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*May 18.
*June 15.

H. W. SMITH AND OTHERS (DEFENDANTS)—APPELLANTS;

AND

J. W. LEVESQUE ES-QUAL (PLAINTIFF) . . . . RESPONDENT.

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

Constitutional law—Succession duty—Bank stock—Company shares—Head office—Situs of property—"Succession Duty Act," R.S.Q. (1909), Arts 1375 and 1376, as amended by 4 Geo. V, c. 9—Art. 6 C.C.

The respondent, acting on behalf of the province of Quebec, claimed from the appellants, executors of the estate of the late W. Smith, domiciled at his death in Halifax, succession duties on the following: first on 2,076 shares of the Royal Bank of Canada having its head office in Montreal but having established at Halifax a local registry under section 43 of the "Bank Act"; and secondly on 100 shares of the Montreal Trust Company, incorporated by the Quebec Legislature and 175 shares of the Abbey Fruit Salts Company incorporated under a Dominion charter, both having their head offices in Montreal.

Held that the executors were not liable to pay succession duty on the shares first mentioned which have already been declared by a judgment of this court to be situate in the province of Nova Scotia. *Smith* v. *The Provincial Treasurer for the Province of Nova Scotia* (58 Can. S.C.R. 570).

As to the shares secondly described, this court was equally divided: Davies C.J. and Idington and Anglin JJ. holding that these shares were not liable to Quebec succession duty as they were not "actually situate within the province." Duff, Brodeur and Mignault JJ. *contra.*

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court at Montreal, and maintaining the respondent's action.

The material facts of the case are fully stated in the above head-note and in the judgments now reported.

E. L. Newcombe K.C. and *Hague K.C.* for the appellants. The late W. Smith being domiciled at the time of his death in Nova Scotia, all these shares must be deemed to have their situs there: *mobilia sequuntur personam.*

These shares are not "actually situate within the province of Quebec," within the meaning of section 92 of the B.N.A. Act and of sections 1375 and 1376 of the Quebec "Succession Duty Act," or within the limits of the constitutional powers of that province.

These shares do not fall within the scope of the word "property" as used in Art. 1375 and therefore do not come

*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin, Brodeur and Mignault JJ.

within the operation of the taxing clauses under which the province claims. Art. 1376 enacts what the word "property" includes. As the shares in question are intangible property, they are therefore not, and cannot be "actually situate" within the province. The effect of Art. 1376 is to exclude all property not comprised within the description given by that article from the operation of Art. 1375.

As to the shares of the Royal Bank of Canada, this court has already held that they were situate in the province of Nova Scotia. *Smith* v. *The Provincial Treasurer of Nova Scotia* (1).

Aimé Geoffrion K.C. for the respondent. The shares are "situate within the province" of Quebec. Generally speaking, the head-office of a company is the place where its property and the shares in it of the particular holders are situated. *Attorney-General* v. *Higgins* (2); *Attorney-General* v. *Sudeley* (3).

THE CHIEF JUSTICE.—I concur with my brother Anglin's reasons for allowing this appeal and dismissing the action in this case.

I desire it to be understood that I do not in any way modify or alter my reasons for judgment in the case of *Smith* v. *The Provincial Treasurer for the Province of Nova Scotia* (1), where I stated at page 576

that the domicile of the decedent would be the test in Canada of the right to levy succession duties upon his personal property wherever it might be locally or physically situate and that such taxation could only be levied by the province of the domicile.

IDINGTON J.—The late Wiley Smith, long domiciled before and at the time of death, in Halifax, died there intestate on the 28th February, 1916.

Letters of administration were shortly thereafter duly granted to the appellants by the probate court of the probate district of the County of Halifax.

Among the assets of the estate so transmitted were 2,076 shares of the Royal Bank of Canada; 100 shares of the Montreal Trust Company and 175 shares of the Abbey Fruit Salts Company.

(1) [1919] 58 Can. S.C.R. 570. (2) [1857] 2 H. & N. 339.
(3) [1896] 1 Q.B. 354.

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A question was raised in the case of *Smith* v. *The Provincial Treasurer for the Province of Nova Scotia* (1), as to the liability of the appellants on behalf of the estate to pay succession duties claimed by said Provincial Treasurer, and this court, Mignault J. dissenting, held that the appellants were liable.

