Privy Council Appeal No. 105 *of* 1923.

Evariste Brassard, in place of J. W. Levesque - - - *Appellant*

v.

Harriett W. Smith and others - - - - - *Respondents*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 22ND DECEMBER, 1924.

Present at the Hearing :
VISCOUNT HALDANE.
LORD DUNEDIN.
LORD ATKINSON.
LORD WRENBURY.
LORD SALVESEN.

[*Delivered by* LORD DUNEDIN.]

Mr. Wiley Smith died on the 28th February, 1916, domiciled in Nova Scotia and intestate. The respondents are his administrators appointed by the Probate Court of Halifax in Nova Scotia. Part of his property consisted of shares in the Royal Bank of Canada. The appellant, who was the plaintiff in the action, is the collector of succession duties in the Province of Quebec and he sues the respondents for succession duty in respect of these shares. He bases his claim on Articles 1375 and 1376 of the Revised Statutes of Quebec, 1909, amended by 4 George V ch. 9. Article 1375 imposes a duty upon property and Article 1376 is as follows :—

> 1376. The word "property" within the meaning of this section includes all property, moveable or immoveable actually situate within the Province, and all debts which were owing to the deceased at the time of his death, or are payable by reason of his death, and which are either payable in the Province, or are due by a debtor domiciled therein ; the whole whether the deceased at the time of his death had his domicile within or without the Province, or whether the transmission takes place within or without the Province.

As the deceased was not domiciled in Quebec the claim necessarily depends on the plaintiff shewing that the deceased's shares were property actually situated within the Province. The Royal Bank is a corporation incorporated and carrying on business by virtue of the Dominion Bank Act. Its head office is in Montreal, but by section 43 (4) it is provided :—

> 4. The Bank may open and maintain in any Province in Canada in which it has resident shareholders and in which it has one or more branches or agencies, a share registry office, to be designated by the directors, at which the shares of the shareholders, resident within the Province, shall be registered and at which, and not elsewhere, except as hereinafter provided, such shares may be validly transferred.

The Royal Bank did open such an office in Halifax and the deceased's shares were registered there and the certificate therefor was held by the deceased in Halifax. The respondents, having applied for probate in Nova Scotia, made up title to the shares, but, on the intervention of the present appellant, conveyed a certain number of the shares in trust to meet the present claim. The action as originally started demanded also payment in respect of shares in other companies which had their offices and registers in Quebec. As to these companies, the present respondents, not having the advantage of the specialty in connection with the local register in Nova Scotia, could only rely on the argument that shares had no local habitation, that accordingly the doctrine *mobilia sequuntur personam* must apply, and that the domicile of the deceased being in Nova Scotia the action must fail.

The case came before Judge de Lorimier in the Superior Court of Montreal. He decided that shares could have a local habitation and that that local habitation was the head office of the company. He accordingly decreed in favour of the plaintiff as to both sets of shares. That judgment was appealed to the Appeal Side of the King's Bench. That Court affirmed the judgment, the judges being unanimous that shares could have a local habitation, which, therefore, concluded the matter in respect of the shares other than those of the Royal Bank, but as to the Royal Bank shares, held by a majority of 3 to 2 that the local habitation was in Quebec, the dissentient judges holding that it was in Nova Scotia.

Appeal was taken to the Supreme Court of Canada. In the meantime, while this litigation was going on, another action had been raised by the Nova Scotia Tax authorities against the same executors for succession duties on the same shares in the Royal Bank. This action had found its way to the Supreme Court of Canada, which had decided that the Royal Bank shares were liable in Nova Scotia, either as having a local situation in Nova Scotia or as being attached to the domicile of the testator, which was in Nova Scotia. Accordingly, when the appeal in this case came to the Supreme Court they held themselves bound by their former judgment, and allowed the appeal, so far as relating to the Royal Bank shares. Appeal has now been taken to the King in Council.

