JOHN DONALD CHRISTIE (*Plaintiff*) ....APPELLANT;

AND

THE BRITISH AMERICAN OIL COMPANY LIMITED (*Defendant*) ..... } RESPONDENT.

1953
*Nov. 24
1954
*Feb. 15

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Companies—Succession Duties—Joint owned shares transferable at Toronto or Montreal—Claim for succession duties by Ontario—Subsequent split of shares—New certificates made transferable at Winnipeg also—Refusal of transfer agent in Winnipeg to make transfer until Ontario's claim settled—Action for damages—Succession Duty Act, S. of O., 1939, 2nd Session, c. 1.

The appellant and his mother, residing in Winnipeg, were, when the latter died in 1943, joint owners of shares of the respondent company transferable at Toronto or Montreal. The transfer agent at Toronto having refused to register the shares in the sole name of the appellant unless a succession duty release was produced, the appellant brought action in Ontario for a mandatory order. This was dismissed at trial and affirmed by the Court of Appeal and by this Court. The situs of the shares however was not determined in the action.

*PRESENT: Kerwin, Kellock, Estey, Cartwright and Fauteux JJ.

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Subsequently, the respondent's shares were subdivided and new certificates were issued in the joint names of the appellant and his mother, transferable among other places, at Winnipeg. The transfer agent there, on demand, refused to issue a new certificate in the name of the appellant without a release from Ontario duty. The shares were ultimately seized by the Ontario Treasurer and the appellant paid the duty and brought these proceedings for damages in Manitoba, alleging that the respondent's refusal to transfer the shares to him was wrongful. The action was dismissed by the trial judge and by the Court of Appeal.

Held: The appeal should be dismissed.

Per Kerwin, Estey, Cartwright and Fauteux JJ.: The action was not properly constituted to determine the question of situs of the shares. The appellant should have moved against the seizure instead of paying the claim. The respondent was not estopped from denying that the shares were transferable in Winnipeg because the appellant did not change his position by reason of the making of the statement in the new certificates.

Per Kellock J.: The establishment of a transfer office in Winnipeg had no relevancy to the issue. The shares were situate and liable to duty in either Ontario or Quebec since these were the only places where they could have been effectively dealt with at the date of the death. The appellant chose to pay the duty instead of contesting liability and has, therefore, not established that he has suffered any damage for which the respondent is responsible.

APPEAL from the judgment of the Court of Appeal for Manitoba (1), affirming the trial judge's dismissal of an action for damages allegedly sustained through the refusal of the respondent to register the appellant as sole owner of certain shares in the respondent company.

J. D. Christie in person.

A. E. Johnston Q.C. for the respondent.

The judgment of Kerwin, Estey, Cartwright and Fauteux JJ. was delivered by:—

KERWIN J.:—Upon the death of the appellant's mother in 1943, the respondent could not ignore the provisions of section 8 of the *Ontario Succession Duty Act, 1939,* 2nd session, chapter 1. In January, 1947, the appellant was served with a demand by the Provincial Treasurer of Ontario under section 31 of that Act for payment of succession duties due upon the alleged passing of the property in certain shares of the respondent company held in the joint names of the appellant and his mother as joint tenants. An action was brought by the appellant in the Province of Ontario against the respondent, of which action

(1) [1953] 8 W.W.R. (N.S.) 714; [1954] 1 D.L.R. 83.

notice was given the Attorney General of Ontario pursuant to section 32 of the *Judicature Act*, R.S.O. 1937, chapter 100, since the appellant as plaintiff in that action claimed that the *Succession Duty Act*, or some part of it, was *ultra vires*. That action was dismissed by the trial judge (1). The Court of Appeal (2) for Ontario and this Court dismissed appeals without, however, in either case, passing on the question of the situs of the shares

Some of the shares were sold by arrangement between the appellant and the Provincial Treasurer of Ontario. Subsequently the respondent sub-divided its shares and issued certificates for the proper number of new shares in the joint names of the appellant and his mother. No question is raised that these are not in substance the same as the remainder of the old shares. When the Treasurer of Ontario served his demand for payment upon the appellant, the latter failed to dispute that demand, as he might have done under section 31 of the *Ontario Succession Duty Act;* and to determine the question of situs, it is at least necessary, under the circumstances of this case, to have a properly constituted action.

The only additional matter argued was that the respondent was estopped from denying that the shares were properly transferable in Winnipeg. That argument is based on the fact that while the old shares were transferable only in Montreal or Toronto, the new certificates contain the following statement:—

> The shares represented by this certificate are transferable in Halifax, N.S., Saint John, N.B., Montreal, Que., Toronto, Ont., Winnipeg, Man., Regina, Sask., Edmonton, Alta., and Vancouver, B.C., in Canada and in New York, New York, in the United States of America.

This means nothing more than that a transfer could be made in any of the named cities if the relevant law permitted it. It does not mean that the respondent was obliged to permit owners to transfer in any of these cities merely upon presentation of the certificate and a demand for such transfer. There is no basis for an estoppel because the appellant did not change his position by reason of the making of the statement quoted above in the new certificates.

(1) [1947] O.R. 455. (2) [1947] O.R. 842.

