Privy Council Appeal No. 19 *of* 1941

The King – – – – – – – – – – *Appellant*

v.

Eva May Williams and another – – – – – *Respondents*

FROM

THE COURT OF APPEAL FOR ONTARIO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD APRIL, 1942

Present at the Hearing:
VISCOUNT MAUGHAM
LORD THANKERTON
LORD RUSSELL OF KILLOWEN
LORD MACMILLAN
LORD CLAUSON
[*Delivered by* VISCOUNT MAUGHAM]

This is an appeal from a judgment of the Court of Appeal for Ontario dismissing an appeal from the judgment of Mr. Justice McTague.

The question raised in the proceedings is whether certain shares which belonged at the date of his death to the late Alexander Duncan Williams, an American citizen domiciled in the city of Buffalo in the State of New York, were at the date of the death situate in the Province of Ontario within the meaning of the Succession Duty Act, 1934, of Ontario, 24 Geo. V, ch. 55, section 6 (1). The proceedings began by Petition of Right claiming a return of duty overpaid under protest, but nothing turns upon this circumstance. The liability of the respondents, the executors of Mr. Williams (whom it will be convenient to call "the testator"), for duty sought to be imposed in respect of the shares in question depends on the section above mentioned which is in these terms:—

> "(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, and every transmission within Ontario owing to the death of a person domiciled therein of personal property locally situate outside Ontario at the time of such death, shall be subject to duty at the rates hereinafter imposed."

In this case there is no question of a transmission within Ontario, and it is admitted that the deceased was domiciled in the State of New York. The question then is the simple one—were the shares in question property situated in Ontario? If they were, the appellant is entitled to the duty in right of the Province. If they were not, the sum paid ($65,336) for duty in respect of the shares with interest was rightly ordered to be repaid to the respondents by the judgment under appeal, and the judgment should be affirmed.

At the date of his death, the testator owned 10,200 fully paid shares of the capital stock of Lake Shore Mines Limited, a company incorporated by Letters Patent issued under the Ontario Companies Act dated the 25th February, 1914. His executors obtained Letters Probate of his Will in the State of New York, and they subsequently obtained Ancillary Letters Probate in Ontario, where the testator possessed other property apart from the shares above referred to.

At the date of the death of the testator the Company had, or at least purported to have, two offices where transfers of its shares might properly be made in the books of the Company, one in Toronto, Ontario, and one in Buffalo in the State of New York. It was however contended on behalf of the appellant that the Company had no power to provide that its shares could effectively be transferred in the city of Buffalo. If this contention is well founded the appeal should succeed. If it fails other questions will arise for decision.

Shares in a company are " things in action " which have in a sense no real situs; but it is now settled law that for the purposes of taxation under such a statute as the Succession Duty Act they must be treated as having a situs, which may be merely of a fictional nature. The decision of this Board in the case of *Brassard* v. *Smith* [1925] A.C. 371 has been treated as laying down a correct test for ascertaining for fiscal purposes the situs of such shares. That was a claim by the collector of succession duty in the Province of Quebec in respect of certain Bank shares, and it may be noted that the Treasurer for the Province of Nova Scotia had already recovered judgment for succession duty in respect of the same shares. In effect therefore it was a contest between the authorities of the two Provinces each of which could only levy " direct taxation within the Province in order to the raising of a revenue for provincial purposes " (British North America Act, 1867, s. 92 (2)). The shares were those of the Royal Bank of Canada whose head office was at Montreal. The deceased died resident and domiciled in Nova Scotia and intestate. The Bank however had power by a Dominion statute to maintain in any Province a registry office at which alone shares held by residents of that Province could be registered and validly transferred. The Judicial Committee held that the ownership of the shares could only be effectively dealt with in Nova Scotia, and therefore were not property in Quebec for succession duty purposes, although the head office of the Bank was at Montreal.

In delivering the judgment of their Lordships, Lord Dunedin observed that the case was really settled by the decision in *Attorney-General* v. *Higgins* 2 H. & N. 339. After citing from the judgment of Baron Martin in that case he continued:—

> " 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. *Lord Sudeley*. 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 circumstances 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."

