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THE PROVINCIAL TREASURER OF MANITOBA ..... APPELLANT;

AND

HELEN HUNT BENNETT AND OTHERS, EXECUTORS OF THE LAST WILL AND TESTAMENT OF RUSSELL MERIDAN BENNETT, DECEASED ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Succession duty—Deposit receipt issued by bank in Province of Manitoba and held by person who died domiciled in State of Minnesota and then held by his executors in Minnesota—Claim by Government of Manitoba (under Succession Duty Act, Man., 1934, c. 42) for succession duty in respect of the sum represented by the deposit receipt—Situs of debt—Terms and nature of the deposit receipt—Collateral attack on validity of instrument as regards authority of officials signing it.

B. died domiciled and resident in the State of Minnesota and having in his possession there a deposit receipt issued by a bank in the Province of Manitoba, reading as follows: "Received from [B.] the sum of $50,000 which this bank will repay to [B.] or order with interest at the rate of 2½% per annum until further notice. Fifteen days' notice of withdrawal to be given and this receipt to be surrendered before repayment of either principal or interest is made. No interest will be allowed unless the money remains in the bank one month. This receipt is negotiable." Probate of B.'s will issued to his executors in Minnesota, where the deposit receipt was reduced into possession and held by them. None of the executors or beneficiaries under the will resided in Manitoba. The Provincial Treasurer of Manitoba claimed from B.'s estate succession duty under the *Succession Duty Act*, Man., 1934, c. 42, in respect of the sum deposited and represented by the deposit receipt. The evidence was that the bank treated that form of deposit receipt as negotiable; that in general practice, if it was endorsed in accordance with the way it was made payable, it would be negotiated and paid; if the payee endorsed it, the bank considered it was properly transferred; it was the bank's practice to honour indorsement by the payee; and it could come through another bank with another party; the bank admitted its liability to pay the deposit receipt in question.

Held: The deposit was not subject to succession duty under said Act. (Judgment of the Court of Appeal for Manitoba, 44 Man. R. 63, affirmed).

The situs of the deposit receipt for the pertinent purposes was not the Province of Manitoba. It came within the well recognized exception to the rule that the situs of a simple contract debt is the jurisdiction where "the debt is properly recoverable and can be enforced." It came within the exception notwithstanding that it might not properly be called a "negotiable instrument" within the strict definition of that term as found in Bills of Exchange Acts or as that term has come to be regarded in English mercantile custom and usage. The exception is not restricted, in its application, to "negotiable in-

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

struments" strictly as so defined. The deposit receipt in question was, after endorsation, capable of being transferred by delivery and of being sold in Minnesota, passing a valid title to the debt, by acts done entirely in Minnesota. It was in effect a saleable chattel, therefore situate where it was found, and it followed the nature of chattels as to the jurisdiction to grant probate. It was capable of being reduced into possession by the executors in Minnesota, by virtue of the probate and letters testamentary there issued, and, when that was done, the executors held a marketable security, saleable and, after endorsation, transferable by delivery, with no act outside of Minnesota being necessary to render the transfer valid. The executors or their transferee could maintain an action, if necessary, against the bank in the Manitoba courts without taking out ancillary letters of administration in Manitoba. The document, and the debt of which it was the title, was locally situated in Minnesota, and was not subject to the succession duty claimed.

Attorney-General v. *Bouwens*, 4 M. & W. 171; *Crosby* v. *Prescott*, [1923] S.C.R. 446; *The King* v. *National Trust Co.*, [1933] S.C.R. 670; *Richer* v. *Voyer*, L.R. 5 Priv. Cou. App. 461, and other cases and authorities cited. *The King* v. *Lovitt*, [1912] A.C. 212, distinguished.

Held, also: It was not open to the Provincial Treasurer to attack collaterally the validity of the deposit receipt as regards the authority of the bank officials who signed it.

APPEAL by the Provincial Treasurer of Manitoba from the judgment of the Court of Appeal for Manitoba (1), which reversed the judgment of Montague J. given upon the reference of the matter in question to a judge of the Court of King's Bench by the Provincial Treasurer under s. 21 (1) of the *Succession Duty Act*, Man., 1934, c. 42.

