

11, 1942

In the Privy Council.

No. 19 of 1941.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

BETWEEN

HIS MAJESTY THE KING, AS REPRESENTED BY THE
ATTORNEY-GENERAL FOR ONTARIO *Appellant,*

AND

EVA MAY WILLIAMS AND REGINALD VICTOR
WILLIAMS, EXECUTORS OF THE WILL OF ALEXANDER
DUNCAN WILLIAMS, DECEASED *(Suppliants) Respondents.*

CASE FOR THE APPELLANT.

1. This is an appeal from a judgment of the Court of Appeal for Ontario (Robertson, C.J.O., Middleton, Masten, Fisher and Henderson, J.J.A.) dated the 16th November, 1940, dismissing an appeal by the Appellant from the judgment dated the 15th May, 1940, given by McTague, J.A., sitting as a judge of first instance, on the trial of a Petition of Right, whereby he granted the Respondents a declaration that 10,200 shares in Lake Shore Mines Limited (a company incorporated under the Ontario Companies Act, and hereinafter called the Company), owned by their testator Alexander Duncan Williams at the date of his death, the 22nd July, 1934, were not property situate in Ontario passing on his death and were not subject to succession duty in Ontario; and that the Respondents are entitled to be repaid with interest \$65,336.17 the amount of succession duty paid by them to the Treasurer of Ontario in respect of the said shares.

Record.
p. 63.
p. 42.
p. 2, ll. 13-17;
p. 4, l. 30.
p. 1, l. 12;
p. 4, l. 30.

2. It is common ground that the testator died resident and domiciled in the State of New York and that the Respondents paid the succession duty now in question under duress and subject to protest in order to obtain possession of other property of the testator in Ontario which was admittedly liable to succession duty. The only question in this appeal is whether the

p. 1, ll. 11-15;
p. 3, ll. 1-17;
p. 4, l. 31.

Record. testator's shares in the Company are also liable to succession duty under sub-section 1 of section 6 of The Succession Duty Act, 1934 (24 George V, Chapter 55), as being property situate in Ontario. The sub-section runs as follows :—

“ 6. (1) All property situate in Ontario and any income therefrom
 “ passing on the death of any person, whether the deceased was at the
 “ time of his death domiciled in Ontario or elsewhere, and every trans-
 “ mission within Ontario owing to the death of a person domiciled therein
 “ of personal property locally situate outside Ontario at the time of such
 “ death, shall be subject to duty at the rates hereinafter imposed.” 10

p. 78. **3.** The company was incorporated on the 25th February, 1914, and on the
 p. 83, 1.26. 30th May, 1914, enacted and confirmed a by-law No. 2 (17) requiring that
 “ a stock transfer book shall be provided in such form as the board of directors
 may approve of and all transfers of stock in the capital of the company shall be
 p. 93, 1.17. made in such book.” By resolution passed on the 21st December, 1916,
 the board of directors in pursuance of that by-law appointed the Trusts and
 Guarantee Company Limited transfer agent and registrar of its capital stock
 p. 96, 1.29. at Toronto. By a further resolution passed on the 21st May, 1925, the board
 appointed the Royal Trust Company as registrar of its stock at Toronto, the
 Trusts and Guarantee Company continuing to be the transfer agent. 20

p. 99, 1.11. **4.** By a further resolution passed on the 18th May, 1927, the board of
 directors of the company purported to appoint the Manufacturers and Traders
 Trust Company of Buffalo, New York, “ as an additional registrar and transfer
 agent at which office shareholders may have their stock registered and trans-
 p. 27, 1.16-
 p. 28, 1.41. ferred within the United States of America.” Thereafter whenever the
 p. 112. Manufacturers and Traders Trust Company purported to record transfers
 of shares in Buffalo they sent particulars to the Company's aforementioned
 transfer agent, the Trusts and Guarantee Company Limited in Toronto, and
 the Trusts and Guarantee Company Limited likewise sent to the Manufac-
 p. 111. turers and Traders Trust Company in Buffalo particulars of all transfers 30
 recorded in Toronto.

