

## In the Privy Council.

UNIVERSITY OF LONDON

W.C.I.

23 OCT 1956

ON APPEAL  
FROM THE COURT OF APPEAL FOR ONTARIO. OF APPEALS  
LEGISLATIVE

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 Estate 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.*

## RECORD OF PROCEEDINGS.

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# In the Privy Council.

## ON APPEAL

FROM THE COURT OF APPEAL FOR ONTARIO.

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 ;

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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.*

# RECORD OF PROCEEDINGS.

No. 1.

**AFFIDAVIT OF VALUE AND RELATIONSHIP, dated 19th June 1942.**

THIS FORM IS NOT TO BE USED WHERE AN APPLICATION IS BEING MADE TO AN ONTARIO SURROGATE COURT. SEND DIRECT TO THE SUCCESSION DUTY OFFICE, PARLIAMENT BUILDINGS, TORONTO, ONTARIO. DO NOT FILE IN DUPLICATE.

No. 1.  
Affidavit of  
Value and  
Relation-  
ship, 19th  
June 1942.

Form 2—Affidavit of Value and Relationship.

## THE SUCCESSION DUTY ACT, 1939.

CANADA  
PROVINCE OF ONTARIO

In the matter of  
the Estate of.....*James D. Aberdein*  
late of the... *Town*...of...*Brookline*...in the...*Commonwealth*  
of...*Massachusetts, U.S.A.*..., *Deceased*  
Occupation

I,....*Harold E. Stevens*..., of the....*City*....of....*Boston*.....  
in the....*Commonwealth*....of....*Massachusetts, U.S.A.*.....make oath and say :

Occupation

No. 1.  
Affidavit of  
Value and  
Relation-  
ship, 19th  
June 1942,  
*continued.*

1. That the above named deceased died on or about the *eleventh* day of *December*, 1940, domiciled in *Brookline, Massachusetts, U.S.A.*
2. That to the best of my knowledge, information and belief, the within schedule marked "A" contains an inventory of all the property passing on the death of the above named deceased and such inventory shows the value of all the property.
3. That the gross value, at the date of the death of the deceased, of all the property passing on his death, wherever situate was \$533,630.25, *including property standing in the joint name of decedent and Alice R. L. Aberdein. None of the property was situated in Ontario.*
4. That the following are, to the best of my knowledge, information and belief, particulars of all gifts or dispositions made during the lifetime of the above named deceased, together with the value of such gifts or dispositions :— *In 1937 and 1938 the decedent gave his wife, Alice R. L. Aberdein, a total of \$27,000, for real estate purchased by said wife in Marblehead, Massachusetts, for use as a summer home. In May 1940 the decedent gave his wife securities having a total value of \$95,000.*
5. That to the best of my knowledge, information and belief, the within schedule marked "B" contains the name, place of residence and degree of relationship to the deceased of every person to whom or for whose benefit any property passes on the death of the above named deceased and such other information as is required by schedule "B."

**SWORN BEFORE ME**

at the.....*City*.....of....*Boston*.....  
in the....*Commonwealth*....of ....*Massachusetts*  
this....*nineteenth*....day of....*June*.....  
1942

...*"Harold E. Stevens"*...  
(Deponent signs here)

*"J. Belden Sly"*

(SEAL)

~~Notary Public~~ Notary Public, ~~etc~~

This affidavit is filed by :

- (1) NAME.....*Harold E. Stevens*
- (2) OCCUPATION.....*Lawyer, and co-executor under the will of James D. Aberdein*
- (3) STREET AND NUMBER.....*60 State Street*
- (4) CITY OR TOWN.....*Boston, Massachusetts, U.S.A.*

NOTE—IF DECEASED DIED DOMICILED OUTSIDE ONTARIO, GIVE FULL PARTICULARS OF THE ONTARIO ASSETS BUT TOTALS ONLY OF ASSETS SITUATE OUTSIDE ONTARIO, IN THE FOLLOWING SCHEDULE :

SCHEDULE " A."

REAL ESTATE Give lot and plan and instrument number of each parcel, as well as street and number. Show encumbrances	Assessed Value	Value of Equity	
<i>NONE</i>			
	TOTAL ....	\$	<i>NONE</i>

  

MORTGAGES, AGREEMENTS FOR SALE, CHATTEL MORTGAGES AND LIEN NOTES Give short description of property and instrument number. Give full details, including mortgagor, interest rate, maturity, etc.	Principal Owing at Death	Interest Accrued	Total
<i>NONE</i>			
TOTAL .....	\$		<i>NONE</i>

No. 1.  
Affidavit of  
Value and  
Relation-  
ship, 19th  
June 1942,  
continued.

BOOK DEBTS AND PROMISSORY NOTES	Principal Owing at Death	Interest Accrued	Total
Particulars of Interest, etc.			
<i>NONE</i>			
TOTAL.....	\$		<i>NONE</i>

Number of Policy or Contract	Issued By	INSURANCE AND ANNUITIES To Whom Payable	Loans Etc.	Dividends Bonuses, Etc.	Net Amount Payable at Death
<i>None situated in Ontario.</i>					
<i>Joint and survivor annuity to James D. Aberdein and Alice R. L. Aberdein paying \$68.31 a month, Value at death of decedent based on life expectancy tables, \$5,288.01. This policy was issued by the Travelers Insurance Company of Hartford, Connecticut.</i>					
TOTAL....					\$

Account Number	Name of Bank or Depository and Branch	MONEY ON DEPOSIT (If joint, give particulars)	Principal	Interest	Total
<i>None situated in Ontario.</i>					
<i>Situated in U.S.A.—A total of \$180,021.96 in commercial accounts in banks in Boston and Brookline, Massachusetts, said accounts standing in the joint names of James D. Aberdein and Alice R. L. Aberdein, \$176,609.04 of which was contributed by the decedent.</i>					
TOTAL.....			\$		

No. 1.  
Affidavit of  
Value and  
Relation-  
ship, 19th  
June 1942,  
*continued.*

Certificate Number	Company	STOCKS AND BONDS Particulars, Preferred or Common, Etc.	Number of shares or face value of bonds	Unit Value	Value
<i>NONE SITUATED IN ONTARIO.</i>					
<i>Shares in corporations organized under the laws of Ontario :</i>					
<i>N/Y2329- N/Y2348</i>	<i>Kerr Lake Mines Ltd.</i>	<i>capital stock \$4. par New York certificates</i>	<i>2,000</i>	<i>.13</i>	<i>\$ 260.</i>
<i>X4547- X4548</i>	<i>*Nipissing Mines Company, Ltd.</i>	<i>capital stock Boston certificates</i>	<i>200</i>	<i>13/16</i>	<i>162.50</i>
<i>A53773-5 T76687</i>	<i>*Hollinger Consolidated Gold Mines Ltd.</i>	<i>capital stock \$5. par</i>	<i>305</i>	<i>8 7/8</i>	<i>2,706.88</i>
	<i>Crown Reserve Mining Co., Ltd.</i>	<i>capital stock \$1 par</i>	<i>4,700</i>	<i>no value</i>	<i>0.</i>
	<i>Larose Mines, Ltd.</i>	<i>capital stock \$1. par</i>	<i>3,415</i>	<i>no value</i>	<i>0.</i>
<i>*These securities stood in the joint name of the decedent and Alice R. L. Aberlein.</i>					
<i>Shares in corporations organized under the laws of Canada :</i>					
<i>NY899233- NY899272</i>	<i>Dome Mines Ltd.</i>	<i>capital stock no-par</i>	<i>4,000</i>	<i>16 3/8</i>	<i>65,500.</i>
<i>Securities in U.S.A. :</i>	<i>the name of decedent in corporations organized in</i>				<i>8,709.69</i>
<i>Securities in joint name of decedent and Alice R. L. Aberlein in corporations organized in U.S.A. :</i>					<i>274,394.13</i>
<i>(State where bonds or stock certificates physically situated at time of death)</i>				<b>TOTAL</b>	<b>\$351,733.20</b>

*NOTE : The decedent James D. Aberlein died domiciled in Brookline, Massachusetts, U.S.A. and had never been domiciled in Ontario or in any part of Canada. None of his property was situated in Canada. All of the certificates of stock shown in this return, including those in corporations organized under the laws of Ontario and of Canada, were in safe deposit boxes in banks in Boston and Brookline, Massachusetts.*

*The assets of the estate standing in the name of the decedent were insufficient to pay all debts and liabilities, including United States and Massachusetts inheritance and estate taxes.*

*The Nipissing Mines Company, Ltd. certificates were "Boston Certificates," those of Kerr Lake Mines, Ltd. were "New York certificates" and those of Dome Mines, Ltd. were issued to the decedent by the New York transfer office of the company.*

OTHER ASSETS	VALUE
Household goods and furniture.....	
Pictures, plate and jewelry.....	
Farm Implements, Produce and Stock..	
Automobiles and other vehicles..... (Make, model, year and serial number.)	
Interest in Trusts and other Estates (Attach full particulars).....	
Interest in partnership or unincorporated business.....	
Any other property .....	
TOTAL.....	\$ NONE

SUMMARY	TOTAL
Real Estate.....	<i>Nil</i>
Mortgages, etc.....	<i>Nil</i>
Book debts and promissory notes.....	<i>Nil</i>
Insurance and Annuities.....	5,288.01
Money on Deposit.....	176,609.04
Stocks and Bonds.....	351,733.20
Other Assets.....	<i>Nil</i>
<b>NONE SITUATED IN ONTARIO</b> TOTAL.....	8533,630.25
(State "Nil" opposite any of the above of which there are none).	

## SCHEDULE " B "

Trace exact relationship of beneficiaries other than those in direct line, or brothers or sisters.  
e.g., nephew, child of sister.

Name	Relationship	Address	Age of Life Tenant or Annuitant	Nature of Bequest or Property Passing	Value
(All beneficiaries must be listed)					
Alice R. L. Aberdeen	Wife	1898 Beacon St. Brookline, Mass. U.S.A.		Sole Beneficiary	

No. 2.  
Statement  
of Debts,  
6th July  
1942.

No. 2.

**STATEMENT OF DEBTS, dated 6th July 1942.**

**UNITED STATES OF AMERICA  
COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

I, HAROLD E. STEVENS, of Boston, County of Suffolk and Commonwealth of Massachusetts, of lawful age, first being duly sworn, depose and state that I am a co-executor under the will of James D. Aberdein, late of Brookline, Massachusetts, U.S.A., who died domiciled in said Brookline on December 11, 1940, and that the following is a true list of the debts and liabilities of the estate :

DEBTS ACTUALLY CONTRACTED BY THE DECEDENT

1. Dr. Roger C. Graves, medical services	\$ 86.65	
2. Dr. Fred A. Higginbotham, medical services	86.	
3. Dr. Alexander F. McWilliams, osteopathic services	10.	
4. Dr. Maurice Gerstein, medical services	5.	
5. S. S. Pierce Company, groceries to 12/9/40	6.03	20
6. H. P. Hood & Sons, milk 12/1 to 12/11/40	1.05	
7. Noble's Milk, milk 12/1 to 12/11/40	5.25	
8. Boston Edison Company, electric service to 12/11/40	1.99	
9. Boston Consolidated Gas Company, gas service 11/2/40 to 12/11/40	2.08	
10. Jordan Marsh Company, merchandise	5.	
11. New England Telephone & Telegraph Company, telephone service for month ending 12/10/40	7.25	30
12. Reservoir Pharmacy, merchandise to 12/11/40	26.84	
13. John A. Johnson, carpentry work	43.63	
14. Medical Oxygen Service, oxygen	2.	
15. Arthur J. Sanford, painting and miscellaneous work	15.	
16. Annie Reeves, maid	12.	
17. Massachusetts income tax for period 1/1/40 to 12/11/40	1,932.73	40
18. Federal income tax for period 1/1/40 to 12/11/40	4,093.39	
19. Federal gift tax for calendar year 1940	4,502.81	
20. Perkins Institution for Blind, repairing damaged bedding	34.30	
21. Sarah E. Bower, nursing services	51.50	
22. E. G. Hussey, nursing services	30.	
23. Walter Hartstone, Esq., legal services	50.	
24. Arthur S. Hubbard, clerical services	300.	
	<hr/>	\$11,310.70 50



Brought forward

\$11,310.70

No. 2.  
Statement  
of Debts.  
6th July  
1942.  
*continued.*

## FUNERAL EXPENSES

- |  |        |
|--|--------|
| 1. J. S. Waterman & Sons, Inc., under-takers     | 1,315. |
| 2. Rogers Flower Shops, flowers at funeral       | 25.    |
| 3. John H. Loud, organist at funeral             | 25.    |
| 4. Deane Monument Co., work on cemetery monument | 371.   |

---

 1,736.

10

## EXPENSES OF ADMINISTRATION

- |  |           |
|--|-----------|
| 1. Filing fee, will and petition for probate   | \$ 3.     |
| 2. Brookline Chronicle, publishing citation  | 6.25      |
| 3. Anselm L. Bacon, appraiser  | 20.       |
| 4. H. Nelson Hartstone, appraiser  | 20.       |
| 5. George M. Naylor, Jr., appraiser  | 20.       |
| 6. Stock transfer taxes, certificates of appointment of executors and certified copies of will for use in transferring certificates of stock (estimated) | 448.22    |
| 7. Filing fee, first and final account of executors  | 3.        |
| 8. Federal estate tax  | 73,717.94 |
| 9. Harold E. Stevens, services as co-executor  | 5,000.    |
| 10. Putnam, Bell, Dutch & Santry, legal services   | 3,000.    |
| 11. Putnam, Bell, Dutch & Santry, expenses incidental to legal services  | 25.       |
| 12. Miscellaneous expenses of administration   | 25.       |

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 82,288.41

TOTAL

---

 895,335.11
 

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" HAROLD E. STEVENS."

United States of America

Commonwealth of Massachusetts

Suffolk, ss.

July 6th, 1942.

40 Then personally appeared Harold E. Stevens, to me personally known, who subscribed to the foregoing and made oath that the statements therein are true to the best of his knowledge, information and belief.

