1933

*May 18, 19.
*Oct. 3.

HIS MAJESTY THE KING (PLAINTIFF) ... APPELLANT;

AND

NATIONAL TRUST COMPANY (DEFENDANT) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Constitutional law—Succession duties—Bonds or debentures of railway companies (G.T.P. Ry. Co. and C.N. Ry. Co.) having head offices in the province of Quebec, at Montreal, where they were registered and transferable—Owner at his death domiciled in the province of Ontario—Whether subject to succession duties under section 5 of the Quebec Succession Duties Act, R.S.Q., 1925, c. 29, as modified by (Q.) 18 Geo. V, c. 17—Powers of provincial legislature to fix situs of intangible property—Specialties.

*PRESENT:—Duff C.J. and Rinfret, Lamont, Smith, Cannon and Crocket JJ.

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The Crown, in the right of the province of Quebec, by its action claimed the sum of $15,775.95, as representing succession duties alleged to be due by the respondent as sole trustee and executor of the estate of the late Sir Clifford Sifton who died in New York in 1929 and was at the time of his death domiciled in the province of Ontario. Amongst the assets of his estate were certain bonds or debentures of the Grand Trunk Pacific Railway Company and the Canadian National Railway Company, respectively, guaranteed by the Government of Canada. These bonds or debentures, registered in Montreal, were at the time of Sir Clifford Sifton's death in the possession of the latter in Toronto. Succession duties were paid to the Government of the province of Ontario; but the Government of the province of Quebec also claimed succession duties on the ground that these bonds or debentures were to be considered for succession duty purposes as property situate in the province of Quebec according to the definition of the word "property" in section 5 of the *Succession Duties Act* (R.S.Q., 1925, c. 29), because the two companies debtors had their head offices at Montreal and the bonds and debentures were registered and transferable on the companies' registers in that city.

Held that these bonds or debentures had not, in the relevant sense, a local situation within the province of Quebec, and, therefore, were not subject to the payment of succession duties in that province. *Brassard* v. *Smith* ([1925] A.C. 371) dist.

Held, also, that a provincial legislature is not competent to prescribe the conditions fixing the situs of intangible property (which has no physical existence) for the purpose of defining the subjects in respect of which its powers of taxation under section 92 (2) B.N.A. Act may be put into effect. Therefore, section 5 of the Quebec *Succession Duties Act* is *ultra vires* of the legislature of that province, when invoked by it for the purpose of claiming succession duties upon property which has no local situation in that province, within the definition laid down implicitly, if not explicitly, by decisions of the Judicial Committee of the Privy Council. *Woodruff* v. *Atty. Gen. for Ont.* ([1908] A.C. 508); *Rex* v. *Lovitt* ([1912] A.C. 212); *Toronto General Trusts Corp.* v. *The King* ([1919] A.C. 679); *Royal Trust Co.* v. *Atty. Gen. for Alberta* ([1930] A.C. 144); *English, etc., Bank* v. *Commissioners of Inland Revenue* ([1932] A.C. 238); *Commissioners of Stamps* v. *Hope* ([1891] A.C. 476); *N.Y. Life Ins. Co.* v. *Public Trustee* ([1924] 2 Ch. 101); *Atty. Gen.* v. *Bouwens* ((1838) 4 M. & W. 171) discussed and referred.

Comments on the legal institution of the common law known as specialty. Debentures authorized by the Parliament of Canada and charged by statute upon the Consolidated Revenue Fund have the character of specialties. The Grand Trunk Pacific Ry. Co. has statutory powers to create bonds having the character of specialties. The bonds in this case must, as respects the obligation of the railway company, be considered specialties, although the head office of the company is fixed by statute in Quebec; and, in view of the statute law applicable to the case, it must be held such a specialty has its situs in Ontario. Neither, for the reasons fully stated in the judgment, have the bonds of the Canadian National Railway Company in question in this case a situs in Quebec.

Judgment of the Court of King's Bench (Q.R. 54 K.B. 351) affirmed.

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APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court, Surveyer J., and dismissing the appellant's action with costs.

The material facts of the case, and the questions at issue are stated in the above head-note and in the judgment now reported.

Chs. Lanctot, K.C., and *Aimé Geoffrion, K.C.*, for the appellant.

