I FURTHER DIRECT that in the event of the death of my said niece, Barbara Ellen McGhee, prior to my decease, without leaving lawful issue, the said Preference shares hereby bequeathed to her shall become 20 and be dealt with as part of "my Trust Estate" as the same is hereinafter created and defined.

8. I GIVE AND BEQUEATH to my nephews, Thomas John Farrell, presently residing at the City of Calgary, in the Province of Alberta, and Patrick Edward Farrell, presently residing at Beaverton, in the Province of Ontario and Francis Dominic Farrell presently residing at the City of Vancouver, in the Province of British Columbia, sons of my sister, Mary Ann Farrell, widow of Laurence Farrell, presently residing at Beaverton aforesaid, Three Hundred (300) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited), 30 having an aggregate nominal or par value of Thirty Thousand Dollars (\$30,000.00) equally amongst them so that each shall receive One Hundred (100) of the said 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited), AND I DIRECT that in the event of the death of all or any of my said nephews prior to the date of my decease, leaving lawful issue, such issue shall take, and if more than one equally between them, the said One Hundred (100) Preference Shares in the Capital Stock of Burns Foundation (Limited), to which his or her deceased father would have been entitled under the terms of this my Will had he survived me. AND I FURTHER DIRECT 40 that in the event of the death to such predeceasing nephew Thomas John Farrell, Patrick Edward Farrell and Francis Dominic Farrell, prior to my decease, without leaving lawful issue, that portion of the said Preference shares hereby bequeathed to such predeceasing nephew or nephews shall become and be dealt with as part of "my Trust Estate" as the same is hereinafter created and defined.

9. I GIVE AND BEQUEATH to my nephews, Thomas Eugene Burns, James Francis Drury Burns, Frederick Joseph Patrick Burns and Bertrand Ulric Nelson Burns, all presently residing at the City of Calgary, in the Province of Alberta, sons of my deceased brother, Thomas Burns, 50 formerly residing at the said City of Calgary, other than my nephew, Michael John Burns, Four Hundred (400) 4% non-voting, non-cumulative,

*Exhibit.*  
 2.  
 Will of the  
 Hon.  
 Patrick  
 Burns  
 deceased,  
 15th  
 January  
 1932,  
*continued.*

redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) having an aggregate nominal or par value of Forty Thousand Dollars (\$40,000.00) equally amongst them so that each shall receive One Hundred (100) of the said 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited), AND I DIRECT that in the event of the death of all or any of my said nephews prior to the date of my decease, leaving lawful issue, such issue shall take, and if more than one equally between them, the said One Hundred (100) Preference Shares in the Capital Stock of Burns Foundation (Limited) to which his or her deceased father would have been entitled under the terms of this my Will had he survived me. AND I FURTHER DIRECT that in the event of the death of any or all of my said nephews, Thomas Eugene Burns, James Francis Drury Burns, Frederick Joseph Patrick Burns and Bertrand Ulric Nelson Burns prior to my decease, without leaving lawful issue, the said Preference Shares hereby bequeathed to such predeceasing nephew or nephews shall become and be dealt with as part of "my Trust Estate" as hereinafter created and defined. 10

10. I GIVE AND BEQUEATH to my nieces, Mary Ethel Sparrow, wife of Albert Costigan Sparrow, presently residing at the City of Calgary, in the Province of Alberta, Zeta Kathleen Coughlin, wife of Philip Coughlin, presently residing at the City of Winnipeg, in the Province of Manitoba, and Eleanor Stella English, wife of William English, presently residing at Winnipeg, in the Province of Manitoba, daughters of my deceased brother, Thomas Burns, formerly residing at the City of Calgary, in the Province of Alberta, Six Hundred (600) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) having an aggregate nominal or par value of Sixty Thousand Dollars (\$60,000.00) equally amongst them so that each shall receive Two Hundred (200) of the said 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited). AND I DIRECT that in the event of the death of all or any of my said nieces prior to the date of my decease, leaving lawful issue, such issue shall take, and if more than one equally between them, the said Two Hundred (200) Preference Shares in the Capital Stock of Burns Foundation (Limited), to which his or her mother would have been entitled under the terms of this my Will had she survived me. AND I FURTHER DIRECT that in the event of the death of any or all of my said nieces, Mary Ethel Sparrow, Zeta Kathleen Coughlin and Eleanor Stella English prior to my decease, without leaving lawful issue, the said Preference shares hereby bequeathed to such pre-deceasing niece or nieces shall become and be dealt with as part of "my Trust Estate" as hereinafter created and defined. 20  
30  
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11. I GIVE AND BEQUEATH to my nephew, Michael John Burns, son of my deceased brother, Thomas Burns aforesaid, presently residing at the City of Calgary aforesaid, One Thousand (1000) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital stock of Burns Foundation (Limited) having an aggregate nominal or par value of One Hundred Thousand Dollars (\$100,000.00). AND I DIRECT that in the event of the death of the said Michael John Burns prior to the date of my decease, leaving lawful issue, such issue shall take and if more than one equally between them, the said One Thousand (1000) 50

Preference shares of the Capital stock of Burns Foundation (Limited) to which his or her deceased father would have been entitled to under the terms of this my Will had he survived me. AND I FURTHER DIRECT that in the event of the death of my said nephew, Michael John Burns, prior to my decease without leaving lawful issue, the said Preference shares hereby bequeathed to him shall become and be dealt with as part of "my Trust Estate" as hereinafter created and defined.

*Exhibit.*

2.

Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

10 12. I GIVE AND BEQUEATH unto the Governing Body of the Jesuit Fathers' College at the City of Edmonton, in the Province of Alberta, Two Hundred (200) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Twenty Thousand Dollars (\$20,000.00).

13. I GIVE AND BEQUEATH unto the Roman Catholic Bishop of the Diocese of Calgary, in the Province of Alberta, Five Hundred (500) 4% non-voting, non-cumulative, redeemable Preference Shares of the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Fifty Thousand Dollars (\$50,000.00) for the purpose of assisting in the erection of a Cathedral in the Diocese of Calgary, to be erected in the said City of Calgary.

20 14. I GIVE AND BEQUEATH unto the Governing Body of the Roman Catholic College, at the City of Edmonton, in the Province of Alberta, One Hundred and Fifty (150) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Fifteen Thousand Dollars (\$15,000.00).

30 15. I GIVE AND BEQUEATH unto the Father Lacombe Home, at Midnapore, in the Province of Alberta, Two Hundred (200) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Twenty Thousand Dollars (\$20,000.00).

16. I GIVE AND BEQUEATH unto the Alberta Branch of the Navy League of Canada, Twenty-five (25) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital stock of Burns Foundation (Limited), having a nominal or par value of Two Thousand Five Hundred Dollars (\$2,500.00).

40 17. I GIVE AND BEQUEATH unto the Branch of the Salvation Army, having its Headquarters at the City of Calgary, in the Province of Alberta, Fifty (50) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Five Thousand Dollars (\$5,000.00).

18. I GIVE AND BEQUEATH unto the Calgary Branch of the Alberta Division of the Canadian Red Cross Society, Twenty-five (25) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Two Thousand Five Hundred Dollars (\$2,500.00).

19. I GIVE AND BEQUEATH unto the Junior Red Cross Society of Alberta, at Calgary, Twenty-five (25) 4% non-voting, non-cumulative redeemable Preference Shares in the Capital Stock of the Burns Foundation

*Exhibit.* (Limited), having a nominal or par value of Two Thousand Five Hundred Dollars (\$2,500.00).

2.  
Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

20. I GIVE AND BEQUEATH unto the Institution known as "The Children's Shelter" and carried on under the auspices of the City of Calgary, in the Province of Alberta, Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Five Thousand Dollars (\$5,000.00). In the event of no Institution existing in the said City of Calgary known and administered as a Children's Shelter and carried on under the auspices of the said City, I direct that the bequest hereby made by me shall be used either to provide the nucleus of a fund for establishing such an Institution, or the nucleus for the establishment of a fund to be administered by the said City for the benefit of poor, indigent and neglected children, and I further direct my Trustees to make such arrangements as may be necessary and advisable with the Civic Authorities of the said City accordingly. 10

21. I GIVE AND BEQUEATH unto any Fund established for the benefit of Widows and Orphans of Members of the Police Force of the City of Calgary, in the Province of Alberta, Fifty (50) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital stock of Burns Foundation (Limited) having a nominal or par value of Five Thousand Dollars (\$5,000.00). In the event that no fund has been established for the benefit of widows and orphans of Members of the Police Force of the said City of Calgary, I DIRECT that the bequest hereby made by me shall be used to provide the nucleus for the establishment of a Fund for the benefit of Widows and Orphans of Members of the Police Force in the said City of Calgary, and I further direct my Trustees to make such arrangements as may be necessary and advisable with the Civic Authorities of the said City accordingly. 20

22. I GIVE AND BEQUEATH unto any Fund established for the benefit of Widows and Orphans of Members of the Fire Brigade of the City of Calgary, in the Province of Alberta, Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Five Thousand Dollars (\$5,000.00). In the event that no fund has been established for the benefit of Widows and Orphans of Members of the Fire Brigade of the said City of Calgary, I direct that the bequest hereby made by me shall be used to provide the nucleus for the establishment of a Fund for the benefit of Widows and Orphans of Members of the Fire Brigade in the said City of Calgary, and I further direct my Trustees to make such arrangements as may be necessary and advisable with the Civic Authorities of the said City accordingly. 30 40

23. I GIVE AND BEQUEATH unto Branch Number 52 of the British Empire Service League, Tubercular Section of the Canadian Legion, Twenty-five (25) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Two Thousand Five Hundred Dollars (\$2,500.00).

24. I GIVE AND BEQUEATH unto the First Battalion, the Calgary Regiment (50th Battalion C. E. F.), Twenty-five (25) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of 50

Burns Foundation (Limited) having a nominal or par value of Two Thousand Five Hundred Dollars (\$2,500.00).

*Exhibit.*

2.

25. I GIVE AND BEQUEATH unto the Branch of the Provincial Boy Scout Association for the Province of Alberta, at Calgary, Twenty-five (25) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Two Thousand Five Hundred Dollars (\$2,500.00).

Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

26. I GIVE AND BEQUEATH unto the Southern Alberta Pioneers' and Old Timers' Association Twenty-five (25) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Two Thousand Five Hundred Dollars (\$2,500.00) to be used by the said Association to render financial assistance to the Members of the said Association in any case where the Directors of the said Association in their uncontrolled discretion may decide such financial assistance is required.

27. I GIVE AND BEQUEATH unto my said son, Patrick Thomas Michael Burns, Two (2) shares of the Common Stock of each of the following companies, namely, Burns Foundation (Limited), P. Burns Ranches, Limited, P. Burns Holdings, Limited, P. Burns Coal Mines Limited and Western Ranches, Limited.

28. I GIVE AND BEQUEATH all the rest, residue and remainder of my real and personal estate, property and effects of whatsoever kind and wheresoever situate, of which I may die seized, possessed of or entitled to, unto and to the use of my Trustees, UPON TRUST to sell, call in or otherwise convert into money such parts of the said Trust Premises as shall not consist of ready money or of Preference and Common shares and bonds, and or debentures of Burns Foundation (Limited), or of shares of any class or kind in any Company held by me for the purpose of qualifying me as a Director of any such Companies, or of investments which may be legally made by a Trustee under the laws of the Province of Alberta, and out of the moneys to arise out of any such sale, calling-in or conversion and the said ready money of which I shall be possessed at the date of my death and the dividends, interest and or other income derived from the said shares and bonds and debentures aforesaid, and from the remaining unconverted Trust Premises, to pay my funeral and testamentary expenses and debts and the cost of acquiring a suitable burial plot in the Roman Catholic Cemetery in or near the City of Calgary, aforesaid, and of erecting thereon a Monument to my memory at the expense of not more than Ten Thousand Dollars (\$10,000.00), and in payment to the Roman Catholic Parish of St. Mary's, in the City of Calgary, of the sum of Five Thousand Dollars (\$5,000.00) for usual and customary religious services of the Roman Catholic Church of which I am a Member, in connection with my decease and all estate, succession, legacy and death duties and taxes which may be payable to any Government or taxing authority with respect to the whole of my estate, which estate, succession, legacy and death duties and taxes have already been provided for to the extent of the principal sum of Three Hundred and Ninety-eight Thousand Dollars (\$398,000.00) by Insurance Policies effected on my life and made payable to my Executors or Administrators for the purpose of paying Succession Duties.

*Exhibit.*

2.  
 Will of the  
 Hon.  
 Patrick  
 Burns  
 deceased,  
 15th  
 January  
 1932,  
*continued.*

29. AND I FURTHER DIRECT that my Trustees shall stand possessed of the balance of the said rest, residue and remainder, the whole thereof hereinafter and herein with the income and accumulations thereof herein referred to as "my Trust Estate" UPON FURTHER TRUST to invest such portions thereof as shall consist of ready money in the names of my Trustees, and out of the net annual income therefrom and from all parts of "my Trust Estate", to pay annually until my said son, Patrick Thomas Michael Burns, shall have attained the age of forty (40) years ;

(a) All taxes, Municipal, Provincial or otherwise, that may be rated, imposed or assessed against the said lots numbered twenty-nine (29) to Thirty-two (32) inclusive, in Block Seventy (70) and Lots Ten (10) to Thirty-three (33), inclusive, the East five (5) feet of Lot Thirty-four (34), and that portion of the lane in Block Eighty-eight (88), which lies to the East of a straight line drawn from a point on the Northern boundary of Lot Thirty-four (34), in said Block Eighty-eight (88), distant Twenty (20) feet East from the Western Boundary of said Lot, to a point on the Southern boundary of the said Lot Ten (10), distant twenty (20) feet East from the Western boundary of said Lot Ten (10), all in said Block Eighty-eight (88), as said Lots and Blocks are shown upon a Map or Plan of part of the City of Calgary aforesaid of record in the Land Titles Office for the South Alberta Land Registration District as "Plan A 1 Calgary," or any other land and premises used as a residence in substitution therefor by my said son as provided in Clause 6 (a) of this my Will. 10

(b) The premiums for the maintenance of insurance on the said dwelling house and buildings or any dwelling house substituted therefor and the furniture and furnishings therein against loss or damage by fire, for their full insurable value. In the event of the said dwelling house situate on the said lands or any dwelling house substituted therefor and furnishings therein being totally destroyed by fire so that they cannot be reasonably repaired or restored for occupancy and use, my Trustees may utilize all insurance moneys derived from the loss of said dwelling house and furniture and furnishings in the erection, construction and furnishings of a suitable residence for my said son, to be held and disposed of as provided in Clause 6 (a) of this my Will, it being my desire that the wishes of my said son in connection with the location, erection, construction and furnishings of such residence shall be consulted as far as possible. 30

(c) The cost of maintaining the said dwelling house and buildings and substituted dwelling house and buildings and furnishings therein at all times in a suitable and proper state of repair including all costs and charges for gardening, upkeep and caretaking of the said dwelling house, buildings and grounds pertaining to the same. 40

30. AND I FURTHER DIRECT that my Trustees shall stand possessed of "My Trust Estate" and the income therefrom and all parts thereof, UPON FURTHER TRUST :

(a) To pay annually to my said son, Patrick Thomas Michael Burns, until he shall have attained the age of thirty (30) years 50



by instalments as may be arranged with him, the sum of Three Thousand Dollars (\$3,000.00).

