SURA v. MINISTER OF NATIONAL REVENUE[1]

Jack R. Miller *

Taxes VIA — Husband and Wife IIC — Community of property — Wife as co-owner — Husband having unrestrained enjoyment of income — Husband's income for tax purposes — Income Tax Act (Can.) Section 3

I — The Issues

Frank Sura was a taxpayer resident in the Province of Quebec and married under its legal community of property matrimonial regime. Income tax returns filed for each of the years 1947-1954 inclusive reported the income of the community, consisting of Sura's salary and rents from immoveables, as his personal income. Later, the administration wished to review the original assessments for reasons which do not concern us here. Sura took the opportunity to raise an objection of his own to the assessments, namely that he and his wife were entitled to file separate returns for one-half of the annual community income each, since under the Quebec Civil Code husband and wife are co-proprietors of the community in equal shares. The underlying assumption was that ownership of income is the factor which attracts tax liability to a person under the Income Tax Act as well as under the Income War Tax Act. His objection was taken before the Income Tax Appeal Board.

Aside from the fact that a basic proposition of Canadian income tax law was under review, the importance of the case lies in the fact that it was a test case: a great number of taxpayers could claim a similar tax advantage were Sura successful. Still others would wonder why a Quebec taxpayer, married under legal community of property, should enjoy such a favoured position under the federal

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[1] (1962) 32 D.L.R. 282 (English translation) or [1962] C.T.C. 1 (original French judgment).

[2] Hereinafter referred to as the Minister.

tax legislation. Nonetheless, uniform treatment of taxpayers across Canada was not a legal issue in this case, nor should it be the consideration of any court in construing a taxing statute. In the event that this problem arose, Parliament could easily amend the Income Tax Act to deem the income of the community to be solely that of the husband for tax purposes. Alternatively, the legislature could extend such an advantage to the mass of taxpayers.

The issues before the Supreme Court were entirely questions of law; the facts were not in dispute. It was common ground that the salary and rents constituting the disputed income were assets of the community under 1272 C.C., and that the community is neither a legal person nor a person within s. 2(1) of the Income Tax Act. Hence, community property could not belong to the community itself, but ownership would have to vest in either the husband, wife, or in both jointly in some proportion. The taxpayer was successful before the Income Tax Appeal Board, but on appeal to the Exchequer Court by the Minister, he lost. When the case reached the Supreme Court, two basic questions had to be answered.

1. What relationship must exist between income and a taxpayer so that tax may be validly assessed on that income in his hands under the Income Tax Act?

2. During the existence of the community, what rights of ownership obtain over the community property?

II — The Legal Arguments

The appellant[3] tried to establish two propositions to the satisfaction of the Supreme Court, that ownership of income is the only quality which involves tax liability under the Income Tax Act, and that the consorts are co-proprietors of community property during the existence of the community under Quebec law. Generally, support for these propositions was derived from (i) Title Fourth of the Quebec Civil Code, entitled *Of marriage covenants and of the effect of marriage upon the property of the consorts,* (ii) French Commentators of the Code Napoleon, (iii) relevant sections of the Income Tax Act and (iv) decisions of the United States Supreme Court and of the Tax Appeal Board allowing consorts married under community of property matrimonial regimes to file joint or separate federal income tax returns.

[3] Hereinafter, where the designations, appellant and respondent, appear, they will refer to Sura and the Minister respectively.

It was not disputed by Sura's counsel that the husband has extensive powers of administration. But, the right of ownership and the power of administration must always be distinguished. There are restrictions on the husband's power of administration. For example, he cannot give away the immoveable property or a universality of the moveable property of the community without the wife's consent, except for the establishment of their common children (1292 C.C.). While the husband has considerable powers of administration over the wife's personal patrimony by virtue of Art. 1298 of the Code, no one would suggest that he owns this property. The respondent replied to the argument by suggesting that absolute ownership may be subject to some restriction without losing that quality. Further, the wife has no control over the husband's administration of the community during its existence. For example, she has no right to demand an accounting. Her controls involve the dissolution of the community,[4] e.g. an action for separation of property.

Certain provisions of the Code assume that the wife has a right of ownership in community property. For example, Art. 1293 C.C. provides that neither consort can bequeath more than "his share" of the community. One cannot bequeath what one does not own. Therefore, the wife must own a share of the community property. Again, under Art. 1338 C.C., the wife has a right to renounce the community, which the appellant contends necessarily assumes she possesses an acquired right in the community property which she could renounce if so motivated. The respondent suggested that what she renounces accrues to her at the time of the dissolution of the community.