A. Chase Casgrain, K.C., for the respondent.

The judgment of the Court was delivered by

DUFF C. J.—The statutory enactments under consideration are sections 3 and 5 of the Quebec *Succession Duties Act*. So far as pertinent, the provisions of these sections are as follows:—

3. All property, moveable or immoveable, the ownership, usufruct or enjoyment whereof is transmitted owing to death, shall be liable to the following taxes calculated upon the value of the property transmitted, after deducting debts and charges existing at the time of death * * *

5. The word "property" within the meaning of this division includes all property, moveable or immoveable, actually situate within the province, and all debts which were owing to the deceased at the time of his death, or are payable by reason of his death, and which are either payable in the province, or are due by a debtor domiciled therein; the whole whether the deceased at the time of his death had his domicile within or without the province, or whether the transmission takes place within or without the province.

The property in respect of which the dispute arises consists of certain bonds or debentures of the Grand Trunk Pacific Railway Company and the Canadian National Railway Company, respectively, guaranteed by the Government of the Dominion of Canada. These bonds were the property of Sir Clifford Sifton who, at the time of his death on the 17th of April, 1929, was domiciled in the province of Ontario where the bonds were in his possession.

The enactments of the statute purport to impose a tax upon property transmitted owing to death; and, therefore, they only affect subjects having a situs within the province (*Woodruff* v. *Attorney General for Ontario* (2); *Rex* v. *Lovitt* (3); *Toronto General Trusts Corporation* v. *The King* (4); *Brassard* v. *Smith* (5); *Provincial Treasurer of Alberta* v. *Kerr*, P.C. Appeal No. 1 of 1933).

(1) (1932) Q.R. 54 K.B. 351.
(2) [1908] A.C. 508.
(3) [1912] A.C. 212.
(4) [1919] A.C. 679.
(5) [1925] A.C. 371.

The question we have to consider is whether or not these bonds have, in the relevant sense, a local situation within that province.

Some propositions pertinent to that issue may, we think, be collected from the judgments of the Judicial Committee of the Privy Council, if not laid down explicitly, at least, as implicit in them. First, property, whether moveable or immoveable, can, for the purposes of determining situs as among the different provinces of Canada in relation to the incidence of a tax imposed by a provincial law upon property transmitted owing to death, have only one local situation. In applying this proposition, of course, it is necessary to distinguish between a tax upon property and a tax upon persons domiciled or resident in the province. (*Toronto General Trusts Corp.* v. *The King* (1); *Brassard* v. *Smith* (2); *Provincial Treasurer of Alberta* v. *Kerr*).

Then, it seems to be a corollary of this proposition that situs, in respect of intangible property (which has no physical existence) must be determined by reference to some principle or coherent system of principles; and again, the courts appear to have acted upon the assumption that the British Legislature, in defining, in part, at all events, by reference to the local situation of such property, the authority of the province in relation to taxation, must be supposed to have had in view the principles of, or deducible from, those of the common law. (*The King* v. *Lovitt* (3); *Toronto General Trusts Company* v. *The King* (1); *Brassard* v. *Smith* (2); *Royal Trust Co.* v. *Attorney General for Alberta* (4).

We think it follows that a provincial legislature is not competent to prescribe the conditions fixing the situs of intangible property for the purpose of defining the subjects in respect of which its powers of taxation under s. 92 (2) may be put into effect.

On this appeal we are concerned with debts, or obligations to pay money. As is well known, rules for the determination of such situs for various purposes have been drawn from those which defined the jurisdiction of the ecclesiastical tribunals respecting probate. (*The Royal Trust Co.* v. *The Attorney General for Alberta* (5); *English, etc., Bank* v. *The Commissioners of Inland Revenue* (6). In those

(1) [1919] A.C. 679.
(2) [1925] A.C. 371.
(3) [1912] A.C. 212.
(4) [1930] A.C. 144.
(5) [1930] A.C. 144 at 150.
(6) [1932] A.C. 238 at 242

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rules, a broad distinction was observed between specialties and simple contract debts. The latter were *bona notabilia* in the jurisdiction in which the debtor had his personal residence; the former, where the instrument constituting the specialty was found at the death of the testator. The case of judgment debts which were deemed to be situated where the judgment was recorded, may be regarded as a special one.

Situs has been ascribed in conformity with these rules to such property, when regarded as items in a succession, "for the purposes of representation and collection," for the purpose of giving effect to testamentary dispositions, of ascertaining the incidence of stamp duties and of determining the incidence of death duties. (*English, etc., Bank* v. *The Commissioners of Inland Revenue* (1).)

