Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Alfred S. Woodruff and others v. *The Attorney-General for the Province of Ontario; and of The Attorney-General for the Province of Ontario* v. *Alfred S. Woodruff and others, from the Court of Appeal for Ontario; delivered the* 31*st July* 1908.

Present at the Hearing:

LORD ROBERTSON.
LORD ATKINSON.
LORD COLLINS.
SIR ARTHUR WILSON.

[*Delivered by Lord Collins.*]

The Succession Duty Act (Rev. Stat. Ont., 1897, c. 24).

The question on these Appeals is as to the right of the Attorney-General of the Province of Ontario to demand payment of a tax, called in the Provincial Act which imposed it "succession duty," upon personal property locally situate outside the Province and alleged by him to form part of the estate of a deceased domiciled inhabitant of the Province, one Samuel De Veaux Woodruff. This question involves the consideration of two separate transactions, or sets of transactions, whereby the deceased divested himself, or assumed to divest himself, of certain personal property locally situate in the State of New York. The first of these transactions took place in 1894, the second in 1902. The deceased died on the 28th October 1904, domiciled, as above stated, in the Province of Ontario.

The present suit was brought by the Attorney-General in February 1906 to have it declared that the property comprised in the said transactions of 1894 and 1902 (as well as certain other

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property described as "the homestead property") was improperly omitted from a certain affidavit to lead Probate filed by the first three Defendants (Appellants) as executors of the said S. De V. Woodruff in the Surrogate Court, and claiming an account of the dutiable value of the said property and payment of the amount of the succession duty thereon. The action was tried before Falconbridge, Chief Justice of the King's Bench Division of the High Court, who on the 5th January 1907 held that the homestead property; which had been settled on the testator's wife and his son H. K. Woodruff, was improperly omitted from the affidavit, but that the property comprised in the transactions of 1894 and 1902 was not improperly omitted from the affidavit, and, as the value of the homestead property, added to the estate disclosed, did not bring the property up to the minimum value fixed by the Succession Duty Act for payment of duty in the case of property going to a wife and children, he dismissed the action. On appeal to the Court of Appeal for Ontario, the decision of the trial Judge as to the homestead property and the transaction of 1894 was affirmed, but was overruled as to the transaction of 1902; and as to the amount comprised in the latter the Defendants were held liable to pay succession duty. No question has been raised before their Lordships as to the homestead property, but both parties have appealed as to the transactions of 1894 and 1902, the Defendants seeking to set aside the decision against them as to the transaction of 1902, and the Plaintiff by way of Cross-Appeal claiming duty in respect of the transaction of 1894. Though this latter claim arises by way of Cross-Appeal only, and the main Appeal is by the Defendants in respect of the transaction of 1902, it is perhaps more convenient to take them in chronological order and begin with the transaction of 1894.

In that year the Mercantile Safe Deposit Company in New York City held in their custody for Samuel De V. Woodruff bonds and debentures issued by various municipalities in the United States and transferable by delivery amounting in value to about $213,000. He arranged with the United States Trust Company of New York that they should take over the custody of these securities to be held by them in trust to carry out the terms of certain deeds to be executed by each of his four sons. He then, in company with his son H. K. Woodruff, went to New York, taking with him four trust deeds executed by his four sons respectively, and delivered these deeds with four parcels of the securities, one parcel appropriated to each deed, to the Trust Company to hold under the terms of the trusts so created. These trusts were for the benefit of each of the sons respectively during his life and for his children after him in equal shares. During the life of Samuel De V. Woodruff the income derived from these securities was sent by the Trust Company half-yearly to the sons respectively by cheques on a New York bank. These cheques were sent on by the sons to S. De V. Woodruff, who returned to each of them $1,500 per annum. The evidence was that there was no agreement, arrangement, or bargain of any kind between the father and the sons that he should receive this income or any portion of it, and that this action on the part of the sons was entirely voluntary. Falconbridge, C.J., held as to the transactions both of 1894 and 1902 that the Act did not "extend to this particular property situated in the State of New York . . . and governed by the the laws of New York," and that, in the view he took of the case, the intentions and motives of the testator and his sons were not in issue.

The subject-matter of the transfer of 1902 consisted of similar bonds or debentures, also then in the custody of the Mercantile Safe Deposit Company, New York, and a cash balance in the hands of Messrs. E. D. Shepard and Company, bankers, New York City, the proceeds of collections of interest they had made for S. De V. Woodruff, together with certain coupons and bonds in their hands for collection, amounting in all to a par value of about $443,257. By written directions from S. De V. Woodruff to the Safe Deposit Company and Messrs. Shepard respectively, the above securities were, in August 1902, transferred in their books into the names of his three sons, and in the case of his safe in the custody of the Safe Deposit Company into the names of his three sons and his wife. The securities remained thus locally situate in the State of New York until the death of S. De V. Woodruff in October 1904. As has been above stated, the trial Judge made no distinction between the 1894 and the 1902 transactions. He treated them both as falling outside the scope of the Provincial Act. The majority of the Court of Appeal, however, held that the second of the two transactions fell within the Act, while they affirmed the view of the trial Judge as to the first. Meredith, J.A., hold that both alike were covered by the Act.

In the opinion of their Lordships, no sound distinction in point of law can be made between the two transactions. They both were concerned with movable property locally situate outside the Province, and the delivery under which the transferees took title was equally in both cases made in the State of New York.

While, therefore, their Lordships agree with the decision of the majority of the Court of Appeal, confirming, as it does, that of the trial Judge,

as to the earlier transaction, they are unable to follow their view of the later one. The pith of the matter seems to be that the powers of the Provincial Legislature being strictly limited to "direct taxation within the Province" (British North America Act, 30 & 31 Vict. c. 3, sec. 92, sub-sec. 2), any attempt to levy a tax on property locally situate outside the Province is beyond their competence. This consideration renders it unnecessary to discuss the effect of the various sub-sections of section 4 of the Succession Duty Act, on which so much stress was laid in argument. Directly or indirectly the contention of the Attorney-General involves the very thing which the Legislature has forbidden to the Province: taxation of property not within the Province.

The reasoning of this Board in *Blackwood* v. *The Queen* (8 A.C. 82) seems to cover this case.

Their Lordships will, therefore, humbly advise His Majesty that the Appeal of the Defendants should be allowed and the Cross-Appeal of the Plaintiff dismissed, that the judgment of the Court of Appeal should be set aside with costs, and the judgment of Falconbridge, C.J., restored.

The Cross-Appellant will pay the costs of the Appeals.