Before me,

" J. BELDEN SLY,"

Notary Public.

My commission expires Nov. 19, 1948.

(Seal)

No. 3.  
Statement  
of Duty.

No. 3.  
STATEMENT OF DUTY.

PROVINCE OF ONTARIO.

TREASURY DEPARTMENT.

This Statement is served pursuant to Section 31 of the Succession Duty Act, 1939.

IN THE MATTER of JAMES D. ABERDEIN, deceased.

To	Jennings & Clute, Barristers, etc. 80 Richmond St., West,	Toronto 2. Jan. 11th 1943.	10
County	York	Toronto.	
		Date of death	11 Dec. 1940.
Domicile	U.S.A.	Duty Payable	11 June 1941.

AMENDED.

Assets as sworn		\$533,630.25	
<i>Deduct</i> insurance		5,288.01	
		<hr/>	
		528,342.24	
<i>Add</i> 10% U.S. funds		52,834.22	
		<hr/>	
		581,176.46	
<i>Deduct</i> , debts	\$95,335.11		20
Disallowed,— monument administration expenses	371.00 82,288.41		
	<hr/>	82,659.41	
		<hr/>	
		12,675.70	
<i>Add</i> 10% U.S. funds		1,267.57	
		<hr/>	
		13,943.27	
		<hr/>	
		567,233.19	
<i>Add</i> —gifts to wife	122,000.00		30
<i>Add</i> —10% U.S.A. funds	12,000.00		
	<hr/>	134,200.00	
		<hr/>	
		\$701,433.19	
		<hr/>	

ESTATE OF JAMES D. ABERDEIN—*continued.*No. 3.  
Statement  
of Duty,  
*continued.*

## ONTARIO ASSETS.

2,000 shares Kerr Lake Mines	260.00	
200 „ Nipissing Mines	162.50	
305 „ Hollinger Consolidated Mines	2,706.88	
4,700 „ Crown Reserve	—	
3,415 „ Larose Mines	—	
4,000 „ Dome Mines	65,600.00	
	<hr/>	
	68,729.38	
10 Add 10% U.S. funds	6,872.94	
	<hr/>	
	75,602.32	
Less proportion of debts	2,724.54	
	<hr/>	
		\$72,877 78
		<hr/>
DISTRIBUTION.		
To widow		\$72,877 78
DUTY		
On \$72,877 78 @ 14.51%	\$10,574.57	
Surtax 15%	1,586.17	
	<hr/>	
	12,160.74	
20 Interest @ 5% on \$12,160.74 from Dec. 11/40 to Dec. 11/42 2 years	1,216.07	
	<hr/>	
	\$13,376.81	
Add interest at the rate of five per cent. per annum on \$12,160.74 from Dec. 11/42 until date of payment.		
Jan. 22/43—42 days	69.97	
	<hr/>	
By Draft		\$13,446.78

C. S. WALTERS,  
Deputy Provincial Treasurer      CU No. 053      Checked by . . .

No. 4.  
 Notice of  
 Appeal  
 from  
 Assessment  
 of  
 Succession  
 Duty, 21st  
 January  
 1943.

No. 4.

**NOTICE OF APPEAL FROM ASSESSMENT OF SUCCESSION DUTY,**  
**dated 21st January 1943.**

TAKE NOTICE that the above-named Alice R. L. Aberdeen as sole beneficiary, and Harold E. Stevens as Executor of the Estate of James D. Aberdeen, HEREBY APPEAL from the assessment of succession duty against the Estate of the said James D. Aberdeen as set forth in the statement served upon them, and dated the 11th day of January, 1943, purporting to be pursuant to section 31 of The Succession Duty Act, 1939.

THE APPEAL of the said Appellants is against the statement of 10  
 succession duty in respect of the following matters :—

1. The addition to the sworn value of the Estate of ten per centum as premium upon United States funds both as to the addition to

(A) The whole Estate ;

(B) The value of the holdings of the Estate in mining companies incorporated in or having their head offices in the Dominion of Canada.

2. The addition of ten per centum to the value of the Canadian assets as being the premium upon United States funds. 20

3. The failure to allow against the gross value of the Estate the full amount of deductible debts as allowed by the taxing authorities at the place of domicile of the said deceased.

4. The assessment of the holdings of the said deceased in the following Canadian companies and in respect of the stated number of shares :

	Value	
2,000 Shares Kerr Lake Mines, Limited	\$260.00	
200 „ Nipissing Mines Co., Limited	162.50	
4,700 „ Crown-Reserve Mining Co. Limited	—	30
3,415 „ Larose Mines, Limited	—	
4,000 „ Dome Mines, Limited	65,600.00	
	\$66,022.50	

5. The percentages used in arriving at the amount of succession duty by reason of the overvaluation of the aggregate value of the Estate by reason of—

(A) The addition of ten per centum premium thereto to United States funds ;

(B) The disallowance of properly allowable debts.

—————  
 The grounds of the appeal are as follows :—

(A) That the deceased James D. Aberdeen was throughout his later lifetime and at the date of his death domiciled at the Town of Brookline in the Commonwealth of Massachusetts, in the United States of America ; and had no domicile, residence, place of business, or agent in the Province of Ontario ;

40

(B) That the share certificates in respect of the holdings of the said deceased in all Canadian companies, with the exception of Hollinger Consolidated Gold Mines, Limited, were issued by transfer agents of the respective companies within the United States of America, and the shares thereby represented were transferable upon the share registers of the respective companies in the United States of America without the aid or assistance of any Surrogate Court in the Province of Ontario ;

No. 4.  
Notice of  
Appeal  
from  
Assessment  
of  
Succession  
Duty, 21st  
January  
1943.  
*continued.*

10 (C) That neither The Succession Duty Act, 1939, and The Amending Act, 1940, nor under any other law, is there authority for the addition of ten per centum to the aggregate value of the Estate as sworn ; nor to the value of the shareholdings of the deceased in Canadian companies ;

(D) That the allowable deduction from the aggregate value of the Estate for the debts of the deceased is governed by the law of the place of domicile of the deceased under which the sum of \$95,335.11 is properly deductible, whereas the statement of succession duty allows only the sum of \$12,675.70 ;

20 (E) That the proportion of debts allowed against the value of the holdings of the deceased in Canadian companies should be increased in accordance with the preceding paragraph (D) from the allowed sum of \$2,724.54 ;

(F) That all the share certificates in respect of the holdings of the Estate of the shares of Canadian companies were in the possession of the deceased in the Commonwealth of Massachusetts, in the United States of America, the place of the domicile of the deceased ;

30 (G) That the share holdings of the said deceased in Canadian companies were not assets within the Province of Ontario at the date of his decease, and were not taxable under the provisions of The Succession Duty Act, 1939, and the Amending Act, 1940 ;

(H) That if any provisions in the said Succession Duty Act, 1939, or the Amending Act, 1940, purport to give authority to levy a tax upon the share holdings of the said deceased in Canadian companies, such provisions are ultra vires of the Legislature of the Province of Ontario ; and are void and of no effect ;

(I) For such further and other reasons as counsel may advise.

40 UNDER Protest and duress and with the complete reservation of, and without prejudice to, the rights of the Executor or of the Estate of the said James D. Aberdein, or of the said Alice R. L. Aberdein, the Appellants herewith pay to the Treasurer of Ontario the sum of \$13,446.78 made up as follows :—

Amount shown, including interest in the statement served upon the Appellants pursuant to section 31 of The Succession Duty Act, 1939	\$13,376.81
Subsequent interest at five (5) per centum per annum from December 11th, 1942	69.97
	\$13,446.78

No. 4.  
 Notice of  
 Appeal  
 from  
 Assessment  
 of  
 Succession  
 Duty, 21st  
 January  
 1943.  
*continued.*

Dated at Toronto this twenty-first day of January, 1943.

THE ESTATE OF JAMES D. ABERDEIN, DECEASED.

By Harold E. Stevens, Executor, and  
 Alice R. L. Aberdeen, Sole Beneficiary.

By their Solicitors herein

JENNINGS & CLUTE.

*Address for Service :*

The Appellants may be addressed and documents may be served upon them by addressing the same to, or serving the same upon Messrs. Jennings & Clute, Barristers, Solicitors, etc., Room 1104, 80 Richmond 10 Street, West, Toronto, Ont.

No. 5.  
 Notice of the  
 Treasurer's  
 decision, 1st  
 February  
 1943.

No. 5.

NOTICE OF THE TREASURER'S DECISION, dated 1st February 1943.

Section 31 (4).

THE SUCCESSION DUTY ACT, 1939.

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, who died on or about the eleventh day of December, 1940.

TAKE NOTICE that the Treasurer confirms the statement served 20 upon you on the eleventh day of January, 1943, pursuant to the provisions of subsection 1 of Section 31, of The Succession Duty Act, 1939.

Dated at Toronto, this first day of February, 1943.

"L. A. RICHARD."

To :

The Estate of James D. Aberdeen,  
 deceased, Harold E. Stevens,  
 Executor, and Alice R. L.  
 Aberdeen, Sole Beneficiary,  
 Appellants.

30

In care of :

Messrs. Jennings & Clute,  
 Barristers, Solicitors, etc.,  
 Room 1104,  
 80 Richmond Street West,  
 Toronto, Ontario.

No. 6.

**NOTICE OF DISSATISFACTION, dated 24th February 1943.**No. 6.  
Notice of  
dissatisfac-  
tion, 24th  
February  
1943.

10 TAKE NOTICE that the above-named Alice R. L. Aberdein, as sole beneficiary, and the said Alice R. L. Aberdein and Harold E. Stevens, as Executors of the Estate of James D. Aberdein, HEREBY GIVE NOTICE of their dissatisfaction with the decision of the Treasurer of Ontario upon the appeal of the said parties from the assessment of succession duty made by the said Treasurer of Ontario in the said Estate ; which decision was notified to the above-named Alice R. L. Aberdein and Harold E. Stevens by notice in writing dated the first day of February, 1943.

In support of this Notice of Dissatisfaction, the said Alice R. L. Aberdein and Harold E. Stevens submit again the statement of issues, and the grounds of appeal as set forth in their Notice of Appeal herein, dated the 21st day of January, 1943, adding to the grounds of appeal as

(j) Dome Mines Limited is a company incorporated under " The Companies Act " of the Dominion of Canada ; and as such the right of its shareholders to transfer shares cannot be controlled by the Legislature of Ontario.

20 The said Alice R. L. Aberdein and Harold E. Stevens expressly reserve the right to support their Notice of Dissatisfaction for such further and other reasons as counsel may advise.

Dated at Toronto this 24th day of February, 1943.

THE ESTATE OF JAMES D. ABERDEIN, DECEASED  
By Alice R. L. Aberdein and Harold E. Stevens,  
Executors, and the said Alice R. L. Aberdein,  
Sole Beneficiary, By their Solicitors herein

JENNINGS & CLUTE.

No. 7.

**REPLY OF THE TREASURER, dated 18th March 1943.**No. 7.  
Reply of the  
Treasurer,  
18th March  
1943.

30

Section 31 (6)

**THE SUCCESSION DUTY ACT, 1939.**

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, who died on or about the eleventh day of December, 1940.

TAKE NOTICE that the Treasurer confirms the amount of duty, interest and penalties set out in statement served on you on the eleventh

No. 7.  
 Reply of the  
 Treasurer,  
 18th March  
 1943,  
*continued.*

day of January, 1943, pursuant to the provisions of subsection 1 of section 31 of The Succession Duty Act, 1939.

Dated at Toronto, this 18th day of March, 1943.

“ L. A. RICHARD.”

To :

The Estate of James D. Aberdein, deceased,  
 Harold E. Stevens, Executor, and  
 Alice R. L. Aberdein, Sole Beneficiary,  
 Appellants.

In care of :

Messrs. Jennings & Clute,  
 Barristers, Solicitors, etc.,  
 Room 1104,  
 80 Richmond Street, West,  
 Toronto, Ontario.

10

*In the  
 Supreme  
 Court of  
 Ontario.*

**No. 8.**

**STATEMENT OF FACTS agreed upon by the parties, dated 31st December 1943.**

No. 8.  
 Statement  
 of facts  
 agreed upon  
 by the  
 parties,  
 31st  
 December  
 1943.

1. The late James D. Aberdein (hereinafter referred to as “ the Testator ”) was born in Madison in the State of Indiana, one of the United States of America, on November 6th, 1849 ; and at all times thereafter 20 was a citizen of and resided in the United States of America. The said Testator died on the 11th day of December, 1940, domiciled at 1898 Beacon Street, Brookline, in the Commonwealth of Massachusetts.

2. The Testator at no time had a residence or place of business within the Province of Ontario.

3. Mrs. Alice R. L. Aberdein, Widow of the said Testator, was born in the United States of America, was at all times a citizen of the United States of America and at the time of the death of the Testator was domiciled at 1898 Beacon Street, Brookline, Massachusetts.

4. The said Mrs. Alice R. L. Aberdein at no time had a residence 30 or place of business within the Province of Ontario.

5. The said Mrs. Alice R. L. Aberdein is the sole beneficiary under the will of the Testator.

6. The assets, of which the Testator was in whole or in part possessed at the time of his death, and which are material to the issues in this matter were :

(A) 200 shares of the capital stock of Nipissing Mines Limited, a company incorporated under the Companies Act of Ontario with head office in the Province of Ontario, represented by two share certificates having a par value of \$5.00 each, dated October 24, 1933, 40 in the names of “ James D. Aberdein and Mrs. Alice R. L. Aberdein joint tenants with right of survivorship and not as tenants in



common," being certificates numbered 4547-4548. The said share certificates were issued at the City of Boston by the Old Colony Trust Company, transfer agents, and State Street Trust Company, registrar of shares, both duly appointed for their respective purposes by Nipissing Gold Mines Limited. At the date of death of the said James D. Aberdein the said shares were registered on the register of the said company in the City of New York, at the office of the Manufacturers Trust Company and on the register of the said company in Ontario at the office of the Toronto General Trusts Corporation Toronto, and were interchangeably transferable either at the office of the Manufacturers Trust Company in the City of New York, in the State of New York, or at the office of the Toronto General Trusts Corporation, in the City of Toronto, Ontario, and at no other place.