The claim on behalf of Quebec therefore failed.

Some five years later the case of *Erie Beach Company, Ltd.* v. *the Attorney-General for Ontario* [1930] A.C. 161 came before the Board. At first sight it strongly resembled the present case, for it related to shares in a company incorporated under the Ontario Companies Act, having its head office in that Province. The deceased was one F. V. E. Bardol and he was domiciled in the State of New York. He was the person chiefly concerned in the undertaking which was carried on at Fort Erie on the Canadian side. All the meetings of the company were held at Buffalo; its business was conducted from its office there; and all its books and records including its records of share transfers were kept there regardless apparently of Canadian law. It is a fair inference that Mr. Bardol kept the certificates for the shares issued to him in Buffalo but nothing is said in the report as to this. The claim on behalf of the Attorney-General of Ontario was for succession duty under section 7 of the Act.

The company had no legal transfer office in the State of New York. It had in fact passed a By-law No. 22 in these terms:—

> " Shares of stock in the company shall not be transferable without the consent and approval of a quorum of the Board of Directors. The shares of the company shall only be transferable by the recording on the stock book of the company at the head office of the company, or at the office of the company's transfer agents, if any, by the shareholder or his or her attorney, of the transfer thereof and the surrender of the certificate of such share, if any certificate shall have been issued in respect thereof, and upon the making of such transfer in the books of the said company the transferee shall be entitled to all the privileges and subject to all the liabilities of the original shareholder, provided that the directors, in case any certificate of share shall have been lost, may in their discretion accept and cause to be recorded the said transfer without the production of the original certificate."

But no transfer agents in Buffalo were ever appointed, and Lord Merrivale in delivering the judgment of the Board and after referring to certain sections of the Ontario Companies Act had no difficulty in deciding that the shares in question, following the decision, in *Brassard* v. *Smith* (*supra*) could only be effectively dealt with in Ontario and were therefore property situate there for the purposes of the Ontario Succession Duty Act. The maxim *mobilia sequuntur personam* was held to have no application in such case. It may be added parenthetically that the headnote in the Law Reports is not quite accurate; but it is difficult to see any ground of substance for criticizing the judgment delivered by Lord Merrivale. He cited the By-law and relied upon it. Mr. Justice McTague seems to have thought that the Board had some responsibility for the headnote; but that is not so. Their Lordships however quite agree with the learned Judge that the *Erie Beach* case is not an authority for holding that the provisions of the Ontario Companies Act, altogether preclude a company subject to its provisions from legally establishing a transfer office in some place outside the Province or inside it at some place other than at the head office.

This is a question their Lordships have now to consider. They observe at this point that the two decisions of the Board, which have repeatedly been followed in Canada, relate to cases where there was a single Province in which alone shares could be effectively dealt with, though of course the principle may have a limited operation in certain other cases.

The legal position of the Company as regards transfer offices and the registration of share transfers must depend mainly on the Ontario Companies Act and the By-laws of the Company, for it is not suggested that there is anything in the Letters Patent incorporating the Company which limits its common law powers in those respects. It should however be mentioned that the Letters Patent provide (*inter alia*) that the head office of the Company is to be situate at the town of Haileybury in the Province of Ontario. In fact the head office for some time past has been at Kirkland Lake. The Letters Patent also authorised the holding of meetings outside of the Province of Ontario.

The relevant sections of the Ontario Companies Act which it will be convenient to cite from the Act of 1937, Ch. 251, seem to be the following:—

> Sec. 24 (1). A company shall possess as incidental and ancillary to the powers set out in the letters patent or supplementary letters patent power to,—
>
> . . . (q) do all such other things as are incidental or conducive to the attainment of the above objects and of the objects set out in the letters patent and supplementary letters patent;
>
> (r) procure the company to be registered and recognized in any foreign country or province of the Dominion of Canada, and to designate persons therein according to the laws of such foreign country or province of the Dominion of Canada to represent the company . . .
>
> Sec. 53. Meetings of the shareholders, directors and executive committees shall be held at the place where the head office of the company is situate except when otherwise provided by the special Act,

letters patent, supplementary letters patent or the by-laws of the company, but shall not be held out of Ontario unless when so authorized by the special Act, letters patent or supplementary letters patent.