Notwithstanding that judgment (4th Feb. 1919) and payment of the amount so held due, the respondent on behalf of the Government of Quebec sued herein, in December, 1919, to recover succession duties claimed to be due the province of Quebec under and by virtue of articles 1375 and 1376 of the R.S.Q., 1919, as amended by 4 Geo. V, c. 9, which reads as follows:—

1375. All property, movable or immovable, 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 the death.

1376. The word "property" within the meaning of this section includes all property, movable or immovable, 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 the 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.

I adhere to my opinion as expressed in pages 576 to 582 of said report of said case and need not repeat same here, but refer thereto for my reasons relative to that item of the claims herein.

The Montreal Trust Company originated in an Act of the Quebec legislature incorporating its predecessor, whose name and charter by many amendments were changed into that name it now bears, and range of action it now enjoys.

So far as I can discover there is nothing in that legislation or some of the articles of the "Quebec Companies Act" made by such legislation applicable to it, that would require for the transfer of its shares any ancillary probate or letters of administration or anything equivalent thereto, in order to enable the appellants (of whom that very Trust Company seems to be one) to dispose of said shares.

Indeed (if counsel understood my question put during the argument herein, and I their reply), there is nothing

(1) 58 Can. S.C.R. 570.

of that kind in question herein as to either of the companies referred to and concerned in this case.

The Abbey Fruit Salts Company is admitted to have been incorporated under the Dominion "Companies Act." There certainly is nothing in its charter either requiring or entitling it to require ancillary probate or letters of administration before assenting to transfer of its shares by the executors or administrators of any estate embracing such shares.

I assume, therefore, that there is no need for appellants to seek anything in way of Quebec governmental authority to complete their title or enable them to dispose of said shares. *Lovitt* v. *The King* (1), and in appeal *Rex* v. *Lovitt* (2), turned upon that test, and nothing else, raising, of course, the constitutional question.

The property therein was thus essentially of that kind to which the maxim *mobilia sequuntur personam* is applicable.

And the case of *Lambe* v. *Manuel* (3) governs all that in my view is necessarily applicable to resolve this case. True the Quebec Act has been revised since, but so far as it contravenes that decision in principle is *ultra vires*.

If I had to depend only upon the question of the interpretation or construction of the above quoted sections of the Act, which taken literally is, in some of the terms of the second section, so absolutely *ultra vires* that I am surprised to find its literal reading contended for, I should be inclined to adopt Mr. Newcombe's argument as to its meaning, but I do not find that necessary in my view.

The adoption of what the respondent's counsel contends for herein, in relation to each item in question, would render this the most important case we have heard for many years; if we only use a very little common knowledge and recognize the fact that Montreal and Toronto are the headquarters of banking, of railway and other commercial enterprises that reap from all Canada, and in order to do so are dependent on the legislative and judicial protection of their manifold interests furnished by and at the expense of many provinces other than Quebec or Ontario.

(1) [1909] 43 Can. S.C.R. 106. (2) [1912] A.C. 212.
(3) [1903] A.C. 68.

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I wish always, in anything we have to decide, and especially the interpretation and construction of the B.N.A. Act, to look ahead and see where the decision we may reach would land the powers that be in the practical results. Over refinement of words leads in such case, if ever, to undesirable results.

Are we to conclude that such a result as double taxation is inevitable? That is, above all things, to be avoided, and certainly not invited.

I would allow this appeal with costs throughout and dismiss respondent's action.

DUFF J.—In the previous case of *Smith* v. *The Provincial Treasurer for Nova Scotia* (1), the majority of the court proceeded upon the ground that the bank shares being by law transferable in Nova Scotia, they had a local situation there, and as we are bound by that decision, the appeal must obviously, as to these shares, be allowed.

Mr. Newcombe now raises for the first time a question as touching the other assets in Quebec, namely, the shares in the Montreal Trust Company and the Abbey Fruit Salts Company—the first being a Quebec company, the second being a Dominion company, and both having their head offices in Montreal.

The application of the Quebec statute does not appear to have been challenged in the courts below in respect of the shares in these companies except upon the ground that being intangible property they could only have a local situation in the place of the domicile of the debtor—a contention which would appear to be disposed of by the decision of the Judicial Committee in *Rex* v. *Lovitt* (2).

