

on a contract "which is to be performed in Ontario." This Rule has invariably been treated as applicable only where the contract expressly requires performance within Ontario.

The second question arises upon the expression used by the testatrix by which this legacy is to be "free of legacy duty." Does this shift the incidence of the duty from the legatee to the residuary estate?

It is argued that "legacy duty" is not equivalent to "succession duty;" and it is pointed out in support of this contention that in another clause of the will the testatrix has used the expression "succession duty." This clause reads: "By reason of my estate being liable to pay succession duty to the province, I do not in this my will remember other charities."

There is in England a definite meaning attached to the expression "legacy duty;" but in Ontario there is only the one inheritance tax. The statute calls this "succession duty." It is a duty imposed upon all property devolving upon death; and it is a tax which has to be borne by the legatee unless the will contains some provision casting the burden upon the residuary estate.

When the testatrix, domiciled in Ontario and speaking with reference to a bequest of property within Ontario, directs that it shall be free from legacy duty, I think I must hold that the intention was to exonerate this property from all duty payable upon the legacy. In other words, the succession duty is the only legacy duty known to Ontario law.

For these reasons I answer the questions submitted by finding that the legacy is subject to the payment of succession duty, and that the executors are not entitled to deduct the duty from the legacy.

The costs of all parties may be paid out of the estate; those of the executors as between solicitor and client.