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KELLOCK J.:—The appellant and his mother, residing in the City of Winnipeg, were, at the date of the death of the latter on July 21, 1943, joint owners of certain shares in the respondent company transferable on the books of the company either at Toronto or Montreal, but not elsewhere. Following the death, the appellant took the share certificates to Toronto and left them with the transfer agents of the respondent there for transfer or re-registration in his own name. Transfer was, however, refused without production of a release from Ontario succession duty. Section 8, s-s (1) of the *Ontario Succession Duty Act*, 1939, 2nd Session, c. 1, prohibits any corporation having its head office, principal place of business or any place of transfer in Ontario from transferring "any property situate in Ontario" in which the deceased had an interest at the time of death without the written consent of the Treasurer. In this situation the appellant was served in Toronto on behalf of the Provincial Treasurer with a statement as to duty pursuant to s. 31 of the *Act*. S. 32, s-s (1), provides that, in the event of non-payment, a warrant may issue for the relevant amount, the warrant having the same force and effect as a writ of execution issued out of the Supreme Court of Ontario.

The appellant ignored the demand, having in the meantime recalled the share certificates into his own possession, and took proceeding in the Supreme Court of Ontario for a mandatory order directing the respondent to transfer or re-register the shares without the production of a succession duty release, claiming that s. 8 of the statute was *ultra vires*. This action was dismissed at trial and this was affirmed on appeal by the Court of Appeal (1) and by this court.

The question as to the situs of the shares was not determined in the action but the reasons for judgment of Roberston C.J.O. contain the following:

> A convenient and expeditious way of determining that question (situs of the shares) was made available to him by the Treasurer of Ontario in serving a demand for succession duty upon the appellant under s. 31 of The Succession Duty Act. In the meantime, while seeking to compel the respondent to register a transfer of the shares, the appellant has refrained from producing the share certificates, without which no transfer can be made, and has ignored the notice under s. 31.

(1) [1947] O.R. 842.

Following the termination of this litigation, the appellant obtained the consent of the Treasurer of Ontario to the release of some of the shares, and these he had registered in his own name. Subsequently, under authority of supplementary letters patent, the outstanding shares of the respondent company were "split" two for one and made transferable at a number of places, including Winnipeg. The appellant then applied for transfer to the transfer agents of the respondent at Winnipeg and was refused on the same ground as before. Subsequently, the Treasurer of Ontario issued his warrant, under which the sheriff seized the shares on the books of the company at Toronto. The appellant thereupon paid the amount demanded and brought these proceedings in Manitoba against the respondent. His action was dismissed at trial and his appeal (1) has also been dismissed.

The appellant's contention is that, as the new certificates, stating on their face as they do that the shares are transferable, among other places, at Winnipeg, his application to the respondent's transfer agents at Winnipeg was wrongfully refused and that the damages flowing from such wrongful refusal, for which the respondent is liable, are the amount he paid in Ontario under the warrant. No point is made by the appellant arising out of the "split" of the shares other than the change in the places of transfer. The initial question which arises is as to what, if any, relevancy to the issue is the fact of the establishment, subsequent to the death, of a transfer office in Winnipeg. In my opinion, it has none.

As pointed out by Lord Uthwatt in *Treasurer of Ontario* v. *Blonde* (2), it is now settled beyond dispute that for the purpose of death duties a local situation is to be attributed to shares in a company and that (apart from the case of "street certificates") the first matter to be ascertained in an inquiry as to the situs of registered shares is the place in which the shares can be "effectively dealt with" as between the shareholder and the company so that the transferee will

(1) [1953] 8 W.W.R. (N.S.) 714; [1954] 1 D.L.R. 83.

(2) [1947] A.C. 24 at 30.

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become legally entitled to all the rights of a member. At p. 31, his Lordship said:

> The adoption of place of transfer as the leading consideration in determining locality involves, in their Lordships' view, the corollary that, if there be, outside the jurisdiction in which it is suggested the shares are situate, several places where transfers can be effectively carried through in the ordinary course of business, and there is no place within the jurisdiction where a transfer can be carried through, the shares cannot be situate within the jurisdiction. The inquiry at the outset is 'Are the shares situate in the jurisdiction or not?' The inability of the jurisdiction to satisfy the test removes it from the arena. The circumstance that alternative places of transfer exist in what happen to be two different states outside the jurisdiction is for the purpose in hand no more relevant than the circumstance that two places of transfer exist in one state outside the jurisdiction.
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> * * *
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> The domicile of the testator, grant of probate in Ontario and the presence in Ontario of the share certificates, are irrelevant.

Accordingly, in the case at bar, the only place where the shares could have been effectively dealt with at the date of the death was either Ontario or Quebec, and they were, therefore, situate and liable to duty in either one or the other, but not in both. The opening of the transfer office in Manitoba some years after the death did not displace that locus or that liability. Which of the two was the proper one was a question to be determined upon the principles laid down in *Rex* v. *Williams* (1) and in *Aberdein's* case (2).

While the appellant at no time and in no way has suggested that the Province of Quebec was the locality of the shares, his whole course of action being rather the contrary, it is not necessary for present purposes to determine the point. It is enough to say that the appellant has not established that the shares were not situate in Ontario or that the respondent committed a wrong in refusing to transfer without a release from Ontario succession duty. The appellant chose to pay the amount demanded by the warrant instead of taking the proceedings open to him to contest liability. He has therefore not established that he has suffered any damage for which the respondent is responsible.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the respondent: *Johnston & Jessiman.*

(1) [1942] A.C. 541. (2) [1947] A.C. 24.