In the *Royal Trust Co.* v. *Atty. Gen. for Alberta* (2) the rule in relation to specialties was held to govern, for the now relevant purpose, the local situation of "statutory obligations of the Dominion of Canada evidenced by bonds" which were "authenticated in the manner prescribed by the Legislature"; and which were by statute (*The Consolidated Revenue Act,* s. 7) charged upon the Consolidated Revenue Fund; and it was there decided that the locality of such statutory obligations, evidenced by particular bonds, was at the place where the bonds were found at the death of the testator.

In the evolution of the legal principles derived from the rules governing the earlier practice and their application to new states of fact, novel questions will naturally arise. A corporation debtor may have more than one residence, and, consequently, it may be necessary to determine which of these is the residence of the corporation for the purpose of the inquiry. The reason given by Lord Field in *Commissioner of Stamps* v. *Hope* (3) for assigning the locality of the debt to the place of the personal residence of the debtor is that there the assets for paying the debt may be presumed to be. Another reason has been given, viz., that there, in the ordinary course, payment of the debt may be enforced, or that there the debt is "properly recoverable." (*N.Y. Life Ins. Co.* v. *Public Trustee,* per Atkin L.J. (4); Westlake 7th ed. 209; Dicey, p. 342).

(1) [1932] A.C. 238 at 242-244.
(2) [1930] A.C. 144.
(3) [1891] A.C. 476.
(4) [1924] 2 Ch. 101.

The circumstances of a particular case may be such that, to them, none of the rules as formulated and applied in decided cases or books of authority is strictly appropriate; and then one must have recourse to analogy, and to the principles underlying the decisions or the rules as formulated or deducible therefrom. (*N.Y. Life Ins. Co.* v. *Public Trustee*) (1).

Applying the rules and principles so ascertained, is it established that these bonds are locally situated in the province of Quebec?

The Crown puts its case on two grounds: First, it is said that the domicile, in each case, of the primary debtor, is in Quebec and that the locality of the obligation is, therefore, there. The contention of the respondent, that the situs of the obligation is determined in each case by the fact that it is a specialty, is met by the argument that the obligation receives its character from the law of Quebec, and that the institution of the common law, known as specialty, is not recognized by the law of that province. Secondly, it is argued that the bonds, in both cases, being registered in Quebec, and being, as the Crown contends, transferable only on the company's register in that province, the situs of the obligation is, by virtue of that circumstance, in that province, even assuming that the rule as to specialties would otherwise be applicable, and that the facts do not bring the case within the rule under which residence is the criterion.

It is convenient to examine, first the last mentioned contention.

The Crown argues that, as the bonds were transferable only on the company's register in the province of Quebec, the situs is fixed in that province by force of the rule laid down in the judgment of the Judicial Committee in *Brassard* v. *Smith* (2). The subjects of taxation in respect of which the controversy in that case arose were shares in the capital stock of the Royal Bank of Canada. It was held that, since, by the provisions of the *Bank Act*, the place of registration of the shares was in Nova Scotia, and there, and only there, except in circumstances having no relevancy, the shares could be validly transferred, they had locality in that province, and not in Quebec. The test applied is stated in the judgment of Lord Dunedin at p. 376 as,

(1) [1924] 2 Ch. 101, at 119, 120. (2) [1925] A.C. 371.

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the circumstance that the subjects in question could be effectively dealt with within the jurisdiction (that is to say, in Nova Scotia).

It is an important rule that the scope of a decision should not, speaking generally, be determined by reference to expressions in the judgment, and without regard to the subject matter upon which the court is pronouncing. Judgments must be read, as the phrase is, *secundum subjectam materiem*. Their Lordships in *Brassard* v. *Smith* (1) were not dealing with debts. They were dealing with shares in the capital stock of a corporation, a different kind of property, and the judgment of the Judicial Committee in the *Royal Trust Co.* v. *Attorney General for Alberta* (2) requires us, we think, to hold that the decision of the matter now in debate is not ruled by the observation just quoted from the judgment of their Lordships in *Brassard* v. *Smith* (1).

It was sought to liken (says Lord Merivale in the course of the judgment in the *Royal Trust Co's case* (2)) the bonds to the shares of a joint stock company so as to apply the principle affirmed in *Brassard* v. *Smith* (1), that in the case of such shares the test of local situation is supplied by the question, "Where could the shares be effectively dealt with?" But these securities were statutory bonds and not shares. The conditions of the bonds as to registration are in no way analogous to the provisions in articles of association for the incorporation of shareholders in a joint stock company by the entry of their names on the register of shareholders at its authorized place of being.