Sec. 54 (1). Every shareholder shall, without payment, be entitled to a certificate signed by the proper officer in accordance with the company's by-laws in that behalf stating the number of shares held by him and the amount paid up thereon. . . .

(3). The certificate shall be *prima facie* evidence of the title of the shareholder to the shares mentioned in it.

Sec. 56 (1). The shares of the company shall be deemed personal estate and shall be transferable on the books of the company in such manner and subject to such conditions and restrictions as by this Act, the special Act, the letters patent, supplementary letters patent or by-laws of the company may be prescribed.

(2). Subject to Section 58, no by-law shall be passed which in any way restricts the right of a holder of paid-up shares to transfer the same, but nothing in this section shall prevent the regulation of the mode of transfer thereof.

Sec. 60. No transfer of shares (unless made by sale under execution or under the order or judgment of a competent court) shall, until entry thereof has been duly made, be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and, if absolute, as rendering the transferee and the transferor jointly and severally liable to the company and its creditors until entry thereof has been duly made in the books of the Company.

Sec. 61 (1). The directors may, for the purpose of notifying the person registered therein as owner of such shares, refuse to allow the entry in any such books of a transfer of shares, and in that event shall forthwith give notice to the owner of the application for the entry of the transfer.

Sec. 91 (1). The directors may pass by-laws, not contrary to law or to the letters patent or supplementary letters patent or to this Act, to regulate:—

(*a*) the allotment of shares, the making of calls thereon, the payment thereof, the issue and registration of certificates of shares, the forfeiture of shares for non-payment, the disposal of forfeited shares and of the proceeds thereof, the transfer of shares;

(*e*) the conduct in all other particulars of the affairs of the Company.

Sec. 101. The Corporation shall cause the secretary, or some other officer specially charged with that duty, to keep a book or books wherein shall be kept recorded:—

(*a*) a copy of the Letters Patent and of any supplementary Letters Patent issued to the corporation and, if incorporated by special Act, a copy of such Act, and the by-laws of the corporation duly authenticated;

(*b*) the names, alphabetically arranged, of all persons who are and who have been shareholders or members of the corporation;

(*c*) the post office address and calling of every such person while such shareholder or member;

(*d*) the names, post office addresses and callings of all persons who are or have been directors of the corporation, with the date at which each person became or ceased to be such a director;

in the case of a corporation having share capital:—

(*e*) the number of shares held by each shareholder;

(*f*) the amounts paid in, and remaining unpaid respectively on the shares of each shareholder;

(*g*) the date and other particulars of all transfers of shares in their order.

Sec. 102 (1). The books mentioned in Sections 101 and 107 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.

(3). Upon necessity therefor being shown and adequate assurance given that such books may be inspected within Ontario by any person entitled thereto after application for such inspection to the Provincial Secretary, the Lieutenant-Governor in Council may relieve any corporation permitted to hold its meetings out of Ontario from the provisions of this section upon such terms as he may see fit.

Sec. 104 (1). If the name of any person is, without sufficient cause, entered in or omitted from any such book, or if default is made or unnecessary delay takes place in entering therein the fact of any person

having ceased to be a shareholder or member of the corporation, the person or shareholder or member aggrieved, or any shareholder or member of the corporation, or the corporation itself, may apply to the Supreme Court, for an order that the book or books be rectified, and the Court may either refuse such application or may make an order for the rectification of the book, and may direct the corporation to pay any damages the party aggrieved may have sustained.

(5). This section shall not deprive any court of any jurisdiction it may otherwise have.

Sec. 105 (1). The books mentioned in Section 101 shall, during reasonable business hours of every day, except holidays, be kept open for the inspection of shareholders, members and creditors of the corporation and their personal representatives or agents, at the head office or chief place of carrying on its undertaking, and every such shareholder, member, creditor, agent or representative, may make extracts therefrom.

Sec. 106. Such books shall be *prima facie* evidence of all facts purporting to be therein stated in any action or proceeding against the corporation or against any shareholder or member.