pp. 113-116 ;
 p. 32, 1.30. **5.** The Respondents' testator became a shareholder in the company
 on the 20th August, 1917, and had many dealings in its shares. On the 15th
 p. 116. December, 1918, he held 10,000 shares, which he retained until his death,
 together with a further 200 shares the transfers whereof were recorded in the
 aforesaid office in Buffalo on the 29th February, 1932. At his death he held
 p. 122,
 p. 109,
 p. 117. 12 share certificates covering the said 10,200 shares, each of which stated
 p. 117. that the shares were transferable only on the books of the company. The
 certificates issued in Buffalo contained the statement “ This Certificate may be
 p. 122, 1.18. transferred at Toronto or Buffalo.” All the certificates were signed by the 40
 p. 39, ll. 12-
 22. president and secretary of the company and sealed with the company's seal.
 All the certificates were physically situate in Buffalo when the testator died.

pp. 43-49.
 p. 45, ll. 14-
 23. **6.** In his reasons for judgment McTague, J.A., held that the books
 recording share transfers kept by the Trusts and Guarantee Company Limited

at Toronto and by the Manufacturers and Traders Trust Company at Buffalo and the registers of shareholders kept by the Royal Trust Company at Toronto and by the Manufacturers and Traders Trust Company at Buffalo were " the books of the company " within the meaning of the Companies Act of Ontario, and that the Act does not contain any prohibition either expressed or implied against the establishment of transfer agencies in foreign jurisdictions. The learned Judge examined authority and held that a company incorporated under the Ontario Act has the power and capacity of a corporation at common law to which the doctrine of ultra vires has no real application, so that whatever rights or powers the laws of New York bestowed on the company, the company had the capacity to accept. He distinguished the facts of *Erie Beach Company Limited v. Attorney-General for Ontario* (1930) A. C. 161 and thought that the judgment of the Judicial Committee unnecessarily went further than was required for the decision and that if it was intended to suggest that an Ontario company could in no circumstances legally establish a transfer office and register in another jurisdiction such a conclusion could only in his opinion be the result of an erroneous reading of the statute and a method of interpretation not in accordance with the Judicial Committee's decision in *Bonanza Creek Gold Mining Company Limited v. The King* (1916) 1 A. C. 566. In his view the situs of the shares in question was at Buffalo since the shares could be effectively dealt with there without anything further having to be done in Ontario, and under New York law the courts of the State of New York could compel the company to transfer the shares in that jurisdiction.

7. The Appellant appealed to the Court of Appeal for Ontario which on the 16th November, 1940, dismissed the appeal with costs. The fullest reasons for judgment were given by Masten, J.A., who was for dismissing the appeal on two grounds, the first, that the shares were locally situated out of the Province of Ontario in Buffalo where their transmission and transfer were effectively carried out, and where the testator was domiciled ; and the second, that the share certificates were specialties situate in Buffalo and, consequently, the shares evidenced by them were not liable to succession duty in Ontario. On the first ground, he agreed with McTague, J.A., but also gave his own reasons for holding on principle and authority that a transfer agency had been legally and effectively established in Buffalo, and that the shares in question were effectively transmissible and transferable there. He then considered whether the share certificates were specialties and concluded with some hesitation that they were, with the result that the obligation had a location where they were found at the time of the obligee's death.

Robertson, C.J.O., agreed with the first ground given by Masten, J.A. In his opinion the changes made in 1897 in the Companies Act of Ontario indicated an intention to remove any restriction that confined the making of share transfers to the head office of a company, and in any event a very general practice had become established to provide for the transfer of shares at the office of a trust company or other convenient place. He distinguished the case of *Erie Beach Company Limited v. Attorney-General of Ontario ubi sup.* because there the company had not provided for the transfer of its shares at any place but its head office.

Record.
p. 65, ll. 32-
46.

Middleton, J.A., also preferred to rest his judgment on the first ground given by Masten, J.A. He considered the second ground to be one of difficulty on which he would express no opinion until he heard it fully argued.

p. 75, l. 33-
p. 76, l. 40.

Fisher, J.A., pointed out that for years American shareholders in the company had completed sales through the Buffalo agency and the argument that the company had no power to establish such an agency was in his view unsound for the reasons given by the learned Trial Judge. He agreed with both grounds on which Masten, J.A., rested his judgment.

p. 76, l. 41-
p. 77, l. 4.

