Privy Council Appeal No. 39 *of* 1929.

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

v.

The Attorney-General of Alberta - - - - - *Respondent*

FROM

THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 31ST OCTOBER, 1929.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD DARLING.
LORD MERRIVALE.
LORD TOMLIN.
SIR LANCELOT SANDERSON.

[*Delivered by* LORD MERRIVALE.]

The question for determination in this case is whether certain bonds of the Dominion of Canada, of which at the time of his death William Roper Hull, late of the City of Calgary, was owner, are within the meaning of the Succession Duties Act (Revised Statutes of Alberta, 1922) property of his, passing on his death, which was at the time of his death "situate within the province" and subject therefore to the duties prescribed by the statute.

The Supreme Court of Alberta held the bonds to be subject to duty. The executors of the deceased appeal against that decision.

The bonds in question are securities which were issued by the Dominion Government under the authority of War Appropriation Acts of 1915, 1916, 1917, and 1918. They secure payment of $641,000: $330,000 in 1933 and $311,000 in 1937.

Each of the bonds maturing in 1933 provides that the Government will pay to "William Roper Hull or registered assigns" the capital sum of $5,000 and will pay interest thereon at the agreed rate half-yearly. "Such principal sum," the bond

states, " is payable at the office of the Minister of Finance and Receiver-General at Ottawa or at the office of the Assistant Receiver-General at . . ."—among other named places Calgary. The interest is made payable free of exchange at any branch in Canada of any chartered bank. The statutory authority for the issue and the terms thereof are set forth on the face of the security, and this statement is made : " This bond is issued under the authority of Statutes of Canada," specifying the War Appropriation Acts, 1915, 1916, 1917, and 1918. Following the statement of the issue and its terms is the attestation of due execution—" In witness whereof the Dominion of Canada has caused the engraved facsimile signature of the Deputy Minister of Finance to be placed hereon and the bond to be duly countersigned. Dated at Calgary, Alberta, January 10th, 1922." The facsimile signature follows. The bond is countersigned, as its terms require, and it purports to be registered at the office of the Assistant Receiver-General, Calgary.

Endorsed upon each of the bonds maturing in 1933 are conditions whereby the bond is made transferable at the office of the Minister of Finance and Receiver-General at Ottawa upon presentation for the purpose, accompanied by a written instrument of transfer, and whereunder also transfer may be effected at, among other places, Calgary.

The bonds maturing in 1937 vary a little from those maturing in 1933. The provisions as to transfer and payment are formulated differently. Each bond for 1937 is made transferable at the office of the Minister of Finance and Receiver-General. By an endorsement the principal sum secured is declared to be payable at the office of the Receiver-General, Ottawa, or the Assistant Receiver-General at various provincial capitals, including Calgary, and the interest at any branch of any chartered bank in Canada ; and the bonds are declared to be transferable upon presentation with a written instrument in due form at the office of the Minister of Finance and Receiver-General at Ottawa or " at . . . . Calgary. . . ."

The method of transfer is described in the special case submitted to the Supreme Court as follows :—

> " An office of the Assistant Receiver-General of the Dominion of Canada is maintained at the City of Calgary . . . and when holders . . . desire to effect transfer . . . the procedure is as follows : Registered bonds accompanied by the proper form of transfer executed by the registered holder, or in the case of the death of the registered holder, by his duly-appointed personal representative, are received by the Assistant Receiver-General at Calgary. . . . The grant of probate or administration to the personal representative signing the transfer may be a grant issued by a Court in any province where the deceased owned property. The bonds are then marked ' cancelled ' by the Assistant Receiver-General and forwarded by him to the Department of Finance at Ottawa, with instructions in accordance with the written request of the owner as aforesaid. If registered bonds are required, the new bonds are issued and registered at Ottawa and the stamp, ' registered at the office of the Assistant Receiver-General, Calgary,' is placed on the bonds at Ottawa before such bonds are

forwarded to the office of the Assistant Receiver-General at Calgary for delivery to the person entitled thereto. Dividend cheques are mailed to the registered owner from the Department of Finance at Ottawa, where records of ownership are kept, and the transfer of fully registered bonds may be effected only at Ottawa. If bearer bonds are required, they are issued at Ottawa and forwarded to Calgary in the same manner as registered bonds. A card record is kept at the office of the Assistant Receiver-General at Calgary, showing the numbers of the bonds forwarded to and received from Ottawa, the origination of the request for registration or exchange for bearer bonds and the action taken on such request. No other records are kept at the office of the Assistant Receiver-General at Calgary."

The case was argued here, as in Alberta, on an agreed statement of facts, upon which the question submitted for the opinion of the Court is "Whether or not succession duties are assessable by the Province of Alberta, with respect to said bonds." The material section of the Provincial statute provides (Cap. 28, Sec. 7) that "all property of the owner thereof situate within the Province and passing on the death shall be subject to succession duties." The decisive question between the parties was and is, therefore, were the bonds in question property of the testator, Mr. Hull, situate within the Province, and passing on his death? They undoubtedly passed on his death; were they "situate within the Province?"