*In the  
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Court of  
Ontario.*  
—  
No. 8.  
Statement  
of facts  
agreed upon  
by the  
parties,  
31st  
December  
1943,  
*continued.*

10

20

30

(B) 4,000 shares of the capital stock of Dome Mines Limited a company incorporated under Companies Act of the Dominion of Canada with head office in the Province of Ontario, represented by 40 share certificates for 100 shares each having no par value dated May 6th, 1940, in the name of James D. Aberdein, being certificates numbered 89233 to 89272. The said share certificates were issued at the City of New York in the State of New York by Empire Trust Company, transfer agents, and Bankers Trust Company, registrar of shares, both duly appointed for their respective purposes by Dome Mines Limited. At the date of death of said James D. Aberdein the said shares were registered on the register of the said Company in the City of New York at the office of the Bankers Trust Company, and on the register of the said company in Ontario at the office of the Toronto General Trusts Corporation and were interchangeably transferable either at the office of the Empire Trust Company in the City of New York or at the office of the Trusts and Guarantee Company, Limited in the City of Toronto, Ontario, and at no other place.

7. At the date of the death of the Testator, all the certificates referred to in Clauses (A) and (B) of the last preceding paragraph hereof were in a safety deposit box in the National Rockland Bank, Roxbury Branch, in the City of Boston, in the Commonwealth of Massachusetts.

8. At the date of death of the said Testator, none of the said share certificates had been endorsed in blank or otherwise by the said Testator.

40 9. The transfer agents and registers named in Clauses (A) and (B) paragraph 6, were properly approved and authorized to act in their respective capacities by Nipissing Gold Mines Limited and Dome Mines Limited.

10. At the date of the death of the said Testator, the debts contracted by and actually owing by him amounted to a total of \$11,310.70; the expenses in connection with the funeral of the said deceased amounted to the sum of \$1,365.00; the expenses of the administration of the estate of the said deceased amounted to \$82,288.41 including the Federal Estate Tax, the remuneration of Harold E. Stevens as co-executor and the legal services of the attorneys for the executor. The total of the said debts 50 amounted to \$95,335.11. The whole of the said sum was properly

*In the  
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deductible from the gross value of the estate of the said deceased according to the law then in force affecting the said matter in the Commonwealth of Massachusetts.

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of facts  
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by the  
parties,  
31st  
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1943,  
*continued.*

11. The widow of the said Testator did not contribute to the purchase of the shares mentioned in paragraph 6 (A) in the name of James D. Aberdein and Mrs. Alice R. L. Aberdein joint tenants etc.

The foregoing statement of fact is agreed to subject to the right of any party to adduce additional evidence.

Dated at Toronto this 31st day of December, 1943.

“ C. R. MAGONE ”

10

Counsel for the Treasurer of Ontario.

“ JOHN JENNINGS ”

Counsel for Mrs. R. L. Aberdein.

“ JOHN JENNINGS ”

Mrs. Alice R. L. Aberdein and Harold E.  
Stevens Executors of the Estate of James  
D. Aberdein, deceased.

No. 9  
Supple-  
mental  
statement  
of facts.

No. 9.

**SUPPLEMENTAL STATEMENT OF FACTS.**

It is further agreed that shares of Nipissing Mines Ltd. and Dome 20  
Mines Ltd. are listed upon and are actively dealt with upon the stock  
exchanges established and carried on in the City of Toronto, and in the  
City of New York.

Toronto, March 30th/44.

“ C. R. MAGONE ”

Solicitor for the Treasurer of Ontario.

“ JENNINGS & CLUTE ”

Solicitor for the executors and for the  
sole beneficiary.

No. 10.

PROCEEDINGS AT TRIAL, dated 20th March 1944.

(a) Discussion.

(b) Evidence of Harry E. Harding.

(c) Evidence of Harold C. F. Mockridge.

*In the  
Supreme  
Court of  
Ontario.*No. 10.  
Proceedings  
at trial,  
20th March  
1944.

IN THE SUPREME COURT OF ONTARIO.

Between: HIS MAJESTY THE KING as represented by  
the TREASURER OF ONTARIO - Plaintiff

and

10 THE GLOBE INDEMNITY COMPANY OF  
CANADA Defendant.

IN THE MATTER of the Estate of JAMES D. ABERDEIN, deceased.

THE EXECUTORS of the Estate of FRANCIS  
T. MAXWELL Plaintiffs

and

HIS MAJESTY THE KING as represented by  
the ATTORNEY-GENERAL FOR ONTARIO Defendant.

*Before The Honourable Mr. Justice KELLY on the 20th day of March, 1944  
at the city of Toronto, in the county of York, province of Ontario.*

20 Appearances:

C. R. MAGONE, K.C. )  
J. D. O'BRIEN ) Counsel for His Majesty the King.  
J. JENNINGS, K.C. ) Counsel for Estate of James D. Aberdein.  
P. E. F. SMILY, K.C. ) Counsel for Executors of Estate of Francis  
T. Maxwell.  
E. BRISTOL, K.C. ) Counsel for Globe Indemnity Company.

(A) DISCUSSION.

(A) Dis-  
cussion.

HIS LORDSHIP: The King against the Globe Indemnity.

30 Mr. MAGONE: My Lord, I appear for the plaintiff, His Majesty the  
King in the right of Ontario, and with me is Mr. J. D. O'Brien of the Treasury  
Department, and my learned friend Mr. Bristol is here for the defendant.  
I would like to speak to the next two cases, my Lord.

HIS LORDSHIP: Yes?

Mr. MAGONE: The next case is a petition of right, *Maxwell vs.  
The King*, and the third case is a case that arises by way of appeal under  
section 31 of the Succession Duty Act. Your Lordship may recall that

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cussion,  
*continued.*

under that section the Succession Duty Act served notice of assessment, and then there follows certain provisions by way of notice of dissatisfaction, and ultimately it gets down for trial on the record that contains the statement filed by the Succession Duty Department and notice of dissatisfaction, and the treasurer's reply.

I would like to argue these three cases together, my Lord. My learned friend Mr. Smily is acting in the Maxwell case and my learned friend Mr. Jennings is acting in the Aberdeen case.

In the Kerr case we are concerned with the situs of shares of stock in Lake Shore Mines. In the Maxwell case we are concerned with shares of International Nickel, and in the Aberdeen case, Mr. Jennings case, we are concerned with shares of stock in Nipissing Mines and Dome Mines. Mr. Jennings has, however, raised in the notice of dissatisfaction two other points, but the main point in these cases is the same because the deceased in each case lived and was domiciled in the United States of America and who was the owner of shares of stock in these various companies, some of which were incorporated under the Ontario Companies Act and some under the Dominion Companies Act. The domicile of the deceased in each case was in a state in which there was no transfer office where the shares of stock could be effectively dealt with, and in each case the certificates, representing the shares, were physically situated in the state of domicile of the deceased and were not in any case endorsed in blank.

In all of these cases there is a transfer office also in the province of Ontario and in all cases the head office of the company is here, so that my submission shortly will be, in all cases, for the reasons which will be advanced on the argument that the preference should be given to Ontario, that is, the situs of these shares of stock, over the State of New York where they may be effectively dealt with, but in which state the decedent was not domiciled nor were the shares physically situated there at the time of death.

In connection with the International Nickel, that is, the Maxwell case, the shares may also be effectively dealt with in Montreal where there is a transfer office and in London, England.

In Mr. Jennings' case, the Aberdeen case, he also raised another point, and that is, that the value to be put on the assets of the estate is the value in the United States and not the value in Canadian dollars, by adding the rate of exchange.

If I am permitted to go on I will, of course, read the notice of dissatisfaction which sets out my friend's position.

HIS LORDSHIP : Is there an agreement between all parties as to the facts ?

Mr. MAGONE : In each case, I should have mentioned, we have agreed on a set of facts, in every case, subject to this, that we may adduce additional evidence. I have one witness to assist your Lordship with respect to the laws of the State of New York of the United States. There may be some other facts that we will agree upon which are not set out in the statement of facts. I think I am accurate in saying my friends have no witnesses to produce.

The Kerr case, I have agreed with my friend Mr. Bristol to put in as exhibits specimen shares of stock, so with your Lordship's permission, I

would like to argue all cases at once and then allow my friends to reply, or in the alternative, if there is objection to that, I would like to put my witness in the box after acquainting your Lordship with the facts more fully than I have done, and allow that evidence to apply to all the cases, giving my friends, of course, the right of cross-examination.

HIS LORDSHIP : Is there any objection to that ?

Mr. JENNINGS : My Lord, I have agreed with my friend Mr. Magone, and as far as I am concerned the evidence of his witness may be considered to be taken in my case, reserving my right to object to admissibility of the  
10 evidence. May I say that I have no witnesses at the present time but if in the development of the case it should suggest the necessity of your Lordship having further information then I reserve my right, at a later stage, to call such evidence.

Then, my Lord, as to the cases all being heard together I, of course, speak solely for my own case. The fundamental underlying issue seems to be the same in each of the three cases so far as I have seen the Record this morning, and the facts seem to be almost identical in these cases.

My friend has said the decedent in each case lived in a State where there was no transfer office, and in each case there will be a transfer agency  
20 in the Province and a transfer agency without the Province. The share certificates in each case were issued from New York Transfer Office of the respective companies. I think I am right that all the respective companies had their head offices in Ontario.

There is this distinction in the International Nickel case and my case : the Dome Mines Limited are incorporated under the Dominion Companies Act, and speaking for my clients we have challenged the right of the Province to in any way interfere with that function of the Dominion Company which consists of transfer of shares. Our submission is, that is  
30 the one difference in my case. There are two other points which do not prevent hearing the cases together : First, we have submitted there is no authority under the Succession Duty Act to increase the gross value of the estate and add 10 per cent. value on the assets said to be or alleged to be in Ontario, with the result that to the Ontario assets there is applied a much higher bracket of taxation by reason of the higher aggregate value, and that higher bracket of taxation is applied to 10 per cent. added value, and in my submission, the Department has no power and has no legal warrant for so doing.

In the Aberdeen case, under the law of Massachusetts all the taxes are deducted and deductible before you arrive at the taxable value of the  
40 estate. That, in our case, amounted to \$92,000, and our submission is the law of the place of domicile governs the question of death, and there must be deducted from the aggregate value the full amount of those duties and allowances which are within the law in the place of domicile.

As I see it now, I see no objection to hearing the evidence, if admissible or relevant, of the witness from the State of New York nor of the argument of the cases together. Your Lordship will aid us in case there should be confusion and we ask you to separate the cases, but I don't foresee that.

Mr. BRISTOL : My Lord, acting for the Defendant in the Globe Indemnity case I am, likewise, content to have evidence taken and to the  
50 argument succeeding, the suggestion of Mr. Magone.

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(A) Dis-  
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I do think my case is exclusively concerned with the question of situs as the Lake Shore Mines is an Ontario company. Also I think my case is first on the list, and perhaps it will simplify matters if I follow Mr. Magone, and my friends after. However, that is a suggestion.

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(A) Dis-  
cussion,  
*continued.*

Mr. SMILY : My Lord, in the *Maxwell vs. The King* case, as counsel for the Respondents or Defendants in the other case, I am also willing to have the evidence of the lawyer from the New York Bar applied to our case, subject to the same rights of additional evidence and objections, also, as Mr. Jennings has mentioned with regard to his case, I would like to reserve my position as to the calling of evidence. I don't anticipate any 10  
facts will arise that will not be admitted but I want to protect my position there in case the situation is different. And I am content that the cases be argued together in any way your Lordship feels is most conducive.

Mr. MAGONE : Then, my Lord, the appearances in the case of *Maxwell vs. The King*, my friend Mr. Smily appears for the plaintiff or the suppliants, as they are called in this petition of right proceeding, and I appear alone in the *Maxwell* case. Then in the *Aberdein* case, my friend Mr. Jennings appears for the Appellants and I appear for the Treasurer of Ontario.

In dealing first with the case of the *Treasurer vs. Globe Indemnity* 20  
your Lordship will see we have agreed upon a statement of facts so that it becomes unnecessary, my Lord, to read the other pleadings. In the statement of facts it is agreed :

“ (1) Thomas Kerr, a citizen of the United States of America  
“ and resident and domiciled in the city of Detroit in the State of  
“ Michigan, died there on or about the 8th of January, 1939.”

I might pause there for a moment, my Lord, to say that by reason of his death in 1939 the Succession Duty Act of 1937 applies to this case. That, however, does not make any material difference because the only question here is : Are these shares situated in Ontario. Paragraph 2 reads : 30

“ Letters Probate of the last will and testament of the said  
“ deceased were granted to Robert M. Kerr of the city of Detroit,  
“ the executor named in the said Will, on 28th February, 1939 by  
“ the Surrogate Court of Wayne County in the State of Michigan.  
“ No Ancillary letters probate of the said last will and testament  
“ were ever applied for or granted out of any court in Ontario.

“ (3) At the time of his death the said deceased owned and  
“ there were standing in his name on the books of Lake Shore Mines  
“ Limited, a company incorporated by letters patent issued under  
“ The Ontario Companies Act dated the 25th day of February 1914, 40  
“ 500 shares of its capital stock represented by certificates which at  
“ the date of death of the said deceased were located in the said  
“ city of Detroit and were not endorsed for transfer in blank or  
“ otherwise by the deceased.

“ (4) The said company had power and authority to provide  
“ and had duly provided that its 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 Buffalo in the State of New York. The  
“ resolution of the Board of Directors of the said company  
“ appointing the Trusts and Guarantee Company, Limited as 50  
“ transfer agent and registrar of the capital stock of the said

“ company in the city of Toronto dated the 21st of December 1916  
 “ in the following words :— ”

I shall skip the reading of that.

“ The resolution of the Board of Directors of the said company  
 “ dated the 21st day of May, 1925 appointing The Royal Trust  
 “ Company of the city of Toronto to act as registrar of its stock in  
 “ the city of Toronto is in the following words :— ”

I shall skip the reading of that.