*Exhibit.*

2.

(b) To pay annually to my said son, Patrick Thomas Michael Burns from and after his attaining the age of thirty (30) years and until he shall have attained the age of thirty-five (35) years, by instalments as may be arranged with him, the sum of Five Thousand Dollars (\$5,000.00).

Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

10

(c) To pay annually to my said son, Patrick Thomas Michael Burns, from and after his attaining the age of thirty-five (35) years and until he attains the age of forty (40) years, by instalments as may be arranged with him, the sum of Seven Thousand Five Hundred Dollars (\$7,500.00).

(d) To pay the annual premiums on all life insurance policies effected on the life of my said son, Patrick Thomas Michael Burns, up to the date of my decease, until he shall have attained the age of forty (40) years or such policies shall have matured or been surrendered.

20

(e) To pay such allowance as my Trustees in their uncontrolled and unfettered discretion shall deem adequate and necessary for the living expenses and expenses of entertainment, cost of maintenance of the home and establishment kept and maintained by my said son, Patrick Thomas Michael Burns, up to an amount not to exceed the sum of Seven Thousand, Five Hundred Dollars (\$7,500.00) per annum.

30

(f) To pay such amount or amounts as my Trustees in their uncontrolled and unfettered discretion may deem adequate and necessary for the costs and expenses of medical and surgical treatments and operations and expenses consequent in travelling, residing abroad and any recuperative and other measures required to be undertaken for the restoration and preservation of the health of my said son, Patrick Thomas Michael Burns, and or his wife and or any member of his family.

40

(g) To pay to my sister, Mary Ann Farrell, widow of Laurence Farrell, of Beaverton, in the Province of Ontario, the sum of Twelve Hundred Dollars (\$1,200.00) per annum, payable in monthly instalments of One Hundred Dollars (\$100.00) per month, for her sole and separate use and benefit during the term of her natural life, to be paid to her free from all deductions, the first payment to be made at the expiration of one year from the date of my decease, and the succeeding payments to be made on the corresponding day (as nearly as may be) of each month thereafter during her natural life as aforesaid, and to pay the funeral expenses of the said Mary Ann Farrell at her death, such expenses to be of such reasonable amount as my Trustees may determine.

50

(h) To pay to my brother, William James Burns, the sum of Eighteen Hundred Dollars (\$1,800.00) per annum, payable in monthly instalments of One Hundred and Fifty Dollars (\$150.00) per month, to be paid to him by my Trustees, free from all deductions, during his natural life, the first of such monthly payments to be payable and to be made at the expiration of one year from

*Exhibit.*

2.

Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

the date of my decease and the succeeding payments to be made on the corresponding day (as nearly as may be) of each succeeding month thereafter, and to pay the funeral expenses of the said William James Burns at his death, such expenses to be of such reasonable amount as my Trustees may determine.

(i) To pay to Ada F. Holliday, my present housekeeper, the sum of Twelve Hundred Dollars (\$1,200.00) per annum, payable in monthly instalments of One Hundred Dollars (\$100.00) per month, to be paid to her by my Trustees, free from all deductions, during her natural life, the first of such monthly payments to be payable and to be made on the first day of the month following my decease. 10

(j) To pay to Christina Currie, wife of Archie Currie, at one time in the employ of P. Burns & Co., and P. Burns & Co., Limited, at the City of Nelson, in the Province of British Columbia, the sum of Six Hundred Dollars (\$600.00) per annum, payable in monthly instalments of Fifty Dollars (\$50.00) per month, to be paid to her by my Trustees, free from all deductions, during her natural life, the first of such monthly payments to be payable and to be made on the first day of the calendar month following my decease, and to pay the funeral expenses of the said Christine Currie at her death, such expenses to be of such reasonable amount as my Trustees may determine. 20

(k) To pay to Mary E. Kelly, widow of Thomas Kelly, deceased, at present residing at Number 1923 Fifth Street West, in the City of Calgary, aforesaid, the sum of Six Hundred Dollars (\$600.00) per annum, payable in monthly instalments of Fifty Dollars (\$50.00) per month, to be paid to her by my Trustees, free from all deductions, during her natural life, the first of such monthly payments to be payable and to be made on the First day of the calendar month following my decease. 30

(l) To pay to Flora Richardson, of the Village of Beaverton, in the Province of Ontario, widow of John Richardson, deceased, the sum of Six Hundred Dollars (\$600.00) per annum, payable in monthly instalments of Fifty Dollars (\$50.00) per month, to be paid to her by my Trustees free from all deductions, during her natural life, the first of such monthly payments to be payable and to be made on the First day of the calendar month following my decease.

(m) To pay to Isabelle Rooney, at present residing at Number 376-D St. Antoine Street, in the City of Montreal, in the Province of Quebec, the sum of One Thousand Dollars (\$1,000.00) per annum, payable in quarterly instalments of Two Hundred and Fifty Dollars (\$250.00) per quarter, to be paid to her by my Trustees, free from all deductions, during her natural life, on the first days of January, April, July and October, in each and every year, the first of such quarterly payments to be payable and to be made on the first of such dates occurring after my decease. 40

AND TO INVEST THE SURPLUS (if any) of such annual income in the names of my Trustees as part of the Capital of "my Trust Estate" at compound interest. 50

31. AND I FURTHER DIRECT that any moneys received by my said son, Patrick Thomas Michael Burns, as Trustee of this my Will, or as a Director, employe or officer of any Company owned or controlled by me at the date of my death, shall be in addition to any sum or sums he may receive or be entitled to receive under the terms of this my Will.

*Exhibit.*

2.

Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

32. AND I FURTHER DIRECT that when and so soon as my said son, Patrick Thomas Michael Burns, shall attain the age of forty (40) years, my Trustees shall stand possessed of "my Trust Estate" including the accumulations thereof, UPON FURTHER TRUST, to distribute the

10 same as follows :—

(a) To appropriate sufficient of "my Trust Estate" or of the investments representing the same to insure an annual income therefrom, sufficient to pay and discharge the annuities then outstanding and hereinbefore given and bequeathed by this my Will, provided that my Trustees, if they so decide, may convert "my Trust Estate" to such extent and in such amounts as may be necessary to purchase Government or other annuities, in substitution for and in the payment and discharge of the annuities then outstanding and heretofore given and bequeathed by this my Will, or for the purchase and extinction of the said annuities.

20

(b) Subject to the right of my Trustees in their uncontrolled and unfettered discretion at any time to appropriate sufficient of the Capital or the Income of "my Trust Estate" or both for the support, maintenance and education of the child or children of my said son, Patrick Thomas Michael Burns, and or the support and maintenance of the wife of my said son, and the fulfillment and performance of the objects and purposes set out in Sub-clause (f) of Clause 30, of this my Will to pay unto my said son, Patrick Thomas Michael Burns, the income of "my Trust Estate" during all the days of his life which he shall survive me and UPON FURTHER TRUST to stand possessed of "my Trust Estate" for a period of twenty-one (21) years as and from the date of the death of my said son, Patrick Thomas Michael Burns, AND UPON THE FURTHER TRUST after the lapse of the said period of twenty-one (21) years to pay and or convey "my Trust Estate" to the child or children of my said son, Patrick Thomas Michael Burns, and if more than one to divide "my Trust Estate" equally between the children of my said son, Patrick Thomas Michael Burns, share and share alike, and I FURTHER DIRECT that in the event of the death of any child of my said son, Patrick Thomas Michael Burns, prior to his death or within the said period of twenty-one (21) years leaving lawful issue, such issue shall take and if more than one equally between them, the share of "my Trust Estate" to which his or her deceased parent would have been entitled under the terms of this my Will had he or she survived my said son, Patrick Thomas Michael Burns, or the said period of twenty-one (21) years as aforesaid.

30

40

(c) In the event of my Trustees appropriating sufficient of "my Trust Estate" or the investments representing the same, to pay and discharge the annuities then outstanding and hereinbefore given and bequeathed by this my Will, I hereby direct that the

50

*Exhibit.*

2.  
 Will of the  
 Hon.  
 Patrick  
 Burns  
 deceased,  
 15th  
 January  
 1932,  
*continued.*

portion of "my Trust Estate" appropriated for the said purpose shall, upon the death of each survivor of such Annuitants, be released by my Trustees from the said Trust and thereupon be paid or transferred or conveyed and be dealt with as part of "my Trust Estate" as the same is hereinbefore created and defined and shall be held upon further trust accordingly.

33. AND I FURTHER DIRECT that if my said son, Patrick Thomas Michael Burns, shall have predeceased me or having survived me shall die leaving him surviving a wife and a child or children, my Trustees shall, subject to the provisions hereinbefore contained for the payment of annuities, hold "my Trust Estate," with the accumulations thereof and additions thereto, UPON FURTHER TRUST :— 10

(a) To allow the widow of my said son, Patrick Thomas Michael Burns, during her lifetime which she shall survive my said son, the use, occupation and enjoyment of a residence, as provided in Clause 6 (b) of this my Will, and during the use, occupation and enjoyment thereof, as aforesaid, by the widow of my said son, Patrick Thomas Michael Burns, to pay annually all taxes, municipal, provincial or otherwise, that may be rated, imposed or assessed against the lands, premises, buildings and improvements thereon, used and occupied by the widow of my said son, Patrick Thomas Michael Burns, as hereinbefore provided, and the premiums for the maintenance of insurance on any dwelling house and buildings and furniture and furnishings against loss or damage by fire for their full insurable value and to maintain the dwelling house and buildings used and occupied by the widow of my said son, Patrick Thomas Michael Burns, as aforesaid, at all times in a suitable and proper state of repair including all costs and charges for gardening, upkeep and caretaking of the dwelling-house, buildings and grounds pertaining to the same. In the event of the dwelling house held for the use, occupation and enjoyment thereof by the widow of my said son, Patrick Thomas Michael Burns, being totally destroyed by fire so that the residence used and occupied by her cannot be reasonably repaired or restored for occupancy, my Trustees may, in their uncontrolled and unfettered discretion, utilize all insurance moneys paid in respect of the loss of the same and the loss of furniture and furnishings in the erection, construction and furnishing of a suitable residence for the use and occupation by the widow of my said son, Patrick Thomas Michael Burns, during her lifetime, as aforesaid, which she shall survive my said son, Patrick Thomas Michael Burns, or they may choose or arrange for another residence and furnish the same, the suitability of which residence shall be a matter entirely in the uncontrolled and unfettered judgment of my Trustees. and my Trustees shall make the payments and provide for the maintenance and upkeep of the residence so erected, constructed or chosen in the same way and to the same extent as hereinbefore provided and at her decease the dwelling house used, occupied and enjoyed by her with the furniture and furnishings thereof shall be sold and disposed of as provided in Clause 6 (b) of this my Will. 20 30 40 50

(b) Out of the income to be derived from "my Trust Estate" to pay to the widow of my said son, an annual income of Fifteen

Thousand Dollars (\$15,000 00) payable in quarterly instalments during all the days of her life, which she shall survive my said son, such quarterly payments to be made on the first days of January, April, July and October in each and every year, the first of such quarterly payments to be payable and to be made on the first of such dates occurring after the decease of my said son.

*Exhibit.*  
 2.  
 Will of the  
 Hon.  
 Patrick  
 Burns  
 deceased,  
 15th  
 January  
 1932,  
*continued.*

- 10 (c) Out of the income to be derived from " my Trust Estate " to pay such sums in such instalments and amounts as my Trustees in their uncontrolled and unfettered discretion may determine as being necessary for the support, maintenance and education during minority of the child or children of my deceased son and I hereby empower my Trustees in their uncontrolled and unfettered discretion to do all such acts, deeds and things as may be necessary to give the child or children of my said son a sound education and to fit such child or children for his or her vocation and station in life and upon the child or children of my said son attaining the age of twenty-one (21) years to pay to such child or children of my said son the income of " my Trust Estate " or such proportion thereof as may be payable to each child if there be more than one.
- 20 and to pay out or distribute the whole of " my Trust Estate " including the accumulations thereof with any additions thereto by reason of the deaths of the respective annuitants as provided in this my Will or otherwise howsoever, to the child or amongst the children (if more than one) of my said son, equally, after the expiry of the said period of twenty-one (21) years from and after the date of the death of my said son, Patrick Thomas Michael Burns, and I DIRECT that in the event of the death of any child of my said son, Patrick Thomas Michael Burns, prior to his death or within the said period of twenty-one (21) years leaving lawful issue, such issue shall take, and if more than one equally between them, the share of
- 30 " my Trust Estate " to which his or her deceased parent would have been entitled under the terms of this my Will had he or she survived my said son, Patrick Thomas Michael Burns, or the said period of twenty-one (21) years, as aforesaid, AND I HEREBY EXPRESS THE DESIRE AND WISH that my said son and his child or children shall do whatsoever may lie within their respective powers to preserve intact the capital of my estate or any share or portion thereof which they may inherit in terms of this my Will.

- 40 AND I FURTHER DIRECT that if my said son, Patrick Thomas Michael Burns, shall predecease me, or having survived me shall die without leaving him surviving a widow, but leaving lawful issue, that my Trustees, subject to the provisions hereinbefore contained for the payment of annuities, shall stand possessed of " my Trust Estate " including the accumulations thereof and additions thereto, UPON FURTHER TRUST

- 50 Out of the income to be derived from " my Trust Estate " to pay such sums in such instalments and amounts as my Trustees in their uncontrolled and unfettered discretion may determine as being necessary for the support, maintenance and education during minority of the child or children of my deceased son and I hereby empower my Trustees in their uncontrolled and unfettered discretion to do all such acts, deeds and things as may be necessary to give the child or children of my said son a sound education and to fit

*Exhibit.*

2.

Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

such child or children for his or her vocation and station in life and upon the child or children of my said son attaining the age of twenty-one (21) years to pay to such child or children of my said son, the income of "my Trust Estate" or such proportion thereof as may be payable to each child if there be more than one.

and to pay out or distribute the whole of "my Trust Estate" including the accumulations thereof with any additions thereto by reason of the deaths of the respective annuitants as provided in this my Will, or otherwise howsoever, to the child or amongst the children (if more than one) of my said son, equally, after the expiry of the said period of twenty-one (21) 10 years from and after the date of the death of my said son, Patrick Thomas Michael Burns, and I DIRECT that in the event of the death of any child of my said son, Patrick Thomas Michael Burns, prior to his death or within the said period of twenty-one (21) years leaving lawful issue, such issue shall take and if more than one equally between them, the share of "my Trust Estate" to which his or her deceased parent would have been entitled under the terms of this my Will had he or she survived my said son, Patrick Thomas Michael Burns, or the said period of twenty-one (21) years aforesaid, AND I HEREBY EXPRESS THE DESIRE AND 20 WISH that my said son and his child or children shall do whatsoever may lie within their respective powers to preserve intact the capital of my Estate or any share or portion thereof which they may inherit in terms of this my Will.

35. AND I FURTHER DIRECT that if my said son, Patrick Thomas Michael Burns, shall predecease me, or having survived me shall die without leaving lawful issue but leaving him a wife surviving, subject to the provisions hereinbefore contained for the payment of annuities, my Trustees shall stand possessed of "my Trust Estate" including the accumulations thereof and additions thereto, UPON FURTHER TRUST :

(a) To allow the widow of my said son, Patrick Thomas Michael 30 Burns, during her lifetime which she shall survive my said son, the use, occupation and enjoyment of a residence, as provided in Clause 6 (b) of this my Will, and during the use, occupation and enjoyment thereof, as aforesaid, by the widow of my said son, Patrick Thomas Michael Burns, to pay annually all taxes, municipal, provincial or otherwise that may be rated, imposed or assessed against the lands, premises, buildings and improvements thereon, used and occupied by the widow of my said son, Patrick Thomas Michael Burns, as hereinbefore provided, and the 40 Premiums for the maintenance of insurance on any dwelling-house and buildings and furniture and furnishings against loss or damage by fire for their full insurable value and to maintain the dwelling house and buildings used and occupied by the widow of my said son, Patrick Thomas Michael Burns, as aforesaid, at all times in a suitable and proper state of repair, including all costs and charges for gardening, upkeep and caretaking of the dwelling house, buildings and grounds pertaining to the same. In the event of the dwelling house held for the use, occupation and enjoyment thereof by the widow of my said son, Patrick Thomas Michael Burns, being totally destroyed by fire so that the residence 50 used and occupied by her cannot be reasonably repaired or restored

for occupancy, my Trustees may, in their uncontrolled and unfettered discretion, utilize all insurance moneys paid in respect of the loss of the same and the loss of furniture and furnishings in the erection, construction and furnishing of a suitable residence for the use and occupation by the widow of my said son, Patrick Thomas Michael Burns, during her lifetime, as aforesaid, which she shall survive my said son, Patrick Thomas Michael Burns, or they may choose or arrange for another residence and furnish the same, the suitability of which residence shall be a matter entirely in the uncontrolled and unfettered judgment of my Trustees, and my Trustees shall make the payments and provide for the maintenance and upkeep of the residence so erected, constructed or chosen in the same way and to the same extent as hereinbefore provided and at her decease any dwelling house, used, occupied and enjoyed by her with the furniture and furnishings thereof shall be sold and disposed of as provided in Clause 6 (b) of this my Will.

*Exhibit.*  
2.  
Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

(b) Out of the income to be derived from "my Trust Estate" to pay to the widow of my said son, an annual income of fifteen thousand dollars (\$15,000.00) payable in quarterly instalments during all the days of her life which she shall survive my said son, such quarterly payments to be made on the first days of January, April, July and October, in each and every year, the first of such quarterly payments to be payable and to be made on the first of such dates occurring after the decease of my said son.

AND I FURTHER DIRECT my Trustees to hold "my Trust Estate" and to appropriate sufficient of the same or of the investments thereof to insure an annual income therefrom sufficient to pay and discharge the Annuities then outstanding and hereinbefore given and bequeathed by this my Will, and to hold "my Trust Estate," including the accumulations thereof and the additions thereto by reason of the deaths of Annuitants or otherwise until the death of the last of the Annuitants to whom I have bequeathed Annuities by this my Will or the death of the widow of my said son, Patrick Thomas Michael Burns whichever shall last happen and subject to prior payment of the said annual income of Fifteen Thousand Dollars (\$15,000.00) per annum to the widow of my said son during all the days of her life which she shall survive my said son and during the period aforesaid, UPON FURTHER

40 TRUST TO PAY :—

(a) To my nephew the said Michael John Burns, Ten Per cent. (10%) of the net annual income derived from "my Trust Estate."

(b) To my niece, the said Barbara Ellen McGhee, Ten Per cent. (10%) of the net annual income derived from "my Trust Estate."

(c) To my nephews, the said Thomas John Farrell, Patrick Edward Farrell, Francis Dominic Farrell, five per cent. (5%) of the net annual income derived from "my Trust Estate" equally amongst them, share and share alike.

(d) To my nephews, the said Thomas Eugene Burns, Francis Drury Burns, Frederick Joseph Patrick Burns and Bertrand Ulric

*Exhibit.*

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Will of the  
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Nelson Burns, five per cent. (5%) of the net annual income derived from "my Trust Estate" equally amongst them share and share alike; and

(e) To my nieces, the said Mary Ethel Sparrow, Zeta Kathleen Coughlin, Eleanor Stella English, thirty per cent. (30%) of the net annual income derived from "my Trust Estate" equally amongst them share and share alike,

such respective percentages of the income of "my Trust Estate" to my said nephews and nieces to be paid to them annually, the first of such payments to be made after the expiration of one year from the date of my decease or the decease of my said son, Patrick Thomas Michael Burns, if he shall have survived me, AND I DIRECT that in the event of the death of any of my said nephews and nieces prior to my decease or the decease of my said son, Patrick Thomas Michael Burns, if he shall have survived me, without leaving lawful issue, the share or shares of the income from "my Trust Estate" to which such predeceasing nephew or niece would have been entitled, shall be paid where there is more than one participant in any one percentage to the survivor or survivors of the said participants. AND I FURTHER DIRECT that in the event of any of my said nephews and nieces predeceasing me or my said son, Patrick Thomas Michael Burns, if he shall have survived me, leaving lawful issue, such issue shall take and if more than one equally between them, the share or shares of the income of "my Trust Estate" to which his or her deceased parent would have been entitled under this my Will as herein provided had he or she survived me or my said son, Patrick Thomas Michael Burns, if he shall have survived me, and in the event of any of my said nephews and nieces surviving me or my said son, Patrick Thomas Michael Burns, and dying during the period throughout which a percentage of income or share or portion thereof would be payable leaving lawful issue then the child or children of such of my said nephews and nieces as shall have survived me or my said son, Patrick Thomas Michael Burns, but shall have died during the said period, shall be entitled to receive the percentage of income or share thereof which his, her or their parent would have received had he or she survived the entire period throughout which the said percentage of income or share thereof would have been payable.

AND until the death of the last annuitant to whom I have bequeathed an annuity by the terms of this my Will, or the death of the widow of my said son, whichever shall last happen, to invest the surplus, if any, of such annual income in the names of my Trustees as part of the capital of "my Trust Estate" at compound interest.

36. AND I FURTHER DIRECT that upon the death of the last of the annuitants to whom I have bequeathed annuities in this my Will or the death of the widow of my said son, whichever shall last happen and if my said son, Patrick Thomas Michael Burns, shall have predeceased me, or having survived me, shall have died without leaving lawful issue, that my Trustees shall stand possessed of "my Trust Estate" with all accumulations thereof and additions thereto and the whole thereof to hold UPON FURTHER TRUST to distribute the same as follows:—

(a) To pay and convey to my nephew, the said Michael John Burns, Fifteen per cent. (15%) thereof and to my other nephews



and nieces, the said Barbara Ellen McGhee, Thomas John Farrell, Patrick Edward Farrell, Francis Dominic Farrell, Thomas Eugene Burns, James Francis Drury Burns, Frederick Joseph Patrick Burns, Bertrand Ulric Nelson Burns, Mary Ethel Sparrow, Zeta Kathleen Coughlin and Eleanor Stella English equally amongst them share and share alike, Fifty-two per cent. (52%) thereof, AND I DIRECT that in the event of the death of the said Michael John Burns, or of any of my said nephews and nieces prior to my decease or the decease of my said son, Patrick Thomas Michael Burns, if he shall have survived me, the share or shares of "my Trust Estate" to which such predeceasing nephew or niece would have been entitled, shall be paid to the surviving nephews and nieces equally amongst them. AND I FURTHER DIRECT that in the event of the said Michael John Burns or any of my other nephews and nieces predeceasing me or my said son, Patrick Thomas Michael Burns, leaving lawful issue, such issue shall take and if more than one equally between them, the share or shares of "my Trust Estate" to which his or her deceased parent would have been entitled under the terms of this my Will had he or she survived me or my said son, Patrick Thomas Michael Burns.

*Exhibit.*  
2.  
Will of the  
Hon. Patrick  
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deceased,  
15th  
January  
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*continued.*

AND UPON THE FURTHER TRUST to pay and convey the rest, residue and remainder of "my Trust Estate" unto The Royal Trust Company for the creation and establishment of a Trust to be known as the "Burns Memorial Trust" to be administered by it as Trustee at its office in the City of Calgary, in the Province of Alberta, and the net annual income therefrom to pay and distribute annually in equal shares thereof amongst the following:—

(1) The Father Lacombe Home at Midnapore in the Province of Alberta.

(2) The Branch of the Salvation Army, having its Headquarters at the City of Calgary, in the Province of Alberta.

(3) The Children's Shelter carried on under the auspices of the said City of Calgary, towards which I have bequeathed Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) by this my Will.

(4) To the Fund established for the benefit of WIDOWS AND ORPHANS OF MEMBERS OF THE POLICE FORCE OF THE CITY OF CALGARY, towards which I have bequeathed Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) by this my Will.

(5) To the Fund established for the benefit of WIDOWS AND ORPHANS OF MEMBERS OF THE FIRE BRIGADE OF THE CITY OF CALGARY, towards which I have bequeathed Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) by this my Will,

the first moneys distributed in pursuance of this bequest to be made after the expiration of one year from the date of the payment, conveyance and transfer by my Trustees of the said rest, residue and remainder of "my

*Exhibit.*  
 2.  
 Will of the  
 Hon.  
 Patrick  
 Burns  
 deceased,  
 15th  
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Trust Estate" unto the said, The Royal Trust Company, and while it is my desire that the said annual income shall be expended annually and I DIRECT the said The Royal Trust Company, to so expend the said income derived from the said Burns Memorial Trust, I hereby provide that in the event of there being at any time a surplus of the said income in any one year that such surplus may be invested in the name of the said The Royal Trust Company, as part of the capital of the said trust, to be known as the "Burns Memorial Trust."

37. I DIRECT that any moneys liable to be invested by my Trustees or the said The Royal Trust Company, in respect of the said "Burns Memorial Trust" under the terms of this my Will may be invested in their names in any of the following forms of investment :

(a) Any investments for the time being allowed by law in the Province of Alberta, for the investment of Trust Funds.

(b) The stocks or funds of the Dominion of Canada or any Province thereof or any British Colony or Dependency or of the United States of America or of any State thereof.

38. I DECLARE that my Trustees shall have a discretionary power to continue indefinitely the investments made by me in my lifetime outstanding at the date of my decease and to postpone for such period as to them shall seem expedient the sale, calling in or conversion of any part or parts of my real and personal estate respectively and during the suspension of such sale, conversion or getting in to manage and order all the affairs thereof as regards administration, operating, letting, occupation, cultivation, repairs, insurance against fire, receipts of rents, allowances to tenants and all other matters whatsoever, but the unsold real estate and the outstanding personal estate shall be subject to the trusts hereinbefore contained concerning the investments aforesaid and the rents and yearly produce, dividends and profits thereof shall so far as may be necessary for the purpose of the said trusts be deemed annual income for the purposes of such trusts and the unsold real estate shall be deemed to be converted as from the date of my death and to be transmissible as personal estate accordingly.

39. As to the shares, stocks or debentures held by me in any and all companies forming part of my estate or which may become vested in my Trustees, I hereby constitute my Trustees the administrators of the said shares and direct that my Trustees while holding the said shares shall cause the said shares to be transferred and to stand in their names in the books of the said companies, in equal numbers or amounts so that each of my Trustees shall hold in his name an equal number of shares and have equal voting rights, and in the event of the number of my Trustees being increased or decreased the holding of shares in the said companies shall be varied and adjusted accordingly, and I declare that during the period that my Trustees may hold the said shares, stocks or debentures, they shall have full power to and shall receive the dividends, interest and profits in trust from time to time, declared and payable upon and in respect of the same, and also full power to provide the qualification shares for any Director or Directors that may be elected by the said companies, and to regulate as far as possible the management thereof, and to do all such acts and things as may be necessary or requisite as shareholders to control and manage the affairs of the said Companies.

40. In addition to the powers by Law conferred upon my Trustees, I specially confer upon them the following powers :—

*Exhibit.*

2.

(a) In their uncontrolled discretion to compromise, settle and adjust or waive any claim and demand belonging to or against my estate but so that any compromise or extension of time for payment shall not exceed a period of three years.

Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

10

(b) To borrow money from any Chartered Bank or any other source, and whether by way of mortgage on real or chattel security forming part of my Estate or otherwise, and to advance their own money if desired for the purposes of paying any debts or other obligations incurred by my Estate or any legacies payable under the terms of this my Will instead of realizing the property and securities belonging to my Estate and to pay or charge interest thereon. PROVIDED HOWEVER that such borrowing by my Trustees shall be limited to a total sum of Fifty Thousand Dollars (\$50,000.00), except that they may borrow whatever in their discretion they consider necessary, having regard to the condition of my estate, for the payment of Succession and Legacy Duties.

20

(c) To continue, discontinue or wind up any business, joint stock company, contract or transaction pending or in which I may be interested at the time of my death.

(d) To grant, endorse or accept bills of exchange, drafts or Promissory Notes and to sign all other commercial obligations and contracts in the administration and settlement of my estate either in continuance or renewals of obligations existing at the date of my decease or any matter subsequently arising and deemed necessary or desirable by my Trustees in the administration of my estate.

