

In the Privy Council.

No. 3 of 1946.

**ON APPEAL FROM THE COURT OF  
APPEAL FOR ONTARIO.**

UNIVERSITY OF LONDON  
W.C.1.  
23 OCT 1956  
INSTITUTE OF FINANCED  
LONDON

IN THE MATTER of The Succession Duty Act, 1939, and the amending Act, 1940

AND

IN THE MATTER of the Estate of James D. Aberdein, late of the Town of Brookline in the Commonwealth of Massachusetts, in the United States of America, deceased

AND

IN THE MATTER of the Appeal of Alice R. L. Aberdein, Widow, of the Town of Brookline aforesaid, sole beneficiary, and of the said Alice R. L. Aberdein and Harold E. Stevens, the latter of the City of Boston in the said Commonwealth of Massachusetts, Executors of the above-named deceased.

BETWEEN

THE TREASURER OF ONTARIO ... .. APPELLANT

AND

ALICE R. L. ABERDEIN and H. E. STEVENS; Executors of the Estate of James D. Aberdein and the said Alice R. L. Aberdein ... .. RESPONDENTS.

**CASE OF THE APPELLANT**

RECORD

1.—This is an Appeal from so much of the Judgment of the Court of Appeal for Ontario (Robertson, C.J.O., Henderson and Gillanders, JJ.A.), dated 16th February, 1945, as dismissed an Appeal by the Appellant from the Judgment of the trial Judge (The Honourable Mr. Justice Kelly) dated the 27th day of May, 1944, in a cause tried at Toronto under Section 31 of The Succession Duty Act, 1939 (2nd Session) Chapter 1, by way of appeal from an assessment for duty made by the Treasurer of Ontario which declared that the shares of the capital stock of Nipissing

p. 59  
p. 44

RECORD — Mines Limited and the shares of the capital stock of Dome Mines Limited were not situate within the Province of Ontario at the date of the death of the decedent James D. Aberdein and were not liable to assessment and taxation under The Succession Duty Act. There is no cross appeal on the other points involved.

pp. 14-16 2.—The facts were agreed upon by Counsel and are set out in a signed statement put in at the trial. The following is a summary.

p. 14, l. 18 3.—(1) James D. Aberdein, a citizen of the United States of America, resident and domiciled in the Commonwealth of Massachusetts, died on the 11th of December, 1940, and at the date of his death there were 10  
p. 15, l. 15 standing in his name on the books of Dome Mines Limited, a company incorporated under the Companies Act of Canada, with head office in the Province of Ontario, 4,000 shares of its capital stock represented by 40 certificates for 100 shares each, and the certificates at the date of his death were located in a safety deposit box in a bank at Boston in the said Commonwealth of Massachusetts and were not endorsed for transfer in blank by the deceased.

p. 14, l. 37, et seq. (2) At the date of his death there were also standing in the names of James D. Aberdein and Mrs. Alice R. L. Aberdein “as joint tenants with right of survivorship and not as tenants in common” on the books of 20 Nipissing Mines Limited, a company incorporated under the Companies Act of Ontario, with head office in the Province of Ontario, 200 shares of its capital stock represented by two certificates which at the date of his death were in a safety deposit box in a bank in Boston, Massachusetts, and were not endorsed for transfer in blank or otherwise.

(3) The deceased was also the holder of shares of stock in mining companies which shares are admittedly within the Province of Ontario and liable to duty under The Succession Duty Act.

p. 16, l. 4 (4) Mrs. Alice R. L. Aberdein, the widow of the deceased and sole beneficiary under his Will, resided in Boston in the Commonwealth of 30 Massachusetts, and did not contribute to the purchase of the shares of Nipissing Mines Limited of which she was a joint tenant.

(5) Nipissing Mines Limited and Dome Mines Limited had authority to provide and each had duly provided that their shares could be transferred either at an office in the City of Toronto in the Province of Ontario or at an office in the City of New York in the State of New York, and had power and authority to appoint and each had duly appointed a registrar of its capital stock in each of the said cities.

(6) At the date of death the said shares were registered both in New York and Toronto and could have been effectively transferred in either 40 place.

(7) The said shares, however, could not at the date of death, or at any time subsequent thereto, be effectively transferred in the Commonwealth of Massachusetts in which the deceased was domiciled and where the certificates representing the said shares were situate at the date of death.

4.—The Appellant claims that the shares of Nipissing Mines Limited and Dome Mines Limited above referred to are property situate in Ontario and are exigible for duty under The Succession Duty Act, 1939 (2nd Session) Chapter 1, as amended in 1940, Chapter 29.