“ The resolution of the Board of Directors of the said company,  
 10 “ dated the 18th day of May, 1927 appointing Manufacturers and  
 “ Traders Trust Company as transfer agent and registrar of the  
 “ capital stock of the said company in the city of Buffalo in the  
 “ state of New York is in the following words :

“ “ Moved by Mr. Martin, seconded by Mr. Wright, that the  
 “ “ company hereby designate and appoint Manufacturers and  
 “ “ Traders Trust Company of Buffalo, New York, as an additional  
 “ “ registrar and transfer agent at which office shareholders may  
 “ “ have their stock register read and transferred within the  
 “ “ United States of America.’ ”

20 “ And pursuant to the said resolutions agreements were entered  
 “ into with the said companies.

“ (5) At the date of death of the said Thomas Kerr the  
 “ resolutions and agreements referred to in paragraph 4 were in  
 “ full force and effect and the said shares of the late Thomas Kerr  
 “ could, at the date of his death, have been fully and effectively  
 “ transferred either in the city of Toronto, in the province of  
 “ Ontario, or in the city of Buffalo in the state of New York.

30 “ (6) The said shares, however, could not at the date of death  
 “ of the said Thomas Kerr or at any time subsequent thereto be  
 “ transferred in the state of Michigan in which state the said  
 “ deceased was domiciled and where the certificates representing  
 “ the said shares were situate at the date of death.

40 “ (7) At the date of death of the said Thomas Kerr his name  
 “ appeared as the owner of 500 shares of Lake Shore Mines Limited  
 “ on the books of Manufacturers and Traders Trust Company at  
 “ Buffalo, New York transfer agent and registrar of the capital stock  
 “ of the said company at the city of Buffalo in the state of New York  
 “ and on the books of the Trusts and Guarantee Company, Limited,  
 “ transfer agents of the capital stock of the said company in the  
 “ city of Toronto in the province of Ontario.

50 “ (8) The said executor, Robert M. Kerr duly applied to the  
 “ said Manufacturers and Traders Trust Company at its offices in  
 “ Buffalo, New York in the month of April, 1939 for transfer of the  
 “ said shares into his name as executor of the estate of the late  
 “ Thomas Kerr but the said transfer agent required the consent  
 “ of the Treasurer of Ontario under the Succession Duty Act before  
 “ making such transfer. In May and June 1939 application for  
 “ such consent was made on behalf of the said executor to the  
 “ Succession Duty office of Ontario without prejudice and without  
 “ admitting any liability. Such consent was refused by the said  
 “ Succession Duty office unless duty as assessed by it was paid or  
 “ secured.

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 Ontario.*

— — —  
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 at trial,  
 20th March  
 1941.  
 (A) Dis-  
 cussion,  
*continued.*

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at trial,  
20th March  
1944.  
(A) Dis-  
cussion,  
*continued.*

“(9) Subsequently in or about the month of May, 1941, the consent of the Treasurer of Ontario under the Succession Duty Act to the transfer of the said 500 shares of Lake Shore Mines Limited was delivered to the said Executor upon his furnishing the bond of the defendant indemnity company referred to in paragraph 2 of the statement of claim to secure any duty which might be payable. The said shares were thereupon transferred to the name of the said executor at the said office in Buffalo, New York, of Manufacturers and Traders Trust Company as one of the transfer agents of Lake Shore Mines Limited. 10

“(10) The duty claimed by the Treasurer of Ontario with respect to the said 500 shares of the capital stock of Lake Shore Mines Limited has not been paid.

“The foregoing statement of facts is agreed upon, subject to the right of either party to adduce additional evidence.”

This, of course, is an action on the bond.

Then in the petition of right of *Maxwell v. The King*, the agreed statement of facts has not been filed.

HIS LORDSHIP : Is the other filed ?

Mr. MAGONE : Yes, my Lord, it is incorporated, I think, in the 20 record.

Exhibit No. 1.

Mr. MAGONE : In this statement of facts it is agreed that the deceased died in March, 1942 resident and domiciled in the State of Connecticut, one of the United States of America and that probate of his will was granted on the 15th day of April 1942 to Florence Parsons Maxwell of Hartford, Connecticut and Frederick N. Belding and the Travellers Bank and Trust Company of Hartford, Connecticut. They, my Lord, are the suppliants in this Action.

“No Ancillary Letters Probate of the last will and testament were ever applied for or granted out of any court in Ontario. At the time of his death and standing in his name on the books of the International Nickel Company Limited, a company incorporated under the Companies Act of the Dominion of Canada 200 shares of its common stock represented by certificates which certificates were issued . ” (Continues reading to end of statement of facts.) 30

Now, my Lord, I should state that in this case in my statement of defence and in the petition of right first it was alleged that the payment of duty was made under protest and by mistake, paragraph 5 reads :— 40

“In answer to the allegations contained in paragraph 8 of the said petition the respondent says that the money was paid voluntarily and not under duress and with full knowledge of all relevant facts.”

I am abandoning that position, my Lord, because of an arrangement which my friend Mr. Smily made with the officials in the Succession Duty Department at the time of payment of the duty and of which I had no knowledge when I drew my pleadings. The arrangement was that in the event of it being found that the shares in question did not have a situs in the province of Ontario that an application might be made for a refund, 50 so I cannot now take the position that I took in paragraph 5 of my pleadings.



Then, my Lord, in the appeal in the Aberdeen case there is a statement of facts filed and it forms part of the record, but in addition to that statement of facts my friend and I have agreed on one other point which I would like to file with your Lordship.

My friend is marking those as exhibits. That is not an exhibit in the case of Globe Indemnity or the Maxwell case.

Mr. BRISTOL : Exhibit 1 is not in the Kerr case or Aberdeen case.

Mr. MAGONE : I doubt, my Lord, that they are exhibits at all. Perhaps your Lordship will just receive them as admissions of counsel.  
10 I don't think they should be filed as exhibits.

My Lord, in the Aberdeen case the agreed statement of facts reads as follows : (*Reads statement of facts in the Aberdeen case*).

And then the note which I handed to your Lordship :

“ It is further agreed that the shares of these two companies  
“ are listed upon and actively dealt with upon the stock exchanges  
“ established and carried on in the City of Toronto and in the  
“ City of New York.”

If your Lordship will look at the notice of appeal, my friend sets out his grounds of appeal, and (A) and (B) deal with the question of situs  
20 of the shares and clause (G) re Succession Duty Act of 1939—

HIS LORDSHIP : What page is that ?

Mr. MAGONE : I haven't a copy of the record, my Lord, but it is about three or four pages back, entitled “ Notice of Appeal.”

Shall we continue later, my Lord, as I have something more to say, but it is now one o'clock.

HIS LORDSHIP : Yes, we will adjourn until two-thirty.

*At 1.00 p.m. the Court adjourned.*

*At 2.30 p.m. the Court resumed.*

HIS LORDSHIP : Yes, Mr. Magone.

30 Mr. MAGONE : My Lord, at the adjournment I was referring to the notice of appeal filed with the Succession Duty Department in the Aberdeen case and was referring to the grounds of the appeal. Clause (c) reads :

“ That neither the Succession Duty Act, 1939, and the  
“ Amending Act, 1940, nor under any other law is there authority  
“ for the addition of ten per centum per annum to the aggregate  
“ value of the estate as sworn . . . ”

It should be ten per centum. I think the words “ per annum ” is a mistake.

40 Mr. JENNINGS : Yes.

Mr. MAGONE : “ Ten per centum to the aggregate value of the  
“ estate as sworn ; nor to the value of the shareholdings of the deceased  
“ in Canadian companies.” In explanation of that ground of appeal, my  
Lord, what the Department did was to take the sworn value of the assets  
of the estate in the aggregate, irrespective of the place where they were  
situated, for the purpose of fixing the rate and, having taken that sworn  
value it was sworn in American dollars.

*In the  
Supreme  
Court of  
Ontario.*

No. 10.  
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at trial,  
20th March  
1911.  
(A) Dis-  
cussion,  
*continued.*

*In the  
Supreme  
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at trial,  
20th March  
1944.  
(A) Dis-  
cussion,  
*continued.*

HIS LORDSHIP : They add 10 per cent.

Mr. MAGONE : We transposed the currency into a value under a Canadian statute, in the same manner as we would have to transpose currency whether it is a French estate sworn in francs or a Japanese estate sworn in yen or some other estate.

“(D) That the allowable deduction from the aggregate value  
“ of the estate for the debts of the deceased is governed by the  
“ law of the place of domicile of the deceased under which the  
“ sum of \$95,335.11 is properly deductible, whereas the statement  
“ of succession duties allows only the sum of \$12,675.70.” 10

The explanation of that, my Lord, is : While under the statement of facts as agreed there were debts under the laws of the state of domicile which were deductible, including administration expenses and attorney's fees, amounting to the sum of \$95,000, but were permitted to be deducted from the aggregate value only the sum of \$12,675.70 in accordance with those sections of the Succession Duty Act of Ontario which permits deductions to be made from the aggregate value :

“(E) That the proportion of debts allowed against the value  
“ of the holdings of the deceased in Canadian companies should be  
“ increased in accordance with the preceding paragraph (D) from 20  
“ the allowed sum of \$2,724.54.”

In explanation of that : What the Department did was to find that there were certain assets in the province of Ontario amounting to a portion of the aggregate value of the estate existing in the United States and other places and taking \$12,000 as the basis of the debts we deducted \$2,700 as being the proportion of that \$12,000 which can be properly deducted from the assets in Ontario. In other words, it is a proportion of all the debts allowed to be deducted under the Succession Duty Act in the ratio which the property in Ontario bears to the property outside the province :

“(F) That all the share certificates in respect of the holdings 30  
“ of the estate of the shares of Canadian companies were in the  
“ possession of the deceased in the Commonwealth of Massachusetts,  
“ in the United States of America, the place of the domicile of the  
“ deceased.”

We have agreed to that. Clause (G) deals with situs also, which I have spoken about :

“(H) That if any provisions in the said Succession Duty Act,  
“ 1939, or the Amending Act, 1940, purport to give authority to  
“ levy a tax upon the holdings of the said deceased in Canadian  
“ companies, such provisions are ultra vires of the Legislature of 40  
“ the province of Ontario, and are void and of no effect.”

“(I) For such further and other reasons as counsel may  
“ advise.”

Then that notice of appeal was followed by the notice of the Treasurer's decision confirming the statement which had been served under section 31 of the Succession Duty Act, and that in turn is followed by a notice of dissatisfaction filed by my friend Mr. Jennings with the Department, in which he advanced another ground and letters it clause (J) in which he takes this additional ground of appeal, that :

“(J) Dome Mines Limited is a company incorporated under 50  
“ the Companies Act of the Dominion of Canada, and as such the

“right of its shareholders to transfer shares cannot be controlled  
“by the Legislature of Ontario.”

Now, I presume—and my friend Mr. Jennings will probably correct me if he does not agree—that this ground of appeal might disappear if the decision on the main question is that these shares are properly situated in Ontario. In other words, if your Lordship should decide that these shares are property in Ontario and whether or not the province has a right to say to a Dominion company: “Your shareholders shall not transfer their shareholdings unless the consent of the Treasurer is obtained”

10 is not of much relevancy except in an academic way. However, my friend might not accept that.

My Lord, in addition I think I should refer to the sections of the Succession Duty Act which are relevant and I will commence with the case of *The King v. Globe Indemnity*. In that case the deceased died in 1939 and it is therefore the Succession Duty Act in R.S.O., 1937, ch. 26, and although the Act has been amended the amendments are not relevant for this purpose. Section 9, clause (a):

20 “After the date of the death of any person all property situate  
“in Ontario passing on the death of such person, whether such  
“person was at the time of his death domiciled in Ontario or  
“elsewhere shall be subject to duty.”

We say that the shares in this company come within that clause, that they are properly situated in Ontario belonging to a person domiciled elsewhere, and they are therefore subject to duty. In the case of the *Treasurer v. Globe Indemnity* that is the only question that arises: Are these shares in the Lake Shore Mines properly situated in Ontario at the date of death of the deceased.

30 Then in the case of *Maxwell v. The King*, the deceased died on the 23rd of March, 1942, and therefore it is the Succession Duty Act of 1939, and although that Act was amended in 1940 and 1941 the amendments are irrelevant because the section to which I refer, namely, section 5, clause (a), has not been amended, and the wording of that section is 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.”

40 So that, in effect, this is the same as the section in the 1937 Act which I have just read, and the only question in this case, as in the *Globe Indemnity* case: Are the shares of International Nickel which were owned by the deceased situated in the province of Ontario at the date of his death.

Then in the *Aberdein* case I will have to refer to several sections in the Act. In *Re Aberdein*, the deceased died on the 11th of December, 1940 and the Act is therefore the Succession Duty Act of 1939, second session, ch. 1 as amended 1940, ch. 29. I have an extra copy of the pamphlet, and it may assist your Lordship. The first section is section 1A, the definition of aggregate value:—

50 “Aggregate value shall mean (1) the value at the date of death  
“of the deceased of the property wherever situate passing on his  
“death; and (2) the value of all dispositions wherever made where  
“such dispositions are made on or after the first day of July, 1892;

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“less the debts, encumbrances and other allowances authorised by  
“sub-section 5 of section 2 and less the exemptions authorised by  
“section 4.”

Your Lordship will see that becomes material because it provides what  
the aggregate value of the estate shall be and what deductions may be made  
therefrom.

Then section 1, clause (g), is the definition of dutiable value :—

“(g) ‘Dutiable value’ of any property situate in Ontario  
“passing on the death of the deceased, ‘dutiable value’ of a  
“transmission, or ‘dutiable value’ of a disposition made in Ontario, 10  
“shall mean, respectively, the value of such property at the date  
“of death of the deceased, the value of such transmission, and  
“the value of such disposition after allowance has been made for  
“the debts, encumbrances and other allowances authorised by  
“and in accordance with sub-section 5 of section 2.”

Then clause (p) :—

“(1) Property passing on the death of the deceased and any  
“expression of like import shall include 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 20  
“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.”