The point now raised by Mr. Newcombe which, as I say, is an entirely new one, is that these shares do not fall within the scope of the word "property" as used in article 1375, and therefore do not come within the operation of the taxing clauses under which the province claims. By article 1376 it is enacted:

> The word "property" within the meaning of this section includes all property, movable or immovable, actually situate within the province, and all debts which were owing to the deceased at the time of his death,

(1) 58 Can. S.C.R. 570. (2) [1912] A.C. 212.

or were 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;

and Mr. Newcombe's argument is that as the shares in question are intangible property, they are therefore not, and cannot be "actually situate" within the province, and that the effect of article 1376 is to exclude all property not comprised within the descriptions given by that article from the operation of article 1375.

It will be more convenient first of all, I think, to consider the general scope of the section in which Art. 1376 appears—c. 9 of 4 Geo. V. Chapters 9 and 10 of the statutes of that year were passed, as is well known, in consequence of the decision in *Cotton* v. *The King* (1). The second of these statutes deals with the subject of succession duties upon transmissions within the province in consequence of the death of persons domiciled therein, of movable property having a "local situation" outside the province and duties are thereby imposed upon such transmissions. By chapter 9, all property, movable or immovable, "actually situate" within the province, and debts owing to the deceased, either payable in the province or due by a debtor domiciled within the province which is transmitted owing to death, wherever the deceased was domiciled and wherever the transmission takes place, is subject to the duties provided for. *Prima facie,* Art. 1375 seems to proceed upon the assumption that the whole estate comes under the operation of that section; that is to say, the whole estate within the province. Where the estate is partly in and partly out of the province, the "whole estate" appears to be assumed by Article 1377 to be divided into two parts—that part which is "actually situated" without the province, and that part which is "actually situated" within. Article 1382 again seems to proceed upon the assumption that shares and bonds of incorporated companies and individual interests in partnerships having their chief places of business within the province are subject to the operation of the Act.

(1) [1914] A.C. 176.

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The two statutes, chapters 9 and 10, are complementary to one another, and they appear to be designed to tax in the one case transmissions taking place within the province of property having a "local situation" outside the province, where the deceased had his domicile in the province; and in the other to tax property transmitted irrespective of the domicile of the deceased and irrespective of the question whether the transmission takes place within the province or without the province where the property is "actually situated," to use the words of Article 1376, "within the province."

The effect of Mr. Newcombe's contention is that from this latter class of property all intangible property is excluded, with the exception of debts which are specially mentioned; and in particular, all shares in joint stock companies and in partnerships, even where the company or partnership carries on business exclusively within the province. Admittedly this class of property is taxed where it has a "local situation" outside the province and the transmission takes place within the province on the death of a person domiciled therein, and, as I have already mentioned, Article 1382 seems to proceed upon the assumption that such property comes within the operation of chapter 9.

Mr. Newcombe's argument proceeds, broadly, upon two lines: first, the phrase "actually situated," he says, in itself has no application to intangible property; and second, he argues that the special mention of debts in Article 1376 and the use of the phrase "locally situated" in chapter 10, which admittedly may apply to intangible property, afford presumptive evidence that in Article 1376 the legislature was deliberately employing a phrase of less comprehensive import.

I think Mr. Geoffrion's contention is sound that the special mention of debts in Article 1376 has little or no significance. The statute is there giving the indicia of the classes of debts governed by the Act; and in fixing these indicia neither the common law rule nor the civil law rule is adopted in its entirety; and that, I think, sufficiently accounts for the special mention of debts.

I have been unable to come to the conclusion that "actually situate" in Articles 1376 and 1377 differs in meaning in any presently material respect from the phrase "locally situate" in Article 1387 (*b*). They are both, I think, used as Mr. Dicey uses the latter (Conflict of Laws, 3 ed., note (*p*), p. 340) in contrast with "constructively or fictitiously situate in the country where the deceased dies domiciled, in accordance with the principle *mobilia sequuntur personam.*" "Actual," no doubt, is a word constantly used by English lawyers in contrast with "constructive" or "fictitious," and the argument is that "actually" here is used in contradistinction to what does not physically exist but is only deemed to exist for juridical purposes.

The fallacy, I think, lies in construing these words without regard to the sense they commonly bear in legal discussion and exposition in connection with the subject of succession duties, with which this legislation deals. "Locally situate" is a phrase which has been in constant use in the sense ascribed to it by Mr. Dicey at the place mentioned; that is to say, as indicating a situation not ascribed to property in obedience to the theory that movables have a *situs* at the domicile of their owner. "Local situation" is hardly a phrase which anybody but a lawyer would be likely to apply to an incorporeal right such as a debt. Lawyers employ it, not for the purpose of indicating that debt has in fact a location in any absolute sense, but that it may have certain attributes of locality which determine its *situs* for legal purposes, which *situs* is determined from the attributes of the debt itself, independently altogether of the domicile of its owner and of the fiction *mobilia sequuntur personam.* The use of the phrase "actually situate" is not so common, but it would, perhaps, be difficult to give a good reason why, for the purpose of excluding the fiction *mobilia sequuntur personam,* "actual" would not be as appropriate an adjective as "local".