Sec. 107. The directors shall cause proper books of account to be kept containing full and true statements of:—

(*a*) the financial transactions of the corporation;

(*b*) the assets of the corporation;

(*c*) the sums of money received and expended by the corporation, and the matters in respect of which such receipts or expenditure took place;

(*d*) the credits and liabilities of the corporation; and a book or books containing minutes of all the proceedings and votes of the corporation, or of the board of directors, respectively, verified by the signature of the president or other presiding officer of the corporation.

Sec. 217. Every corporation or company heretofore or hereafter created:—

(*e*) by or under any general or special Act of this 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.

As already mentioned Lake Shore Mines Limited was authorized by its charter "to hold meetings of its shareholders, directors and Executive Committee outside of the Province of Ontario." (See Section 53 *supra*.) No Order-in-Council was, however, passed under Sub-section (3) of Section 102 relieving the Company from the necessity of keeping the books mentioned in Sections 101 and 107 at its head office in Ontario.

On the 21st December, 1916, the Directors of the said 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.

On May 21st, 1925, the Directors of the said Company passed a resolution appointing the Royal Trust Company Registrar of its stock in the City of Toronto.

On the 18th of May, 1927, the Directors of Lake Shore Mines Limited passed the following Resolution:—

> "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."

Their Lordships agree with all the Judges in Canada that this resolution was within the powers of the directors, if the Company had such a power.

The Company had passed a Bye-law No. 2 in the year 1914, paragraph 17 of which related to transfers of stock. It was in the following terms:—

> "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."

It is not in dispute that since the directors' resolution of the 18th May, 1927, American shareholders of the Company have completed transfers of their shares through the Buffalo agency on books belonging to the Company and have had new certificates issued to and registered in the names of purchasers. Shares are transferable in either Buffalo or Toronto irrespective of where the certificates were issued. Careful steps are taken to prevent an over-issue of shares by daily reports being made by the officials of the Company in Toronto and Buffalo as to the various transfers which are being effected day by day in the two cities respectively and as to the issue of new certificates to new members.

It is contended by the appellant that in the circumstances stated and in view of the Ontario Companies Act provisions the Company could not establish an agency office in the State of New York where transfers of its shares might be made in its books pursuant to sections 56 and 60 of the Act. The point is not free from difficulty, and has been elaborately argued. The contention on behalf of the appellant is mainly based on the view that the transfer books of the Company, on which according to section 56 (1) the shares are transferable, must be included in the books mentioned in section 101, in one of which books " must be recorded " the date and other particulars of all transfers of shares in their order, for all such books must (under section 102) be kept at the head office of the Company within Ontario.

The Lieutenant-Governor in Council might have relieved the Company from that provision if he thought fit under section 102 (3); but he has not done so. There are some sections in the Act which at first sight seem to assist the appellant's contention; but on the whole their Lordships are satisfied that it cannot prevail. It is important to observe that the Company could set up a transfer office out of Ontario, unless there is in the Companies Act under which it was created an express declaration to the contrary (section 217 of Act cited above). Is there such a declaration? It is reasonably plain that the purpose of section 101 is widely different from that of sections 56 and 60. The first, like section 107, is aimed at providing information to shareholders and creditors who are given a right of inspection under section 105 " at the head office or chief place of carrying on its undertaking." The objects of sections 56 and 60 are mainly devoted to the rights of shareholders and relate in particular to the regulations as to transfers of shares. Provided books are kept complying in all respects with section 101 it is difficult to see why other books should not be kept elsewhere, and outside of Ontario if so desired, in which shares shall be transferable as provided in section 56. There is at any rate no express provision to the contrary, and it is significant in this connexion that section 102 is in terms confined to books mentioned in sections 101 and 107 and does not include those mentioned in section 56, or 60.

The conclusion on this point must therefore be, in agreement with all the Judges in Canada who have dealt with the matter, namely, that the Company had legally established a transfer agency in Buffalo; and that the shares in question at and prior to the death of the testator were transferable both in Ontario and in Buffalo. The answer then to the question where the shares could be effectively dealt with must be, either in Ontario or in the State of New York, and further reasons must be found to justify a preference being given to one or the other. Mr. Justice Fisher stated such reasons. In his opinion:—

> " As Williams had the physical control of the certificates of these shares up to the time of his decease and as they were registered in his name and thereby evidencing ownership in him of property in the United States of America, and of property which he could have sold and effectively transferred at any time to a purchaser in the United States of America, and also could have assigned or pledged as security in a commercial transaction to an American citizen, the *situs* of the shares was in the United States of America."