That latter part does not apply. All the share certificates were in the  
name of the deceased and his wife and therefore this section, we submit,  
becomes relevant. Your Lordship will also remember that in the statement 30  
of facts the survivor did not contribute to the purchase of the shares.

Then section 2, sub-section 1 is the value of the securities :—

“(a) The value of any security which is listed on any stock  
“exchange, or if not so listed, on which a price or quotation is  
“obtainable from financial journals, recognised financial reports  
“or registered brokers, shall be the closing price or quotation of  
“such security on the day as of which such value is to be determined  
“or if there is no closing price or quotation on such day, then on the  
“last preceding day on which there is a closing price or quotation.”

Then sub-section 5 of section 2 are the allowances that may be made 40  
from the aggregate value :—

“(5) In determining aggregate value and in determining  
“dutiable value allowance shall be made for reasonable funeral  
“expenses for the deceased, for debts, and encumbrances incurred  
“or created by the deceased *bona fide* and for full consideration  
“in money or moneys worth wholly for his own use and benefit,  
“for Surrogate fees and for solicitors’ fees for obtaining probate  
“or letters of administration to an amount not exceeding \$100,  
“and all debts and encumbrances for which allowance is made shall  
“be deducted from the value of the land or other subject of property 50  
“liable thereto, but allowance shall not be made for those items  
“that are listed thereunder—

“(a) For any debt in respect of which there is a right to reimbursement except such part thereof for which reimbursement cannot be obtained ;

“(b) More than once for the same debt or encumbrance charged upon different properties ;

“(c) Save as aforesaid, for the expense of the administration of the property or the execution of any trust created by the will of the deceased or by any instrument made by him during his lifetime ;

10 “(d) For any debt or encumbrance or any part thereof which by due process of law cannot be realized out of any property ;

“(e) For any wages, salaries or other remuneration due by the deceased to any member of his family except such part of such wages, salaries or other remuneration as the Treasurer may deem reasonable and proper ;

“(f) For any part of any debt not actually and bona fide paid or intended to be paid ;

20 “(g) For any debt for taxes due and payable more than two years prior to the date of death of the deceased, unless such debt is paid or settled within six months after such date ; or

“(h) For any debt not recoverable by reason of The Limitations Act or any other statute of Limitations.”

Then section 5 (a), 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 may be levied on such property in accordance with the dutiable value thereof.”

Section 6 :

30 “(1) The duty levied by this Act shall be at the following rates, where the person who benefits by any property passing to him on the death of the deceased or to whom a disposition is made is the father, mother, husband, wife or a grandfather, grandmother, child, son-in-law or daughter-in-law of the deceased, shall be at the following rates.”

Then your Lordship will see where the aggregate value of the estate, no matter where situated, is within these figures the rate is fixed.

Then going over to the following page of the pamphlet : “The duty levied by this Act shall be at the following additional rate,” and so forth.

40 My Lord, I have one witness, as I indicated to your Lordship in opening, and as your Lordship knows we are breaking ground that has never been broken before and your Lordship will have the honour of settling a point that has not been settled before and I had in mind it might be of assistance to the Court if I adduced evidence to show what the laws of the United States are. As your Lordship knows in the last case which went to the Privy Council and which will be dealt with at length—the case of *The King vs. Williams*—it was held there that where there are two transfer offices at which shares may be effectively dealt with that either one or the other of those two transfer offices must be chosen as the situs of the shares of stock on some rational ground, and in this case, with respect—

50 HIS LORDSHIP : Is that the Windsor case ?

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Mr. MAGONE : No, my Lord, it is the Williams case that my friend Mr. Bristol brought in a Petition of Right. The case shortly involved this point : Williams was domiciled and lived in Buffalo, New York, he owned certain shares in Lake Shore Mines, the same company we are concerned with here, and his share certificates were in Buffalo, and there was in Buffalo a transfer office at which the shares could be effectively transferred. The head office of the company was in Ontario, it was an Ontario corporation and there was a transfer office here. The main point in that case was that the company had no authority to open the transfer office in Buffalo and to keep its books out of the province of Ontario without the authority of the Lieutenant-Governor-in-Council under the Ontario Companies Act. It was held by the trial Court and all the way through to the Privy Council that a company incorporated by Letters Patent under the Ontario Companies Act had all the capacity of a corporation at common law and that there was nothing in the Ontario Companies Act which prohibited an Ontario Company from establishing a transfer office in Buffalo or in any other place where shares could be effectively dealt with, and having decided that point the case went on, in the first instance to the Court of Appeal, which held that these shares were not property situated in Ontario because the certificates evidencing the title of the shares were in the state of New York, a state where shares can be effectively dealt with on the books of the company. In the Privy Council the case went off on another point, and the Privy Council said that they found it unnecessary to decide where the situs of that share would be had the certificates not been endorsed in blank by the deceased before his death but by reason of the fact that the certificates in this case, which Williams had kept in a safety deposit box in Buffalo were endorsed by him in blank so that they were in effect open and made into street certificates and could be passed from hand to hand and that a person getting those certificates, purchasing them, was unable to write his own name in as owner of the shares and have them transferred in Buffalo, that the situs of those shares was Buffalo and not the province of Ontario.

Now, in this case the difference is that the certificates are not endorsed in blank and the certificates are not physically situated in a place where they may be effectively dealt with. So that my submission must be that in a choice between two places where shares may be effectively dealt with on a rational ground that you must choose the place where the company is incorporated which in the case of two companies is the province of Ontario and in the case of the Dominion companies where the company has its head office. There are other reasons which I shall advance in my argument later for choosing as situs of the shares the province of Ontario instead of any other place, and I shall point out to your Lordship that with respect to the shares of the International Nickel Company, which may be effectively dealt with in Montreal or in London, England or in New York or in Toronto that on a rational basis your Lordship should choose the province of Ontario because the certificate being situate in a place where they cannot be effectively dealt with, that London or the province of Quebec has just as much right to say these shares are situated here as has the state of New York to say those shares are situated in New York because they happened to belong to a person, not one who is domiciled in the state of New York, but one who is domiciled for taxation purposes in a foreign jurisdiction from the state of New York. In other words, my submission will be that there is no such thing in the United

States as a domicile at large either for purposes of administration or for purposes of taxation but domicile for purposes of taxation is a state domicile, just as here it must be a provincial domicile. For that reason, my Lord, I think it would assist your Lordship to have expert testimony by a member of the Bar of New York State before your Lordship.

I would like to call Mr. Harding.

Mr. JENNINGS : My Lord, may I just take a preliminary objection in my case for interjecting evidence of this kind, for two reasons : Section 9 of the admitted statement of facts is that the transfer agents and  
10 registrars were properly approved and authorised to act in their respective capacities by Nipissing Gold Mines Limited and Dome Mines Limited ; and then in the two sub-paragraphs of section 6, this admission I think precludes the giving of any evidence :

“ At the date of death of the said James D. Aberdein the said  
“ shares were registered on the register of the said company in the  
“ City of New York, at the office of the Manufacturers Trust  
“ Company and on the register of the said company in Ontario at  
“ the office of the Toronto General Trusts Corporation, Toronto,  
“ and were interchangeably transferable either at the office of the  
20 “ Manufacturers Trust Company in the City of New York, in the  
“ State of New York, or at the office of the Toronto General Trusts  
“ Corporation, in the city of Toronto, Ontario and at no other  
“ place.”

Now, it is admitted for the purpose of this submission to your Lordship the shares with which we have to deal were transferable in the state of New York, and that admission precludes any evidence. There is an admission that these shares were transferable at New York at the date of death of the deceased and as the main issue in our case has to do with  
30 Dome Mines Limited, value \$65,000, and other shares of almost negligible value, I would submit to your Lordship that that being a Dominion company there is no power in the Legislature to restrict the right of the shareholders to transfer the shares. I submit that in the face of that admission it is not relevant evidence and it will rather confuse the issue.

Mr. BRISTOL : My Lord, I don't understand Mr. Magone wishing to introduce this evidence from this witness on the laws of the United States with regard to transfer of stock. Mr. Magone has explained the calling of this evidence and, as I understand it, it establishes no such thing as domicile at large in the United States. I suppose a man must be domiciled in one state or another, and similarly a corporation, too, I  
40 suppose. I don't see, my Lord, how that affects this case—what the United States law may be as to domicile, I don't think it can have the weight or relevancy before your Lordship.

Having made that objection—and if your Lordship wishes to hear it subject to objection you will do so—I can't see any point from which this witness can assist your Lordship, and it is very likely to confuse your Lordship, because if we begin to delve into the tax laws of the United States, how the States deal with intangibles, such as stock in foreign corporations held by residents or non-residents, we get into a great field which has nothing whatever to do with this case. These cases have to be deter-  
50 mined on principles of English and Canadian law, common law and statutory law of Ontario. I think it will simply confuse your Lordship, and I am

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objecting on these grounds : of irrelevance and inadmissibility because of irrelevancy.

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Mr. SMILY : My Lord, I take the same position with regard to the evidence as is proposed to be given on the question of domicile. My submission is that it is not relevant. Of course, your Lordship might want to reserve consideration of that matter until later, but I would point out that in the Williams' case to which my friend has just referred, it is stated that they must reject the notion that the domicile of the deceased has anything to do with the situs of the property or has any relevance.

HIS LORDSHIP : At the moment I am inclined to agree with you, 10 but as this may have some bearing I think I will reserve my decision on it and hear the evidence subject to the objections.

Mr. MAGONE : The fact that my friends do make such objections makes me think that it is more important than I thought in the first place.

Mr. Harding, will you take the stand, please.

(B) Evi-  
dence of  
Harry E.  
Harding,  
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tion.

(B) HARRY E. HARDING, Sworn.

Direct Examination by Mr. MAGONE :

Mr. MAGONE : I might observe, my Lord, I was going, as forcibly as I could, to draw your Lordship's attention to that very passage that has been drawn to your Lordship's attention that the solution should be 20 judged as it would were the domicile here and the share certificates situated in the province of British Columbia. If my friends still adhere to that position it will make the solution much easier, my Lord.

Q. Mr. Harding, your name is ?—A. Harry E. Harding.

Q. You are a practising lawyer in the State of New York ?—A. I am.

Q. And you practise in the city of Buffalo ?—A. I do.

Q. How long have you been practising law in New York State ?—  
A. Since April, 1907.

Q. And you are a graduate of ?—A. Cornell University.

Q. Is that in the law department ?—A. No, I got Bachelor of Arts 30 there and completed my law studies with my father. I had two years of law in Cornell.

Q. Do you hold any official position ?—A. United States Commissioner in the Western District of New York.

Q. And that is—A. Federal. Quasi judicial, more or less qualified Justice of Peace.

Q. I understand you take preliminary hearings ?—A. Yes.

Q. For Federal offences ?—A. Yes.

Q. You carry on general practice in the city of Buffalo ?—A. I do.

Q. In addition to your official duties ?—A. That's true.

Q. Getting down to the case at Bar, Mr. Harding, what can you say 40 with respect to domicile in the United States for the purposes of taxation—is there a Federal domicile ?—A. No, there is not.

Q. What is the domicile there—what must it be ? —A. Actual residence in the state in which domicile is claimed or shown.

Q. Then for the purposes of taxation is there such a thing as situs at large in the United States for an intangible asset ?—A. No, not that I know.



Mr. BRISTOL : What do you mean by that ?

Mr. MAGONE : My friend Mr. Bristol would like to know what you meant by your answer. Will you qualify it ?—A. I simply mean there is no domicile generally in the United States. Domicile is confined to the state in which the decedent or individual actually lives.

Q. With respect to intangible personal property, such as shares of stock, what is the rule of taxation as enunciated by the decision of the Supreme Court with respect to situs of that property—

Mr. SMILY : I think, my Lord, I should object to this particular  
10 evidence, but possibly my general objection is sufficient. It does seem to me the law of the United States with regard to taxation would have no bearing on the point in this case.

Mr. MAGONE : My Lord, I am not dealing with the law of taxation, I am dealing with the law of situs and intangible personalty. I asked the witness what the rule is in the United States with respect to the situs of intangible personalty.

Mr. BRISTOL : I would like to reiterate my objection. My friend is going to ask the witness to state the general rule as to the situs of  
20 intangible personalty. It is well known to everyone that intangible may have a different situs for one purpose and another for another purpose, and I imagine that in forty-nine capital states there are forty-nine variations of that rule. On top of that you have the federal rule which would depend on the interpretation of the constitution. I think we are getting into a field out of all reason to go on with this type of evidence.

My friend has given his evidence as to domicile of a person. There cannot be any more than one domicile, according to this witness. What your Lordship has to find is the situs of these particular shares for the purpose of succession duty of Ontario and according to the laws of Ontario, which is the common law of England in that particular connection.

Mr. JENNINGS : Just so I won't be left out, I associate myself with  
30 my friend's objection.

Mr. MAGONE : My Lord, in some of the cases the judges have indicated that they would like to know whether a specific intangible piece of property has been subjected to taxation in another jurisdiction, and in the Williams case, in the Court of Appeal I believe it was, Mr. Justice Henderson made some remarks of that kind and wanted to know whether the shares had been taxed in the state of domicile of the deceased.

Mr. BRISTOL : You can ask him that if you like.

Mr. MAGONE : So that I do submit in breaking new ground of this  
40 kind your Lordship should have as much information as I can give you and as the witness can give you.

HIS LORDSHIP : In what way ?

Mr. MAGONE : In connection with the manner in which these shares are looked at in the State of New York and in the State of Massachusetts and the basis of taxation there, and from that I hope to show your Lordship that the basis of taxation in the United States is quite different from the basis of taxation here, that—

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Mr. BRISTOL : I agree.

