

PROPERTY SUBJECT TO PROVINCIAL SUCCESSION DUTIES

Supreme Court of Canada Holds Quebec Can Levy Tax on Movable Property Outside Province Belonging to Testator Domiciled in it

THE succession duty imposed by the Quebec Succession Duty Act upon "all transmission within the province, owing to the death of a person domiciled therein, of movable property locally situate outside the province at the time of such death" is direct taxation within the province and *intra vires* the Quebec Legislature under sec. 92 (2) of the B.N.A. Act. This is the substance of the Supreme Court of Canada's decision in the case of Barthe vs. Alleyn-Sharples, on appeal from the Court of King's Bench of Quebec, on February 3, 1920.

The facts of the case were: Amongst other assets, the estate of the late John Sharples, who died domiciled in the province of Quebec, in July, 1913, comprised shares in various companies (most of them foreign), whose head offices were not in that province, of which the aggregate value was \$213,039.75. The defendant Margaret Alleyn-Sharples is the universal legatee in ownership. The plaintiff Barthe, as collector of provincial revenue, sues to recover succession duties in respect of this property.

The article in question, of the Quebec Succession Duty Act, reads:—

"1387 (b). All transmissions within the province, owing to the death of a person domiciled therein, of movable property locally situate outside the province at the time of such death, shall be liable to the following taxes, calculated upon the value of the property so transmitted, after deducting debts and charges as hereinafter mentioned."

Decisions of Lower Courts

Davies, C.J., in his judgment says:—

"The Superior Court, acting upon and applying the well-known rule *mobilia sequuntur personam*, gave judgment for the plaintiff *es-qualité* for the amount of the duties levied and payable under the statute. This judgment was reversed on appeal by the Court of King's Bench in a majority judgment of that Court which held that 'the powers of the provincial legislature are not plenary but limited to "direct taxation within the province;" (British North America Act, sec. 92 (2); and that any attempt to levy a tax on property locally situate outside the province is not taxation within the province and is beyond the competence of the provincial legislature; that the taxation of transmissions within the province of property locally situate outside the province is an attempt to do indirectly that which the legislature is forbidden to do directly and is in effect taxation of property within the province; and that the property and shares in question in this case are locally situate and have a situs outside the province."

"I agree with that part of this judgment which declares the powers of the provincial legislature not to be plenary but to be limited to 'direct taxation within the province.' And I further agree that the taxation of 'transmissions within the province' of property locally situate outside it is an attempt to do indirectly that which the legislature cannot do directly, but I differ from the conclusion reached by the Court that the property and shares in question in this case are locally situate and have a situs outside of the province and so beyond the jurisdiction of the province legislature in levying succession duties. The judgment now in appeal ignores the application of the rule making the domicile of the deceased owner, in questions arising out of succession and legacy duties, the test of the situs of the property and shares in question and adopts that which allots the situs to the location of the head office of the respective companies and so carries this intangible property outside of the province of Quebec.

"I may say that owing to the grave and great importance of the question I have deemed it right in this ap-

peal again to reread all these authorities with the result that I am more firmly convinced than ever, that, in construing the powers of 'direct taxation within the province' granted to provincial legislatures by our Constitutional Act, so far as the levying of succession and legacy duties are concerned, the true rule is that which existed alike in Great Britain as in the province of Quebec at the time such act was passed, namely, that the domicile of the deceased owner of the property, and not its actual location at his death, determined which province could impose succession and legacy duties upon it. That rule is not applicable in the construction of statutes levying probate and estate duties or other taxes, but is confined to succession and legacy duties. The whole question was thoroughly thrashed out and determined in the House of Lords in the appeal case of Winans vs. Attorney-General where the rules respecting succession and legacy duties and estate and probate duties are clearly laid down and the reasons for the application of the mobilia rule to the two classes of duties, succession and legacy are given and for its non-application to estate and probate duties. I was greatly tempted to embody in these reasons of mine some extracts from the judgments of the noble lords who decided that case. They were unanimous in their reasons for the judgment they delivered in determining that so far as succession and legacy duties were concerned the domicile of the deceased owner, and not the local situation of the property, must be taken as the controlling factor."

OWNERSHIP OF CANNING PLANT

Court action involving the ownership of the Garden City Canning Co.'s canning factory in St. Catharines, Ont., was tried on December 9, and Justice Orde reserved judgment. Thomas E. Flynn and his son, J. J. Flynn, both of Buffalo, claim they own the business, and suit was brought against them by John A., Joseph M., and Catherine Flynn, brothers and sister of Thomas.

Some years ago, when the St. Catharines brothers found business bad, they appealed to Thomas and he paid over sums aggregating about \$12,000, he stated in his evidence and in return he was given a deed of the factory property. The plaintiffs testified that the plant is worth fully \$40,000, being capable of turning out 75,000 cans a day, and that they had merely given their brother the deed as security for the money he had loaned them. They said they were ready to pay him back any time. Both the Buffalo Flynns testified that the business had been theirs for some time, and they had financed it, and they claimed it as their own.

CLAIMS BANK CAUSED HIM LOSS

A suit for \$200,000 damages has been entered against the Bank of Toronto by E. D. Barlow, Toronto. The question whether a cheque for \$200 was accepted by the bank for deposit to the account of Barlow, or whether it was merely taken for collection, is the point upon which the case hinges. Barlow asserts that when he deposited the cheque he explained to the bank that he was negotiating the purchase of property in Waterbury, Conn. He says that on October 15 he cashed the cheque for \$200 with the Bank of Nova Scotia. The Bank of Toronto refused to honor it. He says he was afterwards detained by the police, forced to disburse the \$200, with the result that he lost the sale of property upon which he expected to make a profit of \$10,000.

The Bank of Toronto says the cheque Barlow left with them was drawn in favor of a man named Shields on the American National Bank at Richmond, Va., and endorsed by him to Barlow. The bank claims the cheque was left with it for collection, and that it had refused to honor any cheque for Barlow for more than \$50 till the collection had been made. At the time Barlow's cheque was presented by the Bank of Nova Scotia there were no funds to meet it. It alleges this cheque was signed "E. W. Barlow," not in accordance with E. D. Barlow's specimen signature.