30

(e) To act for, initiate, vote and represent my Estate as a Shareholder in any joint stock company or corporation in which my estate may hold stock in any way whatsoever, whether to obtain authority to increase or reduce the capital or of obtaining increased powers or the initiation or agreeing to any proposed liquidation, amalgamation, reconstruction or reorganization of any such company or corporation or in any other way howsoever, and generally to deal with any and all shares, stocks and bonds belonging to my said estate in the fullest and most unrestricted manner without any responsibility on the part of my Trustees other than that imposed by law.

40

(f) In their sole and unfettered discretion to apportion my estate and give each legatee or beneficiary his or her share therein in investments made by my Trustees or in kind, after such valuation as my Trustees may deem prudent and sufficient to ensure equality without such apportionment being susceptible of being called in question by any Legatee or Beneficiary.

(g) In their sole and unfettered discretion to vary and transpose and appropriate any investments made by my Trustees of my said Estate in whole or in part as investments for any specific trust created by the terms of this my Will.

50

(h) In their uncontrolled discretion, instead of acting personally to employ and pay any other person or persons to transact any

*Exhibit.*

2.  
 Will of the  
 Hon.  
 Patrick  
 Burns  
 deceased,  
 15th  
 January  
 1932,  
*continued.*

business or to do any act of whatsoever nature in relation to this my Will and the Trusts hereof, including the receipt and payment of money without being liable for loss incurred thereby. And any Trustee being a Solicitor or other person engaged in any profession or business may be so employed to act and shall be entitled to charge and be paid all professional or other charges for any business or act done by him or his firm in connection with the Trusts hereof, including acts which a Trustee could have done personally. And I hereby authorize and empower my Trustees to appoint from time to time upon such terms as they may think fit any person or persons, their or his attorneys or attorney for the purpose of exercising any of the trusts or powers herein expressly or impliedly given to my Trustees with respect to any property belonging to me outside of the Province of Alberta. 10

(i) To determine in all cases of doubt whether any moneys coming to their hands are capital or income and to apportion blended funds and every such distribution or apportionment shall be final and binding on all persons beneficially interested under this my Will. 20

(j) In their sole and uncontrolled discretion to advance out of the capital of "my Trust Estate" for the child or children of my said son, Patrick Thomas Michael Burns, should he die prior to attaining the age of forty (40) years, during the minority of such child or children, such sum or sums as to my Trustees shall seem expedient for the maintenance and education of such child or children and in addition to advance all such sums of money as may, in my Trustees' sole and uncontrolled discretion seem necessary and expedient to be paid for behoof of such child or children. 30

(k) I realize that my estate may at the time of my death be heavily charged with immediate payments to be made therefrom and that business conditions may from time to time be unsatisfactory, and I therefore direct that my Trustees shall, having regard to those circumstances and such other conditions as may from time to time prevail, defer or pass payment of any dividends, interest and profits on any shares, stocks, bonds or debentures of Burns Foundation (Limited) and that they shall exercise their uncontrolled and unfettered discretion in the administration of the said Burns Foundation (Limited) having at all times regard to the best interests of my estate and the preservation of the businesses with which I have been and may be associated at the time of my death. 40

(l) I declare that it shall be lawful for my Trustees, notwithstanding any of the trusts hereinbefore contained, to sell any part or portion of "my Trust Estate" to pay any deficiency and to satisfy any debts, legacies or any of the obligations whatsoever of "my Trust Estate" arising thereout and that the costs of and incidental to such sale or sales shall be charged upon or paid out of the corpus of my estate. 50

41. I DECLARE that no Trustee of this my Will shall be liable for any loss not attributable :

(a) To his own dishonesty, or

(b) To the wilful commission by him of any act known by him to be a breach of trust

and in particular he shall not be bound to take proceedings against a co-trustee for any breach or alleged breach of trust committed by such co-trustee.

*Exhibit.*

2.

Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

42. I DECLARE that should any difference of opinion at any time  
10 exist between the Trustees for the time being of this my Will in relation to the doing or forbearing to do anything or otherwise howsoever in the execution of the trusts of this my Will or any Codicil hereto, the opinion of the majority of such Trustees shall prevail notwithstanding that any one or more of such Trustees may be personally interested or concerned in the matter in dispute.

43. I DECLARE that it shall be lawful for my Trustees if and so often as they think fit to employ a chartered accountant at the cost of my said estate to audit the accounts of my Trustees with respect to the trust property hereby or by any Codicil hereto given, devised or bequeathed  
20 to any part or parts thereof.

44. I DECLARE that all powers or trusts hereinbefore given to or imposed on my Trustees hereinbefore named may be exercised or performed by the survivors or survivor of them or the Trustees or Trustee for the time being hereof whether original or substituted.

45. I DIRECT that the Trustees of this my Will will be never less (exclusive of my son, Patrick Thomas Michael Burns) than three (3) in number and that any vacancy in the Trusteeship hereof shall be filled up to the said number of three (3) as soon as conveniently may be, but nevertheless that the Trustees or Trustee hereof for the time being shall  
30 during any vacancy have the same powers, authorities and discretions and may act in all respects as if there were four Trustees hereof, inclusive of my said son.

46. I DECLARE that if any Trustee of this my Will shall die or remain out of the Dominion of Canada for more than twelve months or desire to be discharged from all or any of the trusts and powers reposed in or conferred on him or shall refuse or in the opinion of any Judge of the Supreme Court of Alberta, be unfit or incapable of acting therein, then and so often as the same shall happen it shall be lawful for the surviving or continuing Trustees or Trustee hereof for the time being (and for the  
40 purpose of this paragraph a retiring Trustee shall be deemed to be a continuing Trustee if willing to act) to appoint a new Trustee or new Trustees hereof in the place of the Trustee so dead or remaining out of the Dominion of Canada or desiring to be discharged, refusing or being unfit or incapable as aforesaid, and that on every new appointment " my Trust Estate " shall forthwith be conveyed to or otherwise vest in such new Trustee jointly with any other Trustees or Trustee thereof for the time being. AND I DECLARE that every Trustee so appointed shall as well before as after " my Trust Estate " shall have been so conveyed or otherwise vested in him as aforesaid have the same powers, authorities and discretions

*Exhibit.*  
—  
2.  
Will of the  
Hon.  
Patrick  
Burns  
deceased,  
15th  
January  
1932,  
*continued.*

and may in all respects act as if he had originally been appointed a Trustee of this my Will. AND I FURTHER DECLARE that the Statutory Power of appointing a new Trustee or new Trustees hereof shall be vested in and exercised by my said son, Patrick Thomas Michael Burns, along with the other Trustees of my Estate.

47. I DIRECT that my Trustees shall be paid as compensation for their services as Trustees hereunder such fees and allowances as may be from time to time fixed by a Judge of the Supreme Court of Alberta or by a Judge of any Court of record in the said Province having jurisdiction in the premises. 10

IN WITNESS WHEREOF I, the said PATRICK BURNS, the within named Testator have to this my last Will and Testament contained on this and the forty-two preceding sheets of paper set my hand at the City of Calgary, in the Province of Alberta, on this Fifteenth day of January, in the year of our Lord, One Thousand Nine Hundred and Thirty-two.

SIGNED, PUBLISHED and DECLARED  
by the said Patrick Burns, the above  
named Testator, as and for his last Will  
and Testament in the presence of us,  
who, in his presence, at his request and  
in the presence of each other have here-  
unto subscribed our names as witnesses  
attesting the same.

“ P. BURNS ”

20

ALEX. HANNAH,  
Calgary, Alberta,  
Barrister-at-Law.

JOHN J. SAUCIER,  
Calgary, Alberta,  
Barrister-at-Law.

30

V. R. JONES,  
Clerk of the Court.



## Exhibit No. 8.

*Exhibit.***ORDER INTERPRETING WILL.**

8.

Before The Honourable Mr. Justice EWING in Chambers.

Dated at the Court House, Calgary, Alberta, Monday, the 11th day of December, A.D. 1939.

Order  
Inter-  
preting  
Will,  
11th  
December  
1939.

UPON the application of the Right Honourable Bedford Bennett, Michael John Burns, Alick Cochrane Newton and Alexander Hannah, the Executors and Trustees of the last Will and Testament of the Honourable Patrick Burns, late of the City of Calgary, in the Province of Alberta, Rancher, deceased, upon hearing read the Originating Notice herein and the Order of the Honourable Mr. Justice Ewing dated the 19th day of October, A.D. 1939, with proof of service thereof and the Affidavit of Alick Cochrane Newton with the Exhibit therein referred to, and upon hearing Counsel for the said Executors and Trustees, Counsel for the Attorney General of the Province of Alberta, Counsel for the Official Guardian, Counsel for the Salvation Army, Counsel for the City of Calgary, E. A. Hookway, City Comptroller of the City of Calgary and Lieutenant-Colonel David Ritchie, the Chief Constable of the said City, appointed by the said Order to represent the widows and orphans of members of the Police Force of the said City and for the said City Comptroller and Alex. Carr, Chief of the Fire Department of the said City, appointed by the said Order to represent the widows and orphans of members of the Fire Brigade of the said City.

IT IS ORDERED that according to the true construction of the last Will and Testament of the said The Honourable Patrick Burns :—

1. Paragraph number 20 of the said Will reading as follows :

“ I GIVE AND BEQUEATH unto the Institution known as ‘ The Children’s Shelter ’ and carried on under the auspices of the City of Calgary, in the Province of Alberta, Fifty (50) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Five Thousand Dollars (\$5,000.00). In the event of no Institution existing in the said City of Calgary known and administered as a Children’s Shelter and carried on under the auspices of the said City, I direct that the bequest hereby made by me shall be used either to provide the nucleus of a fund for establishing such an Institution, or the nucleus for the establishment of a fund to be administered by the said City for the benefit of poor, indigent and neglected children, and I further direct my Trustees to make such arrangements as may be necessary and advisable with the Civic Authorities of the said City accordingly.”

constitutes a good and valid charitable bequest.

2. Paragraph number 21 of the said Will reading as follows :

“ I GIVE AND BEQUEATH unto any Fund established for the benefit of Widows and Orphans of Members of the Police Force of the City of Calgary, in the Province of Alberta, Fifty (50) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital stock of Burns Foundation (Limited) having a nominal or par value

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of Five Thousand Dollars (\$5,000.00). In the event that no fund has been established for the benefit of widows and orphans of Members of the Police Force of the said City of Calgary, I DIRECT that the bequest hereby made by me shall be used to provide the nucleus for the establishment of a Fund for the benefit of Widows and Orphans of Members of the Police Force in the said City of Calgary, and I further direct my Trustees to make such arrangements as may be necessary and advisable with the Civic Authorities of the said City accordingly."

constitutes a good and valid charitable bequest.

10

3. Paragraph number 22 of the said Will reading as follows :

" I GIVE AND BEQUEATH unto any Fund established for the benefit of Widows and Orphans of Members of the Fire Brigade of the City of Calgary, in the Province of Alberta, Fifty (50) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited) having a nominal or par value of Five Thousand Dollars (\$5,000.00). In the event that no fund has been established for the benefit of Widows and Orphans of Members of the Fire Brigade of the said City of Calgary, I direct that the bequest hereby made by me shall be used to provide the nucleus for the establishment of a Fund for the benefit of Widows and Orphans of Members of the Fire Brigade in the said City of Calgary, and I further direct my Trustees to make such arrangements as may be necessary and advisable with the Civic Authorities of the said City accordingly."

constitutes a good and valid charitable bequest.

4. Under that portion of paragraph number 36 of the said Will, reading as follows :

" AND UPON THE FURTHER TRUST to pay and convey the rest, residue and remainder of ' my Trust Estate ' unto The Royal Trust Company for the creation and establishment of a Trust to be known as the ' Burns Memorial Trust ' to be administered by it as Trustee at its office in the City of Calgary, in the Province of Alberta, and the net annual income therefrom to pay and distribute annually in equal shares thereof amongst the following :—

(1) The Father Lacombe Home at Midnapore in the Province of Alberta.

(2) The Branch of the Salvation Army, having its Headquarters at the City of Calgary, in the Province of Alberta.

(3) The Children's Shelter carried on under the auspices of the said City of Calgary, towards which I have bequeathed Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) by this my Will.

(4) To the Fund established for the benefit of WIDOWS AND ORPHANS OF MEMBERS OF THE POLICE FORCE OF THE CITY OF CALGARY, towards which I have bequeathed Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) by this my Will.

50



(5) To the Fund established for the benefit of WIDOWS AND ORPHANS OF MEMBERS OF THE FIRE BRIGADE OF THE CITY OF CALGARY, towards which I have bequeathed Fifty (50) 4% non-voting, non-cumulative, redeemable Preference shares in the Capital Stock of Burns Foundation (Limited) by this my Will ;”

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the said gifts of income to the Father Lacombe Home, the Salvation Army, The Children's Shelter, the Fund established for the benefit of widows and orphans of members of the Police Force of the City of Calgary and  
10 the Fund established for the benefit of widows and orphans of members of the Fire Brigade of the City of Calgary, are good and valid charitable bequests.

AND IT APPEARING that at the date of the death of the said Testator and at the present time there was and is no Institution existing in the said City of Calgary known and administered as a Children's Shelter or carried on under the auspices of the said City, that no Fund has been established for the benefit of Widows and Orphans of members of the Police Force of the said City of Calgary and that no Fund has been  
20 established for the benefit of widows and orphans of members of the Fire Brigade of the said City of Calgary, this Court was pleased to direct that a Scheme should be settled in each case by the solicitors representing the various parties who appeared upon the said application, subject to the approval of the Court, and such Schemes having been duly settled as aforesaid.

IT IS FURTHER ORDERED :

5. That the Scheme set forth in the Schedule hereto and entitled "Scheme for the Administration of a Fund to be Administered by the City of Calgary for the Benefit of Poor, Indigent and Neglected Children under the Last Will and Testament of the Honourable Patrick Burns, late of the City of Calgary, in the Province of Alberta, Rancher, Deceased,"  
30 is hereby approved and that the said Scheme be carried into effect.

6. That the Scheme set forth in the Schedule hereto and entitled "Scheme for the Establishment and Administration of a Fund to be Administered for the benefit of Widows and Orphans of Members of the Police Force in the City of Calgary, in the Province of Alberta, under the Last Will and Testament of the Honourable Patrick Burns, late of the City of Calgary aforesaid, Rancher, Deceased," is hereby approved and that the said Scheme be carried into effect.

7. That the Scheme set forth in the Schedule hereto and entitled  
40 "Scheme for the Establishment and Administration of a Fund to be Administered for the benefit of Widows and Orphans of Members of the Fire Brigade in the City of Calgary, in the Province of Alberta, under the last Will and Testament of the Honourable Patrick Burns, late of the City of Calgary aforesaid, Rancher, Deceased," is hereby approved and that the said Scheme be carried into effect.