Mr. MAGONE : I don't want my friend to agree, I want the statement on the record in another way, and I say that the objections my friends are making now make me more adamant that the evidence should go in. I want to show to your Lordship that they proceed on the basis of mobilia sequenter personam. Personal property follows the person for the purpose of taxation, and that we are by reason of a decision of the Privy Council— My friend will perhaps pardon me for talking while he is interrupting, but there may be this which I will want to submit later that there can only be in the case of Lake Shore Mines two possible places where these 10 shares can have a situs, namely, the State of New York by reason of the office of transfer there or the Province of Ontario by reason of the office of transfer here, and for other reasons which I will elaborate if I can get rid of the State of New York, and then my case is closed. It may be that your Lordship will want to look at the laws of the State of New York to say that if by the laws of the State of New York the shares cannot have a situs there, that there is only one place where they can have a situs, namely, the Province of Ontario. Now, I don't suggest at the present moment that your Lordship has to go that far. In other words, if we tossed the ball to the New York State, as it were, and say these shares may have 20 situs in New York State and if New York State say by its laws "No, it can't have a situs here—

HIS LORDSHIP : How would that affect us ?

Mr. MAGONE : I am not suggesting it will. My submission will be that I do not have to go that far. My submission is going to be by reason of other considerations, that if your Lordship will hold that these shares are situate in Ontario—but as I say, this is new ground we are breaking and it may be important that this evidence should be before your Lordship.

HIS LORDSHIP : I take it that it will not be very long, anyway.

Mr. MAGONE : It would have been over with before now, my Lord. 30 Maybe my friends will not mind my leading since they are ready to make admission as to the basis of taxation in the United States with respect to intangible personalty on the mobilia sequenter personam rule.

WITNESS : It was up until the Aldrich case, and it is rather difficult to know where to stand at the present time. In the Frick case—

Q. What is the name of the case ?—A. *Tax Commissioner of Utah* against *Aldrich*.

Q. That is reported where ?—A. 316 U.S. 174.

Q. That is the United States Supreme Court Reports ?—A. Yes.

Q. In what year ?—A. 1942.

Q. That case overruled a previous decision of the Supreme Court of 40 the United States, did it not ?—A. Yes, *the First National Bank of Boston* against *the State of Maine*, 289 U.S. 312. Also *the Farmers Loan and Trust Company vs. the State of Minnesota*, 280 U.S. 204.

Q. Dealing with the Maine case that you have referred to— ?—  
A. Yes ?

Q. That was a decision of the Supreme Court of the United States in which they held, what ?—A. They held that shares of corporate stock, like certain other intangible properties, namely, bonds, notes—

*Q.* Let us confine ourselves to stock?—*A.* Well, the stocks can be subject to inheritance tax by one state only.

*Q.* And that State was in this case?—*A.* The State of Massachusetts which was the domicile.

HIS LORDSHIP: Which case is that you are referring to?—*A.* *First National Bank of Boston against Maine.*

Mr. MAGONE: That shares of stock can be subject to taxation in one jurisdiction only?—*A.* Only.

*Q.* And that was the State of——?—*A.* Massachusetts, which was the domicile of Haskell, the deceased.

*Q.* Did that depend upon the presence of the certificate of stock in that State?—*A.* No.

*Q.* So that they applied strictly the rule of *mobilia sequunter personam*?—*A.* Yes.

*Q.* The Aldrich followed that some eleven years afterwards?—*A.* Yes.

*Q.* What was held in that case?—*A.* They held that the deceased who was domiciled in the State of New York and who owned shares in the Union Pacific Railway Company, a Utah corporation, which were represented by certificates which were then in the State of New York, they held that the States Commission for the State of Utah could tax as well as the State of New York could tax. In other words, there was no constitutional immunity from taxation of intangibles by more than one State.

*Q.* What did they say in that case about the *mobilia* rule?—*A.* They didn't apply that.

*Q.* They didn't apply it in so far as Utah was concerned?—*A.* No.

*Q.* Now, you have heard, Mr. Harding, that in this case certain companies have a transfer office in the State of New York only and under the laws of the State of New York have the shares in that company, owned by a person who is not domiciled in the State of New York, a *situs* in New York under your laws?—*A.* No.

*Q.* That is all, I think.

*Cross-examination by Mr. BRISTOL.*

Mr. BRISTOL: Without waiving any objections, your Lordship, I would like to ask the witness one or two questions.

*Q.* Mr. Harding, when you said "Until the Aldrich case," that is, *the State Commission of Utah vs. Aldrich*, which you referred to, in the United States Supreme Court, the basis of taxation in the United States, you said, was predicated on the rule of *mobilia sequunter personam*?—*A.* Yes.

*Q.* You mean, to apply that as a general rule throughout the whole United States?—*A.* No.

*Q.* How do you limit it?—*A.* I can limit it with relation to the State of New York, and that is the only one I have in mind at the present moment.

*Q.* How did the Aldrich case affect the application of that rule in the State of New York?—*A.* Section 3 of Article 16 of the New York Constitution seems to settle pretty well the question of *situs*.

*Q.* Yes, the New York State Constitution was prior to the Aldrich case?—*A.* Yes.

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20th March 1944.  
(B) Evidence of Harry E. Harding, Examination,  
*continued.*

Cross-examination.

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dence of  
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tion,  
*continued.*

Q. And has still not been altered?—A. Never.

Q. The Aldrich case did not affect the law in New York State?—  
A. Not a bit.

Q. Tell us what the Constitution says?—A. I think I had better  
read that if your Lordship will permit.

Q. What section?—A. Section 3 of Article 16 :

“ Monies, credits, securities and other intangible personalty  
within the state——”

Q. Within the state?—A. Within the state.

“ ——when employed in carrying on any business therein by the 10

owner shall be deemed to be located at the domicile of the owner

for the purpose of taxation and if held in trust shall not be deemed

to be located in this state for the purpose of taxation because of

the trustee being domiciled in this state ; provided that if no

other State had jurisdiction to subject such property held in

trust to death taxation it may be deemed property having taxable

situs within the State for the purpose of death taxation. Intang-

ible personal property shall not be taxed ad valorem nor shall

any excess tax be levied solely because of ownership or possession

thereof except that the income therefrom may be taken into 20

consideration in computing any excess tax measured by income.

“ Generally undistributed profits shall not be taxed.”

Q. Is it true to say that that section of the Constitution which you  
were reading from lays down certain statutory rules for determining situs  
or location for the purpose of taxation within the State?—A. Yes, within  
the State.

Q. For the purpose of State taxation?—A. Yes.

Q. And that is purely statutory?—A. Yes.

Q. For the purpose of taxation within that State, in other words,  
with the two exceptions you have mentioned in your reading of that 30  
paragraph. I believe they are, first, where intangible things employed  
legally for business purposes within the State, second, where they are not  
taxed——?—A. By another State.

Q. By another State, then they are deemed to be located at the  
domicile of the owner?—A. That's right.

Q. In other words, the Constitution of the State of New York, with  
those two exceptions, has adopted the principle of mobilia sequunter  
personam?—A. Yes.

Q. You were not speaking then of anything else but the State of New  
York when you gave your evidence before?—A. As to what? 40

Q. As to the basis of taxation in the United States being generally  
predicated on the mobilia rule?—A. No, I don't think so.

Q. You can't speak for all the forty-nine States?—A. No ; I would  
not attempt to.

Q. Then you told my friend, as I understood it, that under the laws  
of the State of New York the shares in a foreign company held by a non-  
resident and where the foreign company had a transfer office in New York,  
those shares would not have a situs in the State of New York?—A. They  
would not.

Q. You are predicating that on the Article you have read?—A. That 50  
and the opinion of the New York State Tax Commission.

Q. But it is based on that constitutional provision?—A. That's right.

*Q.* Then, in other words, what you meant in answering my friend that they don't have a situs in New York, was that for tax purposes in the State of New York under the Article of the Constitution and the ruling of the State Tax Commissioners they were not considered as having a situs in the State of New York?—*A.* That's right.

*Q.* Would it make any difference, Mr. Harding, to your answer on that point if the certificates had been in the State of New York at the date of death?—*A.* I don't think so.

*Q.* Or if the certificates had been in the form of street certificates?

10 Mr. MAGONE: What do you mean by that?

Mr. BRISTOL: I mean by street certificates, certificates that are endorsed in blank by the registered owner and by delivery by hand in the ordinary course of events?—*A.* I don't know that I am prepared to answer that. That is somewhat of a question in my mind.

*Cross-examination by Mr. JENNINGS.*

Mr. JENNINGS: With the same reservation may I ask a question or two, my Lord?

*Q.* Perhaps you could help me in this, Mr. Harding: Two of the share certificates with which we are concerned in my case, issued from the transfer office of Nipissing Mines in New York City, and in the body they read as the holders James D. Aberdein and Mrs. Alice Aberdein, joint tenants, with right of survivorship and not as tenants in common. Now, on the death of one of these joint tenants what would be necessary to issue a new certificate to the survivor—what would be the steps taken?—*A.* Application, I assume, to the registrar if he had his office in New York, showing the survivorship, and the new certificate would be issued by the registrar.

*Q.* Am I right in saying the survivor, bringing in the certificates so issued and proving to the Trust Company in New York, the transfer agent, that Aberdein had died, would then be entitled to a new certificate in her name?—*A.* That's right.

*Cross-examination by Mr. BRISTOL.*

Mr. BRISTOL: One question I did not ask the witness. Perhaps he is not in a position to answer it.

*Q.* Do you know the provisions of the United States Internal Revenue Code and Regulations made therein with respect to taxation and federal death duties on intangible property?—*A.* No, I would not attempt to answer it. It is some time since I have had anything to do with that.

*Q.* All right.

40 Mr. SMILY: I have no questions, my Lord.

*Re-examination by Mr. MAGONE.*

*Q.* Mr. Harding, you may have remembered my question that in dealing with the question of mobilia and its application, I asked you to give your evidence in relation to the decisions of the Supreme Court of the United States?—*A.* Yes.

*Q.* And then you answered a question by Mr. Bristol by saying you were confining your evidence on the mobilia rule to the State of New York. I wondered if you had remembered the question I asked and—

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tion,  
*continued.*

Pardon me, my Lord, for just a moment—I wondered if remembering my question, you have anything to add to that?—*A.* Well, you mean the States in which that has been applied?

*Q.* No. My question was: Having regard to the interpretation of the power of taxation by the United States Supreme Court in those cases?—

*A.* I still don't think I understand your question.

*Q.* Whether you confine your answer to the Constitution of the State of New York or whether you can go beyond that in view of the cases you have cited in the application of the mobilia rule?—*A.* I know that. I don't know whether this answers you or not: I know in the case 10 of Frick against the State of Pennsylvania, which is reported 268, U.S., 473, the deceased, who was a resident of Pennsylvania, had a large portion of his estate in the State of New York and the Supreme Court said in that decision—it has been settled by the Supreme Court that real property as between States may be taxed only by the jurisdiction where it is located. It has also been definitely settled that the right of succession to the ownership of tangible personal property arising through death can be taxed only at its permanent situs. That has all been upset by the Aldrich case.

*Q.* Were they talking then of tangibles or intangibles?—*A.* Tangibles. 20

*Q.* Are you familiar with the case of *Blodgett vs. Silverman*, in the United States Supreme Court?—*A.* Yes, I am, 48 Supreme Court, 410 or 271, U.S., 1.

Mr. BRISTOL: That was before the Aldrich case. I hope your Lordship might permit me to ask a question or two later if my friend is opening up a new field which is not properly re-examination.

Mr. JENNINGS: This is not re-examination at all. This surely should have been brought out in chief.

Mr. MAGONE: My Lord, the questions I have asked specifically arose out of the cross-examination. This witness, if he is going to add to 30 the evidence which he has given and which my friend has brought out, should be permitted to give it.

HIS LORDSHIP: What case are you referring to?

Mr. MAGONE: I asked the witness as to the *Blodgett* and *Silverman* case, my Lord.

*Q.* Let me ask you this, Mr. Harding, is the mobilia rule referred to in that case as a rule of general application or otherwise?—*A.* Well, I can only say that by reading a portion of that opinion.

*Q.* Of course, that is where we get most——*A.* The Court held in this case that intangible personalty as such, situs at the domicile of the 40 owner, that it is personal on his death and may be taxed there.

*Q.* What I asked you was this: From reading the reports and from your knowledge of the law whether the Supreme Court of the United States dealt with the mobilia rule as a rule of general application in taxing matters?—*A.* I think they did.

*Q.* All right, thank you.

Now, if there is anything new I have opened up——

Mr. BRISTOL: I think my friend has opened up something new. I got the witness to say something entirely different and I would like the permission to ask a question.

Q. As I understand it, Blodgett and Silverman held that intangible property, and you so said, Mr. Harding, is subject to tax in the domicile of the deceased?—A. That's right.

Q. You don't suggest to this Court it attempted to lay down a general rule for the whole forty-nine States, regardless of their constitutional provisions or their own interpretation of the common law—

Mr. MAGONE: I admit that.

Mr. BRISTOL: That in all cases the mobilia rule applied to intangibles?—A. Certainly not.

10 Q. Then I don't know what you mean by saying to my friend your impression of the Blodgett case is that the Supreme Court of the United States endeavoured to lay down a general rule; what did you mean by that?—A. I don't think I made such a statement. I didn't intend to say that.

Q. Actually was not the Blodgett case the first time they laid down the rule, subsequently reversed by the Aldrich case, they laid down constitutional limitations under that case?—A. Yes.

Q. In other words, under the provisions of the United States Constitution they said no more than the State of the deceased's domicile could  
20 tax these intangibles?—A. Yes.

Q. Yes, that is the general rule laid down in the Blodgett case and the Aldrich case reversed that. All right.

Mr. MAGONE: All right, Mr. Harding.

(Witness retired.)

Mr. MAGONE: My Lord, with that evidence I would like now to refer your Lordship to certain sections of the Dominion Companies Act.

HIS LORDSHIP: I think we will have a recess now. Do you want the argument taken down?

Mr. MAGONE: If it will assist your Lordship.

30 HIS LORDSHIP: I take my own notes. It is a question whether you want this argument or not.

Mr. MAGONE: I do not want it. My Lord, counsel have determined that they do not require a transcript of the argument.

(A recess of court.)