One may advert, perhaps, for a moment to the circumstance that the *situs* ascribed to intangible property for the purpose of determining the authority of the excutor to deal with it, for example, is not, strictly speaking, a fictitious

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situs. The authority of the ordinary, as the Chief Baron points out in *The Attorney General* v. *Bouwens* (1), over the effects of the deceased rested upon the circumstance that these effects were so situate that "he could have disposed of them *in pios usus*." At p. 192 he points out that the ordinary could administer all chattels within his jurisdiction, and if an instrument was created of a chattel nature, capable of being transferred by acts done within his jurisdiction and "sold for money" there, there was no reason why the ordinary or his appointee should not administer that species of property. And the Chief Baron's judgment, I think, points to the essential element in determining *situs* in the case of intangible chattels for the purpose of probate jurisdiction as

> the circumstance that the subjects in question could be effectively dealt with within the jurisdiction,

to quote Mr. Dicey's words, at p. 342. I repeat that such a *situs* cannot in my opinion be described as a "fictitious" *situs*. This view of the effect of these words is not without support from very high authority. There is, for example, the well-known judgment delivered by Sir Arthur Hobhouse on behalf of the Judicial Committee in *Blackwood* v. *The Queen* (2). The controversy had arisen out of the contention that all movables of the deceased, which included in part, at least, intangible property, should be considered to have a *situs* in the Colony of Victoria, where the deceased was domiciled, the estate contending that the enactment there under consideration applied only to such property as had an actual situation in the colony. Sir Arthur Hobhouse, at p. 91, says that the question was whether

> all moveable assets belonging to the deceased, wherever actually situate,

should be brought into account by the executor or only so much as came under his control by authority of the probate. The phrase "actually situate" is here used in contrast to a *situs* ascribed to movables in obedience to the maxim *mobilia sequuntur personam*. Similar language is used more than once in the judgment of the Judicial Committee

(1) [1838] 4 M. & W., 171, at p. 191. (2) [1882] 8 App. Cas. 82.

in *Rex* v. *Lovitt* (1). At p. 218 the phrase " actual *situs* " (the property in question was a bank deposit) is used as an equivalent of " situate ". At p. 220 this sentence is employed to state the contention there advanced:

The defendants, however, contended that the situation of the property is to be determined not by its actual locality, but according to the principle expressed in the maxim *mobilia sequuntur personam.*

On the same page the phrase " actual situation " is used in the same sense. Mr. Geoffrion has called attention to the circumstance that in the judgments of this court in *The King* v. *Cotton* (2) the word actual is employed for the same purpose more than once in the judgments of different members of the court.

By Art. 6 of the Civil Code the rule that personal property is governed by the law of the owner's domicile is formally adopted as part of the law of Quebec. That rule has been so commonly stated in the form that personal property is deemed to be situate wherever the owner is domiciled, that it is not surprising to find in this legislation phrases obviously used with the object of excluding that fiction in determining *situs*. Nor do I think it is surprising to find the phrase " actually situated," which has been so frequently used in authoritative judgments dealing with the very subject with which the legislature was concerned in a sense including intangible property to which the law ascribes a *situs* by virtue of some quality inherent in the property itself and having no relation to the domicile of the owner.

The appeal should, as regards these shares, be dismissed but the appellant is entitled to the costs of appeal.

ANGLIN J.—In *Smith* v. *Provincial Treasurer of Nova Scotia* (3), in which the Attorney General of Quebec intervened, a majority of this court held that the *situs* of the 2,000 shares in the Royal Bank, in respect of which the Province of Quebec now claims succession duty, was at Halifax, N.S., where a local registry had been established under s. 43 of the " Bank Act," and not at Montreal, where the head office of the bank is located. We are bound by that decision and cannot entertain the respondent's contention

(1) [1912] A.C. 212. (2) [1911] 45 Can. S.C.R. 469.
(3) 58 Can. S.C.R. 570.