8. That the Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) having an aggregate nominal or par value of Five thousand (\$5,000.00) dollars, referred to in paragraph number 20 of the said Will, and all

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dividends declared in respect thereof since the death of the said The Honourable Patrick Burns be forthwith transferred to the Trustees constituted under the Scheme referred to in paragraph 5 hereof; and that the said transfer be effected by the surrender of Share Certificate Number 24 of the said Burns Foundation (Limited) and the various cheques issued by the said Burns Foundation (Limited) payable to the order of "City of Calgary for the Institution known as The Children's Shelter" and that a new Certificate for the said shares and new cheques for the amounts of the said dividends be issued to "The Trustees for Poor, Indigent and Neglected Children of the City of Calgary." 10

9. That the Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) having an aggregate nominal or par value of Five thousand (\$5,000.00) dollars, referred to in paragraph number 21 of the said Will, and all dividends declared in respect thereof since the death of the said The Honourable Patrick Burns be forthwith transferred to the Trustees constituted under the Scheme referred to in paragraph 6 hereof; and that the said transfer be effected by the surrender of Share Certificate Number 25 of the said Burns Foundation (Limited) and the various cheques issued by the said Burns Foundation (Limited) payable to the 20 order of "City of Calgary for the benefit of widows and orphans of members of the Calgary Police Force" and "Fund for widows and orphans of members of Calgary Police Force" and that a new Certificate for the said shares and new cheques for the amounts of the said dividends be issued to "The Trustees for Widows and Orphans of the Police Force of the City of Calgary."

10. That the Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) having an aggregate nominal or par value of Five thousand (\$5,000.00) 30 dollars, referred to in paragraph number 22 of the said Will, and all dividends declared in respect thereof since the death of the said The Honourable Patrick Burns be forthwith transferred to the Trustees constituted under the Scheme referred to in paragraph 7 hereof; and that the said transfer be effected by the surrender of Share Certificate Number 26 of the said Burns Foundation (Limited) and the various cheques issued by the said Burns Foundation (Limited) payable to the order of "City of Calgary for the benefit of the Widows and orphans of members of the Calgary Fire Brigade" and "Fund for widows and orphans of members of Calgary Fire Brigade" and that a new Certificate for the 40 said shares and new cheques for the amounts of the said dividends be issued to "The Trustees for Widows and Orphans of the Fire Brigade of the City of Calgary."

11. And it appearing that the proper corporate name of the Branch of the Salvation Army having its Headquarters at the City of Calgary, in the Province of Alberta, mentioned in the said Will, is "The Governing Council of the Salvation Army Canada West" and the said Governing Council of the Salvation Army Canada West having given its undertaking that all benefits both as to principal and interest in respect of the shares hereinafter mentioned are to accrue to the benefit of its Calgary Branch 50 exclusively; it is ordered that the Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of the

Burns Foundation (Limited) having an aggregate nominal or par value of Five thousand (\$5,000.00) dollars referred to in paragraph number 17 of the said Will, be forthwith transferred to the said The Governing Council of the Salvation Army Canada West ; and that the said transfer be effected by the surrender of Share Certificate Number 23 of the said Burns Foundation (Limited) and the issue of a new Certificate for the said shares in the name of The Governing Council of the Salvation Army Canada West.

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*continued.*

12. That leave be and the same is hereby given to the applicants to amend their Originating Notice herein within 5 days from the date  
10 hereof :

(a) By adding in paragraph number 1 (4) thereof after the words " the said gifts of income to " the words " the Father Lacombe Home, the said Branch of the Salvation Army " ;

(b) By altering the number of paragraph 3 thereof to 4 and adding as paragraph 3 thereof the following :

20 " 3. For directions as to the transfer of the Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) having an aggregate nominal or par value of Five thousand (\$5,000.00) dollars bequeathed by paragraph number 17 of the said Will to the Branch of the Salvation Army having its Headquarters at the City of Calgary, in the Province of Alberta, having regard to the fact that the proper corporate name of the said legatee is ' The Governing Council of the Salvation Army Canada West.' "

13. That the costs of this action and of and incidental to this application and Order be paid out of the estate of the said The Honourable Patrick Burns and the said costs are hereby fixed and allowed as follows :

	To H. J. Wilson, Esq., K.C.,		
	Solicitor for the Attorney-General	.. ..	\$ 25.00
30	To D. G. MacKenzie, Esq., K.C.,		
	Solicitor for the Official Guardian	.. ..	150.00
	To T. W. Collinge, Esq.,		
	Solicitor for the City of Calgary and the representatives of widows and orphans of members of the Police Force and the Fire Brigade . .		150.00
	To S. H. Adams, Esq., K.C.,		
	Solicitor for the Salvation Army	..	50.00

40 the costs of the applicants to be fixed by a Judge of the District Court of the District of Southern Alberta, upon the next passing of accounts in the said estate.

A. F. Ewing  
J. S. C.

Approved :

H. J. Wilson  
Solicitor for the Attorney General  
of the Province of Alberta.  
D. G. MacKenzie  
Solicitor for the Official Guardian.  
T. W. Collinge  
Solicitor for the City of Calgary and  
50 the representatives of widows and  
orphans of members of the Police  
Force and the Fire Brigade.

Entered this 14th day of  
December, 1939  
J. H. Charman  
Acting Clerk of the Court

(SEAL)

## SCHEDULE

*Exhibit.*

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Scheme for the Administration of a Fund to be Administered by the City of Calgary, for the Benefit of Poor, Indigent and Neglected Children under the Last Will and Testament of The Honourable Patrick Burns, late of the City of Calgary, in the Province of Alberta, Rancher, Deceased.

1. From and after the date hereof the Trustees hereinafter appointed shall receive and hold the fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of the Company known as Burns Foundation (Limited) having an aggregate nominal or par value of Five Thousand (\$5000.00) Dollars bequeathed by the last Will and Testament of the Honourable Patrick Burns, late of the City of Calgary, in the Province of Alberta, Rancher, Deceased, to provide the nucleus for the establishment of a Fund to be administered by the said City for the benefit of poor, indigent and neglected children, and all moneys payable as the share of income from The Burns Memorial Trust also bequeathed by the said Last Will and Testament to The Children's Shelter, which said shares and moneys together with all moneys which may hereafter be bequeathed and given or otherwise be added or accrue to the said Fund and all investments thereafter, are hereinafter referred to as "the Trust Fund," and shall be managed by the said Trustees in conformity with the provisions of this Scheme. 10 20

2. The Trustees shall also receive all dividends and profits declared on and payable in respect of the said shares and all dividends, profits, interest and accumulations earned on and payable in respect of all moneys received from the said Burns Memorial Trust and other funds forming part of the Trust Fund and the income and accumulations thereof, all of which shall be held by the Trustees upon trust to pay or invest the same in accordance with the provisions and directions hereinafter contained.

3. The said fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) having an aggregate nominal or par value of Five Thousand (\$5000.00) Dollars and all dividends declared in respect thereof since the death of the said The Honourable Patrick Burns shall be forthwith transferred under the authority of an Order of the Supreme Court of Alberta into the names of the said Trustees in trust as aforesaid. 30

## TRUSTEES

4. The Trustees shall consist of the following persons, namely :

The Mayor for the time being of the City of Calgary ;  
The Comptroller for the time being of the City of Calgary ; 40  
The City Solicitor for the time being of the City of Calgary ;  
The Superintendent of Children's Aid for the time being of the said City.

5. No salary or emoluments whatsoever shall be paid to the Trustees for their services hereunder.

6. In the event that any Trustee or any incumbent of the official offices to be held by the Trustees shall at any time hereafter resign, refuse

to act or desire to be discharged from all or any of the trusts or powers reposed in or conferred upon him or shall refuse or in the opinion of any Judge of the Supreme Court of Alberta be unfit or incapable of acting thereunder, then and so often as the same shall happen the remaining Trustees shall continue to act until such incumbent of any of the said offices may be willing or competent to act.

*Exhibit.*  
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preting  
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*continued.*

#### MEETINGS AND PROCEEDINGS OF TRUSTEES

7. Two Trustees present in person at any meeting shall constitute a quorum. Pending the filling of any vacancy the Trustees or Trustee for  
10 the time being may act for all purposes in the administration of the Trust Fund.

8. The Trustees shall hold meetings at least once in each year at such times and in such places in the City of Calgary as they shall from time to time appoint.

9. The Chairman or any Trustee may at any time summon a meeting for any cause that seems to him to be sufficient.

10. Notice of every meeting of Trustees shall be given to each Trustee by one of the Trustees or the Secretary-Treasurer or some other person acting under the directions of the Trustees twenty-four hours before the  
20 time of holding the meeting or such lesser notice as the Trustees may approve.

11. If a quorum shall not be present within one-half hour after the time appointed for any meeting, the Trustee present may adjourn the meeting. Any meeting may be adjourned by the Chairman upon the adoption of a resolution for its adjournment.

12. The first meeting of the Trustees shall be summoned by the said Mayor for a date to be fixed by him within three calendar months from the date hereof, or if he shall fail to do so, by any one of the Trustees. At this meeting the Trustees shall make all necessary arrange-  
30 ments for the general conduct of the business of the Trust Fund.

13. The Trustees shall at their first meeting in every year elect one of their number to be Chairman of their meetings for the current year. They may make regulations for filling his place in case of his death or resignation or in the case of his absence for another Trustee to act as Chairman. The Chairman shall always be re-eligible to continue in office.

14. Every matter shall be determined by the majority of the Trustees present and voting on the question. In case of an equality of votes the Chairman shall have a casting vote whether or not he shall have previously voted on the same question, but no Trustee shall in any other circumstances  
40 cast more than one vote on any single matter discussed and dealt with at a meeting.

15. Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at a meeting.

16. The Trustees may at any meeting appoint one or more members of their body to be a committee for making any inquiry or for superintending or transacting any business, but every act and proceeding of a committee shall be submitted to a meeting of Trustees for approval.

*Exhibit.*

## GENERAL MANAGEMENT

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*continued.*

17. The Trustees shall appoint one of their number or some other fit person to be their Secretary-Treasurer. They may also appoint any necessary or proper officers or agents for their assistance in the administration and management of the Trust Fund. Every appointment so made shall be revocable by the Trustees at their pleasure. The Trustees may pay to their Secretary-Treasurer and to their other officers and agents not being Trustees such reasonable remuneration as may from time to time be approved by a Judge of the Supreme Court of Alberta, regard being always had to the amount available for distribution in the Trust Fund. 10  
Subject as herein provided the Trustees shall from time to time prescribe and appoint the duties to be performed by the Secretary-Treasurer and other officers or agents.

18. The Secretary-Treasurer shall conduct the correspondence and other business relating to the Trust Fund, shall summon, attend and keep minutes of all meetings of the Trustees; shall keep the accounts of the Trust Fund, shall prepare and furnish the statements of such accounts which the Trustees are bound to render and shall perform such other duties, not coming within the province of a professional legal adviser, as the Trustees may reasonably require. 20

19. A minute book shall be provided and kept by the Trustees. Minutes of the entry into office of every new Trustee and of all proceedings of the Trustees shall be entered in the minute book and shall be signed by the Chairman of the Meeting, either at the conclusion thereof or at some future meeting, if they shall have been duly confirmed.

20. Full accounts shall be entered in proper books of account to be provided for the purpose, of all money received and paid respectively on account of the Trust Fund. Such books of account shall be made up for each year and shall be examined and passed by the Trustees at a meeting in the ensuing year and shall thereupon be signed by the Chairman of the 30  
meeting. All proper accounts in relation to the Trust Fund shall in each year be made out and certified and copies thereof submitted for approval to a Judge of the said Court, provided that no legal fee shall be allowed in respect of the submission of such accounts to a judge as aforesaid during the period from the date hereof until the first payment shall be made to the Trust Fund from the Burns Memorial Trust.

21. A bank account for the purposes of the Trust Fund shall be opened and kept with some branch in the City of Calgary of a Canadian chartered bank to be from time to time selected by the Trustees. Every sum of money received on account of the Trust Fund shall be forthwith paid into 40  
the credit of that account, unless otherwise expressly ordered by the Trustees.

22. All cheques and orders for the payment of money shall be signed by one or more of the Trustees and endorsed or countersigned by the Secretary-Treasurer or another Trustee.

23. Within the limits prescribed by this Scheme the Trustees shall have full power from time to time to make regulations for the conduct of their business and for the management of the Trust Fund and such regulations shall be binding on all persons affected thereby.

24. The Trustees may receive any additional donations or endowments for the general purposes of the Trust Fund. They may also receive donations or endowments for any special objects connected with or similar to those of the Trust Fund, which shall not be inconsistent with or calculated to impede the due working of the provisions of this Scheme.

25. Upon a redemption or realization of the said shares the Trustees shall have power to invest all moneys arising from the said redemption or realization and all or any other moneys held or administered in accordance herewith and forming part of the Trust Fund and liable to be invested  
10 in the names of the Trustees in any investments for the time being allowed by law in the Province of Alberta for the investment of trust funds.

26. The said shares and all moneys received from the said Burns Memorial Trust shall be treated as capital in the Trust Fund. All capital in the Trust Fund shall be and remain invested by the Trustees and only the income thereof shall be paid out of the Trust Fund as hereinafter provided.

27. Without limitation to anything contained in this Scheme the right is hereby reserved to the Trustees to apply to a Judge of the Supreme Court of Alberta for the variation of the provisions of this Scheme.

20

#### APPLICATION OF INCOME

28. All the proper costs, charges and expenses of and incidental to the administration and management of the Trust Fund shall be first defrayed by the Trustees out of the income of the Trust Fund.

Subject to the payments aforesaid all the yearly income of the Trust Fund shall be applied by the Trustees for the benefit of poor, indigent and neglected children.

#### GENERAL PROVISIONS

29. The amounts and conditions of any payments or allowances to be made in pursuance of this Scheme for the benefit of poor, indigent and  
30 neglected children may be determined and varied from time to time by the Trustees.

30. The appropriation of the income of the Trust Fund shall be made by the Trustees from time to time in the exercise of their discretion at meetings of their body or by a committee in that behalf duly authorized.

31. No Trustee acting as Secretary-Treasurer or in any other capacity in respect of the Trust Fund shall receive any salary or remuneration from the funds of the Trust Fund.

32. The Trustees may cause this Scheme to be printed and a copy shall be given to every Trustee and officer upon his appointment, and if  
40 printed, copies may be sold at a reasonable rate to all persons applying for the same.

33. A copy of this Scheme shall be kept with the books of account and other documents pertaining to the Trust Fund.

34. Any question affecting the validity of any proceeding under this Scheme shall be determined by a Judge of the said Court upon application made to him for that purpose.

