

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lambe and another v. Manuel and others from the Court of King's Bench for Lower Canada, Province of Quebec; delivered the 19th November 1902.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD LINDLEY.

[*Delivered by Lord Macnaghten.*]

This action in which the Attorney-General for the Province of Quebec has intervened was brought by the Collector of Provincial Revenue for the District of Montreal against the Respondent John Manuel, sole acting executor and universal residuary legatee under the will of the late Allan Gilmour, a gentleman of considerable property who had his domicile in the Province of Ontario. The object of the action was to recover succession taxes claimed to be due under the Quebec Succession Duty Act of 1892 and the Acts amending the same in respect of certain parts of the testator's estate as being "movable property . . . in the Province."

The items in respect of which succession taxes were claimed are the following:—

1. Shares standing in the testator's name in the capital stock of the Merchants' Bank of Canada. The head office of the Bank is in the City of Montreal where its stock register and transfer books are kept.

2. Shares in the capital stock of the Canadian Bank of Commerce. The head office of that Bank is in the City of Toronto. It has however a branch in Montreal with a separate stock register and transfer books in which transfers are entered and recorded, so that a certain portion of the capital of the Bank is represented by shares registered and transferable in Toronto and the remainder by shares registered and transferable in Montreal. On the application of the owner transfers are made from one register to the other. The testator's shares were at the time of his death standing in his name in the Montreal register.
3. A mortgage debt secured by hypothec on land in Montreal.

The taxes were claimed under the following provisions of the Quebec Succession Duty Acts :—

1191 B. " All transmissions, owing to death,
 " of the property in, usufruct or enjoyment
 " of, movable and immovable property in
 " the Province shall be liable to the follow-
 " ing taxes calculated upon the value of the
 " property transmitted after deducting debts
 " and charges existing at the time of the
 " death.

* * * *

" 3. If the succession devolves to a
 " stranger, 10 per cent."

1191 D, sub-section 5, " No transfer of the
 " properties of any estate or succession
 " shall be valid, nor shall any title vest in
 " any person, if the taxes payable under
 " this Section have not been paid; and no
 " executor trustee administrator curator
 " heir or legatee shall consent to any
 " transfers or payments of legacies unless
 " the said duties have been paid."

The Superior Court unanimously rejected the Plaintiff's claim and the decision of that Court was unanimously affirmed by the Court of King's Bench.

The reasons of the learned Judges were delivered by Sir Melbourne M. Tait Acting C.J. in the Superior Court and by Bossé, J., in the Court of King's Bench.

Those reasons stated shortly are that according to their true construction the Quebec Succession Duty Acts only apply in the case of movables to transmissions of property resulting from the devolution of a succession in the Province of Quebec, or in other words that the taxes imposed by those Acts on movable property are imposed only on property which the successor claims under or by virtue of Quebec law, and that in the present case the several items in respect of which succession taxes are claimed form part of a succession devolving under the law of Ontario.

The decisions of the Quebec Courts are in their Lordships' opinion entirely in consonance with well-established principles which have been recognised in England in the well known cases of *Thomson v. Advocate-General* 12 Cl. and F. 1 and *Wallace v. Attorney-General* Law Reports 1 Chancery 1 and by this Board in the case of *Harding v. Commissioners of Stamps for Queensland* 1898 A. C. 769.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed.

The Appellants will pay the costs of the Respondent Manuel who alone defended this Appeal.
