

BRODEUR, JJ.:—The duties imposed by the Manitoba "Succession Duties Act" are direct taxation and, consequently, the legislation imposing them is *intra vires* of the provincial legislature.

*Per* IDINGTON and BRODEUR, JJ.:—The provincial legislature is competent to impose taxation as a condition for obtaining the benefit of probate.

*Per* DUFF, J.:—In so far as the statute professes to impose duties in respect of property having a *situs* within Manitoba it is *intra vires* of the provincial legislature. *Rex v. Lovitt*, (1912) A.C. 212, followed. In so far as the statute professes to impose duties on property not having a *situs* in Manitoba, and without respect to the domicile of the owner, the attempted taxation is ineffective as it is not direct taxation within the province and, consequently, *ultra vires* of the provincial legislature. *Colton v. The King*, (1914) A.C. 176, applied.

*Per* ANGLIN, J.:—The succession duties imposed by the Manitoba statute are not fees payable for services rendered but constitute taxation subject to the restrictions mentioned in item 2 of section 92 of the "British North America Act, 1867."

*Per* DUFF and ANGLIN, JJ.:—The provisions of the Manitoba "Succession Duties Act" in respect to taxation which may be *ultra vires* may be construed severably and do not render the statute ineffective as a whole.

IDINGTON and ANGLIN, JJ., questioned the jurisdiction of the Supreme Court of Canada, under subsection (d) of section 37 of the "Supreme Court Act," to entertain an appeal in a matter or proceeding originating in the Surrogate Court of Manitoba.

ANGLIN, J., suggested that in the proceedings provided for by section 19 of the Manitoba "Succession Duties Act" the Judge of the Surrogate Court would act as *persona designata* and that there may not be an appeal from his order to the Supreme Court of Canada.

The judgment appealed from, (24 Man. R. 310,) was affirmed.

W. R. Mulock, K.C., for appellants. Wallace Nesbitt, K.C., and R. B. Graham, for respondent.

Ont.]

VIVIAN & CO. v. CLERGUE.

[June 24.]

Contract—Sale of mining land—Substituted purchaser—Reservation of claim against original purchaser—Forfeiture of second contract—Sale of land to other parties—Effect on reserved claim.

In June, 1903, V. & Co., by agreement in writing, contracted