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35. If any doubt or question shall arise among the Trustees as to the construction or application of any of the provisions of this Scheme or the administration or management of the Trust Fund, they may apply to a Judge of the said Court for his opinion thereon, which when given shall be binding on the Trustees and on all persons claiming under the Trust who shall be affected by the question so decided.

36. This Scheme shall come into operation on the day on which it is approved by an Order of a Judge of the Supreme Court of Alberta, which day is herein referred to as the date hereof.

—————

10

Scheme for the Establishment and Administration of a Fund to be Administered for the benefit of Widows and Orphans of Members of the Police Force in the City of Calgary, in the Province of Alberta, under the Last Will and Testament of The Honourable Patrick Burns, late of the City of Calgary aforesaid, Rancher, Deceased.

1. From and after the date hereof the Trustees hereinafter appointed shall receive and hold the fifty (50) 4% non-voting, non-cumulative redeemable Preference Shares in the Capital Stock of the Company known as Burns Foundation (Limited) having an aggregate nominal or par value of Five Thousand (\$5,000.00) Dollars bequeathed by the Last Will and Testament of the Honourable Patrick Burns, late of the City of Calgary, 20 in the Province of Alberta, Rancher, Deceased, to provide the nucleus for the establishment of a Fund for the Benefit of widows and orphans of members of the Police Force in the said City of Calgary and all moneys payable as the share of income from The Burns Memorial Trust also bequeathed by the said Last Will and Testament to the Fund established for the benefit of widows and orphans of members of the Police Force of the City of Calgary, which said shares and moneys together with all moneys which may hereafter be bequeathed and given or otherwise be added or accrue to the said Fund and all investments thereafter, are hereinafter referred to as "the Trust Fund" and shall be managed by 30 the said Trustees in conformity with the provisions of this Scheme.

2. The Trustees shall also receive all dividends and profits declared on and payable in respect of the said shares and all dividends, profits, interest and accumulations earned on and payable in respect of all moneys received from the said Burns Memorial Trust and other funds forming part of the Trust Fund and the income and accumulations thereof, all of which shall be held by the Trustees upon trust to pay or invest the same in accordance with the provisions and directions hereinafter contained.

3. The said Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) 40 having an aggregate nominal or par value of Five Thousand (\$5,000.00) Dollars and all dividends declared in respect thereof since the death of the said The Honourable Patrick Burns shall be forthwith transferred under the authority of an Order of a Judge into the names of the said Trustees in trust as aforesaid.

4. In this Scheme, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them, that is to say :—

"The Trustees" means the body of Trustees as constituted by this Scheme ;



“ The Police Force ” means the Police Force, maintained by the Corporation of the City of Calgary, in the Province of Alberta ;

*Exhibit.*

“ Deceased member ” means :

8.

(a) any member of the Police Force who has heretofore died or shall hereafter die while still a member of the Police Force ; or

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(b) after retirement from active duty as a member of the Police Force under circumstances entitling him to a pension under the provisions of The Police Pension by-law of the City of Calgary ; or

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*continued.*

10

(c) any member of the Police Force who, while an active member thereof, has joined or shall hereafter join His Majesty's Forces and shall hereafter die as a result of service with His Majesty's Forces.

“ Widow ” means the lawful widow of any deceased member, but any such widow shall cease to be a widow within the meaning hereof upon her subsequent remarriage ;

“ Orphan ” means any child up to and including the age of 18 years of any deceased member, regardless of whether or not the other parent of such child is still living ;

20

“ A Judge ” means a Judge of the Supreme Court of Alberta.

#### TRUSTEES

5. The Trustees shall consist of the following persons, namely :
- The Mayor for the time being of the said City of Calgary ;
  - The Comptroller for the time being of the said City ;
  - The Chief Constable for the time being of the said City ;
  - The City Solicitor for the time being of the said City.

30 Provided that the Trustees shall have power from time to time to appoint active members of the Police Force as Trustees for such periods as they shall determine but so that the total number of Trustees shall at no time exceed five in number.

6. In the event that any Trustee or any incumbent of the official office to be held by any Trustee shall at any time hereafter resign, refuse to act or desire to be discharged from all or any of the trusts or powers reposed in, or conferred upon him or shall refuse or in the opinion of a Judge be unfit or incapable of acting thereunder, or cease to be a resident of the City of Calgary aforesaid, then and so often as the same shall happen the remaining Trustees shall continue to act until such incumbent of any of the said offices may be willing or competent to act.

40

#### MEETINGS AND PROCEEDINGS OF TRUSTEES

7. Two Trustees present in person at any meeting shall constitute a quorum. Pending the filling of any vacancy the Trustee or Trustees for the time being may act for all purposes in the administration of the Trust Fund.

8. The Trustees shall hold meetings at least once in each year at such times and in such places in the City of Calgary as they shall from time to time appoint.

*Exhibit.*

8.

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preting  
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9. The Chairman or any one Trustee may at any time summon a meeting for any cause that seems to him to be sufficient.

10. Notice of every meeting of Trustees shall be given to each Trustee by a Trustee or the Secretary-Treasurer or by some other person acting under the directions of the Trustees, twenty-four hours before the time of holding the meeting or such lesser notice as the Trustees may approve.

11. If a quorum shall not be present within one-half hour after the time appointed for any meeting, the Trustee present may adjourn the meeting. Any meeting may be adjourned by the Chairman upon the 10 adoption of a resolution for its adjournment.

12. The first meeting of the Trustees shall be summoned by the said Mayor for a date to be fixed by him within three calendar months from the date hereof, or if he shall fail to do so, by any one of the Trustees. At this meeting the Trustees shall make all necessary arrangements for the general conduct of the business of the Trust Fund.

13. The Trustees shall at their first meeting in every year elect one of their number to be Chairman of their meetings for the current year. They may make regulations for filling his place in case of his death or resignation or in the case of his absence, for another Trustee to act as 20 Chairman. The Chairman shall always be re-eligible to continue in office.

14. Every matter shall be determined by the majority of the Trustees present and voting on the question. In case of an equality of votes the Chairman shall have a casting vote whether or not he shall have previously voted on the same question, but no Trustee shall in any other circumstances cast more than one vote on any single matter discussed and dealt with at a meeting.

15. Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at a meeting.

16. The Trustees may at any meeting appoint one or more members 30 of their body to be a committee for making any inquiry or for superintending or transacting any business, but every act and proceeding of a committee shall be submitted to a meeting of Trustees for approval.

#### GENERAL MANAGEMENT

17. The Trustees shall appoint one of their number or some other fit person to be their Secretary-Treasurer. They may also appoint any necessary or proper officers or agents for their assistance in the administration and management of the Trust Fund. Every appointment so made shall be revocable by the Trustees at their pleasure. The Trustees may pay to the Secretary-Treasurer and to other officers and agents not being 40 Trustees such reasonable remuneration as may from time to time be approved by a Judge, regard being always had to the amount available for distribution in the Trust Fund. Subject as herein provided the Trustees shall from time to time prescribe and appoint the duties to be performed by the Secretary-Treasurer and other officers or agents.

18. The Secretary-Treasurer shall conduct the correspondence and other business relating to the Trust Fund, shall summon, attend and keep

minutes of all meetings of the Trustees; shall keep the accounts of the Trust Fund, shall prepare and furnish the statements of such accounts which the Trustees are bound to render and shall perform such other duties, not coming within the province of a professional legal adviser, as the Trustees may reasonably require.

*Exhibit.*

8.

Order  
Inter-  
preting  
Will,  
11th  
December  
1939,  
*continued.*

19. A minute book shall be provided and kept by the Trustees. Minutes of the entry into office of every new Trustee and of all proceedings of the Trustees shall be entered in the minute book and shall be signed by the Chairman of the Meeting, either at the conclusion thereof or at some  
10 future meeting, if they shall have been duly confirmed.

20. Full accounts shall be entered in proper books of account to be provided for the purpose, of all moneys received and paid respectively on account of the Trust Fund. Such books of account shall be made up for each year and shall be examined and passed by the Trustees at a meeting in the ensuing year and shall be thereupon signed by the Chairman of the meeting. All proper accounts in relation to the Trust Fund shall in each year be made out and certified and copies thereof submitted for approval to a Judge provided that no legal fee shall be allowed in respect of the submission of such accounts to a Judge during the period from the date  
20 hereof until the first payment shall be made to the Trust Fund from the Burns Memorial Trust.

21. A bank account for the purposes of the Trust Fund shall be opened and kept with some branch in the said City of Calgary of a Canadian chartered bank to be from time to time selected by the Trustees. Every sum of money received on account of the Trust Fund shall be forthwith paid into the credit of that account, unless otherwise expressly ordered by the Trustees.

22. All cheques and orders for the payment of money shall be signed by one or more of the Trustees and endorsed or countersigned by the  
30 Secretary Treasurer or another Trustee.

23. Within the limits prescribed by this Scheme the Trustees shall have full power from time to time to make regulations for the conduct of their business and for the management of the Trust Fund and such regulations shall be binding on all persons affected thereby.

24. The Trustees may receive any additional donations or endowments for the general purpose of the Trust Fund. They may also receive donations or endowments for any special objects connected with or similar to those of the Trust Fund, which shall not be inconsistent with or calculated to impede the due working of the provisions of this Scheme.

40 25. Upon a redemption or realization of the said shares the Trustees shall have power to invest all monies arising from the said redemption or realization and all or any other moneys held or administered in accordance with this Scheme and forming part of the Trust Fund and liable to be invested in the names of the Trustees in any investments for the time being allowed by law in the Province of Alberta, for the investment of trust funds.

26. The said shares and all moneys received from the said Burns Memorial Trust shall be treated as capital in the Trust Fund. All capital

*Exhibit.*  
 8.  
 Order  
 Inter-  
 preting  
 Will,  
 11th  
 December  
 1939,  
*continued.*

in the Trust Fund shall be and remain invested by the Trustees and only the income thereof shall be paid out of the Trust Fund as hereafter provided.

27. Without limitation to anything contained in this Scheme the right is hereby reserved to the Trustees to apply to a Judge for the variation of the provisions of this Scheme.

#### APPLICATION OF INCOME

28. All the proper costs, charges and expenses of and incidental to the administration and management of the Trust Fund shall be first defrayed by the Trustees out of the income of the Trust Fund. 10

Subject to the payments aforesaid the yearly income of the Trust Fund shall be applied by the Trustees for the benefit of widows and orphans of members of the Police Force, provided that if and so long as there shall be no such widows or orphans or there shall be a surplus of income, the Trustees shall accumulate the unapplied income or any surplus and invest the same as part of the capital of the Trust Fund.

#### GENERAL PROVISIONS

29. The amounts and conditions of any payments or allowances to be made in pursuance of this Scheme for the benefit of widows and orphans of members of the Police Force may be determined and varied from time to time by the Trustees. When payments are available from the said Burns Memorial Trust, the Trustees may formulate a scheme providing for annual or other periodical payments to each widow and orphan and in that event shall apply to a Judge for approval of such scheme. 20

30. The appropriation of the income of the Trust Fund shall be made by the Trustees from time to time in the exercise of their discretion at meetings of their body or by a committee in that behalf authorized.

31. No Trustee acting as Secretary-Treasurer or in any other capacity in respect of the Trust Fund shall receive any salary or remuneration from the funds of the Trust Fund. 30

32. The Trustees may cause this Scheme to be printed and a copy shall be given to every Trustee and officer upon his appointment.

33. A copy of this Scheme shall be kept with the books of account and other documents pertaining to the Trust Fund.

34. Any questions affecting the validity of any proceeding under this Scheme shall be determined by a Judge upon application made to him for that purpose.

35. If any doubt or question shall arise among the Trustees as to the construction or application of any of the provisions of this Scheme or the administration or management of the Trust Fund, they may apply to a Judge for his opinion thereon, which when given shall be binding on the Trustees and on all persons claiming under the Trust who shall be affected by the question so decided. 40

36. This Scheme shall come into operation on the day on which it is approved by an Order of a Judge, which day is herein referred to as the date hereof.

Scheme for the Establishment and Administration of a Fund to be administered for the benefit of Widows and Orphans of Members of the Fire Brigade in the City of Calgary, in the Province of Alberta, under the Last Will and Testament of The Honourable Patrick Burns, late of the City of Calgary aforesaid, Rancher, Deceased.

*Exhibit.*

8.  
Order  
Inter-  
preting  
Will,  
11th  
December  
1939,  
*continued.*

1. From and after the date hereof the Trustees hereinafter appointed shall receive and hold the Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of the Company known  
10 as Burns Foundation (Limited) having an aggregate nominal or par value of Five Thousand (\$5,000.00) Dollars bequeathed by the Last Will and Testament of the Honourable Patrick Burns, late of the City of Calgary, in the Province of Alberta, Rancher, Deceased, to provide the nucleus for the establishment of a Fund for the benefit of widows and orphans of members of the Fire Brigade in the said City of Calgary and all moneys payable as the share of income from The Burns Memorial Trust also bequeathed by the said Last Will and Testament to the Fund established for the benefit of widows and orphans of members of the Fire Brigade of the City of Calgary, which said shares and moneys together with all moneys  
20 which may hereafter be bequeathed and given or otherwise be added or accrue to the said Fund, and all investments thereafter, are hereinafter referred to as " the Trust Fund " and shall be managed by the said Trustees in conformity with the provisions of this Scheme.

2. The Trustees shall also receive all dividends and profits declared on and payable in respect of the said shares and all dividends, profits, interest and accumulations earned on and payable in respect of all moneys received from the said Burns Memorial Trust and other funds forming part of the Trust Fund and the income and accumulations thereof, all of which shall be held by the Trustees upon trust to pay or invest the same in  
30 accordance with the provisions and directions hereinafter contained.

3. The said Fifty (50) 4% non-voting, non-cumulative, redeemable Preference Shares in the Capital Stock of Burns Foundation (Limited) having an aggregate nominal or par value of Five Thousand (\$5,000.00) Dollars and all dividends declared in respect thereof since the death of the said The Honourable Patrick Burns shall be forthwith transferred under the authority of an Order of a Judge into the names of the said Trustees in trust as aforesaid.

4. In this Scheme, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned  
40 to them, that is to say :

" The Trustees " means the body of Trustees as constituted by this Scheme ;

" The Fire Brigade " means the Fire Brigade maintained by the Corporation of the City of Calgary, in the Province of Alberta.

