Privy Council Appeals No. 43 *of* 1941 *and No.* 3 *of* 1946

The Treasurer of Ontario - - - - - - *Appellant*

v.

Mrs. Frances Eugenia Blonde and others - - *Respondents*

AND

The Treasurer of Ontario - - - - - - *Appellant*

v.

Alice R. L. Aberdein and others - - - - *Respondents*

FROM

THE COURT OF APPEAL FOR ONTARIO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10TH OCTOBER, 1946

Present at the Hearing:

VISCOUNT SIMON
LORD MACMILLAN
LORD PORTER
LORD UTHWATT
SIR LYMAN DUFF

[*Delivered by* LORD UTHWATT]

These appeals from the Court of Appeal for Ontario relate to the question of the *situs* to be attributed to registered shares in companies for the purposes of The Succession Duty Acts of Ontario. They may be conveniently dealt with together.

In *Blonde's* case the testator A. T. Montreuil at the date of his death on the 2nd October, 1936, was the registered owner of certain fully paid shares in the capital stock of Briggs Manufacturing Co. and Pfeiffer Brewing Company. Each of these companies was incorporated under the law of the State of Michigan, U.S.A., and had its head office in Detroit. Each company had duly appointed transfer agents in Michigan and New York and all the shares of each company could be transferred at either place on production of the relative share certificate. No other transfer office was maintained by either company.

At the date of his death, the testator was domiciled and resident in Ontario and the share certificates were in his possession in Ontario. None of them had been indorsed in blank or otherwise. Probate of the testator's Will was on the 29th October, 1936, granted to his executors in Ontario.

In these circumstances proceedings were taken by the Treasurer of Ontario to recover Succession duty from the executrices of Montreuil's estate pursuant to The Succession Duty Act, 1934, of Ontario. The only

point at issue is whether the shares were at the date of the testator's death " property situate in Ontario " within the meaning of Section 6 (1) of that Act.

The Court of Appeal for Ontario (Masten J.A. dissenting) reversing the Trial Judge held that the shares were not situate in Ontario. The hearing of the case in Canada and the lodging of the present appeal by the Treasurer took place before the decision of their Lordships in *Rex* v. *Williams* [1942], A.C. 541.

In *Aberdein's* case the testator J. D. Aberdein was, at the date of his death on the 11th December, 1940, the registered owner of certain shares in the capital stock of Dome Mines Ltd. He and his wife were also the joint registered owners with right of survivorship of shares in the capital stock of Nipissing Mines Ltd. Dome Mines Ltd. was incorporated under the Companies Act of Canada and Nipissing Mines Ltd. was incorporated under the Companies Act of Ontario. The head office of both companies was in Ontario. Under the Ontario Companies Act Nipissing Mines Ltd. was bound to keep a register of members in Ontario.

Each company had duly appointed transfer agents in Toronto and in New York and all the shares of each company could be transferred at the offices of the transfer agents in either place. There was no other place at which transfers could be carried through. At each of the transfer offices the survivor of shares held in two joint names could by taking the appropriate steps secure registration in his name. The shares in each company were listed and actively dealt with upon the stock exchanges of Toronto and New York.

At the date of the death of the testator he and his wife were domiciled and resident in the Commonwealth of Massachussets and all the share certificates were in Massachussets. None of them had been endorsed in blank or otherwise by the testator.

In these circumstances proceedings were taken by the Treasurer of Ontario to recover Succession duty from the executors of Aberdein's estate and Mrs. Aberdein pursuant to The Succession Duty Act, 1939, of Ontario. Under Section 1 of that Act property passing on the death of the deceased includes joint property (subject to an exception here immaterial). The only point at issue is whether the shares in the two companies were at the testator's death " property situate in Ontario " within the meaning of Section 5 of that Act.

At the hearing evidence was led as to the law of New York relating to the *situs* of shares. The broad effect of that evidence was that for the purpose of taxation the shares here in question did not under that law have a *situs* in New York.

The Trial Judge and the Court of Appeal for the reasons given in their judgments in *The King* v. *The Globe Indemnity Company of Canada Limited* [1945] O.R. 190, held that the shares were not situate in Ontario. Against this decision the Treasurer of Ontario has appealed.

The authorities which bear upon the *situs* of registered shares were recently reviewed by their Lordships in *Rex* v. *Williams* (*ubi supra*), and it is unnecessary again to review them.

It is now settled beyond dispute that for the purpose of death duties a local situation is to be attributed to shares in a company and that (leaving aside the case of " street certificates ") the first matter to be ascertained in an enquiry as to the *situs* of registered shares is the place in which the shares can be effectively dealt with as between the shareholders and the company so that the transferee will become legally entitled to all the rights of a member.