An important platform of the appellant's case concerns the property of the community which is reserved to the entire administration of the wife. This is provided for in the Code under Articles 1425a - 1425i by amendment in order to ameliorate the powers of the wife over community property. Previously, such monies now described as reserved property of the wife were under the husband's administration as any other revenue of the community. The law thus transferred the powers of administration over this property to the wife, although the right of ownership remained divisible between the consorts. Consequently, each consort has his own area of community property which he administers. Therefore it is illogical to reason that because the husband has such extensive powers of administration over part of the community property, he owns that

[4] In the case of *Guerin* v. *Giroux*, [1943] C.S. 323, it was held that a wife cannot take an action to annul an illegal alienation of community property by the husband until the community has been dissolved.

property. The wife does not own the reserve property which is under her entire administration.[5]

The Codifiers considered the Coutume de Paris to be the sire of the community of property regime in the Province of Quebec. Art. 225 of the Coutume and a comment thereon by Pothier have inspired the doctrine of the husband as sole owner of community property.

The Codifiers:

"Aussi, d'après le système que nous adoptons et qui est celui de la Coutume de Paris, sauf quelques exceptions indiquées...[6]

Art. 225, Coutume de Paris:

"Le mari est seigneur des meubles et conquêtes immeubles par lui faits durant et constant le mariage de lui et de sa femme, en telle manière qu'il les peut vendre, aliéner ou hypothéquer, et en faire et disposer par donation ou autre disposition entre vifs, à son plaisir et volonté sans le consentement de sa dite femme à personne capable et sans fraude".

Pothier:

"Le droit de la femme se réduit donc, tant que la communauté dure, à une simple espérance de partager les biens qui se trouveront la composer lors de sa dissolution; ce n'est que par cette dissolution que le droit de la femme est ouvert, et qu'il devient un droit véritable et effectif de propriété pour moitié de tous les biens qui se trouvent alors la composer".[7]

An attempt was made by the appellant to minimize the influence of the old French law on the Quebec Civil Code in this respect. Authors were quoted as saying that the designation, "maitre et seigneur", was an exageration used to emphasize the unusual administrative powers entrusted to the husband. Pothier refers to the community as a type of partnership, which the appellant seized upon as a connotation of common ownership in the community property.

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[5] There are those who would argue that the reserved property is not part of the community, but is owned by the wife. The source of this opinion, which seems to be held by Faribault (*Traité de Droit Civil du Québec*, Vol. X, p. 439, 447) appears to be the second paragraph of article 1425f which allows the wife to retain her reserved property, subject to the payment of certain debts, if she renounces to the community at the time of dissolution. However, the articles 1425a - 1425i mention only powers of administration and allow the creditors of the community to proceed against the wife's reserved property for debts contracted "in the interest of the household". It is submitted that these articles should be amended to clarify the situation for its bearing not only on income tax matters but also on the wife's right to compensation in the event a community debt is paid from her reserved property. For the purposes of this comment, it will be assumed the reserved property is part of the community, i.e. community revenue under the administration of the wife.

[6] Report of the Codifiers of the Civil Code of Lower Canada, Vol. IV-V, p. 200.

[7] Bugnet, *Oeuvres de Pothier*, Vol. VII, p. 270.

"Le mariage, en formant une société entre le mari et la femme, dont le mari est le chef, donne au mari, en sa qualité qu'il a de chef de cette société, un droit de puissance sur la personne de la femme, qui s'étend aussi sur ses biens".[8]

The appellant went a step further to suggest that the medieval community of property regime has undergone such a face-lifting in its evolution to its present state in Quebec law that it is a different animal. Restrictions on the husband's power are more extensive and sophisticated than they ever were under the Coutume de Paris. Certain similarities in choice of words between the Code Napoleon and the Quebec Civil Code are too striking in contrast to the Coutume de Paris to be regarded as mere coincidence. For example, both Codes use the word "administre" to describe the nature of the husband's powers,[9] where the Coutume speaks of the husband as "maître et seigneur de la communauté". Further, the second paragraph added to 1292 C.C. by amendment is virtually identical to 1422 C.N., which itself was later amended (1942) to confine the husband's powers still further.[10]

In spite of the dissident voice of Toullier and several others, the overwhelming majority of commentators on the Napoleonic Code [11] support the appellant's contention that the consorts are co-owners, assuming the French authors are a relevant authority for the Quebec Civil Code on matrimonial regimes. Josserand is a recent example.