The Court of Appeal held that, having regard to the form and terms of the bonds, they must be included among obligations classed in law as "specialties" which have their situation in point of liability to taxation where they are found in the possession of the testator at his death, and that, though not under seal, they have the character of specialty by reason of the statutory liability which they establish. The Court considered also that if the liability witnessed by the bonds were no more than a chose in action, nevertheless—as everything requisite to be done to effect a transfer or to obtain payment of moneys due could be effectually done in Alberta—apart from the law as to specialties the bonds constitute property situate in Alberta. These conclusions the appellants challenge, mainly upon two broad grounds, that the bonds not being securities under seal cannot rightly be regarded as specialties, so as to secure for them a peculiar local situation, and that as personal obligations their situation—"*situs*"—is to be determined by ascertaining the place where they can be effectively dealt with. The register of bond holders being at Ottawa and title having to be completed by registration, the bonds, it is said, are legally situate in the Province of Ontario.

The local situation proper to be attributed to the various assets of a deceased person has long been governed under our law by rules, no doubt somewhat artificial in character, which were evolved when the lawful jurisdiction to direct the administration of such assets depended upon the locality in which the assets were found. Many of the Courts concerned had authority within small provincial areas only. A simple contract

debt due from a debtor resident outside the jurisdiction within which the testator resided was not assets within that jurisdiction. As is held in the judgment of Lord Abinger in *Attorney-General* v. *Bouwens* (4 M. & W. 171), such debts are assets where the debtor resides. A debt under seal, or specialty, was held to have a species of corporeal existence by which its locality might be reduced to a certainty. Such debts were called by the civilians *bona notibilia*. Wentworth, a very old authority in regard to such matters, sets forth the distinction (Wentworth, 1763 edition, pp. 45 and 46), and specifies some of the obligations which were classed as *bona notibilia*, *e.g.*, a bond and "a debt due from the King," and says succinctly, "These debts shall be said to be where the bonds or other specialties be." Sir Edward Vaughan Williams re-affirms Wentworth as to debts of the Sovereign—(Williams on Executors 1st edn., p. 176). A passage from the opinion of Lord Field in *Commissioner of Stamps* v. *Hope* ([1891] A.C. 476 at p. 481), states in simple terms the grounds of what Lord Field calls the "well-settled rule" that "a debt does possess an attribute of locality," and says "the distinction drawn and well settled has been and is whether it is a debt by contract or a debt by specialty." What is excluded from "locality" within a limited jurisdiction is a personal claim not there enforceable. What is "specialty" is a larger subject.

Were the bonds in question, then, debts by specialty? They were not under seal; but that does not conclude the matter. The sign manual and—far less immediate than that—the signature of an officer of State, or of the Household, must have sufficiently evidenced what Wentworth calls "a debt due from the King." Here we have an instrument certain in itself—an obligation of the sovereign authority of the Dominion authenticated in the manner prescribed by the Legislature. Each bond is, moreover, a statutory obligation, and so long ago as 1853 the Court of Common Pleas in England held (*Cork and Bandon Railway Company* v. *Goode* (13 C.B. 826)) that a debt arising under a statute is not a simple contract debt with a six years' period of limitation of liability, but by reason of its statutory origin a debt by specialty subject only to the period of limitation appropriate to specialties. "A declaration in debt upon a statute," it was said, "is a declaration upon a specialty."

In their Lordships' opinion, the statutory obligations of the Dominion of Canada evidenced by the bonds here in question are specialties, and at the time of the testator's death had their local situation at his place of residence in Alberta.

It is unnecessary to consider at length the question whether—apart from the law as to specialty—these bonds as contractual liabilities of the Dominion Government had a local situation in Alberta. The view that they had, which is declared in the judgments of the Court of Appeal, was not, in the opinion of their Lordships who have heard the case here, displaced by the

argument made on behalf of the appellants. It was sought to liken the bonds to the shares of a joint stock company so as to apply the principle affirmed in *Brassard* v. *Smith* ([1925] A.C. 371, pp. 373, 376), that in the case of such shares the test of local situation is supplied by the question, "Where could the shares be effectively dealt with?" But these securities were statutory bonds and not shares. The conditions of the bonds as to registration are in no way analogous to the provisions in articles of association for the incorporation of shareholders in a joint stock company by the entry of their names on the register of shareholders at its authorised place of being. The fact that payment may be claimed in any other Province, as well as in Alberta, does not, as was suggested, neutralise the effect of the undertaking in the bond to make payment in Alberta if payment there be required. It is unnecessary, however, to deal at length with the aspect of the case upon which these considerations arise.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed. The appellants must pay the costs.

In the Privy Council.

THE ROYAL TRUST COMPANY

v.

THE ATTORNEY-GENERAL OF ALBERTA.

DELIVERED BY LORD MERRIVALE.

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