It will be convenient at this place to deal with the contention that the certificates are specialties on the ground that they are under the seal of the Company and that the shares were therefore situate in Buffalo. This was held to be the case by the judgment of Masten, J. A., on the authority of two Irish cases (*re Drogheda Steam Packet Co., Ltd.* (1903) 1 Ir. Rep. Ch. D. 512; *Smith* v. *Cork & Bandon Ry. Co.*, Ir. Rep. 5 Eq 65) and of *re Artizans Land & Mortgage Corpn.* [1904] 1 Ch. 796. These cases have not escaped criticism as Masten, J. A., himself observed, but whatever view may be taken as to their authority they do not justify the conclusion that a certificate for shares in a company is for general purposes a specialty. The word " specialty " is sometimes used to denote any contract under seal, but it is more often used in the sense of meaning a specialty debt, that is, an obligation under seal securing a debt or a debt due from the Crown or under Statute. (See *Royal Trust Co.* v. *A.G. for Alberta* [1930] A.C.144.) Such an obligation was for centuries treated as very different from an ordinary debt. Indeed the act of creating a specialty by deed was at one time possible only to men of the highest rank. Unlike debt it was enforced by an action of covenant. (Holdsworth, vol. 3, p. 417.) The deed itself was the foundation of the action; the original debt, if any, was merged. The terms of the deed were conclusive. Specialty debts till recent times conferred special rights. They used to rank in the administration of the estate of a deceased person in priority to simple contract debts; and unlike such debts were enforceable against the real estate. They were said to be " of a higher nature " than debts by contract.

It is therefore not surprising that specialty debts by deed were treated from an early date as *bona notabilia* where the deeds were found at the time of the death, unlike ordinary debts which were said " to follow the person of debtor." That this is still the rule was decided in the House of Lords in the well known case of *Commrs. of Stamps & Hope* [1891] A.C. 476 where an interesting passage from Wentworth on the Office of Executors ((1763), pp. 45, 47, 60 (1)) was referred to and followed. (See also *Toronto General Trusts Corpn.* v. *the King* [1919] A.C. 679.)

It may be useful to note that the situs of the specialty debt was originally one of considerable importance, because of the different prerogatives of the Archbishops of Canterbury and York. If there were assets in both Provinces, there had to be several administrations, and administration in one was void as to the goods situate in the other. (See Swinburne on Wills, 7th Edn., vol. II, p. 790, et seq.) The rule as to situs had no meaning except in the cases where the specialty was an asset.

Their Lordships are concerned here merely with the question whether the certificates being under seal can be treated as establishing that the shares of the testator must be regarded as situate where the certificates were found at the death of the testator. They plainly are not specialty *debts*. They do not contain any express obligation or promise. As Lord Cairns observed in *Shropshire Union Railways & Canal Co.* v. *Regina* (1875) 7 H.L. 496 at p. 509 " the certificate is not the title but evidence of the title to the shares." (See also *Attorney-General* v. *Higgins* per Martin, B., 1857, 2 H. & N. 339.) Being little more than pieces of paper evidencing the right to shares in the company it is impossible to regard them as taking the modern place of " notable goods." The ancient rules as to situs of specialty debts have no real application in such a case.

It should be added that the view that ordinary certificates for shares are not specialty debts has been assumed to be correct in a number of decided cases both in Canada and in England and in a much greater number of cases where there has been no litigation. The rule laid down in *Brassard* v. *Smith* would in practice be useless if the place where the certificates for shares were found at the time of the death should be taken to be necessarily the situs of the shares. Their Lordships have no hesitation in holding that the situs of the certificates is not, taken alone, sufficient to afford a solution to the present problem.