The question was whether or not the Province of Manitoba was entitled to succession duty in respect of the sum of $50,000 and interest, which sum of $50,000 had been deposited by Russell M. Bennett, now deceased, with a branch in Winnipeg of the Royal Bank of Canada and was represented by a deposit receipt dated August 15, 1934, issued by the said bank, in the form set out in the judgment now reported. The said deceased died at the city of Minneapolis in the State of Minnesota on October 31, 1934, resident in said city of Minneapolis and domiciled in said State of Minnesota. The executors of his will were granted probate and letters testamentary in said State, and said deposit receipt was reduced by them into their possession there. The executors and beneficiaries under the deceased's will all lived outside Manitoba. The material facts and circumstances of the case are sufficiently stated in the judgment now reported, and are indicated in the above headnote.

(1) 44 Man. Rep. 63; [1936] 1 W.W.R. 691; [1936] 2 D.L.R. 291.

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The Court of Appeal for Manitoba held that the Government of Manitoba was not entitled to the succession duty claimed. The Provincial Treasurer of Manitoba appealed to this Court. By the judgment now reported the appeal was dismissed with costs.

G. L. Cousley for the appellant.

W. P. Fillmore K.C. for the respondents.

The judgment of the court was delivered by

RINFRET J.—This is a submission, in accordance with section 21 (1) of the *Succession Duty Act,* 1934, by the Provincial Treasurer of the Province of Manitoba for the decision of certain questions raised in connection with the estate of Russell Meridan Bennett, late of the city of Minneapolis, in the State of Minnesota, U.S.A.

The facts are agreed upon as set out in an affidavit of the executors of the estate:

Bennett died at Minneapolis on the 31st day of October, 1934, being domiciled and having his residence, at the time of his death, at Minneapolis.

By his last will he appointed the respondents his executors. The will was duly proved and recorded in the Probate Court of the County of Hennepin, in the State of Minnesota, and letters testamentary issued to the executors by the Probate Court on the 17th day of December, 1934.

None of the executors or of the beneficiaries under the will reside in the Province of Manitoba.

Among the property in the possession of the deceased in Minneapolis, at the time of his death, and which was vested in the executors under his last will, was found a deposit receipt in the following words and figures:

THE ROYAL BANK OF CANADA
Incorporated 1869

$50,000.00 No. 9209

$\frac{11}{8}$ WINNIPEG, MAN., August 15th, 1934.

Received from Russell M. Bennett the sum of Fifty Thousand 00/100 Dollars which this Bank will repay to the said Russell M. Bennett *or order* with interest at the rate of 2½ per cent. per annum until further notice. Fifteen days notice of withdrawal to be given and this Receipt to be surrendered before repayment of either Principal or Interest is made.

No interest will be allowed unless the money remains in the Bank one month.

This Receipt is negotiable.

For the Royal Bank of Canada,

F. S. Purse, Accountant. J. H. Strafford, Manager.

This deposit receipt has been reduced into possession by the executors at Minneapolis, where, at all material times, it has been held by them.

The branch of the Royal Bank of Canada wherein the money was deposited, and where the deposit receipt was issued, being in Manitoba, the Provincial Treasurer of that province claimed from the Bennett estate a total duty of $8,671.09 in respect of the moneys so deposited and represented by the deposit receipt; the executors denied any liability; and, as the parties could not agree, it was decided to refer to the courts, in the words of the submission, "the liability of the above estate for succession duty."

Montague, J., in the Court of King's Bench, found and determined that the deposit was subject to succession duty and adjudged accordingly; but, in the Court of Appeal, this judgment was unanimously reversed, the appeal was allowed; and it was decided that the deposit was not subject to any duty under the *Succession Duty Act*.

The learned judge of the Court of King's Bench delivered no reasons for his decision.

Trueman, J.A. (with whom the Chief Justice of Manitoba concurred) held that the deposit receipt was "negotiable by virtue of the estoppel resulting from its own representation"; and that

this being the nature of the receipt, the executors have title to it by virtue of the Minnesota letters testamentary and are independent of ancillary probate or any other act in this Province [of Manitoba] to render legal their endorsement and delivery up of the receipt to the Bank against payment or their negotiation of it to a purchaser whether within the Province or elsewhere, proof being made to the Bank of their Minnesota authority.

He found accordingly that the money in question was not subject to the Crown's claim.

Robson, J.A., came to the same conclusion, but on different grounds which it will not be necessary to discuss here, in view of the conclusion we have reached on the other point and which is sufficient to uphold the result arrived at by the Court of Appeal.

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Richards, J.A., gave no written reasons and, as we were told, merely declared that he was for allowing the appeal.