" Deceased member " means :

(a) any member of the Fire Brigade who has heretofore died or shall hereafter die while still a member of the Fire Brigade ; or

(b) after retirement from active duty as a member of the Fire Brigade under circumstances entitling him to a pension under the provisions of The Firemen's Pension By-law of the  
50 City of Calgary ; or

*Exhibit.*  
8.  
Order  
Inter-  
preting  
Will,  
11th  
December  
1939,  
*continued.*

(c) any member of the Fire Brigade who, while an active member thereof, has joined or shall hereafter join His Majesty's Forces and shall hereafter die as a result of service with His Majesty's Forces.

"Widow" means the lawful widow of any deceased member, but any such widow shall cease to be a widow within the meaning hereof upon her subsequent re-marriage;

"Orphan" means any child up to and including the age of 18 years of any deceased member, regardless of whether or not the mother of such child is still living;

"A Judge" means a Judge of the Supreme Court of Alberta.

10

#### TRUSTEES

5. The Trustees shall consist of the following persons, namely:

The Mayor for the time being of the said City of Calgary;

The Comptroller for the time being of the said City;

The Chief of the Fire Brigade for the time being of the said City;

The City Solicitor for the time being of the said City.

Provided that the Trustees shall have power from time to time to appoint active members of the Fire Brigade as Trustees for such periods as they shall determine but so that the total number of Trustees shall at no time exceed five in number.

20

6. In the event that any Trustee or any incumbent of the Official Office to be held by any Trustee shall at any time hereafter resign, refuse to act or desire to be discharged from all or any of the trusts or powers, reposed in, or conferred upon, him or shall refuse or in the opinion of a Judge be unfit or incapable of acting thereunder, or cease to be a resident of the City of Calgary aforesaid, then and so often as the same shall happen the remaining Trustees shall continue to act until such incumbent of any of the said offices may be willing or competent to act.

30

#### MEETINGS AND PROCEEDINGS OF TRUSTEES

7. Two Trustees present in person at any meeting shall constitute a quorum. Pending the filling of any vacancy the Trustee or Trustees for the time being may act for all purposes in the administration of the Trust Fund.

8. The Trustees shall hold meetings at least once in each year at such times and in such places in the City of Calgary as they shall from time to time appoint.

9. The Chairman or any one Trustee may at any time summon a meeting for any cause that seems to him to be sufficient.

40

10. Notice of every meeting of Trustees shall be given to each Trustee by a Trustee or the Secretary-Treasurer or by some other person acting under the directions of the Trustees, twenty-four hours before the time of holding the meeting or such lesser notice as the Trustees may approve.

11. If a quorum shall not be present within one-half hour after the time appointed for any meeting, the Trustee present may adjourn the meeting. Any meeting may be adjourned by the Chairman upon the adoption of a resolution for its adjournment.

*Exhibit.*  


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 8.  
 Order  
 Inter-  
 preting  
 Will,  
 11th  
 December  
 1939,  
*continued.*

12. The first meeting of the Trustees shall be summoned by the said Mayor for a date to be fixed by him within three calendar months from the date hereof, or if he shall fail to do so, by any one of the Trustees. At this meeting the Trustees shall make all necessary arrangements for the general conduct of the business of the Trust Fund.

10 13. The Trustees shall at their first meeting in every year elect one of their number to be Chairman of their meetings for the current year. They may make regulations for filling his place in case of his death or resignation or in the case of his absence for another Trustee to act as Chairman. The Chairman shall always be re-eligible to continue in office.

14. Every matter shall be determined by the majority of the Trustees present and voting on the question. In case of an equality of votes the Chairman shall have a casting vote whether or not he shall have previously voted on the same question, but no Trustee shall in any other circumstances cast more than one vote on any single matter discussed and dealt with  
 20 at a meeting.

15. Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at a meeting.

16. The Trustees may at any meeting appoint one or more members of their body to be a committee for making any inquiry or for superintending or transacting any business, but every act and proceeding of a committee shall be submitted to a meeting of Trustees for approval.

GENERAL MANAGEMENT

17. The Trustees shall appoint one of their number or some other fit person to be their Secretary-Treasurer. They may also appoint any  
 30 necessary or proper officers or agents for their assistance in the administration and management of the Trust Fund. Every appointment so made shall be revocable by the Trustees at their pleasure. The Trustees may pay to the Secretary-Treasurer and to other officers and agents not being Trustees such reasonable remuneration as may from time to time be approved by a Judge, regard being always had to the amount available for distribution in the Trust Fund. Subject as herein provided the Trustees shall from time to time prescribe and appoint the duties to be performed by the Secretary-Treasurer and other officers or agents.

18. The Secretary-Treasurer shall conduct the correspondence and  
 40 other business relating to the Trust Fund; shall summon, attend and keep minutes of all meetings of the Trustees; shall keep the accounts of the Trust Fund, shall prepare and furnish the statements of such accounts which the Trustees are bound to render and shall perform such other duties, not coming within the province of a professional legal adviser, as the Trustees may reasonably require.

19. A Minute Book shall be provided and kept by the Trustees. Minutes of the entry into office of every new Trustee and of all proceedings

*Exhibit.*  
 8.  
 Order  
 Inter-  
 preting  
 Will,  
 11th  
 December  
 1939,  
*continued.*

of the Trustees shall be entered in the Minute Book and shall be signed by the Chairman of the Meeting, either at the conclusion thereof or at some future meeting, if they shall have been duly confirmed.

20. Full accounts shall be entered in proper books of account to be provided for the purpose, of all money received and paid respectively on account of the Trust Fund. Such books of account shall be made up for each year and shall be examined and passed by the Trustees at a meeting in the ensuing year and shall be thereupon signed by the Chairman of the meeting. All proper accounts in relation to the Trust Fund shall in each year be made out and certified and copies thereof submitted for approval to a Judge provided that no legal fee shall be allowed in respect of the submission of such accounts to a Judge during the period from the date hereof until the first payment shall be made to the Trust Fund from the Burns Memorial Trust. 10

21. A bank account for the purposes of the Trust Fund shall be opened and kept with some branch in the said City of Calgary of a Canadian chartered bank to be from time to time selected by the Trustees. Every sum of money received on account of the Trust Fund shall be forthwith paid into the credit of that account, unless otherwise expressly ordered by the Trustees. 20

22. All cheques and orders for the payment of money shall be signed by one or more of the Trustees and endorsed or countersigned by the Secretary-Treasurer or another Trustee.

23. Within the limits prescribed by this Scheme the Trustees shall have full power from time to time to make regulations for the conduct of their business and for the management of the Trust Fund and such regulations shall be binding on all persons affected thereby.

24. The Trustees may receive any additional donations or endowments for the general purposes of the Trust Fund. They may also receive donations or endowments for any special objects connected with or similar to those of the Trust Fund, which shall not be inconsistent with or calculated to impede the due working of the provisions of this Scheme. 30

25. Upon a redemption or realization of the said shares the Trustees shall have power to invest all moneys arising from the said redemption or realization and all or any other moneys held or administered in accordance with this Scheme and forming part of the Trust Fund and liable to be invested in the names of the Trustees in any investments for the time being allowed by law in the Province of Alberta, for the investment of trust funds.

26. The said shares and all moneys received from the said Burns Memorial Trust shall be treated as capital in the Trust Fund. All capital in the Trust Fund shall be and remain invested by the Trustees and only the income thereof shall be paid out of the Trust Fund as hereinafter provided. 40

27. Without limitation to anything contained in this Scheme the right is hereby reserved to the Trustees to apply to a Judge for the variation of the provisions of this Scheme.



## APPLICATION OF INCOME

*Exhibit.*

28. All the proper costs, charges and expenses of and incidental to the administration and management of the Trust Fund shall be first defrayed by the Trustees out of the income of the Trust Fund.

8.  
Order  
Inter-  
preting  
Will,  
11th  
December  
1939,  
*continued.*

Subject to the payments aforesaid all the yearly income of the Trust Fund shall be applied by the Trustees for the benefit of widows and orphans of members of the Fire Brigade, provided that if and so long as there shall be no such widows or orphans or there shall be a surplus of income, the Trustees shall accumulate the unapplied income or any surplus  
10 and invest the same as part of the capital of the Trust Fund.

## GENERAL PROVISIONS

29. The amounts and conditions of any payments or allowances to be made in pursuance of this Scheme for the benefit of widows and orphans of members of the Fire Brigade may be determined and varied from time to time by the Trustees. When payments are available from the said Burns Memorial Trust, the Trustees may formulate a Scheme providing for annual or other periodical payments to each widow and orphan and in that event shall apply to a Judge for approval of such Scheme.

30. The appropriation of the income of the Trust Fund shall be made by the Trustees from time to time in the exercise of their discretion at meetings of their body or by a committee in that behalf duly authorized.

31. No Trustee acting as Secretary-Treasurer or in any other capacity in respect of the Trust Fund shall receive any salary or remuneration from the funds of the Trust Fund.

32. The Trustees may cause this Scheme to be printed and a copy shall be given to every Trustee and officer upon his appointment.

33. A copy of this Scheme shall be kept with the books of account and other documents pertaining to the Trust Fund.

34. Any questions affecting the validity of any proceeding under this Scheme shall be determined by a Judge upon application made to him for that purpose.

35. If any doubt or question shall arise among the Trustees as to the construction or application of any of the provisions of this Scheme or the administration or management of the Trust Fund, they may apply to a Judge for his opinion thereon, which when given shall be binding on the Trustees and on all persons claiming under the Trust who shall be affected by the question so decided.

36. This Scheme shall come into operation on the day on which it is approved by an Order of a Judge, which day is herein referred to as the  
40 date hereof.

## Exhibit No. 9.

## ACCOUNTS for the year 1939.

ESTATE OF THE LATE HON. P. BURNS  
CALGARY, ALBERTA

## BALANCE SHEET AS AT 24TH FEBRUARY, 1939

ASSETS		LIABILITIES	
Current		Current	
Cash in Bank on Income Account .. ..	\$11,729.69	Debts, as listed in Schedule "E" of Probate, as per Schedule No. 3—	
on Capital Account .. ..	1,938.48	Boy Scouts Association .. ..	\$2,000.00
Accounts Receivable, as per Schedule No. 1 ..	1,458.73	Reserve for Income Taxes .. ..	325.18
Accrued Interest on Province of Alberta Bonds	4,609.30		<u>\$2,325.18</u>
<u>Investments</u>		Accounts Payable on Income Account .. ..	14.14
Shares in Associated Companies, as per Schedule No. 2 .. ..	\$2,417,169.27	Interest Accrued—Burns' Foundation Limited ..	4,400.29
Shares in Sundry Companies, as per Schedule No. 2 .. ..	6,562.66	<u>Income Account</u>	\$ 6,739.61
Reversionary Interest		Balance at credit held in Reserve, as per Statement ..	<u>7,315.26</u>
Probate Value of Reversionary Interest in \$145,000.00 Par Value, Dominion of Canada, 3% Bonds, held in trust during the lifetime of Mrs. T. M. Burns .. ..		<u>Capital Account</u>	
Household Furniture		Balance at credit, as per Statement .. ..	2,628,806.79
Probate Value of Silver remaining unsold ..		Burns' Foundation Limited	<u>\$2,642,861.66</u>
Real Estate		Advances on Capital Account, secured by the hypothecation of Province of Alberta Bonds, together with interest coupons thereon .. ..	327,785.47
Probate Value of Residence and Garden Property		<u>Contingent Liability</u>	
Province of Alberta Bonds		re Endorsement \$1,411.54	
Probate Value of (\$799,000.00 Par Value) Bonds, as per Schedule No. 2, hypothecated both as to principal and interest coupons, as security for the Advances made to the Estate by Burns' Foundation Limited .. ..			<u>\$2,970,647.13</u>
	\$2,483,777.13		
			<u>486,870.00</u>
			<u>\$2,970,647.13</u>

CALGARY, Alberta, 28th April, 1939.

Subject to our Report of this date, which is attached, the above Balance Sheet is, in our opinion, properly drawn up so as to exhibit a true and correct view of the position of the Estate of the late Hon. Patrick Burns, as at 24th February, 1939, according to the best of our information and the explanations given to us and as shown by the books of the Estate.

HARVEY, MORRISON & CO.,  
Chartered Accountants.

## ESTATE OF THE LATE HON. P. BURNS

## CALGARY, ALBERTA

SUMMARY OF INCOME ACCOUNT FOR THE YEAR ENDED  
24th FEBRUARY, 1939.*Exhibit.*

9.

Accounts  
for the  
year 1939,  
*continued.*

	Balance at credit 24th February, 1938 .. ..		\$10,597.94
	Receipts during Year—		
	Dividends—Burns' Foundation Limited on Shares held in Trust by executors :—		
	2% re 1937, paid during 1938 .. ..	32,650.00	
10	2% re 1938, paid during 1938 .. ..	32,650.00	
	1 $\frac{3}{4}$ % re 1938, paid during 1939 .. ..	28,568.75	
	Dividends—Sundry Companies .. ..	289.20	
	Interest .. ..	106.61	
	Rentals .. ..	88.85	
		<hr/>	\$104,951.35
	<u>Less</u> : Transfer to Capital Account re Interest Accrued on Province of Alberta Bonds to 24th February, 1938, credited to Income Account during the first year, now deemed to be Capital, as these bonds are hypothecated, both as to principal and interest to Burns' Foundation Limited as security for the advances made to the Estate by that Company .. ..		16,732.50
20			<hr/>
			\$88,218.85
	Payments during Year :—		
	Office Expenses & Audit Fees .. ..	\$ 2,586.52	
	Annuities—as directed by the Will .. ..	4,200.00	
	as directed by the Court—1937-8 .. ..	1,800.00	
	—1938-9 .. ..	1,800.00	
30	Maintenance of Residence and Garden Property— Taxes, Insurance, Caretaking, etc. .. ..	3,154.65	
	Interest—Burns' Foundation Limited .. ..	11,500.00	
	—Miscellaneous .. ..	1.88	
	Sundry Expenses .. ..	185.25	25,228.30
		<hr/>	<hr/>
			\$62,990.55
	<u>Less</u> : Amount held in reserve for payment of Annuities and Sundry Expenses .. ..	\$ 7,315.26	
	Accrued Interest Burns' Foundation Limited ..	4,400.29	11,715.55
		<hr/>	<hr/>
	Amount Distributed .. ..		\$51,275.00
			<hr/>
40	Distribution of Income :—		
	To Beneficiaries, as directed by the Will totalling 60% .. ..		\$30,765.04
	„ Executors for “ Trust Estate ”—40% ..		20,509.96
			<hr/>
			\$51,275.00
			<hr/>

ESTATE OF THE LATE HON. P. BURNS  
CALGARY, ALBERTA

*Exhibit.*  
9.  
Accounts  
for the  
year 1939,  
*continued.*

SUMMARY OF THE FINANCIAL POSITION OF THE ESTATE AS AT THE  
24th FEBRUARY, 1938 AND AT THE 24th FEBRUARY, 1939, SHOWING THE  
TRANSACTIONS DURING THE YEAR (CAPITAL ACCOUNT).