Mr. BRISTOL: My Lord, in *King vs. Globe Indemnity*, the only evidence I want to put in in addition to the two statements of facts are two which my friend has agreed to go in without proof, one is a specimen share certificate of the Lake Shore Mines, a certificate that is endorsed on the back, and the other is a specimen of stock transfer record. It is  
40 just one sheet of paper. On one side is printed "Specimen of stock transfer record at Toronto." On the other side is "Specimen of stock transfer record at Buffalo," and I think, perhaps, if it pleases your Lordship they will be exhibits.

I think my friend and I can also agree in the case of *King and Globe Indemnity* the facts are identical with the facts in the *Williams'* case except that the certificates were not endorsed by the deceased prior to his death

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and that the deceased lived and the certificates were located at his death in the State of Michigan, in a State different to where the transfer office was.

Mr. MAGONE : That is right.

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Mr. SMILY : My Lord, before my friend commences his argument—I don't know whether he intends to argue now all three cases or whether he intends to argue one case first and deal with the other cases separately, but what I have in mind is, if he is desirous of arguing all the cases at this time he might want to have the additional evidence, which I would like to put in in the Maxwell case, such as by-laws and a specimen of certificate of stock. I don't want to confuse the record or the presentation of the case. 10

HIS LORDSHIP : If you are going to produce any evidence I think it should go in before any argument is put in.

Mr. SMILY : Then, my Lord, my friend has seen this and is satisfied with them. They are copies of the by-laws or extracts of the by-laws and resolutions of the directors of the International Nickel Company and also specimen forms of a common share stock certificate of International Nickel which is similar to the form of certificate in question in our proceeding. We haven't the original certificate because the stock was sold and transferred.

Then, my Lord, we might state to the Court as a fact the inheritance 20 tax on the shares in question was paid to the United States—I don't know if it is of any relevance but it might be in argument—and to the State of Connecticut, the State tax.

HIS LORDSHIP : Are you filing the by-laws ?

Mr. SMILY : And specimen certificates, my Lord. Those are all the exhibits, my Lord.

HIS LORDSHIP : What else besides by-laws and specimen certificates ?

Mr. SMILY : That is all, my Lord.

Then, my Lord, I would like to state, if my learned friend will admit, 30 that the executive offices of the International Nickel Company and of some of the officers are situated in New York City and some of the officers and the secretary of the company reside in New York City and that the company holds its directors' meetings in New York City. That was all brought out in the McFarland case, 1933 O.R. It will save calling evidence if my friend will admit that.

Mr. MAGONE : My Lord, I don't know whether the situation is as it was then. I don't know what they mean by "executive offices." I can admit that they have an office in New York. Their head office is in Ontario. What they mean by "executive offices" I do not know. 40

Mr. SMILY : I don't know whether you want to burden the Record with going into details. In the McFarland case, in the judgment, it says that the chief executive offices of the company are in New York. It is there the directors meet and from there all dividends, etcetera have been paid. That is reported in 1933 O.R. p. 44, my Lord. I would be glad to call witnesses to give my friend any details by way of explanation of that that he would like to have.



HIS LORDSHIP : Unless it is admitted I don't for the moment see the need in this case, so you had better have on the record what you want.

Mr. MAGONE : I want to admit anything that is relevant and that I can properly admit but I don't know that these things are so. It may be between now and to-morrow I can admit it. My friend Mr. Richard tells me he may get the information to permit us to admit that.

Mr. SMILY : In view of my friend arguing the case he might want to have that fact in mind because that is what I want to bring out as part of the facts of my case. If your Lordship will follow Mr. Magone's  
10 suggestion by waiting until to-morrow morning I will bring evidence.

Mr. MAGONE : If my friend states this is the fact, I have no doubt we can substantiate it and admit it to-morrow morning, my Lord.

HIS LORDSHIP : Very well.

Mr. BRISTOL : Just before my friend proceeds, my Lord, my friend is also admitting in my case, *The King vs. Globe Indemnity*, that the inheritance or death taxes were paid by the estate of Thomas Kerr in the State of Michigan and to the United States Federal Government, but not to the State of New York. I suggest that my friend might confine himself in his argument to the one question of situs in which we are all interested  
20 and confine the question to which Mr. Jennings and himself alone are interested in.

*Argument by Mr. MAGONE.*

*At 5.05 p.m. the court adjourned until 10.30 a.m. the following day.*

*Tuesday, 21st of March, 1944, the court resumed at 10.30 a.m.*

(c) HAROLD CHARLES FEATHERSTON MOCKRIDGE, *sworn.*

*Direct Examination by Mr. SMILY.*

Q. Mr. Mockridge, you are an officer of the International Nickel Company of Canada, Limited?—A. Yes, I am a director and assistant secretary.

30 Q. I believe you are also counsel for the company?—A. Yes.

Q. Will you tell us, Mr. Mockridge, where the executive offices of the company are located?—A. This is perhaps somewhat a fine distinction, Mr. Smily : The president, the secretary—No, I'm sorry. The president, executives, vice-president, secretary and the treasurer have their offices in New York, at 67 Wall Street.

Q. 67 Wall Street, is that the office of the company in any sense?—A. It is the office of the International Nickel Company, Incorporated, a wholly owned subsidiary of the Nickel Company of Canada, Limited.

40 Q. Are any operations of the International Nickel Company of Canada, Limited carried on from that office?—A. Directors' meetings of International Nickel Company of Canada, Limited are ordinarily held in that office.

Q. What about the dividends, how are they paid?

A. Dividends are paid by the dispersing agents of the company, the Bankers Trust Company in New York, which company is also the

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New York transfer agent, is dividends dispersing agent for the common stock of the company other than the dividends in respect of which were issued from the London transfer office.

*Q.* London, England?—*A.* Yes. The Bankers Trust Company pays dividends on the common stock by cheques drawn on the Bank of Montreal.

*Q.* The common stock ledgers, where are they kept?—*A.* The common stock ledgers are kept by the Bankers Trust Company, the New York transfer agents.

*Q.* One other question: the plant policy of the business of the company, what would you say about that—as to that being directed from 10 New York or otherwise?—*A.* Well, I think in view of the fact directors' meetings are held in New York and the senior executive officers of the company, who carry on in the interval between directors' meetings, are in New York, it may be said that the general policy of the company is guided and controlled from New York.

*Q.* That is all, thank you. Mr. Magone may wish to ask you some questions.

*Cross-examination by Mr. MAGONE.*

Cross-  
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tion.

*Q.* Mr. Mockridge, the International Nickel Company of Canada, Limited, has an office in New York?—*A.* The company itself has no 20 office. The Canadian company itself has no office in New York, but, as I say, a number of its senior executive officers have.

*Q.* And where is the main business of International Nickel Company, Limited, located—its main undertaking?—*A.* That is a little difficult question to answer. The mines, smelters and refineries are all situated in Ontario, at Copper Cliff and Port Colborne. Of course, that is only part of the company's business. The selling of its products is equally an important part.

*Q.* Is that carried on by the company itself or by subsidiaries?—  
*A.* By both. 30

*Q.* Are there a number of wholly owned subsidiaries?—*A.* There are a number—there are two principal subsidiaries, one The International Nickel Incorporated and The Mond Nickel Company, Limited, which is in England.

*Q.* I think you said that the directors' meetings are ordinarily held in New York?—*A.* Yes.

*Q.* Then with respect to dividends, are some of the dividends paid from Ontario?—*A.* The Toronto General Trusts Corporation is the dividend dispersing agent for the company's preferred stock, other than 40 those situated in England.

*Q.* The cheques that are drawn for the dividends on the common stock are on the Bank of Montreal?—*A.* Yes, they are drawn by Bankers Trust on the Bank of Montreal.

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*Re-examination by Mr. SMILY.*

*Q.* Mr. Mockridge, I think I should ask you this in reply: The officers you have mentioned as having their offices in New York City, did they transact business of the International Nickel Company of Canada, Limited, in these offices in New York City?—*A.* Yes.

*Witness retired.*

*An intermission of court.*

*Wednesday, 22nd of March, 1944, at 10.00 a.m. court resumed.  
 Argument continued.  
 At 1.17 p.m. the court adjourned.  
 At 2.45 p.m. the court resumed.  
 At 4.10 p.m. argument of counsel concluded.*

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HIS LORDSHIP: I do not think in a matter of this importance I should deliver my judgment now. However, I will not delay and I will endeavour to get it out as soon as possible.

Whereupon the court adjourned.

10

Certified.

H. W. TUCK,

Official Reporter, S.C.O.,  
 314 Manning Chambers,  
 City Hall Square,  
 Toronto, Ontario.

No. 11.

**REASONS FOR JUDGMENT of KELLY, J., dated 15th May 1944.**

No. 11.  
 Reasons for  
 judgment of  
 Kelly J.,  
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20 KELLY, J. : This is an action pursuant to Section 31 of The Succession Duty Act of Ontario, 1939, by way of an appeal by Alice R. L. Aberdein and Harold E. Stevens, executors of the estate of James D. Aberdein, deceased, from the decision of the Treasurer of Ontario confirming the amount of succession duty payable by the estate to the said deceased.

30 The parties agreed upon a statement of facts which is filed as part of the Record. It appears that James D. Aberdein was born in the State of Indiana, and until his death resided in the United States of America, and that he died on the 11th day of December, 1940, domiciled in the Commonwealth of Massachusetts. Probate of the last will and testament of the said James D. Aberdein was granted to his widow Alice R. L. Aberdein, of Brookline, and Harold E. Stevens, of Boston, in the Commonwealth of Massachusetts, as executors of the said estate. By his last will and testament the late James D. Aberdein named his widow, Alice R. L. Aberdein, as his sole beneficiary.

At the date of death of the said deceased his assets included :—

40 (A) Two hundred shares of the capital stock of Nipissing Mines Limited, a company incorporated under the Companies Act of Ontario, with its head office in the Province of Ontario. The said shares were represented by two certificates in the name of James D. Aberdein and Mrs. Alice R. L. Aberdein (joint tenants, with the right of survivorship, and not as tenants in common). The said certificates were issued in the City of Boston by the Old Colony Trust Company, transfer agents, and State Street Trust Company, registrar of shares, both duly appointed for their respective purposes by Nipissing Mines Limited. At the date of death of the said deceased, the shares were registered on the register of the said company in the City of New York at the offices of the Manufacturers Trust Company and in the register of the said company in Ontario

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at the offices of the Toronto General Trusts Corporation at Toronto. The said shares were interchangeably transferable either at the office of the Manufacturers Trust Company in New York, or at the office of the Toronto General Trusts Corporation in Toronto, and at no other place.

(B) Four thousand shares of the capital stock of Dome Mines Limited, a company incorporated under the Companies Act, of the Dominion of Canada, with its head office in the Province of Ontario. Certificates representing the said stock were issued in the name of James D. Aberdein at the City of New York by Empire Trust Company, transfer agents, and Bankers Trust Company, registrar of shares, both duly appointed for their respective purposes by Dome Mines Limited. At the date of death of James D. Aberdein, the said shares were registered in the registry of the said company in the City of New York at the offices of the Bankers Trust Company, and on the register of the said company in Ontario at the offices of the Toronto General Trusts Corporation at Toronto, and were interchangeably transferable either at the offices of the Empire Trust Company in New York, or at the offices of the Trusts and Guarantee Company in the City of Toronto, and at no other place. 10 20

It is admitted that shares of Nipissing Mines Limited and of Dome Mines Limited are listed upon and are actively traded in upon the stock exchanges established and carried on in the City of Toronto and in the State of New York.

At the date of death of the testator none of the share certificates had been endorsed in blank or otherwise by the testator, and all the said certificates were located in a safety deposit box in the National Rockland Bank in the City of Boston.

It is further admitted that Alice R. L. Aberdein had at no time been resident in the Province of Ontario, and that she had not contributed to the purchase of the said shares in Nipissing Mines Limited. 30

In this case several questions were argued before me,

(A) Are the shares of stock belonging to the estate of John D. Aberdein property within Ontario and subject to succession duty under The Succession Duty Act of Ontario 1939 as amended in 1940 by Statutes of Ontario, c. 29 ?

(B) Should the full amount of the expenses in connection with the funeral of the deceased, the expenses of the administration of the estate, including Federal Estate Taxes, the remuneration of Harold E. Stevens as co-executor, and the legal services of the attorneys for the executors, be deducted from the gross value of the estate of the deceased before computing the amount of succession duty payable in Ontario ? 40

(C) In arriving at the gross value of the assets of the estate, is the Treasurer of Ontario right in adding 10 per cent. to the aggregate value of the estate as computed in the currency of the United States of America ?

For convenience, counsel in the case at bar and counsel in the cases of *His Majesty The King, as represented by the Treasurer of Ontario v. The Globe Indemnity Company of Canada*, and *The Executors of the Estate of Francis T. Maxwell v. His Majesty The King, as represented by the Attorney-* 50

*General for Ontario*, agreed that all three cases be tried together. I will deal firstly with the main question for determination before me :

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10 Q. Are the shares of stock in Nipissing Mines Limited and Dome Mines Limited property within Ontario and subject to succession duty under section 5 (a) of The Succession Duty Act of Ontario 1939 ? As the pertinent facts for the determination of this question are similar in all three cases, I find, for the reasons given in my judgment in the case of *His Majesty The King, as represented by the Treasurer of Ontario v. The Globe Indemnity Company of Canada, Limited*, delivered to-day that the said shares are not property within Ontario and are not subject to succession duty in Ontario.

Having arrived at the above conclusion on the main question for determination before me, it is not now necessary for me to consider the other issues argued before me in this case.

20 The appellant is therefore entitled to a judgment declaring that the shares of stock in Nipissing Mines Limited and Dome Mines Limited belonging to the estate of John D. Aberdein are not subject to succession duty in Ontario, and to a further declaration that they are entitled to a refund of the amount of succession duties paid in respect of such shares, from the Treasurer of Ontario, together with interest thereon at 5 per cent., and to their costs.

27th May, 1944.

30 Since delivering my judgment in this matter on the 13th day of May, 1944 it has been brought to my attention that apart from the shares of stock in Nipissing Mines Limited, and in Dome Mines Limited, there are admittedly, assets of this estate situate in the Province of Ontario which are subject to the payment of succession duty in Ontario. It is, therefore, incumbent upon me to deal with the other two questions raised in the argument.