"On a soutenu que le patrimoine de la communauté serait en réalité le patrimoine du mari, propriétaire exclusif des biens dits communs, sur lesquels la femme n'aurait aucun droit effectif, au moins pendant la durée du régime. On a appuyé cette conception étrange sur les pouvoirs très étendus qui appartiennent au mari sur les biens communs, dont il peut disposer librement, sauf certaines réserves en matière de donation, et qui se confondent, *en fait*, avec

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[8] *Ibid*, p. 1. A possible explanation of why such extensive powers were given to the husband under the medieval customary law is offered by Prof. Baudouin. "L'état des moeurs dans l'Ancien Droit pouvait justifier que dans cette association la gestion de la communauté fut confiée au mari et exclusivement concentrée entre ses mains. Les femmes à cette époque n'avaient guère l'expérience des affaires, et restaient peut-être plus heureusement pour elles, attachées à leur foyer ne participant pas à la vie économique." *(Le Droit Civil de la Province de Québec* (1953) at p. 1022).

[9] 1421 C.N. and 1292 C.C.

[10] 1422 C.N. "Le mari ne peut, même pour l'établissement des enfants communs, disposer entre vifs à titre gratuit des biens de la communauté sans le consentement de sa femme."

[11] Huc, *Commentaire Théorique et Pratique du Code Civil* (1896), Vol. IX, p. 176; Aubry et Rau, *Droit Civil Français* (1949), Vol. VIII, p. 10; Baudry-Lacantinerie, *Traité Théorique et Pratique de Droit Civil du Contrat de Mariage* (1906), Vol. I, p. 581-3. For more complete list, see: Gertrude Wasserman, *The Wife Common as to Property: Co-proprietor in the Community* (1955) 15 R. du B. 430.

ses propres biens; sur l'effacement de la femme, qui ne participe point à l'administration de la communauté; et aussi sur la tradition: ne disait-on pas autrefois, dans nos anciennes coutumes: *Uxor non est proprie socia, sed speratur fore.* Mais cette thèse devient de plus en plus paradoxale à mesure que se développent les droits de la femme et que se restreignent ceux du mari: elle n'explique pas que la femme qui exerce une profession distincte ait l'administration et la disposition de ses biens réservés; ni que le mari voie ses pouvoirs limités par certaines dispositions (1422, 1437); elle est condamnée par le texte de l'art. 1492, d'après lequel la femme *renonçant "perd toute espèce de droits sur les biens de la communauté"*: c'est donc qu'elle en avait jusque là; on ne perd que ce que l'on possédait. Il faut donc admettre, avec tous les auteurs récents que les biens de la communauté appartiennent au mari et à la femme." [12]

Concluding the appellant's arguments in civil law is the respected authority of Mignault.

"La femme qui renonce *perd* toute espèce de droit sur les biens de la communauté. *Perd*: car elle avait pendant le mariage des droits sur les biens de la communauté. Elle était co-propriétaire avec le mari, non pas sous la condition suspensive de son acceptation, mais sous la condition résolutoire de sa renonciation." [13]

The essence of the respondent's submission was that income tax is imposed by the Income Tax Act on the person who receives the benefits of income, which does not necessarily entail ownership of that income. In the Minister's opinion, a definite distinction is to be drawn between the ownership and the absolute enjoyment of income. As long as the husband receives the full benefit of community income, he is liable to pay tax on the total community income, whether he owns the income or not.

The clearest enunciation of the principle applicable under the Income Tax Act is to be found in a decision of the Exchequer Court of Canada, *Robertson* v. *M.N.R.*,[14] involving an insurance agent's appeal from an assessment of some commissions in his hands. A distinction was drawn between premiums which were not refundable and advance premiums which might be repayable if the policies were cancelled before the expiry of their term. Thorson, J. laid down the following test which the respondent maintains is the basis of the assessment of tax under the Income Tax Act.

"Did such amounts have, at the time of their receipt, or acquire, during the year of their receipt, the quality of income, to use the phrase of Mr. Justice Brandeis in *Brown* v. *Helvering*. In my judgment, the language used by him, to which I have already referred, lays down an important test as to whether an amount received by a taxpayer has the quality of income. Is his right to

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[12] *Cours de Droit Civil Positif Français* (1933), Vol. III, p. 9.

[13] *Droit Civil Canadien* (1902), Vol. VI, p. 337.

