

In the Privy Council.

No. 43 of 1941.

ON APPEAL FROM THE COURT OF APPEAL
FOR ONTARIO.

UNIVERSITY OF LONDON
W.C. 1.
23 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES
(Plaintiff) Appellant,

APPELLANT'S CASE

BETWEEN
THE TREASURER OF ONTARIO

AND

MRS. FRANCES EUGENIA BLONDE,
FLORENCE MAISONVILLE AND EMILY
F. LYNCH, Executrices of the Estate of
Albert Theodore Montreuil, AND ALFRED
GEORGE THOMCZEK, LOUISE MATILDA
THOMCZEK, EUGENIE THOMCZEK,
FLORENCE MAISONVILLE AND RAY-
MOND GIRARDOT *(Defendants) Respondents.*

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CASE OF THE APPELLANT.

1. This is an appeal from the judgment of the Court of Appeal for Ontario (Robertson, C.J.O., Middleton, Masten, Henderson and Gillanders JJ.A), dated June 24th, 1941, allowing an appeal by the Respondents, in an action brought by the Treasurer of Ontario tried at Toronto, from the judgment of the trial Judge (The Honourable Chief Justice Rose, Chief Justice of the High Court) in which he held that the shares of the capital stock of Briggs Manufacturing Company and Pfeiffer Brewing Company, owned by the deceased Albert Theodore Montreuil at the date of his death, were property locally situate in the Province of Ontario at the date of the death of the said
10 Albert Theodore Montreuil under the provisions of The Succession Duty Act, 1934, Chapter 55, Section 6 (1) which reads as follows:—

Record.

p. 37.

p. 24.

“ 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

Record. “ therein of personal property locally situate outside Ontario at the
 “ time of such death, shall be subject to duty at the rates hereinafter
 “ imposed.”

and are subject to succession duty, and that, therefore, the Plaintiff do recover from the Defendants the sum of \$105,513.95, being \$93,869.93 balance of duty and interest amounting to \$11,444.02 to the date of judgment.

p. 4. **2.** The facts are set out in a Special Case referred to the Court and the following is a summary :—

3. Albert Theodore Montreuil, late of the City of Windsor in the Province of Ontario, died on the 2nd day of October, 1936, domiciled in the Province **10** of Ontario, having made his Last Will and Testament, dated the 14th day of July, 1936, probate of which was granted by the Surrogate Court of the County of Essex in the said Province of Ontario to the Defendants, Frances Eugenia Blonde, Florence Maisonville and Emily F. Lynch, Executrices therein named, on the 29th day of October, 1936.

4. At the date of the death of the said Albert Theodore Montreuil, he was the owner of 8,000 fully paid-up shares of the capital stock of Briggs Manufacturing Company registered in his name and 41,000 fully paid-up shares of the capital stock of the Pfeiffer Brewing Company registered in his name. 20

5. The certificates representing the above shares were found in his safety deposit box in the City of Windsor in the Province of Ontario.

6. Both the Briggs Manufacturing Company and the Pfeiffer Brewing Company were incorporated under the laws of the State of Michigan and the head offices of both Corporations were in the City of Detroit in the State of Michigan one of the United States of America.

7. Neither Company maintained a register for the transfer of shares nor did it record transfers of shares of its capital stock at the head offices. Both Companies had, however, appointed Trust Companies in the City of Detroit in the State of Michigan and in the City of New York in the State of **30** New York as transfer agents, and the said shares could be transferred at either transfer office upon the production of the share certificates.

8. Neither Company has a register for the transfer of shares within the Province of Ontario.

9. The share certificates in question were all sealed with the corporate seals of the Companies.

p. 7, l. 43. **10.** The question for the opinion of the Court as set out in Paragraph 21 of the Special Case is :—“ Were the said shares of capital stock of Briggs

“ Manufacturing Company and Pfeiffer Brewing Company, property locally
 “ situate in the Province of Ontario at the death of the said Albert Theodore
 “ Montreuil, for the purposes of The Succession Duty Act, and as so locally
 “ situate, subject to succession duty ? ” Record.

11. The action is to recover duty with respect to the interest in the said shares passing to five persons living in the City of Detroit in the State of Michigan one of the United States of America. Duty has been paid on the “ transmission ” of the interest in the said shares to two beneficiaries residing in the Province of Ontario.

10 12. Therefore if the question referred to in Paragraph 10 hereof is answered in the affirmative, it is agreed in the Special Case, Paragraphs 22 p. 8. and 23, that judgment shall be entered in favour of the Plaintiff and if it is answered in the negative that the action be dismissed with costs.