The authorities prior to *Rex* v. *Williams* establish that if such a place be found within a particular jurisdiction, the shares are situate within that jurisdiction, but in none of those cases was there present the feature that there were two places where the shares could effectively be dealt with, one within and the other outside the jurisdiction. That situation arose in *Rex* v. *Williams*, where shares could be transferred indifferently in Toronto, Ontario and in Buffalo, New York. The principle laid down and applied in that case was if it were possible on rational grounds to prefer one of the alternative places to the other as the place of transfer for the shares in question, the selection should be made accordingly.

A just estimation is in their Lordships' opinion first to be made of all matters which relate to the transfer of the shares under consideration. If sufficient reason for a choice of one place then appears, the problem is solved. It is only where a solution on these lines is not possible that the need for resort to some other principle for determining *situs* arises.

The adoption of place of transfer as the leading consideration in determining locality involves in their Lordships' view the corollary that, if there be, outside the jurisdiction in which it is suggested the shares are situate, several places where transfers can be effectively carried through in the ordinary course of business and there is no place within the jurisdiction where a transfer can be carried through, the shares cannot be situate within the jurisdiction. The enquiry at the outset is "Are the shares situate in the jurisdiction or not?" The inability of the jurisdiction to satisfy the test removes it from the arena. The circumstance that alternative places of transfer exist in what happen to be two different states outside the jurisdiction is for the purpose in hand no more relevant than the circumstance that two places of transfer exist in one state outside the jurisdiction.

These considerations are sufficient to dispose of *Blonde's* case. It is clear that the shares could be transferred outside Ontario in the ordinary course of business and could not be transferred within Ontario at all. The shares were therefore not situate in Ontario. The domicil of the testator, grant of probate in Ontario and the presence in Ontario of the share certificates, are irrelevant.

Aberdein's case cannot be disposed of so summarily. Effective transfers were possible both in Ontario and outside Ontario. The other matters bearing on transfer must therefore be considered.

In argument two matters were referred to as helping the view that the shares were situate in Ontario. First it was said that under the law of New York, the shares were not situate in New York. The field was therefore left open for Ontario, and the absence of a competitor, if not conclusive in favour of Ontario as the *situs* of the shares, at least tipped the scale in its favour. In their Lordships' opinion the view taken by the law of New York as to the *situs* of the shares is irrelevant. The question at issue is what is the *situs* according to the law of Ontario and upon that topic the law of New York has no bearing. A *situs* in New York according to the law of Ontario is consistent with the absence of that *situs* according to the law of New York. It may be added that it was not suggested that the lack, according to the law of New York, of *situs* in New York in any way impeded operations on the register of transfers maintained in New York.

Second it was suggested, in the case of the shares in the Nipissing Company, that as the Ontario Companies Act required a register of members to be kept in Ontario and the maintenance of a register of members and a transfer office in New York was facultative, primacy should be accorded to the Ontario office. In their Lordships' opinion there is no substance in this point. The New York transfer office was no fleeting phantom and, as regards its functions, it stood in all respects on a parity with the Ontario transfer office.

The other features that bear on transfer are that the shares were freely marketable both in New York and in Ontario, that the registered owners were domiciled and resident in Massachussets; that the share certificates were in Massachussets: that probate in Ontario was not necessary in order to enable Aberdein's executors to be registered on the New York register and that there were clear advantages to executors in choosing New York rather than Ontario as the place of transfer (See *Rex* v. *Globe Indemnity Company of Canada Ltd.* [1945] O.R. 190).

The common feature of these matters is that none of them points to Ontario, and all point to New York, as the place at which in the ordinary course of affairs the shares would be dealt with by the registered owner. That owner domiciled and living in Massachussets and with alternative markets open to him would be little likely when desiring to deal with his shares to choose a market and place of transfer which subjected him to the necessity of transferring the share certificates to a place outside the U.S.A. and of receiving Canadian dollars on a sale. On transmission on death both as regards shares held jointly as well as the shares held by Aberdein solely, New York and not Ontario would in the ordinary course be selected as the place for completing the formalities incident to the new ownership. In substance for transfer purposes New York occupied the field so far as these shares were concerned. Without leaving the region of transfer there is in their Lordships' view sufficient ground here (though there is not present as in *Rex* v. *Williams*, any blank endorsement of the certificate) to enable a selection to be made between New York and Ontario. In their Lordships' view the shares were not, according to the law of Ontario, situate in Ontario.

Their Lordships will humbly advise His Majesty that the appeals in both cases should be dismissed. The Appellant in each case will pay the costs of the appeal.

(51920) Wt. 8013—5 140 10/46 D.L. G. 338

In the Privy Council

THE TREASURER OF ONTARIO

v.

MRS. FRANCES EUGENIA BLONDE
AND OTHERS

AND

THE TREASURER OF ONTARIO

v.

ALICE R. L. ABERDEIN
AND OTHERS

DELIVERED BY LORD UTHWATT

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1946