It may not be out of place to observe that the phrase cited by Lord Dunedin from the judgment in this court in *Smith* v. *Lévesque* (3) is, in the latter judgment, shewn to be a quotation from Mr. Dicey's book at p. 342, and that in the passage in that book where the phrase quoted occurs, the situs as determined by the test expressed in that phrase, when applied to debts, is "the country where" the debt is "properly recoverable or can be enforced"; which, it may be added, is the test given in the judgment of Atkin L.J. in *New York Life Ins. Co.* v. *Public Trustee* (4).

The judgment in *Attorney General* v. *Bouwens* (5), 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 nego-

(1) [1925] A.C. 371.
(2) [1930] A.C. 144, at 151-2.
(3) [1923] S.C.R. 578, at 586.
(4) [1924] 2 Ch. 101.
(5) (1838) 4 M. & W. 171.

tiable instruments, that is to say, instruments the delivery of which effects a transfer of the debt. Negotiable instruments 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. But, we do not doubt (independently of the binding force of the judgment in the *Royal Trust Co.* v. *Attorney General for Alberta* (2)) that there is nothing in the judgment in *Brassard* v. *Smith* (3), or in the judgment in *Attorney General* v. *Bouwens* (1), the principle of which that judgment adopts, to justify the conclusion that a specialty debt, non-negotiable, has (either necessarily, or *prima facie*) its situs at a place where some formality has to be observed in order effectually to transfer it.

On the contrary, the rules by which the courts have uniformly governed themselves in ascertaining the locality of specialties or simple contract debts (except in the case of negotiable instruments) have been those already stated, unless the circumstances have been such (as, for instance, in *Toronto General Trust Corporation* v. *The King* (4)) as to make them inapplicable. If the criterion adopted in *Brassard* v. *Smith* (3) were to be considered appropriate to debts (other than specialties and negotiable instruments) then the words "the place where it can be effectively dealt with" must be understood, as Mr. Dicey uses them, in relation to such debts, as denoting "the place where it is properly recoverable or can be enforced." (See *Attorney General* v. *Glendinning* (5) per Phillimore J.)

The bonds now under consideration were, in neither case, negotiable (transferable by delivery) at the date of the testator's death. As regards the bonds of the Grand Trunk Pacific Railway Company, we shall presently give our reasons for the conclusion that they are specialties. As regards

(1) (1838) 4 M. & W. 171.
(2) [1930] A.C. 144, at 151.
(3) [1925] A.C. 371.
(4) [1919] A.C. 679.
(5) (1905) 92 L.T. 87.

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the bonds of the Canadian National Railway, somewhat different considerations come into play. We are not satisfied that the obligation of the company itself, under these bonds, is a specialty debt; but the argument of the Crown, immediately under discussion, as respects these bonds, fails, nevertheless, on the facts. The clause dealing with the subject of registration is in the following terms:

> Unless registered this bond shall pass by delivery. This bond may be registered as to the principal sum in the name of the holder on the books of the company at the head office of the corporate trustee in the borough of Manhattan city and state of New York, or at the office of the company in the city of Montreal, Dominion of Canada, such registration being noted thereon. After such registration no transfer shall be valid unless made at one of said offices by the registered holder in person or by his attorney duly authorized, and similarly noted hereon, but this bond may be discharged from registration by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored; and this bond may again from time to time be registered or transferred to bearer as before.

We have quoted the pertinent provision in its entirety. It is quite plain that a bond registered in Montreal may be transferred in New York, and a bond registered in New York transferred in Montreal. Duplicate registers are obviously contemplated. Registration at either place is registration in both. The language of the bond is explicit and cannot properly be read as requiring transfer at the place of registration.

It is worth while, perhaps, to compare the language of this bond with the language of the Grand Trunk Pacific Railway Company's bond, in which it is unequivocally stated that, after registration of the bond, transfer can be effectuated only "on the company's books at the office where such registration was made."

Coming then to the contentions (*a*) that the rule as to specialties is irrelevant, and (*b*) that the locality of the obligation is determined, in each case, by the residence of the corporation.

We shall first consider whether the bonds are, in the present connection, to be treated as specialties.

The view to which we have already referred, viz., that the rules for determining situs, in applying the enactment of s. 92 (2) of the B.N.A. Act, must rest upon the principles of the common law of England, does not, by any logical necessity, involve the consequence that an obligation in its scope and nature governed by the rules of the law of Que-

bec is, for this purpose, a specialty, merely because such obligation created in like circumstances in one of the other provinces of the Dominion and having *inter partes* the like scope and effect, would, by the rules of the common law, fall within the category of specialty. It is unnecessary now to discuss or consider any such question.