On the 24th February, 1938, one year after the death of the Hon. P. Burns, the Estate was comprised of the following Assets :—

Cash .. .. .	\$ 463.94	
Interest and Accounts Receivable .. .. .	15,035.61	10
Reversionary Interest in Bonds held in Trust during the lifetime of Mrs. T. M. Burns .. .. .	19,635.00	
Stocks, Shares and Bonds—		
(Includes all the shares of Burns' Foundation Limited, valued at \$2,657,941.76.		
This valuation includes shares of P. Burns' Holdings Limited and P. Burns' Ranches Limited held by the Foundation Company) ..		
	3,198,221.55	
Account Receivable which is not to be collected, as directed by the Will .. .. .	48,324.05	20
Household Goods and Furniture .. .. .	6,817.75	
Real Estate—Residence and Garden Property ..	20,000.00	
	\$3,308,497.90	

from which must be deducted Liabilities as follows :—

Debts due which were owing 24th February, 1937	\$24,848.99	
Loan from Burns' Foundation Limited, 24th February, 1937 .. .. .	31,200.00	
Loan from Burns' Foundation Limited for the year to 24th February, 1938 .. .. .	362,304.98	
Accounts Payable—Sundry .. .. .	3,328.80	
Loan from Income Account .. .. .	7,066.76	30
	428,749.53	
leaving the <u>Net Value</u> at 24th February, 1938, at ..	\$2,879,748.37	

During the year, the Account Receivable which was not to be collected, as directed by the Will, has now been cancelled by Agreement and the 3,725 shares of Burns' Foundation Limited, bequeathed to legatees under the Will, have now been distributed to the parties entitled thereto, valued at the probated amount of \$66.66 2/3 per share .. .. .

	\$48,324.05	
	248,333.33	296,657.38 40
	\$2,583,090.99	

and the debt due to Burns' Foundation Limited in respect of the late P. T. M. Burns has been cancelled under direction of the Court .. .. .

14,867.95

which leaves the balance of the Estate under administration by the Executors at .. .. .

\$2,597,958.94

Carried Forward .. .. .

\$2,597,958.94

ESTATE OF THE LATE HON. P. BURNS  
CALGARY, ALBERTA

*Exhibit.*

9.

Accounts  
for the  
year 1939  
*continued.*

SUMMARY OF THE FINANCIAL POSITION OF THE ESTATE AS AT THE  
24<sup>TH</sup> FEBRUARY, 1938, AND AT THE 24<sup>TH</sup> FEBRUARY, 1939, SHOWING THE  
TRANSACTIONS DURING THE YEAR (CAPITAL ACCOUNT) (Cont'd.)

	Brought forward ..	\$2,597,958.94
During the year, the following amounts were received in cash and added to the Capital Value of the Estate :—		
10	Province of Alberta Interest Coupons at one-half the contract rates :—	
	for the year ended 24th February, 1938 .. ..	\$16,732.50
	for the year ended 24th February, 1939 .. ..	12,123.62
	Distribution of Income	
	40% payable to Executors for "Trust Estate" ..	20,509.96
	Profit on Investments Realized .. .. .	8,396.00
	Accounts Receivable collected in excess of Probate Value .. .. .	201.37
	Profit on Sale of Household Furniture .. ..	97.07
20	Refund of Income Tax Appeal .. .. .	50.00
	Gross Cash Increase .. .. .	\$58,110.52
to which must be added :—		
	Accrued Interest on Province of Alberta Bonds from Coupon Date to 24th February, 1939 ..	4,609.30
	Cancellation of Liability to Royal Bank re Red Cross over amount paid .. .. .	4,983.34
	Gross Increase in Estate for Year	\$67,703.16
30	<u>Deduct</u> Cash Payments made which decrease Capital Value :—	
	Executors' Fees .. .. .	\$25,000.00
	Succession Duties—Provinces of Manitoba, Ontario and Deposit—British Columbia .. .. .	9,156.02
	Legal Expense .. .. .	1,650.28
	Investment Expense .. .. .	599.01
	Settlement—Chauffeur .. .. .	400.00
	University of Alberta—Scholarship .. .. .	50.00
	Net Increase in Capital Value of Estate for the year	30,847.85
	Value of Estate as at 24th February, 1939 .. ..	\$2,628,806.79

40 Note :—There are still Capital Charges not yet determined which include Succession Duties to the Province of British Columbia, Legal Fees, Income Taxes and Cost of Monument.

*Exhibit.*

ESTATE OF THE LATE HON. PATRICK BURNS  
CALGARY, ALBERTA

9.  
Accounts  
for the  
year 1939,  
*continued.*

SUMMARY OF THE FINANCIAL POSITION OF THE ESTATE AS AT THE  
24<sup>TH</sup> FEBRUARY, 1938, AND AT THE 24<sup>TH</sup> FEBRUARY, 1939, SHOWING THE  
TRANSACTIONS DURING THE YEAR (CAPITAL ACCOUNT) (Cont'd.)

The above value is comprised of the following		
<u>ASSETS</u> :—		
Cash in Bank .. .. .	\$	1,938.48
Accounts Receivable .. .. .		1,458.73
Interest Accrued .. .. .		4,609.30
Stocks, Shares and Bonds .. .. .		2,423,731.93
(Includes all the Common and 16,325 Preferred Shares of Burns' Foundation Limited valued at \$2,414,941.77. This valuation includes shares of P. Burns' Holdings Limited and P. Burns' Ranches Limited held by the Foundation Company.)		
Household Goods .. .. .		674.00
Reversionary Interest in Bonds held in Trust during the lifetime of Mrs. T. M. Burns .. .. .		19,635.00
Real Estate—Residence and Garden Property ..		20,000.00
\$799,000.00 Par Value—Province of Alberta Bonds hypothecated to Burns' Foundation Limited at the Probate Value of .. .. .	\$486,870.00	
<u>Less</u> Amount due Burns' Foundation Limited ..	327,785.47	159,084.53
		\$2,631,131.97
<u>Less Liabilities</u> as at 24th February, 1939		
Boy Scouts' Association .. .. .	\$	2,000.00
Income Tax Reserve .. .. .	325.18	2,325.18
Value of Estate as at 24th February, 1939 .. ..		\$2,628,806.79

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ESTATE OF THE LATE HON. PATRICK BURNS  
CALGARY, ALBERTA

STATEMENT OF CASH RECEIPTS AND PAYMENTS FOR THE YEAR ENDED 24TH FEBRUARY, 1939.

	Income Account	Capital Account	PAYMENTS	Income Account	Capital Account
<b>RECEIPTS</b>			<b>Testamentary Expenses—</b>		
Cash in Bank, 24th February, 1938 ..			Succession Duties—		
Interest on Province of Alberta Bonds ..			Province of Quebec .. .. .		\$ 2,522.09
Interest Coupons Due and Interest			Province of Manitoba .. . . .		133.93
Accrued prior to 24th February, 1937 ..			Deposit on Succession Duties payable to Province of British Columbia which are not yet finally assessed ..		6,500.00
Interest Coupons Due 25th February, 1937 to 24th February, 1938 ..	\$13,655.38		Administration Expenses		
Interest Coupons Due 25th February, 1938, to 24th February, 1939 ..	16,732.50		Proportion of Office Expenses of Burns' Foundation Limited .. .. .	\$2,000.00	
	12,123.62	42,511.50	Miscellaneous .. .. .	1.52	
<b>Accounts Receivable Collected</b>			Audit Fees .. .. .	585.00	
C. Sharples .. .. .	\$ 1.00		Executors' Fees .. .. .		\$2,586.52
Mrs. Edwards .. .. .	5.00		Debts Paid as per Schedule "E" of Probate		
V. Lloyd Owen .. .. .	150.00	156.00	Income Taxes .. .. .		\$ 1,005.86
Collections in excess of valuations in Schedule "C" of Probate			Burns' Foundation Limited .. .. .		31,200.00
C. Sharples .. .. .	\$ 61.37		Sundry Liabilities Paid, ascertained after 24th February, 1937		
Mrs. Edwards .. .. .	65.00	201.37	P. Burns' Agencies Limited—re		
A. T. Chadwick .. .. .	75.00		Valuations .. .. .		\$ 328.80
<b>Investments Realized</b>			St. Mary's Cathedral .. .. .		3,000.00
Debtenture—Burns' Foundation Limited .. .. .	\$15,319.63		University of Alberta—Scholarship ..		50.00
50 Shares — Royal Trust Company	4,000.00		Annuites Paid, as directed by the Will		
Probate Value .. .. .	496.00		Mrs. A. F. Holliday .. .. .	\$1,200.00	
Profit .. .. .			Mrs. C. Currie .. .. .	600.00	
100 Shares—Bank of Montreal, Probate Value .. .. .	23,300.00		Mrs. M. E. Kelly .. .. .	600.00	
Profit .. .. .	7,900.00	51,015.63	Mr. W. J. Burns .. .. .	1,800.00	4,200.00
<b>Household Furniture</b>			Annuity Paid, as directed by the Court		
Probate Value .. .. .	\$ 5,909.25		Mrs. M. E. Burns		
Profit .. .. .	97.07	6,006.32	24th Feb., 1937 to 24th Feb. 1938	\$1,800.00	
<b>Interest and Dividends</b>			25th Feb., 1938 to 24th Feb., 1939	1,800.00	3,600.00
Dividends—Burns' Foundation Limited			Maintenance of Residence and Garden Property		
2% re 1937 Paid in 1938 .. .. .	\$32,650.00		Taxes .. .. .	\$1,917.19	
2% re 1938 Paid in 1938 .. .. .	32,650.00		Residence—Heat .. .. .	183.48	
1½% re 1938 Paid in 1939 .. .. .	28,568.75		—Light and Water .. .. .	116.72	
Dividends—Royal Trust Co. .. .. .	280.00		—Repairs, etc. .. .. .	27.45	
—Dominion Bridge Co. .. .. .	1.20		Wages and Caretaking—Grounds, etc.	577.18	
—C. & E. Corpn. .. .. .	8.00		Insurance .. .. .	318.49	
Interest—Royal Trust Co. .. .. .	10.08				
—V. Lloyd Owen .. .. .	48.27				
—Bank .. .. .	48.26				
Rentals .. .. .	\$94,264.56				
Refund—Income Tax Appeal .. .. .	88.85	50.00			
		\$100,404.76			
Carried forward .. .. .	\$94,353.41		Carried Forward .. .. .	\$13,527.03	\$69,740.68

Exhibit.

9.  
Accounts for the year 1939, continued.

ESTATE OF THE LATE HON. PATRICK BURNS  
CALGARY, ALBERTA

Exhibit.

9.  
Accounts  
for the  
year 1939  
continued.

STATEMENT OF CASH RECEIPTS AND PAYMENTS FOR THE YEAR ENDED 24TH FEBRUARY, 1939 (Cont'd.)

RECEIPTS	Income Account	Capital Account			Income Account	Capital Account
Brought Forward .. .. .	\$94,353.41	\$100,404.76	PAYMENTS		\$13,527.03	\$69,740.68
From Income Account			Brought Forward .. .. .			
Executors' Proportion of Distribution, as per Contra .. .. .			Interest etc.			
			Burns' Foundation Limited			
			—Interest due 24th Feb., 1938 ..	\$ 7,261.35		
			—Interest due 24th Feb., 1939 ..	11,500.00		
			Bank of Montreal re Cutting Coupons			
			Insurance on Bonds .. .. .			\$341.45
			Registration of Bonds .. .. .			175.51
			Safety Deposit Box Rentals .. ..			21.65
			Exchange .. .. .	1.88		60.40
					<u>18,763.23</u>	599.01
			Canadian Red Cross Society—Payment to Royal Bank of Canada under which 50 shares of Burns' Foundation Limited have been acquired by the Estate at a valuation of .. .. .			
			and the liability to the Royal Bank on an endorsement in the amount of \$6,650.00 has been satisfied .. ..			\$3,333.34
						<u>1,666.66</u>
						5,000.00
			Legal Expenses			
			re Quebec Succession Duties .. ..			\$ 200.00
			re Passing of 1938 Accounts by the Court and Settlement of Annuity payable to Mrs. M. E. Burns .. ..			<u>1,450.28</u>
						1,650.28
			Miscellaneous			
			Proportion of Taxes— Chinook Jockey Club .. .. .	\$ 54.56		
			Care of Grave Plot .. .. .	10.00		
			Advertising .. .. .	37.62		
			Sundry .. .. .	.75		
			Settlement—Chauffeur .. .. .			400.00
			Rental Expenses .. .. .	<u>82.32</u>		
					185.25	
			Distribution of Income			
			Executors of Estate (see Contra) 40%	\$20,509.96		
			Mr. M. J. Burns .. .. .	5,127.50		
			Mrs. B. J. McGhee .. .. .	5,127.50		
			Mrs. M. E. Sparrow .. .. .	5,127.50		
			Mrs. Z. K. Coughlin .. .. .	5,127.50		
			Mrs. F. S. English .. .. .	5,127.50		
			Mr. F. J. Farrell .. .. .	854.60		
			Mr. P. E. Farrell .. .. .	854.59		
			Mr. F. D. Farrell .. .. .	854.59		
			Mr. T. E. Burns .. .. .	1,281.88		
			Mr. F. J. P. Burns .. .. .	<u>1,281.88</u>		
			Balance carried down .. .. .		51,275.00	43,524.75
					<u>10,602.90</u>	
					\$94,353.41	<u>\$120,914.72</u>



ESTATE OF THE LATE HON. PATRICK BURNS  
CALGARY, ALBERTA

STATEMENT OF CASH RECEIPTS AND PAYMENTS FOR THE YEAR ENDED 24TH FEBRUARY, 1939 (Cont'd.)

RECEIPTS	Income Account	Capital Account	PAYMENTS		Income Account	Capital Account
Balance brought down .. .. .	\$10,602.90	\$43,524.75	Repayments to Burns' Foundation Limited in respect of Advances ..		\$ 7,939.97	(red) \$52,009.48
Loans from Burns' Foundation Limited	2,000.00	9,550.00	Repayments of Income re 1937-38 ..			7,066.76
Income Receipts used 1937-38 to pay Succession Duties .. .. .	7,066.76		Cash in Bank 24th February, 1939 ..		11,729.69	1,938.48
	<u>\$19,669.66</u>	<u>\$53,074.75</u>			<u>\$19,669.66</u>	<u>\$53,074.75</u>

Exhibit.  
9.  
Accounts for the year 1939, continued.