10 5.—The relevant sections of The Succession Duty Act, 1939 (2nd Session) Chapter 1, amended in 1940, Chapter 29, are as follows:—

1. “ In this Act—

(p) property passing on the death of the deceased shall be deemed to include—

20 (i) any property held jointly by the deceased and one or more persons and payable to or passing to the survivor or survivors, except that part of such property which is shown to the satisfaction of the Treasurer to have been contributed by the survivor or survivors, provided that where the joint tenancy or holding is created by a person other than the deceased and the survivor or survivors, such property shall be deemed to have been contributed to equally by the deceased and the survivor or equally by the deceased and each of the survivors ; ”

5. “ Subject to sections 3 and 4, on the death of any person whether he dies domiciled in Ontario or elsewhere—

(a) where any property situate in Ontario passes on his death, duty shall be levied on such property in accordance with the dutiable value thereof ; ”

30 8.—(1) “ On the death of any person, whether he dies domiciled in Ontario or elsewhere, unless the consent in writing of the Treasurer is obtained—

(a) no bank, trust company, insurance company or other corporation, having its head office, principal place of business, office from which payments are made, register of transfers, or any place of transfer, in Ontario, shall deliver, assign, transfer or pay, or permit the delivery, assignment, transfer or payment of—

(i) any property situate in Ontario in which the deceased, at the time of his death, had any beneficial interest ; or

40 (ii) any money payable as a result of death under any contract of insurance either effected, contracted for or applied

## RECORD

for by the deceased, or in which the deceased had at the time of his death any interest, where the debt resulting in the payment of such money was situate in Ontario at the date of death of the deceased, provided that this subclause shall not apply to any money payable as mentioned in clause (h) of section 3; and

(b) no person in Ontario, other than a person acting in the capacity of administering the property passing on the death of the deceased, shall deliver, assign, transfer or pay or permit the delivery, assignment, transfer or payment of any property in which the deceased had at the time of his death any beneficial interest. 10

(4) Every bank, trust company, insurance company or other corporation and every other person who fails to comply with this section shall be guilty of an offence and shall, for each offence, incur a penalty of \$1,000 and an amount not exceeding the amount of duty levied on or with respect to the transmission or disposition of any property dealt with in contravention of this section."

p. 43, l. 16 6.—The trial Judge held that the shares in Nipissing Mines Limited  
p. 44, l. 30, and Dome Mines Limited were not property within Ontario and were not  
et seq. subject to succession duties in Ontario for the reasons given in his 20  
p. 43, l. 37 Judgment in *The King v. The Globe Indemnity Company of Canada Limited*  
and further that the total expenses of the Estate which are properly  
deductible according to the laws of the State in which the deceased was  
domiciled at the time of his death should govern and that these expenses  
should be deducted from the value of the Estate before computing the  
duty payable in Ontario under The Ontario Succession Duty Act.

pp. 55-58 7.—The Appellant appealed to the Court of Appeal for Ontario and  
p. 58, l. 33 the Judgment of the Court was delivered by the Honourable Chief Justice  
p. 59, l. 34 Robertson who allowed the appeal with respect to the deductions to be  
allowed for the purpose of arriving at the aggregate value of the Estate 30  
and held that the deductions authorised were those authorised by the  
Ontario statute. The Court of Appeal, however, dismissed the appeal on  
the question of situs of the shares of Nipissing Mines Limited and Dome  
Mines Limited and held that they were not property situate in Ontario  
at the date of the death of the deceased for the reasons given in the  
Judgment of the Court of Appeal in *The King v. The Globe Indemnity  
Company of Canada Limited*.

8.—The Appellant respectfully submits that the shares in question  
are property situate in Ontario and are exigible for duty under The  
Succession Duty Act and that so much of the judgment of the Court of 40  
Appeal for Ontario to the contrary was wrong and should be reversed for  
the following among other

**REASONS**

1. Because where shares may at the date of death be effectively transferred in the State of New York or in the Province of Ontario the situs of such shares must be within the State of New York or the Province of Ontario and the selection of the one or the other as the situs of the shares must be made on a rational ground.
2. Because there is no such thing as situs at large in the United States as distinguished from State situs.
- 10 3. Because the shares did not have a situs in the Commonwealth of Massachusetts where the certificates were located, but where they could not be dealt with effectively.
4. Because the solution must be the same in this case as it would be if the testator had been domiciled, say in Manitoba and duplicate transfer offices were in two other provinces of Canada.
5. Because the shares did not have a situs in the State of New York where there was a duplicate transfer agent and registrar only and no other factor in favour of New York.
- 20 6. Because entry on a duplicate register out of Ontario and the establishment of a duplicate transfer office out of Ontario has not the effect of divesting the shares of their Ontario character or making them foreign property.
7. Because on rational grounds the situs is in the Province of Ontario where the shares could be dealt with effectively ; where the corporate existence of the Company depends on Ontario and Canadian law ; where the shareholders and the Company receive the protection of Ontario and Canadian laws ; where the head office of the Company is situate and  
30 where winding-up proceedings would take place.

C. R. MAGONE.

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AND

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Widow, of the Town of Brookline aforesaid, sole  
beneficiary and of the said Alice R. L. Aberdein,  
and Harold E. Stevens, the latter of the City of  
Boston in the said Commonwealth of Massachusetts,  
Executors of the above-named deceased.

BETWEEN

THE TREASURER OF ONTARIO

AND

*Appellant*

ALICE R. L. ABERDEIN and  
H. E. STEVENS, Executors of  
the Estate of James D. Aberdein  
and the said Alice R. L. Aberdein

*Respondents.*

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## CASE OF THE APPELLANT.

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BLAKE & REDDEN,

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