It must first be noted that the Manitoba enactment, in terms, affects only "all property situate within the province" (subs. 1 of s. 8 of c. 42 of the Statutes of Manitoba, 1934). Under the statute, property having a situs in the province is alone declared "subject to duty." Indeed, property within the province is the only property that the province has the constitutional power to tax (*Lambe* v. *Manuel* (1); *Woodruff* v. *Attorney-General for Ontario* (2); *The King* v. *Lovitt* (3); *Alleyn* v. *Barthe* (4)). The deposit receipt which is the subject of the present litigation is primarily a document which constitutes evidence of a debt owing by the Royal Bank of Canada to the deceased, Russell M. Bennett. It is a simple contract debt and, as such, its situs, at least for the purposes of this case, would be the jurisdiction where the debtor is domiciled, and that is to say: where "the debt is properly recoverable or can be enforced" (*New York Life Insurance Company* v. *Public Trustee* (5); *The King* v. *National Trust Company* (6)).

But there is a well recognized exception to that rule, and that is that certain instruments capable of being transferred by delivery, and of being sold for money, in the jurisdiction where they are found and without it being necessary to do any act outside of that jurisdiction in order to render the transfer of them valid, are considered as instruments of a chattel nature or, in effect, saleable chattels which follow the nature of other chattels as to the jurisdiction to grant probate (*Attorney-General* v. *Bouwens* (7); Dicey, Conflict of Laws, 5th ed., pp. 342 & 343).

The only point, therefore, for our decision is whether the deposit receipt now in question can be regarded as an instrument of such a nature that it was capable of being reduced into possession by the executors in Minneapolis, by virtue of the probate and letters testamentary there issued to them, in such a way that their title to the

(1) [1903] A.C. 68.
(2) [1908] A.C. 508.
(3) [1912] A.C. 212.
(4) [1922] 1 A.C. 215.
(5) [1924] 2 Ch. 101.
(6) [1933] S.C.R. 670, at 676.
(7) (1838) 4 M. & W. 171, at 192.

debt represented by the deposit receipt was as valid as a title to corporeal chattels reduced into possession in similar circumstances.

In the case of corporeal chattels, there can never be any dispute, for they have an actual local situation; but it was argued—and with great ability—by counsel for the provincial treasurer that the exception applies only to those instruments which, by statute or by custom of the English mercantile world, are recognized as "entitled to the name of a negotiable instrument," to use the words of Lord Blackburn, in *Crouch* v. *Credit Foncier of England Ltd* (1).

We do not think, however, that such a restriction follows from the pronouncements made upon that point in the decided cases.

It may be assumed in this discussion that the deposit receipt held by the respondents is not, in its nature, a "negotiable instrument" within the limited meaning put forward by the appellant. It may be conceded that it lacks some of the characteristics of a promissory note, as, for example, it is not made for "a sum certain," in view of the power reserved to the bank to modify the rate of interest. Moreover, there may be a question whether the instrument is such that the property in it may be acquired free of any defect of title in the transferror or free of the equities existing between the immediate parties to the instrument.

But we do not understand the doctrine to be that, in order to be taken out of the rule with regard to simple contract debts, the instruments which represent them and of which they are the titles must necessarily answer to the strict definition of "negotiable instruments" as it is to be found in the Bills of Exchange Acts, or according as they have come to be regarded by the custom and usage of the English mercantile world.

Let us refer to the language of Lord Abinger, C.B., in *Attorney-General* v. *Bouwens* (2). The instruments in that case were Russian, Danish and Dutch bonds. The dividends due on the Russian and Danish government bonds respectively could be collected from agencies in England; but the dividends on the Dutch bonds were payable solely at Amsterdam. Lord Abinger stated first that

(1) (1873) L.R. 8 Q.B. 374. (2) (1838) 4 M. & W. 171.

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The special verdict gives a description of these instruments, which are called, though incorrectly, bonds; and finds that all these were marketable securities within this kingdom, transferred by delivery only, and that it never has been necessary to do any act whatsoever out of the kingdom of England, in order to make the transfer of any of the said bonds valid. He then points out that the rules for the determination of situs for the pertinent purposes were derived from those which define the jurisdiction of the ordinary to grant probate (p. 191); and, after having referred "to the locality of many descriptions of effects," he goes on to say (p. 192):

> But, on the other hand, it is clear that the ordinary could administer all chattels within his jurisdiction; and if an instrument is created of a chattel nature, capable of being transferred by acts done here, and sold for money here, there is no reason why the ordinary or his appointee should not administer that species of property. Such an instrument is in effect a saleable chattel, and follows the nature of other chattels as to the jurisdiction to grant probate.