Henderson, J.A., also agreed with the learned Trial Judge and with Masten, J.A.'s first ground. He preferred to express no opinion on the other 10 ground.

pp. 131-153.
pp. 58-63.

8. Extracts from earlier Ontario Companies Acts are printed in the Record. The present Act is Chapter 251 of the Revised Statutes of Ontario, 1937, extracts from which are also printed in the Record. So far as material its provisions have remained unchanged since 1914, except that in 1916 a provision was inserted that every company incorporated by or under any Act of the Ontario Legislature shall, unless otherwise expressly declared in the Act or instrument creating it, have and be deemed from its creation to have had the capacity attaching at common law to corporations created by charter, and that in 1931 express power was given to Ontario companies to register 20 in other provinces and countries and to designate persons there to represent and accept service for the company. By section 56 of the present Act shares are transferable on the books of the company, and by section 60 no transfer is valid (except in events immaterial to this appeal) until entry thereof has been duly made. Section 101 requires the company to cause "the secretary or some other officer specially charged with that duty" to keep a book or books showing the names of all shareholders and the number of shares held by each, and by section 102 these books, except where leave to the contrary is given by the Lieutenant-Governor in Council (which has not been done in the case of the company), are to be kept at the head office in Ontario. Section 103 30 imposes sanctions on any director, officer or employee of the company who knowingly makes any untrue entry or neglects to make any proper entry in any of the books, and by section 104 the Supreme Court of Ontario is empowered to order rectification of the books. Section 106 makes the books prima facie evidence of the facts therein stated in any proceedings against the company or a shareholder. By section 91 (1) the directors may pass by-laws, not contrary to law or the charter, to regulate the company's affairs including the registration of certificates of shares, but by section 91 (2), subject to immaterial exceptions, every such by-law "unless in the meantime "confirmed at a general meeting of the company duly called for that purpose, 40 "shall have force only until the next annual meeting of the company, and in "default of confirmation thereat shall, at and from that time, cease to have "force, and in that case no new by-law to the same or the like effect or re- "enactment thereof shall have any force until confirmed at a general meeting "of the company."

p. 62, l. 36-
p. 63, l. 14.

p. 58, ll. 23-
39.

p. 59, l. 21.

p. 59, l. 31.

p. 60, l. 45.

p. 61, l. 20.

p. 61, l. 31.

p. 62, l. 14.

p. 60, l. 35.

9. The Appellant respectfully submits that under the Companies Act and the charter of the Company the shares of the company could only validly

be transferred in the company's books in Ontario and that the shares held at his death by the Respondents' testator were therefore property situate in Ontario and liable to Ontario succession duty. The Appellant accordingly submits that the judgment of the Court of Appeal for Ontario was wrong and should be reversed for the following amongst other

REASONS.

1. Because the shares of the company could be effectively dealt with only in the Province of Ontario.
- 10 2. Because the company could not lawfully establish a transfer office outside the Province of Ontario.
3. Because in the absence of a permit from the Lieutenant-Governor of Ontario in Council (which has not been given in the case of the company), the books of an Ontario company must be kept at the head office of the company in Ontario.
4. Because the books of an Ontario company must be kept by an officer and not merely an agent of the company in Ontario and the shares are transferable only on the books so kept.
- 20 5. Because by paragraph 17 of by-law number 2 the company required its directors to provide a stock transfer book in Ontario and the directors provided such a transfer book and had no power or authority to provide and did not effectively provide any other transfer book.
6. Because the Court of Appeal for Ontario were wrong in holding that the doctrine of ultra vires does not apply to companies incorporated by charter granted under the Companies Act of Ontario.
- 30 7. Because share certificates in a joint stock company sealed with the company's seal are not specialties so as to make the rights thereby evidenced situate wherever the certificates happen to be.

D. N. PRITT.
FRANK GAHAN.

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by The Attorney-General for Ontario - *Appellant*

AND

EVA MAY WILLIAMS and REGINALD
VICTOR WILLIAMS, Executors of the
Will of Alexander Duncan Williams,
deceased - - - (*Suppliants*) *Respondents*

CASE FOR THE APPELLANT.

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