The bonds with which we are concerned are the guaranteed bonds of Dominion railway companies. There can, we think, be no controversy as to the power of the Parliament of Canada to authorize a Dominion railway company to execute specialties. Normally, the undertaking of such a company is a work extending through two or more provinces of Canada; and such companies must, frequently, in the ordinary course, become concerned in transactions in provinces other than Quebec, which involve the execution of deeds of conveyance and deeds of covenant. The authority of the Dominion must necessarily extend to empowering such companies to execute instruments having the effect of a common law specialty, and the exercise of this power cannot be affected by the circumstance that the head office of the company is fixed by statute in Quebec.

It is unnecessary to consider what restrictions may affect the exercise of the power as respects transactions which, apart from Dominion legislation, would, ordinarily, under the accepted principles of private international law, be governed by the civil law of Quebec. There can be no doubt that, as regards bonds charged by trust deed or otherwise upon the company's undertaking as a whole, Parliament is competent to empower the company to execute transfers by deed having the effect of a deed at common law, to execute covenants having the force of, and being, specialties, at common law, and to give the same effect to the bonds and debentures to which securities attach; as well as to bonds and debentures not so secured, issued in the exercise of the borrowing powers of the Company. Nor have we any doubt that such is the effect of the statutes and Orders in Council by which the bonds now in question were authorized.

First of the Grand Trunk Pacific Railway Company. That company's bonds were guaranteed by the Government

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of Canada pursuant to the provisions of a statute known as the *Grand Trunk Pacific Guarantee Act*, 1914 (c. 34 of the statutes of that year).

By this statute, His Majesty, upon certain conditions, which have been fulfilled, may "for the purpose of aiding the company provide" certain monies

> and upon and subject to the conditions hereinafter set out guarantee payment of the principal and interest of an issue of bonds to be made by the company.

The statute enacts (s. 4) that the bonds are to be secured by a trust deed or deeds "granting fixed and floating mortgages or charges"; and, by s. 5,

> The kind of securities to be guaranteed hereunder and the forms thereof, and the forms and terms of the new trust deed, and the trustee, and the times and manner of the issue of the guaranteed securities, and the disposition of the moneys to be raised thereon, by sale, pledge or otherwise, and the forms and manner of guarantee or guarantees shall be such as the Governor in Council approves, and such terms, provisions and conditions as the Governor in Council may consider expedient or necessary shall be included in the new trust deed.

It is unnecessary to go further for the purpose of establishing the power of the company to create bonds having the character of specialties.

The bonds are under the seal of the company. A seal is not necessary for compliance with the forms and conditions prescribed by the *Railway Act* (s. 132 (2), c. 170, R.S.C. 1927). It cannot be presumed that the execution of the bonds under seal, as prescribed by the Governor in Council, was an idle ceremony merely. The bonds must, we think, as respects the obligation of the company, be considered specialties.

As to the guarantee of the Government of Canada, the Parliament of Canada has exclusive jurisdiction by force of the enactments of s. 91 (1) to make laws in relation to the subject of the "Public Debt." We see no reason to think that the subject defined in these words does not include the form and the effect of the instruments authorized by Parliament to evidence the public obligations; and the case already cited (*Royal Trust Co.* v. *Attorney General for Alberta* (1)) is conclusive authority for the proposition that debentures authorized by Parliament and charged by statute upon the Consolidated Revenue Fund have the character of specialties.

(1) [1930] A.C. 144, at 151.

By s. 6 of the *Guarantee Act*, it is enacted that,

The said guarantee shall be deposited with the trustee, signed by the Minister of Finance or such officer as is designated by the Governor in Council, and upon being signed and deposited as aforesaid His Majesty shall become liable as guarantor for the payment of principal and interest of the guaranteed securities according to the tenor thereof, and the said payment shall form a charge upon the Consolidated Revenue Fund, and the guarantee so signed and deposited shall be conclusive evidence that the requirements of this Act respecting the guaranteed securities and the new trust deed and all matters relating thereto have been complied with.

In exercise of his powers under s. 5 (quoted above) the Governor in Council approved the form and the terms of a mortgage and of the bonds and the form and manner of the guarantee; and authorized the Minister of Finance, upon the due execution, delivery and deposit of the mortgage in the form approved, to sign and deposit with the trustee, the Royal Trust Co., a guarantee of the bonds. This guarantee is in the form of a certificate by which the Minister of Finance certifies

that the bonds * * * are guaranteed as to the payment of both principal and interest by the Dominion of Canada.