As can be seen, no reference is there made to instruments recognized as negotiable instruments by the statutory law, or by the usage and custom of merchants. All that is said about the instruments, in order to hold them and the debts which they represent as having a local situs in England, is that they are "capable of being transferred by acts done [in England], and sold for money [there]."

The principle so laid down was adopted by this Court in the case of *Crosby* v. *Prescott* (1). Mrs. Crosby, domiciled in Massachusetts, died there, leaving, among the assets of her estate, promissory notes payable to her order, but not endorsed. The maker lived in Manitoba. The Probate Court of Massachusetts appointed one Prescott administrator of Mrs. Crosby's estate. No grant of letters of administration, ancillary or otherwise, was ever received by the administrator from Manitoba. It was held that the situs of the notes was in Massachusetts, they being transferable by acts done solely there, and the administrator, or his transferee, alone being able to sue on them. It was also held that the administrator could maintain an action against the maker of the notes in the Manitoba courts, without taking out ancillary administration in that province.

In the course of his reasons in support of that judgment, the present Chief Justice of this Court said (p. 448):

(1) [1923] S.C.R. 446.

It is, of course, a perfectly well settled doctrine of English law that simple contract obligations due to the deceased by a debtor residing in England are deemed for the purposes of administration and collection to have a situs within the jurisdiction where the debtor resides, and consequently no action can be maintained in England to enforce such obligations against a debtor residing there by a foreign administrator who is not clothed with authority to administer the assets of the deceased in England by an English grant. *Commissioner of Stamps* v. *Hope* (1).

But the Chief Justice then added:

The Court of Appeal in Manitoba has held, rightly as I think, that there is an exception to this rule in the case of negotiable instruments; and that, as regards these, if they are reduced into possession by a foreign administrator within the territory from which he has received his grant and where they were at the time of the death of the creditor, it is competent to him to enforce them by action in the English courts, even in the absence of an English grant.

And, at p. 449:

It is beyond question also that the debts due upon negotiable instruments held in England at the time of his death by a creditor dying abroad are English assets in respect of which probate duty is payable; *Attorney-General* v. *Bouwens* (2); *Winans* v. *Attorney-General* (3); and this on the ground that such instruments are of a chattel nature capable of being transferred in England and "sold for money" in England.

The proposition thus expounded by the Chief Justice is supported on Story's Conflict of Laws, par. 517, and Westlake, a passage of whose work on Private International Law, at page 126, is said to state the true rule and which reads thus:

96. But to the rule in par. 95*a* the debts due on negotiable instruments are an exception, because they can be sufficiently reduced into possession by means of the paper which represents them. They are in fact in the nature of corporeal chattels. Hence the negotiable instruments of a deceased person, and his bonds or certificates payable to bearer, belong to the heir or administrator who first obtains possession of them within the territory from the law or jurisdiction of which he derives his title or his grant. He can indorse them if they were payable to the deceased's order, and he or his indorsee can sue on them in any other jurisdiction without any other grant.

And the conclusion of the Chief Justice was (p. 451):

* * * such instruments * * * are transferable by delivery, and such delivery has the effect of transferring not only the document, but the debt as well, and in that respect the resemblance to corporeal moveables is complete;

The reasons of Mr. Justice Mignault were to the same effect. The then Chief Justice of this Court, Sir Louis Davies, and Mr. Justice Anglin adopted the reasons of the Chief Justice of Manitoba and of the late Mr. Justice

(1) [1891] A.C. 476. (2) (1838) 4 M. & W. 171.
(3) [1910] A.C. 27.

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Cameron in the Appeal Court, which were also to the same effect.

The passage from Story's Conflict of Laws, par. 517, referred to in his reasons by Chief Justice Duff (Story, 8th ed., p. 736) is in these terms:

> The like principle will apply where an executor or administrator, in virtue of an administration abroad, becomes there possessed of negotiable notes belonging to the deceased, which are payable to bearer; for then he becomes the legal owner and bearer by virtue of his administration, and may sue thereon in his own name; and he need not take out letters of administration in the state where the debtor resides, in order to maintain a suit against him. And for a like reason it would seem that negotiable paper of the deceased, payable to order, actually held and indorsed by a foreign executor or administrator in the foreign country, who is capable there of passing the legal title by such indorsement, would confer a complete legal title on the indorsee, so that he ought to be treated in every other country as the legal indorsee, and allowed to sue thereon accordingly, in the same manner that he would be if it were a transfer of any personal goods or merchandise of the deceased, situate in such foreign country.