Before going further it is necessary to call attention to a circumstance which seems not to have been previously mentioned. Their Lordships noted that the only stock certificates proved in evidence of which complete copies were produced were two in number (Exhibits 10 and 14), the first relating to 1,000 shares in the name of A. D. Williams and the second to 100 shares in his name. Each bears the usual endorsement on the back of forms of transfer of the shares and the appointment of an attorney for the purpose. The endorsements are signed one of them " Alexander Duncan Williams," and the other " A. D. Williams." The names of the transferees and of the attorneys are left in blank. These exhibits were put in at the trial by Stephen Albert Smyth, the manager of the Stock Transfer Department of the Trusts and Guarantee Company in Toronto. The Exhibit 17A which consisted of the original stock certificates of the Company in the name of A. D. Williams or Alexander Duncan Williams for the whole 10,200 shares was filed by consent of the parties on the 4th November, 1940, as though put in at the trial (see Record, p. 129), and they were admitted by the appellant to be identical with one or other of the Exhibits 10 and 14 (see Record, p. 122). Counsel for the appellant before their Lordships admitted that it must be taken in the circumstances that the testator had signed the endorsements on all the certificates in his name leaving the names of the transferees and of the attorneys in blank in the way usual both in the Dominion and in the United States. This had the admitted result of making a delivery of the certificates with the endorsements signed in blank a good assignment of the shares, since it passed a title to the assignees both legal and equitable, with a right as against the Company to obtain registration and to obtain new certificates. (*Colonial Bank* v. *Cady* (1890), 15 App. Cas. 267.) It must be accepted therefore as a fact that the certificates were currently marketable in the State of New York as securities for the shares, and that they were documents necessary for vouching the title of the testator to the shares. This conclusion of mixed law and fact has been followed in Canada in *Secretary of State of Canada* v. *Alien Property Custodian for the United States* [1931], S.C.R. 170. That was a case of conflicting claims to jurisdiction between the Canadian Custodian of Alien Enemy Property and the Alien Property Custodian of the United States. The decision of the Supreme Court depended on special circumstances; but incidentally it was held, and it was not here in dispute, that the lawful holder in the United States of certificates for shares endorsed and signed in blank by the holder is entitled both under Canadian and United States law to have himself or his nominee registered as the owner thereof.

There remains the question whether accepting the view, first, that there were two places in which the shares could properly be registered (of which one was outside Ontario) and, secondly, that the certificates are not of the nature of specialities, the shares must be regarded as " property situate in Ontario " at the date of the death. It may be useful here to make some general remarks on the meaning and effect of the principle laid down in *Brassard* v. *Smith* and in the *Erie Beach* case. The first observation is that the phrase used in laying down the principle clearly means " where the shares can be effectively dealt with as between the shareholder and the company, so that the transferee will become legally entitled to all the rights of a member," e.g., the right of attending meetings and voting and of receiving dividends. If the phrase only meant " effectively dealt with as between transferor and transferee of shares," the test would obviously be almost completely useless, since the rights of a shareholder as between himself and a transferee can speaking generally effectively be transferred in any part of the world. The second observation is that the test, where applicable, is concerned merely with the place where the shares are to be taken to be situate. The late owner in the normal case was absolutely entitled to the shares as the registered owner of them in the books of the Company, and, if resident in a country or province different from that in which the shares can be effectively dealt with, could nevertheless have sold the shares and completed the transaction by an attorney or otherwise. That however does not touch the question of situs. Moreover, in relation to succession duties imposed by the

Provinces of Canada, some other propositions are well-founded. The case of the *King* v. *National Trust* (1933, S.C.R. 670) a decision of the Supreme Court related to a claim by the Crown in the right of the Province of Quebec to succession duties alleged to be due on the death of Sir Clifford Sifton in respect of bonds or debentures of two Dominion Companies, the Grand Trunk Pacific Railway Company and the Canadian National Railway Company guaranteed by the Government of Canada. Sir Clifford was domiciled in Ontario and died in Toronto where the bonds or debentures were in his possession. The two Companies had their head offices in Montreal and the bonds or debentures were registered there, where alone the bonds were transferable, and they were in neither case transferable by delivery. Succession duty had been paid to the Government of the Province of Ontario. In Quebec, the duties were claimed under sections 3 and 5 of the Quebec Succession Duties Act and it had to be established that the bonds or debentures were " situate within the province " at the time of death.