One of the stipulations of the bond itself is that it shall not become valid or obligatory for any purpose until authenticated by the certificate of the trustee endorsed upon it. In the certificate the trustee certifies that the

bond is one of a series * * * guaranteed by the Government of Canada, described in the within-mentioned mortgage, executed by the Grand Trunk Pacific Railway Company to the undersigned as trustee.

Another stipulation of the bond is this:—

A copy of the guarantee of the Government of the Dominion of Canada is endorsed on this bond.

By Art. 4 (2) and (3) of the mortgage it is provided as follows:—

Section 2. The said guarantee shall be deposited with the trustee, signed by the Minister of Finance or such officer as is designated by the Governor in Council, and upon being signed and deposited as aforesaid, His Majesty shall become liable as guarantor for the payment of the principal and interest of the said bonds according to the tenor thereof, and the said payment shall form a charge upon the Consolidated Revenue Fund. A copy of the said guarantee, with a facsimile of the signature of the Minister of Finance, or such other officer, may be engraved upon the said bonds.

Section 3. No extension, waiver, or other modification of the obligations of the company, given or granted pursuant to the provisions in this mortgage contained by the trustee, or by all or any of the bondholders, or by such bondholders and trustee acting together, shall release or discharge the Government from its obligations as guarantor of the said bonds or upon its covenants herein contained.

From all this it is quite clear that, by force of s. 6 of the *Guarantee Act*, quoted above, His Majesty is liable

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"as guarantor for the payment of principal and interest" of each of the bonds "according to the tenor thereof"; and that "the said payment," that is to say, "the payment of principal and interest" of the bonds, forms "a charge upon the Consolidated Revenue Fund."

The debt under the guarantee is, therefore, not only the debt of His Majesty, it is a debt by statute and as such is charged upon the Consolidated Revenue Fund. As regards the guarantee, these circumstances bring the obligation plainly within the principle of the *Royal Trust Co.* v. *Attorney General for Alberta* (1).

As to the situs of the specialty,—the bond was in the possession of the testator in the province of Ontario. The copy of the guarantee endorsed upon the bond in compliance with the terms of the approval of the Governor in Council, acting under statutory authority, together with the certificate of the trustee in the form approved by the Governor in Council acting under the same authority, constituted, and were intended to constitute, a representation to persons dealing in the bonds that the conditions of the statutory guarantee had been complied with, and that the charge, conditionally created by the statute, was operative. (Ex parte, *Asiatic Banking Corp.* (2); *Bhugwandass* v. *Netherlands &c. Insce Co.* (3). The bond, in the hands of the holder, in itself, constitutes the evidence, and it alone constitutes the evidence, of the holder's individual right to demand payment in execution of the guarantee. Again, on the principle of *The Royal Trust Co.* v. *Attorney General for Alberta* (1), the proper conclusion seems to be that the specialty had its situs in Ontario.

The definition of His Majesty's liability under art. 4, s. 2, of the mortgage, which is to arise upon the fulfilment of the condition laid down in that section, is expressed in language which is identical with the language of s. 6.

The Grand Trunk Pacific Railway Company's bonds are, therefore (as respects both the obligation of the company and the guarantee of the Government) specialties which had their situs in Ontario at the critical date.

Secondly, of the Canadian National Railway Company's bonds.

(1) [1930] A.C. 144. (2) (1867) L.R. 2 Ch. App. 391.
(3) (1888) 14 A.C. 83.

These bonds were executed by the Canadian National Railway Company, under the authority conferred by s. 26 of c. 13 of the Dominion statutes of 1919; and, pursuant to an Order in Council of the 13th of September, 1924, a guarantee was signed by the acting Minister of Finance on behalf of His Majesty. This Order in Council, and the guarantee given pursuant to it, were authorized by *The Appropriation Act* (No. 3) of 1924, being c. 75 of the statutes of that year and schedule "A" thereto.