The judgment, so far as dealing with the shares other than those of the Royal Bank, is acquiesced in as there is no cross-appeal. In these circumstances their Lordships think it best to deal exclusively with the question of the local situation of the shares, assuming that shares have a local situation. If they cannot, the appellant cannot succeed because the deceased was not domiciled in Quebec. Upon the assumption that they can, their Lordships think that the judgment of the Supreme Court was right.

The argument for the appellant was put in two ways. Admitting that, for the purposes of transference, the shares can now only be dealt with in Nova Scotia, they said that there were many things in connection with shares other than transference which could only be done in Quebec, as for instance the declaration of a dividend, the claim put forward in the event of liquidation, the voting at a general meeting, etc. The argument seems to their Lordships clearly double-edged; for if there are, so to speak, so many qualities of a share which are attributable to different places it would seem to follow that there cannot be a proper local habitation for a share at all—an argument which is necessarily excluded from the appellant because it would be fatal to him in another aspect.

The appellant then argued that the words of section 4 of the Dominion Bank Act are "at which, and not elsewhere, such shares may be validly transferred," and that the word "transferred" applied to transfer *inter vivos* and must be distinguished from transmission, which is a proper term for what happens on death. Their Lordships do not think that this distinction can avail. Section 51 deals with transmission by decease:—

> "Notwithstanding anything in this Act, if the transmission of any share of the capital stock has taken place by virtue of the decease of any shareholder . . .
>
> "(c) if the deceased shareholder died out of His Majesty's dominions, any authenticated copy of the probate of his will or letters of administration of his property, or other document of like import, granted by any court or authority having the requisite power in such matters;
>
> shall be sufficient justification and authority to the directors for paying any dividend, or for transferring or authorizing the transfer of any share in pursuance of and in conformity to the probate, letters of administration, or other such document as aforesaid."

It is clear from this that transmission is used to express the legal result which follows on death, but not to express the actual step which is necessary to invest the new holder. That is done by transfer, and that transfer in such a case is effectuated by a change in the register where the shares are registered, that is in this case in Nova Scotia. Their Lordships consider that the question was really settled by the case of *The Attorney-General v. Higgins*,

2 H. & N., p. 339. Baron Martin in that case says in so many words :—

> "It is clear that the evidence of title to these shares is the register of shareholders and, that being in Scotland, this property is located in Scotland."

It is quite true that in that case the head office as well as the register was in Scotland, but in their Lordships' view it is impossible to hold that in that case the position of the head office was the dominant factor merely on the strength of a phrase used by the reporter of the Attorney-General's argument, and a casual reference made to the case by Lord Esher in a subsequent case of *Attorney-General v. Sudeley* [1896], 1 Q.B. 354. In the present case Duff, J., dealing no doubt with the "no local situation" argument, said as follows : —

> And the Chief Baron's judgment, I think, points to the essential element in determining *situs* in the case of intangible chattels for the purpose of probate jurisdiction as "the circumstance that the subjects in question could be effectively dealt with within the jurisdiction."

This is, in their Lordships' opinion, the true test. Where could the shares be effectively dealt with ? The answer in the case of these shares is in Nova Scotia only, and that answer solves the question.

It may be well to remark that, although in the way the case has developed itself, it has been found unnecessary to decide whether shares can have a local situation, their Lordships must not be considered as throwing any doubt on the soundness of the conclusion to which the Supreme Court has come in that matter.

Their Lordships think it also necessary to add that no question was argued before them as to whether the legislation, in so far as it sought to place a tax on this particular estate, was *ultra vires* of the Province. They do not suggest that questions could have been raised such as were raised in the case of *Burland and another v. The King* [1922], 1 A. C. 215, lately before the Board. They only wish to make it clear that the judgment in this case has no corollary attached to it dealing with such matters.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

EVARISTE BRASSARD, IN PLACE OF
J. W. LEVESQUE,

v.

HARRIETT W. SMITH AND OTHERS.

DELIVERED BY LORD DUNEDIN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.

1925.