13. By the judgment of the trial Judge (The Honourable Chief Justice p. 29, l. 13,
et seq. Rose), he held that he could not find in this particular instance, that any one office is the office in which a transfer of the shares could be made effective, and, therefore, could not apply the *Attorney-General vs. Higgins* 2 H. & N. 339—157 E.R. 140 and the cases that have followed it, but could find a whole series of cases in which some effect had been given to the fact that the owner
 20 of the shares had the certificates with him in the place of his domicile, and there being nothing else that can be seized upon, he took that fact which the cases show to be important in some circumstances, as being the governing fact in the circumstances of this case. He holds, therefore, that the situs of the shares in question is in the Province of Ontario.

14. In the Court of Appeal the Honourable Chief Justice Robertson pp. 38-47. was of the opinion that the judgment of the trial Judge was wrong and that because there are two places, at either one of which transfer of the shares may be made, does not in the slightest degree serve to qualify another place where the shares cannot be transferred, as their local situation, no matter
 30 what difficulties there may be in distinguishing between the two places first mentioned. That so long as there is a place where the shares can be transferred, whether that place is Michigan or New York need not be determined in order to reach the conclusion that Ontario is not the situs of the shares.

15. Mr. Justice Middleton and Mr. Justice Gillanders agreed with Chief Justice Robertson and had nothing to add.

16. Mr. Justice Masten dissented from the judgment of the majority pp. 47-55. of the Court of Appeal and agreed with the views expressed by Rose C.J.H.C., that the existence of transfer offices in two places (New York and Detroit) weakens if it does not entirely destroy the foundation of the rule that the
 40 location of the shares should be determined by the place of registration of transfer. In his opinion, the whole beneficial interest in the shares in question

Record. could be effectively dealt with in Ontario by the testator in his lifetime and by his executors after his death in accordance with the principles laid down in such cases as *Attorney-General vs. Bouvens* (1836) 4 M. & W. 171 ; *Stern vs. The Queen* (1896) 1 Q.B.D. 211 and *Crosby vs. Prescott* (1923) S.C.R. 146. He was further of the opinion that the certificates being sealed with the seal of the corporation were "specialties" and had a situs where they were found at the date of death.

p. 55. **17.** The Honourable Mr. Justice Henderson agrees with the majority in the Court of Appeal, that the shares in question have not a situs in Ontario and states that it is for the Defendants to take whatever course they may ¹⁰ be advised to determine whether Michigan State or New York State is the situs of the shares.

18. The Appellant respectfully submits that the judgment of the trial Judge and of Masten J.A. in the Court of Appeal is right and that the judgment of the majority in the Court of Appeal is wrong, and that this appeal should be allowed and judgment entered for the Appellant with costs here and below.

REASONS.

1. Because the certificates were found at the death in the Province of Ontario, where the deceased was domiciled. 20
2. Because the shares in question could be dealt with in Ontario.
3. Because the said Companies did not themselves maintain registers of transfers of shares at their head offices.
4. Because the Companies have appointed two transfer agents in different jurisdictions, namely, in New York State and Michigan State, where the shares are interchangeably transferable.
5. Because the shares in question cannot be transferred on the books of the transfer agents of the Companies in Michigan ³⁰ or New York unless the certificates are produced.
6. Because the Ontario probate gave to the Executors a right to the possession of the certificates which were in Ontario at the date of death.
7. Because the Executors could endorse the certificates for transfer as effectively as could the owner when living.
8. Because the situs of the shares is fixed by the circumstances at the date of death.
9. Because shares have a situs for the purpose of taxation.

10. Because shares can have only one situs for the purpose of taxation.
11. Because the action of the personal representatives in choosing one or the other of the places of transfer cannot relate back to fix the situs at the date of death.
12. Because the principle of law that shares have a situs at the place where they can be effectively dealt with has no application in the case of duplicate or multiple transfer offices in different jurisdictions, where the shares may be interchangeably transferable.
13. Because the reasons stated by the trial Judge and by the Honourable Mr. Justice Masten in the Court of Appeal are right and should be supported.

C. R. MAGONE.
L. A. RICHARD



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(Plaintiff) Appellant,

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MRS. FRANCES EUGENIA BLONDE,
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Estate of Albert Theodore Montreuil,
AND ALFRED GEORGE THOMCZEK,
LOUISE MATILDA THOMCZEK,
EUGENIE THOMCZEK, FLORENCE
MAISONVILLE AND RAYMOND
GIRARDOT ... *(Defendants) Respondents.*

CASE OF THE APPELLANT.

BLAKE & REDDEN,

17, Victoria Street, S.W.1.