Now, the point about the doctrine in Story and in Westlake is that, for the pertinent purposes, these instruments are treated in the same manner as corporeal chattels, or moveables, not necessarily because they are, in their nature, what is known in the Law Merchant and under mercantile custom and usage as being "entitled to the name of a negotiable instrument," but because they are marketable securities within the jurisdiction where they are found, transferable by delivery only, saleable for money "without it being necessary to do any act out of that jurisdiction in order to render the transfer valid." Nowhere is the rule predicated upon the necessity of these documents or securities being negotiable instruments in the restricted sense that the appellant contends for.

This was further emphasized by the Chief Justice of this Court in the judgment which he delivered on behalf of the Court in the case of *The King* v. *National Trust Company* (1).

At pp. 676 and 677, after referring to Mr. Dicey's book at p. 342, he says:

> The judgment in *Attorney-General* v. *Bouwens* (2), at the pages mentioned in the judgment delivered in this court (pp. 191-2) (3), distinguishes simple contract debts from debts by specialty, as well as from debts embodied in negotiable instruments, that is to say, instruments the delivery of which effects a transfer of the debt. Negotiable instruments

(1) [1933] S.C.R. 670. (2) (1838) 4 M. & W. 171.
(3) [1923] S.C.R. 578, at 586.

are treated as instruments "of a chattel nature capable of being transferred by acts done here, and sold for money here," as "in fact a simple chattel"; therefore, it is said, "such an instrument follows the nature of other chattels as to the jurisdiction to grant probate." The criterion expressed in Mr. Dicey's words may fairly be said to be that approved in the judgment in *Attorney-General* v. *Bouwens* (1) as respects negotiable instruments and other kinds of intangible property which are "dealt with" ordinarily and naturally by transferring them.

The Chief Justice says in this passage, it will be noticed, that the criterion applies not only to "negotiable instruments" but also to "other kinds of intangible property which are 'dealt with' ordinarily and naturally by transferring them."

The necessary consequence, and we may say the logical consequence, is that the rule applies, not only to negotiable instruments so-called, but also to instruments which are marketable securities, saleable and transferable by delivery only, without it being necessary to do any act outside of the jurisdiction where they are found, in order to render their transfer valid.

It remains only to consider whether the deposit receipt under discussion is such an instrument.

As long ago as *Richer* v. *Voyer,* decided in the Privy Council in the year 1874 (2), Sir Montague Smith, delivering the judgment of the Board upon a bank deposit receipt in most respects similar to the present one and payable to order as this one is, but not marked: "This receipt is negotiable," said (p. 475):

> It appears that certificates of this kind are in common use among bankers in Canada and the United States, and considerable discussion has taken place in those countries as to their legal character.

P. 476:

> The word "payable" in the certificate in question unquestionably imports a promise to pay the sum deposited, and interest at 4 per cent., and "à l'ordre" are the apt words to constitute a negotiable instrument transferable by indorsement (see Art. 2286). So far the essential attributes of a negotiable promissory note are obtained; but it was said that the provisions that the money should not carry interest unless it remained at least three months in the bank, and that the holder of the certificate should not withdraw the money until after fifteen days' notice, the interest ceasing from the day of notice, imported conditions and contingencies incompatible with the certainty required in such an instrument. The answer given to this objection was, that the provision as to interest only prescribed the time when it was to commence and cease; and that the stipulation for fifteen days' notice introduced no more uncertainty into the promise than occurs in a bill payable so many days after sight.

(1) (1838) 4 M. & W. 171. (2) L.R. 5 Priv. Cou. App. 461.

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Sir Montague Smith afterwards refers to, as he says, an American text writer of high authority, Mr. Parsons, who, in his Treatise on Promissory Notes and Bills of Exchange, after stating that certificates of this nature were in common use and had given occasion to much discussion, and after referring to numerous cases containing conflicting decisions, and among them *Patterson* v. *Poindexter* (1), says: "We think this instrument (of which he gives the form) possesses all the qualities of a negotiable promissory note, and that seems to be the prevailing opinion." (vol. 1, p. 26). It is to be observed, however, that the form given by Mr. Parsons omits the provisions as to interest and notice which appear in the present certificate.

