

three days later. His estate was inventoried at \$3,762,397.90, of which \$2,969,209.49 were assets within Ontario.

The will was a lengthy document—roughly, the estate was divided between the widow and daughter, but there were many trusts and provisions, and one peculiar provision by which the widow and daughter and the trustee—a Detroit trust company—were to be at liberty to vary the trusts and provisions of the will as they might agree. The will was proved in Michigan, and ancillary letters probate were granted in Ontario. The widow and daughter and trustee made an agreement dealing with the estate, and an order was made by the Judge of the Probate Court of the County of Wayne purporting to approve the agreement.

The motion was heard in Chambers but was treated as a Court motion.

W. N. Tilley, K.C., and Christopher C. Robinson, for the Secretary of State of Canada.

Glyn Osler, for the National Trust Company, ancillary administrator with the will annexed of the estate of the deceased in Ontario.

SUTHERLAND, J., in a written judgment, after setting out the facts, said that he was of opinion that the Countess Matuschka was an alien enemy, to whom the War Measures Act, 1914, and the orders in council made thereunder applied; that there was in her, at the time of the death of her father, at least a beneficial interest which came under the scope and operation of the orders, and which had not been dealt with and transferred by what had been done elsewhere so as to escape therefrom. No theory of the comity of nations, which implies usually a favourable consideration and adoption by foreign Courts of judgments or orders granted in the Courts of domicile, could or should be carried so far as to require this Court to decline to make the order asked, in the circumstances of this case. Any such theory is subject to the essential modification or restriction that, if it runs counter to high public policy, effect cannot be given to it. What had been done in the State of Michigan came into conflict with public policy of great importance so far as Canada was concerned: Westlake's *Private International Law*, 15th ed. (1912), pp. 55, 308.

An order should be made in the terms suggested by the applicant.

If an appeal lay by virtue of the Judges' Orders Enforcement Act or otherwise, and if leave to appeal were desired, leave should be granted.

There should be no costs of the application.