By the last mentioned statute, the Governor in Council was empowered to pay and to apply a sum not exceeding $159,543.39 for the charges and expenses of the public service from the 1st of April, 1924, to the 31st of March, 1925, not otherwise provided for (being the aggregate of two-thirds—the residue—of the amount of each of the several items, less deductions set forth in schedule "A"). Item 137 relates to a sum of $56,000,000 appropriated to meet expenditures made, and indebtedness incurred, by or on behalf of the Canadian National Railway Company or any one or more of its constituent companies; and it is enacted as follows:

> The amount herein authorized may be applied from time to time, in the discretion of the Governor in Council:—
>
> (*a*) To meet expenditures made or indebtedness incurred by the company in respect of railways, properties and works entrusted to the company as aforesaid.
>
> (*b*) By way of loans in cash, or by way of guarantee, or partly one way and partly the other, subject, however, as follows:—
>
> If by way of loans, the amount or amounts advanced shall be repayable on demand, with interest at the rate fixed by the Governor in Council, from time to time, payable half-yearly, secured if and when directed by the Governor in Council by mortgage or mortgages upon such properties, in such form and containing such terms and conditions, not inconsistent herewith, as the Governor in Council may approve.
>
> If by way of guarantee, any such guarantee may be of the principal and interest of the notes and obligations or securities of one or more of the said companies specified by the Governor in Council, and may be signed by the Minister of Finance, on behalf of His Majesty, in such form and on such terms and conditions as the Governor in Council may determine to be appropriate and applicable thereto.

While the language is not as precise as in the section already quoted from the *Guarantee Act* of 1914, the effect of the *Appropriation Act* and the schedule seems to be very clearly this: the Governor in Council may, by guarantee given within the period mentioned, of the principal and interest of notes and obligations or securities of the Canadian

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National Railway Company or one or more of its constituent companies, charge the Consolidated Revenue Fund with the payment of such notes, obligations or securities; the guarantee to be executed by the Minister of Finance on behalf of His Majesty, in such form and on such terms and conditions, as the Governor in Council may determine.

The form of the bonds, and of the trust deed referred to in it, were duly approved by the Order in Council mentioned. By the trust deed, an original counterpart of the guarantee is to be deposited with the corporate trustee, and a copy of it to be endorsed upon all the bonds with the same effect as if the original guarantee were endorsed thereon; the guarantee, when deposited with the corporate trustee, is to be absolute and unconditional; it is unnecessary for the trustees or for any holders of the bonds to take any steps or proceedings for enforcing their rights against the company in order to preserve or enforce their rights against the Government.

The bond itself declares the

> payment of the principal and interest of the bonds of this issue as and when the same become respectively due and payable is unconditionally guaranteed by His Majesty the King acting in the right of the Dominion of Canada, by guaranty, a copy of such guarantee being hereon endorsed with the same effect as if the original guarantee were hereon endorsed.

It is also stipulated that the bonds shall not be obligatory for any purpose until authenticated by the certificate of the corporate trustee under the trust agreement endorsed thereon.

The nature of the guarantee clearly appears to be that of an unconditional obligation resting upon His Majesty to pay the principal and interest of the bonds according to their tenor. The approval of the form of the bond and of the trust agreement by the Governor in Council, acting as the delegate of the legislature, and its direction to the Minister of Finance to execute the guarantee have the same effect as if such approval and direction formed part of an Act of Parliament. The debt incurred is a debt created by statute. And, once again, the individual right of the holder is evidenced by the bond, and by the bond alone, that is to say, by the instrument as a whole, the promise of the company, the declarations contained in the bond and the copy of the guarantee attached to, and the certificate of the trustee endorsed upon it. The instrument, in so far as it

embodies an obligation of His Majesty unconditionally to pay principal and interest when due according to the terms of the bond, seems clearly, on the principle to which effect was given in *The Royal Trust Co.* v. *Attorney General for Alberta* (1), to be a specialty and to have had its situs, where it was at the testator's death, in his possession in the province of Ontario.

It is necessary, however, to consider the nature of the obligation of the company, which is not under the company's seal.

First, we think the obligation of the company itself is not a specialty debt. It is not a specialty in form; and the obligation is clearly not a debt by statute within the meaning of the rule applied in the *Royal Trust Co's* case (1).

Then, treating the company's obligation as a simple contract debt. The company has its head office in Montreal. The company has, therefore, a residence there. The bonds as we have seen were registered there. On both grounds, as we have already noticed, it is argued that the situs of this obligation was in Quebec.

The effect of registration in Montreal has been discussed.

What weight is to be attached to the fact that the head office of the company is in Quebec?