In what their Lordships take leave to describe as a very luminous judgment of the Supreme Court Chief Justice Duff formulated as the result of the authorities certain propositions pertinent to the question of situs of property with which their Lordships agree. First, property whether moveable or immoveable can for the purposes of determining situs as among the different provinces of Canada in relation to the incidence of a tax imposed by a provincial law upon property transmitted owing to death, have only one local situation.

Secondly, situs in respect of intangible property must be determined by reference to some principle or coherent system of principles and the Courts appear to have acted upon the assumption that the legislature in defining in part at all events by reference to the local situation of such property, the authority of the province in relation to taxation, must be supposed to have had in view the principles deducible from the common law.

Thirdly, a provincial legislature is not competent to prescribe the conditions fixing the situs of intangible property for the purpose of defining the subjects in respect of which its powers of taxation under section 92 (2) of the British North America Act may be put into effect.

Their Lordships are now in a position to deal with the problem arising from the existence of two valid registries, one in Ontario and one in Buffalo. They observe that the solution must be the same in this case as it would have been if the testator had been domiciled in another province of Canada, say in Quebec instead of in New York, and if all the other facts had been, as they were in fact, including the existence of a separate registry in Quebec. It has been argued that in a case where shares can be effectively dealt with in registries existing in different fiscal areas, a possible view is that the cases of *Brassard* v. *Smith* and following decisions above referred to have no application and that a completely different test or tests of situs should be applied, e.g., that of head office or principal place of business or domicile, leaving out of account the principle laid down in *Brassard* v. *Smith*. Their Lordships do not accept this view. The principle seems to them not to have lost all weight even if in certain cases a choice has to be made as between more than one place where the shares can effectually be transferred. Moreover to search through all the surrounding circumstances for a completely new ground for attributing a situs to the shares would certainly not be keeping within the " coherent system of principles " by which the Courts ought to be guided in such a case. One or other of the two possible places where the shares can be effectively transferred must therefore be selected on a rational ground.

Their Lordships have come to the conclusion that the existence in Buffalo at the date of the death of certificates in the name of the testator endorsed by him in blank must be decisive in the present case. They must reject the notion that the domicile of the deceased has anything to do with the situs of the property or that the maxim " mobilia sequntur personam " has any relevance. Some observations on this head contained in the judgment of the Board delivered by Lord Thankerton

in *Provincial Treasurer of Alberta* v. *Kerr* [1933] A.C. 710 at p. 721) may be usefully referred to. As was long ago remarked the owner in any country may dispose of his personal property in any other country, yet on his death the maxim is applicable. The certificates endorsed and signed as they were cannot be regarded as mere evidence of title. They were valuable documents situate in Buffalo and marketable there and a transferee was capable of being registered as holder there without leaving the State of New York or performing any act in Ontario. On the testator's death his legal personal representatives in the State of New York became the lawful holders of the certificates entitled to deal with them there; any sale by them would be " in order " and the purchaser could obtain registration in the Buffalo registry. If we contrast the position in Ontario the difference is obvious. Nothing effective could lawfully be done there without producing the certificates and the legal personal representatives in Buffalo could not be compelled to part with them in order to enable the transfers to be effected in Ontario rather than at Buffalo. In a business sense the shares at the date of the death could effectively be dealt with in Buffalo and not in Ontario.

Their Lordships do not think it would be right for them to express any opinion as to the conclusion which they would have come to if the certificates had not been endorsed and signed in blank by the testator, for that point does not arise for decision; and there are some obvious distinctions arising in cases where the endorsement on certificates has not been signed by the registered holder. Further they have avoided any citations from the recent decision of the Court of Appeal for Ontario in the case of *The Treasurer of Ontario* v. *Blonde & others,* for the reason that they were informed that an appeal to His Majesty in Council in that case is pending, and it seemed better not in any way to prejudice the appeal.

On the above grounds their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellant will pay the costs of the appeal.

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In the Privy Council

THE KING

v.

EVA MAY WILLIAMS AND ANOTHER

DELIVERED BY VISCOUNT MAUGHAM

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