

<p>THOMAS R. CORKINGS AND ANOTHER } (PLAINTIFFS) }</p>	APPELLANTS;	<div style="text-align: center;">1936 { * Feb. 12 —</div>
AND		
<p>AMELIA COLLINS (PLAINTIFF).....</p>	RESPONDENT;	
AND		
<p>THE TORONTO GENERAL TRUSTS } CORPORATION }</p>	DEFENDANT.	

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH
COLUMBIA

Will—Administration—Intestacy—Deceased survived by widow without issue—Valuation of estate—Date of—Mining shares—Stock market value—Prima facie evidence—Not conclusive—Concurrent finding—Administration Act Amendment Act, 1925, c. 2, ss. 3 and 4—Administration Act, R.S.B.C., c. 5, s. 114, as amended by statute of 1925, c. 2, s. 4.

One G. H. Collins died intestate leaving a widow without issue. The chief asset of the estate was 256,017 shares in B.C. Nickel Mines,

* PRESENT:—Duff C.J. and Rinfret, Crocket, Davis and Kerwin JJ.

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Limited. The appellants, nephew and niece of the deceased, claimed that they were entitled to share in the estate, which they alleged would exceed \$20,000, on the ground that at the date of the death the market value of these shares was 29 cents per share. It was held by the trial judge and affirmed by the appellate court that the net value of the estate should be ascertained as of the date of the deceased's death and that 5½ cents per share was the outside price at which the shares could have been realized upon at that time and that the widow, now respondent, was entitled to the whole estate.

Held, affirming the judgment of the Court of Appeal (50 B.C. Rep. 122) that the finding of the trial judge as to the value of the shares (this being an issue of fact), in which the appellate court concurred, ought not to be set aside. The price at which shares are selling on the stock market might be regarded as *prima facie* evidence of the value of those shares but such evidence ought not to be accepted as conclusive by the courts. *Untermeyer Estate v. Attorney-General for British Columbia* ([1929] S.C.R. 84) discussed.

APPEAL from the judgment of the Court of Appeal for British Columbia (1) affirming the judgment of the trial judge, Murphy J. (2), on an issue between the parties on the question of the value of a deceased's estate.

D. K. MacTavish for the appellants.

R. S. Robertson K.C. for the respondent.

The judgment of the Court was delivered orally by

DUFF C.J.—It will not be necessary to call on you, Mr. Robertson.

This appeal concerns the application of section 114 of the British Columbia *Administration Act*, R.S.B.C. 1924, c. 5, as amended by statute of 1925, c. 2, s. 4. The controversy on the appeal relates to the value of certain shares in the British Columbia Nickel Mines Ltd. which constituted the estate of the deceased George Henry Collins. The enactment which is to be applied is that where a testator dies intestate leaving a widow but no issue, and the net value of the estate does not exceed \$20,000, the estate shall go to the widow.

The learned trial judge held that these shares had a certain value on the relevant date, 6th August, 1933. There was an appeal taken from that to the Court of Appeal which was dismissed, one judge dissenting.

(1) (1935) 50 B.C. Rep. 122; (2) (1935) 49 B.C. Rep. 398;
 [1935] 2 W.W.R. 550. [1935] 1 W.W.R. 295.

The sole question is whether the finding of the learned trial judge as to value, in which the Court of Appeal concurred, ought to be set aside. The rule, of course, is well settled and is that where there is a concurrent finding on an issue of fact this Court will not interfere unless some definite error is shown to affect the conclusion at which the courts below arrived.

The appeal is supported by reference to the judgment delivered by Mr. Justice Mignault in the case of *Untermeyer Estate v. Attorney-General for British Columbia* (1). The controversy there related to the value of certain shares which had to be ascertained for the purpose of applying the *Succession Duty Act*. The phrase used in the statute was "fair market value," and the question at issue was as to the fair market value at the date of the death of the deceased. In the circumstances of that case, it was thought that the proper criterion of value was the price at which the shares were selling at the relevant date on the market.

What is laid down in the judgment of Mr. Justice Mignault there cannot be treated as establishing a general principle of law applicable to all cases. The words which we are to apply in this case are not identical with the words under consideration in that case, but, even if they were, the question being a question of fact, the determination in that case would not necessarily rule the decision in this case. What the courts below had to ascertain was the real value of the shares at the pertinent time. The price at which the shares were selling on the stock market might be regarded as *prima facie* evidence, but the British Columbia courts were quite right in declining to accept that as conclusive; and examining all the factors entering into the real value of the shares, there is no ground upon which concurrent findings of the courts could properly be disturbed.

The appeal is, therefore, dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellants: *H. R. Bray*.

Solicitors for the respondent: *Savage & Keith*.

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