

ON APPEAL FROM THE
COURT OF APPEAL FOR ONTARIO.

BETWEEN

HIS MAJESTY THE KING as represented by THE
ATTORNEY-GENERAL OF ONTARIO *Appellant*

AND

EVA MAY WILLIAMS and REGINALD VICTOR
WILLIAMS, Executors of the Will of ALEXANDER
DUNCAN WILLIAMS deceased (*Suppliants*) *Respondents.*

CASE FOR THE RESPONDENTS.

1.—This is an Appeal from a Judgment of the Court of Appeal for Ontario pronounced on the 16th November, 1940, dismissing an appeal by the present Appellant from a Judgment pronounced by the Honourable Mr. Justice McTague on the 15th May, 1940, in proceedings commenced by the present Respondents by Petition of Right dated the 15th April, 1936.

RECORD
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2.—The Respondents are the Executors of the Will of the late Alexander Duncan Williams, an American citizen domiciled in the City of Buffalo in the State of New York, where he died on July 22nd, 1934. Their claim in the Petition of Right, and as allowed by the Trial Judge, was for a refund of Succession Duties, demanded by the Treasurer of Ontario and paid to him in July 1935 admittedly under compulsion and subject to protest, in respect of 10,200 shares of Lake Shore Mines, Limited, an Ontario Company, owned by the deceased, together with interest thereon. There is no dispute as to the amount involved.

p. 1, l. 11 to
p. 2, l. 12
p. 4, l. 30
p. 3, l. 40
p. 2, l. 12
p. 4, l. 30
p. 8, l. 4

3.—The liability of the Respondents for the duty sought to be imposed depends on Section 6, subsection 1 of the Succession Duty Act, 1934, 24 Geo. V. Ch. 55, the relevant words of which are as follows:—

20 “ (1) All property situate in Ontario and any income therefrom
“ passing on the death of any person, whether the deceased was
“ at the time of his death domiciled in Ontario or elsewhere . . .
“ shall be subject to duty at the rates hereinafter imposed.”

RECORD

4.—The Respondents' contention was that these shares, the certificates for which were at all material times physically located in Buffalo, where the deceased was domiciled, could be effectually transferred in Buffalo at the office of the Manufacturers & Traders Trust Company, Transfer Agents of the said Lake Shore Mines Limited, without anything being done in Ontario, and therefore were not property situate in Ontario and not subject to Succession Duty there.

p. 78

5.—Lake Shore Mines Limited was incorporated by Letters Patent dated the 25th February, 1914, in accordance with the provisions of the Ontario Companies Act.

p. 58, l. 34

Under Section 24 (1) (r) of the Ontario Companies Act, R.S.O. 1937 Ch. 251 it is provided that a Company shall possess as incidental and ancillary to the powers set out in the Letters Patent power to procure the Company to be registered and recognised in any foreign country and to designate persons therein according to the laws of such foreign country to represent the Company and to accept service for and on behalf of the Company of any process or suit.

p. 58, l. 40

By Section 30 (1) of the Act provision is made for the forfeiture and revocation of the Letters Patent by the Lieutenant-Governor in Council on sufficient cause being shown.

p. 59, l. 21

p. 59, l. 31

Sections 56 and 60 of the Act relate to the transfer of shares, which are to be transferable, and, except as mentioned in Section 60 only transferable, on the books of the Company in such manner and subject to such conditions and restrictions as by the Act, the special Act, the Letters Patent, Supplementary Letters Patent or by-laws of the Company may be prescribed.

p. 60, l. 35

Section 91 of the Act authorises the directors to pass by-laws regulating (*inter alia*) the transfer of shares.

p. 60, l. 45

Section 101 of the Act requires the keeping of a book or books wherein are to be kept recorded (*inter alia*) particulars of the shareholders and of all transfers of shares.

p. 61, l. 20

Section 102 of the Act provides that the books mentioned in Section 101 shall be kept at the head office of the corporation within Ontario, whether the Company is permitted to hold its meetings out of Ontario or not.

p. 62, l. 36

By Section 217 of the Act it is provided that every corporation or company theretofore or thereafter created by or under any general or special Act of that Legislature shall unless otherwise expressly declared in the Act or instrument creating it, have, and be deemed from its creation to have had, the general capacity which the common law ordinarily attaches to corporations created by charter.