The evidence afforded by the public statutes and the evidence in the appeal book touching the amalgamation of the Canadian National Railway Company with the Grand Trunk Pacific Railway Company require us to take notice of the fact that the Canadian National Railway Company carries on business in other provinces, including Ontario, as well as in Quebec. The debt of the company is primarily payable in New York. But the company is bound to provide for payment of the bonds at Toronto and at Ottawa as well as in New York and Montreal. Payment is not, moreover, contemplated at the head office of the company, or indeed at any office of the company. In each of the places mentioned the bonds are payable at the principal office of the Bank of Montreal.

Either of the reasons, above mentioned, for the rule fixing the situs of simple contract debts by reference to the residence of the debtor, would justify the assignment of locality to the bonds in Toronto or Ottawa as well as in Montreal.

(1) [1930] A.C. 144.

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New York is, as mentioned, the primary place of payment, and, again, there is sufficient evidence in the public statutes that the Canadian National Railway Company carried on business in the state of New York at the pertinent date, to require us to take judicial notice of that fact; although we cannot judicially know however notorious it may be, that the Canadian National Railway Company at that date carried on business in New York city.

In light of these facts, the residence of the debtor, in the circumstances stated, does not seem to afford, in itself, a criterion for the selection of any one among these jurisdictions as the situs of the bonds.

On the other hand, there are other considerations derived from the circumstances that are not without considerable weight.

The guaranteed bond is the sole evidence of the holder's individual right as against the company as well as against the Crown. Since the instrument embodies a specialty debt, that of the Crown, and since, being in Ontario, it was an asset there, and it could not justifiably be dealt with there, possession of it, for the purpose of transferring it, could not lawfully be assumed there, except by sanction of an Ontario probate, or an Ontario grant of administration (*Attorney General* v. *N.Y. Breweries* (1). Moreover, as an asset having its situs in Ontario, it could not justifiably be reduced into possession in Ontario, for presentation on behalf of the estate of Sir Clifford Sifton for payment in New York or Montreal, except under such sanction.

Probate or administration in Ontario would not, of course, alone entitle the executors to receive payment elsewhere than in Ontario. But the point I am now emphasizing is that, if the bond became due on the date named in it, or by the happening of any of the events having that effect under the trust deed, payment would, in the ordinary course, be provided for in Ontario, where Sir Clifford Sifton resided in his lifetime, and where on his death his legal personal representative in Ontario would be entitled to receive payment; and, in the last mentioned event, nobody would be entitled to take possession of it in Ontario for the purpose of presenting it for payment but such legal personal representative. Moreover, on fulfilment of the

(1) [1899] A.C. 62.

conditions entitling the holder of the bond to enforce payment directly against the company, the debt would be "properly recoverable," in every sense, in Ontario.

Furthermore, the primary right of the holder of the bond, on default, is not to enforce the obligation directly against the company, it is to call upon the trustees to proceed on behalf of the holders of all the outstanding bonds. That right would appear to be a right primarily exercisable and situate in New York where the trustees are.

Again, in the event of default continuing for sixty days, the trustees are entitled to require payment to themselves in New York. The rights of the trustees could be asserted in Ontario or in New York as well as in Quebec.

It is unnecessary, therefore, for the purpose either of transfer or of collection, to resort to the province of Quebec, while for the purpose of asserting the holder's primary rights in case of default, resort to the trustees in New York is necessary, and, for the purpose of getting possession of the bond, probate or administration in Ontario, in the event of death, is necessary.

The question before us is a question as to the locality of certain assets of the estate of the testator. These assets are guaranteed bonds. In assessing the assets to succession duty, no attempt has been made, and probably such an attempt would be merely idle, to segregate the value of the obligation of the company from the value of the obligation of the Government, as an asset. In point of fact, the company was empowered only to issue a guaranteed bond, the payment of which was charged upon the Consolidated Revenue Fund. In view of the considerations just mentioned, it seems to be difficult to assign one situs to the bond as guarantee and another to the simple contract obligation of the company. There is a sense in which it may be said that the obligation of the company, if that obligation had a separate situs in Quebec, would receive its value from the fact that it is guaranteed by a statutory charge and that the situs of this charge is *non ad rem;* but the value derived from the statutory charge is nevertheless a value primarily attaching to something in Ontario; and, at the date of the event which happened, the event on which succession duties became payable, viz., the death of Sir Clifford Sifton, this thing was part of the *bona notabilia* of

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his estate in Ontario, and could not rightfully be taken possession of or realized except by an executor or administrator acting under the sanction of Ontario law.

For these reasons it seems to be the more conformable to the rules determining the situs of *bona notabilia* from which the principles by which we are governed are derived, to hold that this asset had not a situs in Quebec.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

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