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that those shares were "actually situate within the Province" of Quebec. Article 1376 (4 Geo. V, c. 9),

The position is different as to the other stocks in respect of which succession duty is claimed viz., 100 shares in the Montreal Trust Company and 175 shares in the Abbey Fruit Salts Company. Both these companies have head offices in Montreal and shares in them are transferrable there only. Nevertheless the attribution of a *situs* to such shares at Montreal is purely fictitious. They were the property of a decedent domiciled without the province. In order that they should be liable to Quebec succession duty they must have been "actually situate within the Province." Notwithstanding Mr. Geoffrion's ingenious suggestion, based on *The King v. Lovitt* (1), that we should construe the word "actually" as intended merely to exclude the fictitious *situs* of personal property dependent on the application of the rule *mobilia sequuntur personam,* I am of the opinion that we are not justified in giving to that word any other than its ordinary connotation, especially where to do so would have the effect of extending the scope of a statute imposing taxation.

Actual *situs* is ordinarily used in contradistinction to fictitious or notional or ideal situs on whatever basis the latter may be attributed to property and whether such property possesses some other physical *situs* or is without any such *situs.* Indeed actual *situs* and physical *situs* seem to be almost interchangeable terms, both implying, to use the language of Mr. Dicey (Conf. of L. 2 ed. p. 71) "real local situation"—the occupation of a definite space. I am unable to place on the words "actually situate", *réellement situé,* in Art. 1376 any other construction. The phrase, "actually situate" in Art. 1376 (4 Geo. V., c. 9) seems to be used in contradistinction to the phrase "locally situate" employed in Art. 1378 (*b*), (4 Geo. V., c. 10) and to imply a greater restriction, as might be expected in a provision covering non-residents as well as residents.

I have not overlooked the use of the word "includes" rather than the word "means" in Art. 1376, but in dealing with a taxing statute I am not disposed on that account to

(1) [1912] A.C. 212.

treat the definition of "property" in that article as other than exhaustive.

It follows that the appeal should be allowed and the action dismissed. The appellant is entitled to her costs.

BRODEUR J.—I concur with my brother Duff.

MIGNAULT J.—The respondent, acting on behalf of the Crown in right of the Province of Quebec, claims from the appellants, administrators of the estate of the late Wiley Smith, domiciled at his death in Halifax, Nova Scotia, succession duties on the following movable property.

1. 2,076 shares of The Royal Bank of Canada, the head office of which is in Montreal;

2. 100 shares of The Montreal Trust Company, a corporation incorporated by the Quebec Legislature, with head office in Montreal;

3. 175 shares of Abbey Fruit Salts Co., Limited, a company incorporated under a Dominion charter, the head office of which is also in Montreal.

As to the 2,076 shares of The Royal Bank of Canada, a majority of this court distinctly held in *Smith* v. *The Provincial Treasurer of Nova Scotia* (1) that these shares were situate, at Wiley Smith's death, in Nova Scotia, at the branch registry office of the bank in Halifax. While I did not concur in that holding, I am, of course, bound by it. As a consequence, the appeal must succeed as to these shares on which, on account of their situation, the Province of Quebec could not impose a succession duty where the succession devolved outside of the province.

I will therefore consider the merits of the appeal merely as to the shares of the Montreal Trust Company and of Abbey Fruit Salts Co., Limited. It was held by both courts below that these shares were situate at the head office of these companies and therefore within the Province of Quebec.

As Wiley Smith died in Nova Scotia, the right of the Province of Quebec to impose succession duties on these shares depends on their being "within the province" in the meaning both of sect. 92, s.s. 2, of the British North

(1) 58 Can. S.C.R. 570.

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America Act and of the Quebec statute, 4 Geo. V, c. 9, Arts. 1375 and 1376.

Chapters 9 and 10 of 4 Geo. V contain the law concerning succession duties of the Province of Quebec. They add two new sections—sections XX and XXa—to chapter 5 of Title 4 of the Revised Statutes. The scheme of section XX is to tax property actually situate within the province transmitted by the death of a person domiciled within or without the province, and of section XXa to tax the transmission by death within the province of property locally situate outside of the province. If the shares in question can be taxed it is only under the provisions of section XX.

Article 1375 of section XX renders all property, movable or immovable, the ownership, usufruct or enjoyment whereof is transmitted owing to death, liable for succession duties. And the word "property" is defined as follows by Article 1376:—

1376. The word "property" within the meaning of this section includes all property, movable or immovable, actually situate within the province and all debts which were owing to the deceased at the time of his death, or 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.