6.—The only provisions of the by-laws of the Company relating to transfers of shares are contained in Clauses 5 and 17 of General By-Law No. 2, which are as follows:—

p. 82, l. 4

“ 5. The name and post office address of each shareholder and
“ director shall be entered in a register and until notification in
“ writing of a new address is received by the Secretary, the last

“ address appearing in the register shall be deemed the post office address and the last known address of such shareholder or director.” RECORD
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“ 17. A stock transfer book shall be provided in such form as the board of directors may approve of and all transfers of stock in the capital of the company shall be made in such book and shall be signed by the transferor or by his attorney duly appointed in writing, stock certificates shall be in such form as the board may approve of and shall be under the seal of the Company and shall be signed by the President or Vice-President and the Secretary or such other officer in place of the Secretary as the Board may by resolution authorize.” p. 83, l. 26

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7.—On the 21st December, 1916, the Directors of the Company passed a Resolution appointing The Trusts and Guarantee Company, Limited, Transfer Agent and Registrar of the capital stock of the Company in the City of Toronto. p. 93

8.—On the 21st May, 1925, the Directors of the Company passed a Resolution appointing the Royal Trust Company Registrar of its stock in the City of Toronto. p. 96, l. 19

20 9.—On the 18th May, 1927, the Directors of Lake Shore Mines, Limited, passed the following Resolution :— p. 99, l. 1

“ That the Company hereby designate and appoint Manufacturers & Traders Trust Company of Buffalo, New York, as an additional Registrar and Transfer Agent at which office shareholders may have their stock registered and transferred within the United States of America.”

10.—The said Manufacturers & Traders Trust Company has acted under the last Resolution ever since and effected transfers of the shares of Lake Shore Mines, Limited, without reference to the latter Company or its Toronto Transfer Agent or Registrar and without anything being done in Ontario, the system being that shares of the Company are interchangeably transferable in either Buffalo or Toronto irrespective of where the certificates issued. p. 28, ll. 23-41
p. 36, ll. 24-39

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Each of the Transfer Agents in Buffalo and Toronto respectively maintain a loose-leaf stock transfer book and send daily reports to the other of the transfers effected by them and recorded therein. p. 21, l. 22 to
p. 23, l. 12

Certificates when presented for transfer bear an endorsement on the back appointing an Attorney in blank to effect the transfer on behalf of the transferor who signs the endorsement. This blank is completed by filling in the name of a representative of the Transfer Agent in Buffalo or Toronto, as the case may be, who then signs the transfer as such Attorney, and a new certificate is issued to the transferee by the Transfer Agent effecting the transfer. p. 26, ll. 3-38
pp. 109-111
p. 35, l. 10 to
p. 36, l. 23

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p. 37, l. 34 to
p. 38, l. 35
p. 120

11.—The duties of the Registrar in Toronto are to guard against an over-issue of stock and are limited to verifying the signatures of the transferors and seeing that the new certificates issued by the Toronto Transfer Agent balance with old ones being cancelled. It keeps no record of the names of shareholders or other particulars but only of the certificates cancelled and issued. The Manufacturers & Traders Trust Company is both Transfer Agent and Registrar in Buffalo and the Royal Trust Company as Toronto Registrar performs no duties in respect of shares transferred or certificates issued in Buffalo.

