

The Royal Trust Company - - - - - *Appellants*

v.

The Minister of Finance of British Columbia - - - - - *Respondent.*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 27TH OCTOBER, 1921.

Present at the Hearing :

VISCOUNT HALDANE.

VISCOUNT CAVE.

LORD PARMOOR.

LORD CARSON.

SIR ROBERT STOUT.

[*Delivered by VISCOUNT CAVE.*]

This appeal raises a question as to the construction of the Succession Duty Act of British Columbia. By Section 5 of the Succession Duty Act of 1907 (being Chapter 217 of the Revised Statutes of 1911) all property of a deceased person, whether domiciled in the Province or not, which is situated within the Province, is made subject on his death to succession duty, the rate of duty being fixed by Sections 7 to 9 of the Act. Section 7 of the Act, as amended by the Succession Duty Act of 1915, is as follows :-

"7. When the net value of the property of the deceased exceeds twenty-five thousand dollars and passes under a will, intestacy or otherwise either in whole or in part to or for the use of the father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased, all property situate within the Province or so much thereof as so passes (as the case may be) shall be subject to duty as follows :-

"(a) Where the net value exceeds twenty-five thousand dollars but does not exceed one hundred thousand dollars, at the rate of one dollar and fifty cents for every one hundred dollars.

"(b) Where the net value exceeds one hundred thousand dollars but does not exceed two hundred thousand dollars, at the rate of one dollar and fifty cents for every one hundred dollars of the first one hundred thousand dollars and two dollars and fifty cents for every one hundred dollars above the one hundred thousand dollars.

“(c) Where the net value exceeds two hundred thousand dollars, at the rate of one dollar and fifty cents for every one hundred dollars of the first one hundred thousand dollars, two dollars and fifty cents for every one hundred dollars of the second one hundred thousand dollars and five dollars for every one hundred dollars above the two hundred thousand dollars.”

Section 8 of the Act fixes the duty on property situate within the Province, and passing on death to a lineal ancestor of the deceased (other than a father or mother) or to a brother or sister of the deceased or a descendant of a brother or sister or to an uncle or aunt of the deceased, or a descendant of an uncle or aunt at five per cent. of the net value; and Section 9 fixes the duty on all property situate within the Province and passing to a more distant relation or to a stranger in blood at ten per cent. of the net value.

“Net value” is defined in the interpretation clause (Section 2) of the Act as meaning “the value of the property, both within and without the Province, after the debts, incumbrances or other allowances or exemptions authorised by this Act are deducted therefrom.”

The late Sir William Cornelius Van Horne died at Montreal on the 11th September, 1915, being then domiciled in the Province of Quebec, and having made a will whereby (subject to a legacy of \$200,000 in favour of a grandson) he left his property to his wife, son and daughter in unequal shares. The gross value of his estate within and without British Columbia was found to be \$6,371,374.73 and his gross liabilities \$169,989.56, leaving a net value of \$6,201,385.17. His only property in British Columbia consisted of certain shares which were valued at \$300,000; and if a proportion of the gross liabilities (namely \$9,536.75) is deducted from the last mentioned sum, it appears that the net value of the property in British Columbia was \$290,463.25. No question is raised in these proceedings as to what is to be described as property within the Province, or as to the propriety of deducting the above-mentioned sum of \$9,536.75; and the above sum of \$290,463.25 is practically an agreed figure. It is with reference to the amount of succession duty payable on this sum of \$290,463.25 that the contest in this case has arisen.

The amount of duty claimed by the respondent, the Minister of Finance of British Columbia, was \$14,242.10, made up as follows:—

1½ per cent. on	$\frac{290,463.25}{6,201,385.07}$	} of \$100,000, or \$4,683.84 ..	\$70.24
2½ per cent. on	$\frac{290,463.25}{6,201,385.07}$	} of \$100,000, or \$4,683.84 ..	117.09
5 per cent. on	$\frac{290,463.25}{6,201,385.07}$	} of \$6,001,385.07 or \$281,095.57	14,054.77
			<hr/> \$14,242.10 <hr/>

The appellants, the executors of Sir Wm. Van Horne, denied that they were liable under the statute for the above sum of \$14,242.10, but admitted liability for \$8,523.16, made up as follows :

1½ per cent. on \$100,000	..	..	..	\$1,500.00
2½ per cent. on \$100,000	..	..	..	2,500.00
5 per cent. on \$90,463.25	..	..	..	4,523.16
				\$8,523.16

The appellants accordingly presented a petition to the Supreme Court of British Columbia praying that it might be declared that the claim of the respondent proceeded upon a wrong basis, and that the succession duty payable was \$8,523.16, and no more.