[14] [1944] C.T.C. 75. No pronouncement was made in this judgment whether absolute enjoyment and ownership are synonymous.

it absolute and under no restriction, contractual or otherwise, as to its disposition, use, or enjoyment?"[15]

Applying this principle to the husband under community of property in Quebec, if he had the absolute disposition, use or enjoyment of the community's revenues at the time of their receipt, notwithstanding a contingent liability to the wife to repay misused funds at the dissolution of the community, he would be liable to pay income tax on such amounts. The respondent suggested that this was indeed the case as far as salaries and rents, which constituted the income in dispute, were concerned. The appellant did not agree that the Code permits this segregation of the community's assets, since all revenues melt into the pot losing their identity.

The appellant denied the existence of this distinction by submitting that ownership is the only basic criterion of assessment under the Income Tax Act, although there may be exceptional cases where this criterion is not applied. While the Act does not contain an explicit statement, the use of the words "of" and "his" indicate ownership.

S. 2(1) — "An income tax shall be paid as hereinafter required upon the taxable income for each taxation year *of* every person resident in Canada at any time in the year."

S. 2(3) — "The taxable income of a taxpayer for a taxation year in *his* income for the year minus the deductions permitted by Division C."

S. 3 — "The income of a taxpayer for a taxation year for the purpose of this Part is *his* income for the year from all sources inside or outside Canada and, without restricting the generality of the foregoing, includes income for the year from all (a) businesses, (b) property, and (c) offices and employment."[16]

It is an axiom of tax law that liability can only be imposed by the strict wording of the statute, and not by speculation as to Parliament's intention.

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissable, in any statute, what is called an equitable construction, certainly such a construction is not admissable in a taxing statute, where you can simply adhere to the words of the statute."[17]

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[15] *Ibid.*, p. 91.

[16] Italics added.

[17] *Partington* v. *Attorney-General* (1869-70) L.R., 4 H.L. 100 at 122. Beneficial receipt too has its roots in the wording of the Income Tax Act, e.g., s.5(1) — "Income for a taxation year from an office or employment is the salary wages and other remuneration, including gratuities, received by the taxpayer in the year plus...". The ambiguity of the meaning of income in the Income Tax Act arises from the absence of any comprehensive definition in the Act.

Finally, the appellant cited as a persuasive authority the decisions of the United States Supreme Court allowing consorts married under state community of property matrimonial regimes to file joint federal income tax returns.[18] Also tendered for the Court's consideration was a decision of the Income Tax Appeal Board which granted an appeal from an assessment of income in the hands of a taxpayer domiciled in the State of California where he was married under community of property on the ground that the income was only half his, the other half belonging to his wife.[19]

III — The Ratio Decidendi of the Supreme Court

In an elaborate judgment,[20] Mr. W. S. Fisher of the Income Tax Appeal Board held Sura's wife to have a vested one-half interest in the community revenue during the regime's existence. Hence Sura was liable to tax only on what he *owned*, viz. one half of the community's annual revenue. As Mr. Fisher put it:

> "I could find nothing in the Canadian income tax legislation which, since I am of the opinion that the wife under legal community of property has a vested interest in one-half of the income of the community, would enable the taxing authorities to impose a tax upon the husband in respect of the whole of the income from the community property when he does not own all the property, and, in my opinion, he is liable to tax in respect only of the income which is his own, namely, one-half of the community property income." [21]

On appeal to the Exchequer Court,[22] Fournier, J. reversed the decision of the Board, upholding the assessment on the following reasoning. During the existence of the community, the wife has none of the rights which characterize ownership. Therefore, the husband is sole owner. Pothier, Toullier, and the Coutume de Paris are the principal authorities for this proposition.

Consequently, the learned judge interpreted the issue in pure civil law terms, implicitly assuming ownership to be the basis of assessment under the Income Tax Act, to which he makes no reference of any significance in his opinion. He concludes by stating:

> "Le revenue dont il est question dans ce débat est un actif de la communauté au sens de l'article 1272 du *Code Civil* et provient des salaires de l'intimé et de loyers d'immeubles. Ces revenus sont donc les revenus de l'intimé, le mari étant seul propriétaire de l'actif de la communauté." [23]

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[18] *Bender* v. *Pfaff* 282 U.S. 127 or 75 L. ed. 252; *U.S.A.* v. *Malcolm* 282 U.S. 792 or 75 L. ed. 714; *Poe* v. *Seaborn* 282 U.S. 101 or 75 L. ed. 239.

[19] *Reese* v. *M.N.R.* (1955) 13 Tax A.B.C. 379.