From the evidence given by bankers and others who were called in this case to prove a custom, it certainly appears that these certificates have been commonly treated as transferable by indorsement, but whether with recourse to the indorser does not appear.

The only essential difference between the deposit receipt under consideration in *Richer* v. *Voyer* (2) and the deposit receipt now in question is that in this case the bank reserved unto itself the right to change the rate of interest. Otherwise, the wording of the present receipt is really more favourable to the respondents' contention, in view of the provision therein that "This receipt is negotiable."

Here, the evidence is that, so far as the bank is concerned, this form of deposit receipt is called negotiable; and it is regarded and treated by it as negotiable. It was stated by the officers of the bank who testified in the case that,

in general practice, if it [i.e., the deposit receipt] is indorsed in accordance with the way it is made payable, it will be negotiated and paid. * * * if the payee indorses it, the bank considers it is properly transferred. * * * It is the practice for the bank to honour indorsement by the payee. * * * [and] it could come through another bank with another party.

As a consequence, indorsation of the document in this case operates as a transfer both of the instrument and of the debt to which it is a title. After indorsation, the receipt is capable of being transferred by delivery only and sold in the foreign jurisdiction where it was found; and the stipulation is as between obligor and obligee that the obligor will pay to anyone who holds the document. Such a stipulation is perfectly good. Such payment would be good as against the obligee (Willis, Law of Negotiable Securities, p. 32). It may be that the stipulation falls short of negotiability within its restricted meaning; but undoubtedly the document is capable of being transferred by delivery. Its sale transfers a valid title to the debt

(1) (1843) 6 Watts and Sargent, 227.

(2) (1874) L.R. 5 Priv. Cou. App. 461.

itself. It is a saleable chattel within the meaning of the judgments above referred to; and, therefore, it is situated where it is found and it follows the nature of other chattels as to the jurisdiction to grant probate. Even if the receipt does not possess the incidents of a promissory note, of a bill of lading or of other negotiable instruments in the restricted sense, it was meant to be transferred by endorsement. It is so far negotiable as to pass a good and valid title to the debt; and it follows inevitably from the evidence that, in the words of Lord Abinger (*Attorney-General* v. *Bouwens* (1)), the "instrument has been clearly framed with a view to its becoming a subject of sale and easily transmissible from hand to hand."

It may be further added that, in the circumstances, the deposit receipt could be completely reduced into possession for all material purposes in Minneapolis, where it was and is transferable by acts done solely in the State of Minnesota; that when so reduced into possession by the executors, they held a marketable security saleable and, after indorsation, transferable by delivery only; that it was not necessary for them to do any act out of Minnesota in order to render the transfer of the instrument valid; and that the executors, or their transferee, could maintain an action, if necessary, against the Royal Bank of Canada, in the Manitoba courts, without taking out ancillary letters of administration in that province.

In those circumstances, our opinion is that the deposit receipt, and the debt of which it is the title, is locally situated in Minneapolis, in the State of Minnesota; that it is not, therefore, property situate within the province of Manitoba; and, accordingly, it is not subject to succession duty under the *Succession Duty Act* of Manitoba, as claimed by its Provincial Treasurer.

A secondary point was raised by the appellant as regards the authority of the bank officials who signed the deposit receipt. But, on the evidence, it was made clear that the Bank admits its liability; and we do not think it is open to the appellant thus collaterally to attack the validity of the instrument in that respect.

This disposes of the appellant's contentions, except, perhaps, that a word should be added concerning the *Lovitt*

(1) (1838) 4 M. & W. 171, at 190.

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case (1), strongly relied on by him at the argument. In our view, the decision in that case does not apply here. The deposit receipt there under discussion was marked "not transferable." It lacked, therefore, the essential element on which lies the whole foundation of our judgment in the premises.

It has been said of the *Lovitt* case (1) (see: *Provincial Treasurer of Alberta* v. *Kerr* (2)) that it was one of a local probate duty charged by the Province, where the property was locally situate, for the collection or local administration of the particular property, and was not a case of pure taxation.

In fact, in that case, the point here put forward by the respondents and with which this Court agrees, was neither raised nor discussed; and, in view of the non-transferable character of the deposit receipt there in question, the point did not arise.

The appeal ought to be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *John Allen.*

Solicitors for the respondents: *Sweatman, Fillmore, Riley & Watson.*