The petition has given rise to a remarkable division of judicial opinion. The Chief Justice of British Columbia (Hunter C.J.), by whom the petition was heard, gave judgment in favour of the appellants. On an appeal by the respondent to the Court of Appeal of the Province that Court by a majority of three to two (Macdonald C.J.A., Galliher J.A. and Eberts J.A., Martin J.A. and McPhillips J.A. dissenting) affirmed the judgment of the lower Court and dismissed the appeal: but on a further appeal to the Supreme Court of Canada, that Court by a majority of three to two (Idington, Duff and Brodeur JJ., Anglin and Mignault JJ. dissenting), reversed the decision of the Court of Appeal of British Columbia, and decided in favour of the Minister of Finance. Thereupon the present appeal was brought by the executors to His Majesty in Council.

The claim of the respondent, the Minister of Finance, which has been affirmed by the Supreme Court, rests upon the following basis. He contends that, having regard to the definition of "net value" contained in Section 2 of the Act, the expression, "net value" in paragraphs (a) (b) and (c) of Section 7, means the total net value of the testator's estate wherever situate, and accordingly that the sums of "one hundred thousand dollars" and "two hundred thousand dollars" mentioned in those paragraphs are to be treated as constituent parts of that total net value. Thus, taking paragraph (c) as the paragraph applicable to the present case, it is said that the meaning and effect of that paragraph is that where (as in this case) the total net value of the testator's estate, wherever situate, exceeds \$200,000, the duty is to be calculated at the rate of 1½ per cent. on the first \$100,000 of that total net value, 2½ per cent. on the second \$100,000 of that total net value, and 5 per cent. on the remainder of the same total net value: but that, as it cannot be intended that the property within the Province shall be charged with a percentage on the net value of the whole estate wherever situate, the duty when so calculated is to be levied only on such proportion of each constituent part of the total net value as is situate within the Province. The argument is most clearly

stated in the following extract from the judgment of Mr. Justice Duff:—

“ Net value as defined in the interpretation section means a net value ascertained by taking into account the value of all property both within and without the Province. It seems reasonably clear that the scheme contemplated by the Legislature, as brought into force by paragraph (c), is that for the purpose of ascertaining the rate in the case of estates falling within that paragraph, the net value of the estate is to be divided into three parts; the first being the sum of one hundred thousand dollars, the second also being the sum of one hundred thousand dollars, the third being the difference between the sum of two hundred thousand dollars and the sum representing the aggregate net value; the net value in every case as already mentioned being ascertained by reference to the whole of the property both within and without the Province. This division having been made, the rate prescribed by paragraph (c) is the rate of one dollar and fifty cents notionally applied to the whole of the first one hundred thousand dollars of the net value, the sum of two dollars and fifty cents for every one hundred dollars on the second one hundred thousand dollars notionally applied to the whole of that sum and five dollars for every one hundred dollars above the two hundred thousand dollars notionally applied to the whole estate both within and without the Province. In this manner the rate of taxation is ascertained. The property taxed, however, is only the property situated within the Province, and in the case of each of the parts only that part of the first one hundred thousand, the second one hundred thousand or the excess over two hundred thousand, as the case may be, which is so situate is subject to taxation according to the several rates prescribed by Sub-section (c), for the parts mentioned.”

It is obvious that the effect of so calculating the duty is to accelerate, in the case of a deceased person who leaves property both within and without the Province, the process of graduation on the property within the Province; and, if this be the clear meaning of the statute, there appears to be no reason why it should not have effect. As Mr. Justice Martin says, “ it is not a matter of indirect taxation at all, but simply the fixing of a basis of domestic assessment in certain varying circumstances, domestic and foreign.” But taxation, to be effective, must be imposed by clear words; and, with great respect to the learned Judges who have taken a different view, their Lordships are unable to find in the Act any words imposing the tax which the respondent claims to levy. If the expression “ net value ” in paragraph (c) means the total net value of the property of the deceased, then the duty imposed by the paragraph is, according to the natural meaning of the language used, a percentage upon that total net value; and, if this construction leads to results which are inadmissible, those results cannot be avoided by importing into the paragraph a principle of proportionate levy which is not to be found there. In order to support the respondent’s construction it would be necessary to substitute for “ the first one hundred thousand dollars ” in paragraph (c) some such words as the following:—“ a sum bearing the same proportion to the first one hundred thousand dollars as the net value of the property situate within the Province and passing to any of the persons described in this section bears to the net value of all the property of the deceased,” and to make corresponding changes in the later

words of the paragraph. This would be, not to construe, but to amend the Act; and it appears to their Lordships that it would be contrary to the established rule as to the construction of taxing statutes to make so generous an addition to the language of the Act.