[20] *No. 445* v. *M.N.R.* (1957-58) 18 Tax A.B.C. 65. The case was heard *in camera*.

[21] *Ibid.*, p. 86. Note that Mr. Fisher assumed that the general principle upon which tax is assessed under the Income Tax Act is ownership of the income taxed.

[22] [1960] Ex.C.R. 83.

[23] *Ibid.*, p. 119.

The *ratio decidendi* of the Supreme Court is that the husband has the absolute enjoyment of all the community's revenues and is therefore liable to income tax thereon, notwithstanding the Quebec Civil Code wherein the provincial legislature has enacted that the husband owns only one-half of the community property, of which the revenues are a part. Before assessing the implications of this *ratio*, the process by which the Court arrived at this perplexing decision is now outlined.

Speaking on behalf of the Court, whose members were unanimous in concurring with his opinion, Taschereau, J. begins by indicating the general approach under the Income Tax Act. The Act "looks" at a person and determines what benefits he has received. It does not commence with a piece of property and attempt to ascertain its owner. This is what is meant by the income tax axiom that persons not property are the subjects of income taxation.

> "La loi... ne recherche pas le capital ou la propriété d'un bien. Elle s'adresse à la personne, et le montant de l'impôt est déterminé par les bénéfices qu'elle recueille. Comme la femme n'en retire aucun, dérivant des biens communs, il s'ensuit que le fisc ne peut rien lui réclamer." [24]

Note from the statement quoted that the wife is held to receive no taxable benefits from the community revenues, even though she is regarded as co-owner of community property during the duration of the community. This is explained in two steps.

Taschereau, J. defines the issue: should some of the income of the community be treated as her income for purposes under the Income Tax Act. The first step is constituted by the holding that the husband's powers of administration over both community and personal property stem from "la volonté du législateur", not an implied mandate emanating from the will of the wife. Consequently:

> "Il reçoit pour lui, et nullement comme mandataire ou fiduciaire pour le bénéfice de son épouse. Cette dernière ne retire aucun revenu, et son bénéfice consiste dans l'augmentation des biens communs dont elle est propriétaire et dans lesquels, elle a un droit éventuel du partage futur".[25]

The learned judge pauses to recognize an exception to the general rule, where the wife is allowed to receive the benefit of revenues which for some purposes belong to the community. The reference is to the wife's rights over her reserve property, an example of the

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[24] [1962] C.T.C. 1 at 8-9.

[25] *Ibid.*, 6. i.e. the husband receives the community revenue in his own right, and not as agent for the wife. The Court thus regards any amount given to the wife as an application, and not an alienation, of income by the husband for which he remains liable to tax.

exception proving the rule. Presumably, it follows that the wife would be liable to income tax on her reserve property, even though the community might receive the benefit of some of its revenues. Sura's wife had no reserve property nor personal property, so this possible complication was not present.

The second step is formed by the distinction drawn between holding a right and exercising that right. While the law may permit a person to possess a right, it may forbid its exercise until the happening of a certain future event. It was held that the wife cannot exercise her right of ownership until the dissolution of the community, which means she has no control over the disposition of community revenues. Consequently, they cannot be said to be in part her income for tax purposes. The husband alone receives the benefit of community revenues.

> "Tous les revenus sont *les siens* dont il peut disposer, qu'il peut aliéner, même à titre gratuit, sauf les restrictions imposées par la loi. Il résulte que la femme ne touche aucun revenu des biens communs, qu'elle n'a "aucun traitement, salaire, ou rémunération", que rien ne lui "provient d'entreprises de biens, de charges ou d'emplois". Or c'est précisément ce qui est taxable." [26]

Mr. Justice Taschereau consolidates the explanation by suggesting that to tax the wife would be to impute to her an annual personal gain, which does not accrue to her. She does not receive a taxable benefit from the community. It is inferred in the judgment that the tax consequences might be different under conventional community, presumably if there was a provision conferring annual benefits upon the wife. Such benefits as the wife may receive pursuant to the obligations arising out of marriage are not taxable in the hands of the wife according to this decision.

At the end of his opinion, Taschereau, J. removes a few loose threads. The holding of Fournier, J. in the Exchequer Court is explicitly rejected in so far as he states the husband alone to be sole owner of community property. Secondly, the American jurisprudence is rejected as an authority on the basis of differences in the comparative civil law systems. It is submitted that the only relevant difference would be if the foreign community of property laws provided for the wife to receive taxable benefits, which the Quebec civil law does not allow. In any case, American jurisprudence is never binding on Canadian courts.