p. 42, l. 10

12.—The Respondents' Petition was heard by the Honourable Mr. Justice McTague on the 4th May, 1940, and on the 15th May, 1940, it was adjudged and declared that the said 10,200 shares of Lake Shore Mines Limited, the property of the said Alexander Duncan Williams deceased, were not property situate in Ontario passing on his death, and were not subject to Succession Duty in Ontario, and that the Respondents were entitled to be repaid the sum of \$65,336.17, representing Succession Duty paid by them to the Treasury of Ontario in respect of the said shares, with interest on the said sum at 4 per cent. per annum from the 22nd July, 1935; and further that the Respondents were entitled to be paid their costs of and in connection with their said Petition and the trial thereof. 20

p. 45, l. 14

p. 45, l. 26

13.—The learned Judge, in the course of his Judgment, found that the transfer books kept by the Manufacturers & Traders Trust Company at Buffalo, New York, were legally the books of Lake Shore Mines Limited; and that the deceased was domiciled in the State of New York, and that at the time of his death the certificates of the shares in question were physically located in Buffalo. The learned Judge then decided, after reviewing the authorities, that the test of the *situs* of the said shares, for the purposes of the said Succession Duty Act, was "where could the shares be effectively dealt with?" and held that, having regard to the deceased's domicile and the location of the said Certificates as aforesaid, that place was Buffalo. 30 The learned Judge also, after pointing out that Lake Shore Mines Limited had the capacity of a corporation at common law, held that such capacity was not, for the purposes now material, taken away or affected by the Ontario Companies Act.

p. 63, l. 16

14.—From this Judgment the Appellant appealed to the Court of Appeal for Ontario, and on the 16th November, 1940, the said appeal was dismissed with costs by the unanimous Judgments of Robertson, C.J.O., and Middleton, Masten, Fisher and Henderson, Jj.A.

p. 66, l. 38
p. 71, l. 28 to
p. 74, l. 1

15.—The learned Judges of The Court of Appeal agreed with the conclusion of the Honourable Mr. Justice McTague. In addition, Masten J.A., held that the share certificates held by the deceased at his death were "specialties" locally situate in Buffalo and, consequently, 40

that the shares evidenced by them were not liable to Succession Duty in Ontario.

RECORD

16.—On the 8th April, 1941, the Appellant was granted leave to appeal to His Majesty in His Privy Council by the Honourable the Chief Justice of Ontario. p. 77, l. 5

17.—The Respondents humbly submit that the Judgments of the learned Judge of first instance and of the learned Judges of the Court of Appeal were right, and should be upheld, and that this Appeal should be dismissed with costs for the following amongst other

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REASONS.

- (1) Because the essential element in determining the *situs* of shares of a company for Succession Duty purposes is, "where could the shares be effectually dealt with."
- (2) Because where two transfer offices are established by a company in different localities at either of which shares can be effectually transferred, the *situs* of the shares is determined by the locality in which the certificates are physically located and the owner is domiciled.
- (3) Because by virtue of Section 217 of The Ontario Companies Act the Company has the status and capacity of a corporation at common law and, unless prohibited by Statute, has power accordingly, among other things, to establish a transfer agency out of Ontario; and because there is in the Ontario Companies Act no prohibition against establishing such a transfer agency out of Ontario or any requirement that transfers can only be effected within Ontario at the head office or elsewhere.
- (4) Because even if by the terms of the Statute such a prohibition were to be implied, a violation of such prohibition is not *ultra vires* although it might give ground for proceedings for the forfeiture and revocation of the Letters Patent.
- (5) Because the share certificates held by the deceased at his death were specialties locally situate in Buffalo where the certificates were in fact found at the death of the deceased; and a specialty debt is situate where the instrument happens to be.
- (6) Because the Order of the Court of Appeal was right and ought to be affirmed.

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CHARLES ROMER.
RAYMOND JENNINGS.

In the Privy Council.

No. 19 of 1941.

ON APPEAL FROM THE COURT OF APPEAL FOR
ONTARIO.

BETWEEN

HIS MAJESTY THE KING as
represented by the ATTORNEY-
GENERAL FOR ONTARIO *Appellant*

AND

EVA MAY WILLIAMS and
REGINALD VICTOR WILLIAMS,
Executors of ALEXANDER DUNCAN
WILLIAMS deceased
(Suppliants) Respondents.

CASE FOR THE RESPONDENTS

LEE & PEMBERTONS,
44 Lincoln's Inn Fields, W.C.2,
Solicitors for the Respondents.