On the other hand, their Lordships have difficulty in accepting the argument put forward by counsel for the appellants. They contended that, even if the "net value" referred to at the beginning of paragraph (c) is the net value of the whole estate of the deceased, wherever situate, the sums of \$100,000 and \$200,000 mentioned in the latter part of the same paragraph are nevertheless intended to be constituent parts of the net value within the Province only: but such a construction would not be consistent with the language of the paragraph. The "first one hundred thousand dollars" and the "second one hundred thousand dollars" mentioned in the paragraph are plainly intended to be fractions of the net value mentioned in the first words of the paragraph; and the expression "the two hundred thousand dollars" occurring at the end of the paragraph can only refer to the two hundred thousand dollars of net value specified at the beginning. Further, if the meaning of the paragraph is that the duty is to be graduated according to the net value of the property within the Province only, there is no sense or purpose in making that graduation contingent on the total net value of the estate reaching a particular figure.

In these circumstances it is necessary to seek some other solution of the problem; and in the opinion of their Lordships the solution is to be found in a close consideration of the meaning of the expression "net value" as used in Section 7 of the Act. Section 2 does not say (as was assumed in the argument) that "net value" wherever used means the value of all the property of the deceased wherever situate, less his debts and incumbrances, but only that "net value" means the value of "the property,"—that is to say, of the particular property with reference to which the expression is used in the section which is to be construed—whether that property be within or without the Province, less the authorised deductions from that value. If so, then, the expression "net value" used in paragraphs (a) (b) and (c) of Section 7 is properly and naturally to be referred to the property described in the words immediately preceding those paragraphs, that is to say, to the property within the Province passing to the near relatives mentioned in the section, and the sums of "one hundred thousand dollars" and "two hundred thousand dollars," afterwards referred to, are to be treated as constituent parts of that net value: and it follows that the rate of taxation is to be ascertained with reference to the net value of the property within the Province only. It may be objected that the initial words of the section ("where the net value of the property of the deceased exceeds twenty-five thousand dollars") refer to the total net value of the estate, and no doubt this is so. But those words are introduced only for the

purpose of keeping the section in compliance with Section 4 of the Act, which provides that where the net value of the property of the deceased does not exceed twenty-five thousand dollars, no succession duty shall be payable on property passing to a parent, husband, wife, child, daughter-in-law or son-in-law of the deceased: and there is no reason why they should govern the meaning of "net value" throughout Section 7.

The construction here suggested, which also commended itself to Chief Justice Macdonald, is more consistent with the history of Section 7 than that for which the respondent contends. In that section as passed in 1907, paragraphs (b) and (c), were similar in form to paragraph (a), and read as follows:—

"(b) Where the net value exceeds one hundred thousand dollars, but does not exceed two hundred thousand dollars, at the rate of two dollars and fifty cents for every one hundred dollars.

"(c) Where the net value exceeds two hundred thousand dollars, at the rate of five dollars for every one hundred dollars."

It is difficult to construe these paragraphs otherwise than as imposing a tax of $2\frac{1}{2}$ per cent. or 5 per cent. (as the case may be) on the property to be taxed: and it is most improbable that the amendment made in 1915, which was obviously enacted for the relief of the taxpayer, can have been intended to alter the whole construction of the section to his detriment.

Further, the above construction of Section 2 of the Act makes it possible to put a reasonable interpretation on Sections 8 and 9. Section 8 provides that where the net value of the property of the deceased exceeds five thousand dollars (the minimum sum mentioned in Section 4) and passes in whole or in part to a lineal ancestor of the deceased (except his father or mother) or to his brother, sister, uncle or aunt or their descendants "all property situate within the Province or so much thereof as so passes (as the case may be) shall be subject to a duty of five dollars for every one hundred dollars of the net value without any exemption." If (as the respondent contends) the "net value" here referred to is the total net value of the estate, then it is necessary here also to calculate the duty on the whole estate wherever situate and then to apply the principle of proportionate levy in order to support the taxation; but if "net value" means the net value of the property within the Province passing to the persons named in the section, then there is a direct levy of 5 per cent. on the value of that property. The pecuniary result of both methods may be the same: but the first method is artificial and indirect, while the latter is simple and direct. The same observations apply to Section 9.

For the above reasons their Lordships are of opinion that the claim to duty made by the Minister proceeds upon an erroneous basis, and that the amount of duty payable by the appellants is the sum of \$8,523.16 and no more: and they will humbly advise His Majesty that this appeal should be allowed, and the order of the Chief Justice of British Columbia restored. The respondent will pay the appellants' costs of the appeal to the Supreme Court of Canada, and their costs of this appeal.

In the Privy Council.

THE ROYAL TRUST COMPANY

vs.

THE MINISTER OF FINANCE OF BRITISH
COLUMBIA.

DELIVERED BY VISCOUNT CAVE.

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