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[26] *Ibid.*, 8. Italics added.

IV — The Perspectives

What principle of income tax law are we to derive from this case? Has the Supreme Court in effect equated absolute enjoyment of income and ownership? If a distinction has been drawn, is it meaningful? Has the Supreme Court ignored the law of Quebec and relied upon a common sense approach to determine who shall be taxed on a given income? What are the consequences of the reasoning which underlies the *ratio?*

After agreeing with the appellant that the consorts own the community property in equal shares, which includes the community's revenues, the Supreme Court held that no tax consequences flow from rights of ownership. Instead, persons are taxed on income when their right to that income is "absolute and under no restriction, contractual or otherwise, as to its disposition, use or enjoyment". Thus a distinction is made.

As a distinction between two rights *in rem,* it is meaningless since the concepts are synonymous. Compare the definition of absolute enjoyment given above and the definition of ownership given in Article 406 C.C. As a distinction between a right *in rem* and a legal capacity to act, it is meaningful but leads to anomalous results in the context of income tax law. If we take the Supreme Court to intend this distinction, we arrive at the conclusion that the administrator of the property of an incapable is personally liable for income tax on the revenues of that property. While the administrator has the obligation to file income tax returns and to pay the assessed tax on behalf of the incapable, it does not follow that the income is his. Therefore, it is submitted that for the purpose of the Income Tax Act ownership and the absolute enjoyment of income are synonymous. The distinction appears to have been employed to avoid drawing the obvious conclusions from the Court's holding that the consorts each own one-half of community property. This would have led to the result that the husband would be liable for income tax on one-half of the wife's reserved property, which violates a common sense approach. This was the dilemma of the Supreme Court: to find a consistent criterion which would allow a taxation of all community revenues in accordance with common sense principles.

The solution was to assimilate extensive powers of administration over community revenues to a right to those revenues which is "absolute and under no restriction, contractual or otherwise, as to its disposition, use, or enjoyment", and hence, it is submitted, to a right of ownership. The Supreme Court has said in effect that because

the wife is unable to exercise her right of co-ownership, she loses it in so far as community revenues are concerned. For tax purposes, the income under the administration of the husband is his income, although under the Civil Code he only has a one-half undivided interest therein. Thus, by adopting this assimilation, the Supreme Court was able to find the husband liable for income tax on community revenues over which he had the administration. Similarly, had Sura's wife received reserved property, the Court would have been able to hold her liable for tax on community revenues under her administration, i.e. treat her as if she were the owner of those revenues. Both these statements conform to what is currently understood to be departmental practice. However, it has also been departmental practice to tax the wife on the revenues from her personal property. In the light of the Sura case, this would no longer be possible since they are community revenues under the administration of the husband. Whether the community's revenues come from the husband's earnings or the wife's personal property, the husband's powers of administration are identical.

While there are exceptions, it is submitted that the basic principle under the Income Tax Act is that income tax is a personal debt of the person who owns the income which is being taxed. Influenced by the departmental practice to tax the person whose revenue it is as a matter of fact, thus ignoring the Quebec Civil Code, the Supreme Court attempted to find a rationale which would sanction this practice in law. However, it is respectfully submitted that the rationale used is based on a fiction of law, namely that the power of administration over community revenues is synonymous to ownership. This has the anomalous result that the rights of ownership of the consorts over community property, of which the revenues are a part, assume a schizophrenic character: under the Civil Code, the husband owns one-half of the broad range of community revenues, irregardless of the allocation of administrative functions by the Code between the consorts; for the purposes of federal tax law, each consort owns the community revenus which he is charged with administering. In other words, the federal law provides for a different scheme of ownership of community property than does the Quebec Civil Code. Because of the peculiar nature of the community of property matrimonial regime in Quebec, it is suggested that the problem requires special legislative attention in the Income Tax Act to provide that, in this instance only, income tax would be a personal debt of the administrator and not the owner. This would still have the result of taxing in the husband's hands revenues from the wife's personal property. Perhaps the Quebec Legislature might consider placing these rev-

enues under the wife's administration, as it did in the case of reserved property.

In summary, the Supreme Court realized at the outset that to tax the consorts on the basis of their rights of ownership in the community property would be unrealistic because the wife would be called upon to pay tax on monies over which she had little control in fact. However, their attempted rationalization of departmental practice has led to legal fictions and anomalies. It is therefore respectfully suggested that the Income Tax Act be amended to deal with this peculiar problem, thus maintaining the integrity of the Act as a whole.