Mr. Newcombe on behalf of the appellants contended that, with the exception of "debts" which are specially referred to, intangible property, such as the shares in question, is incapable of *actual* situation anywhere, and therefore is not comprised in the definition of the word "property." This would entail the consequence that these shares are not within the meaning of the taxing provision, Article 1375.

If "actually situate" means "physically situate," of course intangible or incorporeal property cannot have such a situation. But if "actually" is used to exclude a fictitious or notional situation, such as one derived from the rule "*mobilia sequuntur personam*,"—and this seems to result from the French version of Article 1376, which uses the words "*réellement situé*," thus denoting the *real* as opposed to the *fictitious* or *notional* situation—I do not

think that Article 1376 should be so construed as to leave out of the contemplation of this statute the whole class of intangible property, debts only excepted as being expressly mentioned, for the sole reason that such property cannot have an "actual" situation. That certainly was not the intention of the legislature as is shewn by Article 1382, which requires from every corporation, company or firm having its chief office in the province a notice of any interest, shares, stock or bonds possessed therein by any person dying outside of the province.

Moreover it has always been considered that intangible property can have an actual or real situation at least for the purpose of probate duties. The shares in question could be transferred only at the head office of these two companies, so any sale of the shares, to be effective as against the companies, would have to be perfected by a transfer of the shares at the head office in Montreal. In England, and for the purpose of probate duty, these shares, I think, would be considered as having an actual situation if there were a register in England where sales or transfers could be registered. Of course, this is a succession and not a probate duty, but if these shares can have an actual situation for the purpose of a probate duty, I fail to see why they cannot have one for a succession duty, or a legacy duty to which the taxes imposed by chapter XX bear a very close resemblance. On this question, I may perhaps be permitted to refer generally to the authorities cited in my judgment in *Crosby* v. *Prescott* (1).

I do not think that a different situation can be ascribed to these shares under the Quebec civil code. Article 6, in the case of movables, admits of the rule *mobilia sequuntur personam* except, *inter alia,* where the rights of the Crown are involved, when the Quebec law applies. And it would seem to follow that shares in Quebec companies, which are movable by determination of law (article 387 C.C.), being subject to Quebec law when the question involved relates to the rights of the Crown, should also be held to be actually situate in the province of Quebec by the laws of which they are governed. I cannot conceive of a company having

(1) [1923] S.C.R. 446 at pages 452 et seq.

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an actual *situs* at its head office and its shares having no real *situs* anywhere. And if the shares, for instance, of the Montreal Trust Company, incorporated under a Quebec charter, are not in Quebec, it would be difficult to say where they really are.

The words " actual *situs* " have been used by the Judicial Committee in respect of intangible property. See for example *Rex* v. *Lovitt* (1). In *Cotton* v. *The King* (2) we find several times, in connection with bonds, debentures, shares, etc., the expression " locally situate " which is also used in 4 Geo. V (Que.) c. 10, article 1387b. If Mr. Newcombe's contention is well founded, shares, bonds or debentures could have no local situation. So I venture to think that the legislature uses these expressions in the sense in which they are used in these cases, as indicating that this species of property can have an actual or local situation which I would place at the head office of the company.

The affidavit of the appellants, which is the respondent's exhibit no. 1, expressly refers to the shares of the Royal Bank of Canada, the Montreal Trust Company, and Abbey Fruit Salts Co. as being

that portion of the estate *which was situate in the province of Quebec* on the day of the death of the deceased.

The appellants, of course, may not be bound by their admission on what is really a question of law, but I may perhaps refer to it as shewing how novel Mr. Newcombe's construction really is.

I therefore think that this very ingenious contention cannot be upheld, and, in my opinion, the shares of the Montreal Trust company and of Abbey Fruit Salts Co. were actually situate in the province of Quebec and therefore subject to the duty claimed.

Being, however, bound by the decision of this court in *Smith* v. *Provincial Treasurer* (3), I would allow the appeal as to the 2,076 shares of the Royal Bank of Canada, and the amount by which the judgment should be reduced can easily be determined by the parties, and if not it can be

(1) [1912] A.C. 212 at p. 218.
(2) [1914] A.C. 176.
(3) 58 Can. S.C.R. 570.

spoken to. I would give the appellants their costs in this court and would not interfere with the disposition of costs in the court below.

Appeal allowed with costs.

Solicitors for the appellants: *Meredith, Holden, Hague, Shaughnessy & Heward.*

Solicitor for the respondent: *Charles Lanctôt.*