40 The next question for determination by me is, should the full amount of the expenses in connection with the funeral of the deceased, the expenses of administration of the estate, including Federal estate taxes, the remuneration of Harold E. Stevens as co-executor, and the legal services of the attorneys for the executors, be deducted from the gross value of the estate of the deceased before computing the amount of succession duty payable in Ontario ? I am of the opinion that the total expenses of the estate which are properly deductible according to the law of the State in which the deceased was domiciled at the time of his death, should govern ; that is, that the question is governed by the *lex domicilii*, and that these expenses should be deducted from the total value of the estate before computing the succession duty payable to the Province of Ontario.

50 The next question for determination is, should the Treasurer of Ontario, in arriving at the gross value of the assets of the estate, add 10 per cent. to the aggregate value of that part of the estate located in the United States of America ? I am of the opinion that as the succession duties in Ontario are payable in the currency of the Dominion of Canada, the value of the assets subject to the payment of the succession duties should also be determined according to the currency of the Dominion of Canada, and as the American dollar is at a premium of 10 per cent. in value to the Canadian dollar, that the Treasurer of Ontario is entitled to add 10 per cent. to the value of the assets in the United States which have already been computed in terms of the American dollar.

## FORMAL JUDGMENT, dated 27th May 1944

*In the  
Supreme  
Court of  
Ontario.*

No. 12.  
Formal  
Judgment,  
27th May  
1944.

IN THE SUPREME COURT OF ONTARIO.

The Honourable Mr. Justice KELLY.

Saturday the 27th day of May, 1944.

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 ; 10

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 Estate of the above-named deceased.

THIS ACTION having come on for trial at the sittings of this Court holden at the City of Toronto for the Trial of Actions without a jury pursuant to the provisions of Section 31 of the said The Succession Duty Act, 1939 and The amending Act 1940 on the 20th, 21st and 22nd days of 20 March, 1944, in the presence of counsel for the Treasurer of Ontario and for the executors and the beneficiary of the Estate of the said James D. Aberdein, deceased ; UPON HEARING READ the assessment of succession duty, the notice of appeal from the assessment of succession duty, the notice of the decision of the Treasurer of Ontario, the notice of dissatisfaction on behalf of the Estate and the beneficiary, the reply of the Treasurer of Ontario and the statement of facts agreed upon by counsel for the parties hereto ; AND UPON HEARING what was alleged by counsel for the said parties ; and this action having stood over for judgment and coming on this day for judgment : 30

1. THIS COURT DOTH DECLARE that the shares of the capital stock of Nipissing Mines Limited, and the shares of the capital stock of Dome Mines Limited specifically referred to in the Statement of Facts agreed upon by Counsel for the Parties hereto were not situate within the Province of Ontario at the date of the death of the decedent, James D. Aberdein, and were and are not liable to assessment and taxation under the provisions of The Succession Duty Act (Ontario) 1939 and the amending Act of 1940 ; and doth adjudge the same accordingly ;

2. AND THIS COURT DOTH FURTHER DECLARE that the debts of the estate including funeral expenses of the deceased, the 40 administration expenses including the Federal Estate Tax, the remuneration of the co-executor, and the legal services of the attorneys of the estate be deducted from the gross value of the estate of the said deceased

for the purpose of ascertaining the aggregate value and the dutiable value of the said estate under The Succession Duty Act and before the Treasurer of Ontario fixes the rate and makes the assessment for the succession duty on the assets within Ontario ; and doth adjudge the same accordingly ;

*In the  
Supreme  
Court of  
Ontario.*

No. 12.  
Formal  
Judgment,  
27th May  
1944,  
*continued.*

3. AND THIS COURT DOTH FURTHER DECLARE that in arriving at the aggregate value and the dutiable value of the said estate under The Succession Duty Act and before arriving at the value of the assets admittedly in Ontario the Treasurer of Ontario is entitled to add ten per centum to the aggregate value of the estate and to the value of the  
10 assets admittedly within Ontario the same having been appraised in the currency of the United States of America ; and doth adjudge the same accordingly ;

4. AND THIS COURT DOTH FURTHER DECLARE that the Treasurer of Ontario should repay to the executors of the estate of James D. Aberdein, deceased, the sum of Thirteen Thousand Four Hundred and Forty-six Dollars and seventy-eight cents (\$13,446.78) less the duty payable upon the assets admittedly within Ontario calculated upon the principle set forth in the paragraph hereof numbered two ; and should  
20 repay to the executors of the said estate in addition five per centum per annum on the sum so found due calculated from the 21st day of January, 1943, to the date hereof ; and doth adjudge the same accordingly ;

5. AND THIS COURT DOTH ADJUDGE that the executors of the estate of the said James D. Aberdein and Mrs. Alice R. L. Aberdein, sole beneficiary under the Will of the said James D. Aberdein, do recover from the Treasurer of Ontario their costs of and incidental to the proceedings by way of appeal from the assessment of succession duty and of this action forthwith after taxation thereof.

Judgment signed this 13th day of June A.D., 1944,

“ CHAS. W. SMYTH,”

Registrar S.C.O.

30

No. 13.

**NOTICE OF APPEAL.**

No. 13.  
Notice of  
Appeal.

TAKE NOTICE that the Treasurer of Ontario appeals to the Court of Appeal from the Judgment pronounced by the Honourable Mr. Justice Kelly on the 27th day of May, 1944 and asks that the Judgment be reversed and that judgment be entered for the Treasurer of Ontario with costs, upon the following grounds :

1. That the learned trial judge erred in holding that the shares of the capital stock of Nipissing Mines Limited and Dome Mines Limited  
40 standing in the name of James D. Aberdein at the date of his death on or about the 11th day of December, 1940 were not property situate in Ontario at the date of death of the said James D. Aberdein for the purpose

*In the  
Supreme  
Court of  
Ontario.*

No. 13.  
Notice of  
Appeal,  
*continued.*

of the Succession Duty Act and in holding that such shares were not subject to duty in Ontario.

2. That because the certificates representing the said shares were, at the date of death of the said James D. Aberdein, situate in the Commonwealth of Massachusetts, where they could not be effectively dealt with, and were not endorsed in blank by the deceased, the said shares were not situate in the Commonwealth of Massachusetts.

3. That the shares in question could be effectively dealt with in the Province of Ontario and in the State of New York and one or the other of the two places where such shares may be effectively dealt with must be 10 selected.

4. That the shares in question are not property situate in the State of New York.

5. That the said shares are property situate in Ontario.

6. That if the learned trial judge is right in holding that the said shares are not property within Ontario and are not subject to succession duty, nevertheless the learned trial judge was wrong in holding that interest at the rate of 5% is payable on the amount of duty returnable in respect of such shares, from the date of payment to the Treasurer of Ontario. 20

7. That the learned trial judge was wrong in holding that the expenses of the estate which are deductible according to the law of the State of the United States in which the deceased was domiciled at the time of his death, are to be deducted from the total value of the estate for the purpose of ascertaining aggregate value and dutiable value under The Succession Duty Act.

8. And upon such other grounds as counsel may advise.

C. R. MAGONE,

Parliament Buildings,  
Toronto 2, Ontario,

Solicitor for the TREASURER OF ONTARIO. 30

To : MESSRS. JENNINGS & CLUTE,  
Room 1104  
80 Richmond St., W.,  
Toronto, Ontario,  
Solicitors for the Estate of  
JAMES D. ABERDEIN.

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## STATEMENT OF FACT AND LAW on behalf of Appellant.

*In the  
Court of  
Appeal.*No. 14.  
Statement  
of Fact and  
Law on  
behalf of  
Appellant.

1. This is an appeal from the Judgment of The Honourable Mr. Justice Kelly dated the 27th day of May, 1944, in a proceeding under Section 31 of The Succession Duty Act, 1939 (2nd Session), Chapter 1, by way of appeal from an assessment for duty made under the said Act by the Treasurer of Ontario in which the learned trial Judge declared that the Treasurer of Ontario should repay to the executors of the Estate of James D. Aberdein, deceased, the sum of \$13,446.78 less the duty payable  
 10 upon the assets admittedly within Ontario with interest at 5 per cent. per annum on the amount so found due from the 21st of January, 1943, and further declared that the debts of the Estate, including funeral expenses of the deceased, the administration expenses including the Federal Estate Tax, the remuneration of the co-executor and the legal services of the attorneys of the Estate be deducted from the gross value of the Estate of the said deceased for the purpose of ascertaining the aggregate value and the dutiable value of the Estate under The Succession Duty Act and further declared that in arriving at the aggregate value  
 20 and the dutiable value of the said Estate under The Succession Duty Act and before arriving at the value of the assets admittedly in Ontario the Treasurer of Ontario is entitled to add 10 per cent. to the aggregate value of the Estate and to the value of the assets admittedly in Ontario the same having been appraised in the currency of the United States of America.

2. The facts are set out in the Statement of Facts agreed upon by Counsel (Record, pages 14 to 16) and are as follows :

3. James D. Aberdein resident and domiciled in the Commonwealth of Massachusetts one of the United States of America died on the 11th day of December, 1940, and at the date of his death there were standing :

30 (A) in the names of James D. Aberdein and Mrs. Alice R. L. Aberdein joint tenants with right of survivorship and not as tenants in common 200 shares of the capital stock of Nipissing Mines Limited, a Company incorporated under The Companies Act of Ontario with Head Office in the Province of Ontario represented by two certificates. At the date of death of the said James D. Aberdein the said shares were interchangeably transferable in the City of Toronto in the Province of Ontario and in the City of New York in the State of New York and at no other place ;

40 (B) in the name of James D. Aberdein 4,000 shares of the capital stock of Dome Mines Limited, a company incorporated under the Companies Act of the Dominion of Canada with Head Office in the Province of Ontario represented by 40 share certificates for 100 shares each. At the date of death of the said James D. Aberdein the said shares were interchangeably transferable in the City of Toronto in the Province of Ontario and in the City of New York in the State of New York and at no other place.

4. At the date of death of the said James D. Aberdein the certificates representing the said shares were located in the City of Boston in the Commonwealth of Massachusetts and were not endorsed for transfer in  
 50 blank by the Testator.

*In the  
Court of  
Appeal.*

5. Mrs. Alice R. L. Aberdein the sole beneficiary under the Will of the deceased and the joint tenant of the shares of Nipissing Mines Limited did not contribute to the purchase of the said shares.

No. 14.  
Statement  
of Fact and  
Law on  
behalf of  
Appellant,  
*continued.*

MEMORANDUM OF LAW.

*As to the Situs of the Shares.*

6. The Appellant submits that the Judgment of the learned trial Judge holding that the shares of Nipissing Mines Limited and Dome Mines Limited owned by the deceased James D. Aberdein at the date of his death were not property situate in the Province of Ontario is wrong.

7. The relevant Statute is The Succession Duty Act, 1939 (2nd 10 Session), Chapter 1, as amended 1940, Chapter 29 :

Section 1 (a) (aggregate value defined)

(g) (dutable value defined)

(p) (i) (property held jointly)

Section 2 (1) (a) (Value of listed securities)

(5) (allowance for debts)

Section 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."

Section 31 (10) (Interest on repayments).

8. It is submitted that the shares in question are property situate in Ontario and are exigible for duty under The Succession Duty Act.

9. The situs of the certificate alone is not sufficient to determine the situs of the share.

*The King vs. Williams* [1942] A.C. 541 at 556.

The domicile of the deceased has nothing to do with the situs of property

*The King vs. Williams, supra*, at 560.

10. To determine situs a choice must be made between the places where the shares can be effectively dealt with.

*The King vs. Williams, supra*, at 559.

11. The said shares have not a situs in the State of New York.

*Re MacFarlane* (1933) O.R. 44.

12. The Appellant will also refer to the following cases :

*The Attorney-General vs. Higgins*, 2 H. & N. 339 ; (157 E.R. 140).

*Brassard vs. Smith* [1925] A.C. 371.

*The Provincial Treasurer vs. Blonde* (1941) O.R. 227.

*The Toronto General Trusts Corporation and The King* [1919] A.C. 679.

*Toronto General Trusts Corporation vs. The King* (1938) 1 D.L.R. 40. 40

*Ivey et al vs. The King* (1939) 1 D.L.R. 631.

*Rice vs. The King* (1939) 4 D.L.R. 701.

*Provincial Treasurer of Alberta vs. Kerr* [1933] A.C. 710.  
*The King and National Trust Company* (1933) S.C.R. 670 at 673.  
*Winans vs. The Attorney-General* [1910] A.C. 27 at 30.  
*Braun vs. The Custodian* (1944) Ex. C.R. 30.  
*State Tax Commissioners of Utah vs. Aldrich* (1942) 316 U.S. 174.  
*Blodgett vs. Silverman* (1928) 277 U.S. 1.  
*First National Bank vs. Maine* (1931) 284 U.S. 312.

*In the  
Court of  
Appeal.*

No. 14.  
Statement  
of Fact and  
Law on  
behalf of  
Appellant,  
*continued.*

*As to the Deduction for Debts.*

13. The Appellant submits that the learned trial Judge was wrong  
 10 in holding that the aggregate value and the dutiable value of the Estate  
 is arrived at in accordance with the Laws of the Commonwealth of  
 Massachusetts and submits that the allowances to be made for debts are  
 only those provided for in The Succession Duty Act.

*Re Renfrew* (1898) 29 O.R. 565 at 569.

*Re The Succession Duty Act and the Estate of Van Horne* (1919)  
 47 D.L.R. 529 approved by Judicial Committee *sub nom.*

*Royal Trust Company vs. Minister of Finance British Columbia*  
 (1921) 61 D.L.R. 194 at 198 and 199.

14. For the above reasons and for the reasons that may be advanced  
 20 in argument it is submitted that this appeal should be allowed with costs.

C. R. MAGONE

of Counsel for the Treasurer of Ontario.

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No. 15.

**STATEMENT OF FACT AND LAW on behalf of Respondent, dated 20th September 1944.**

No. 15.  
Statement  
of Fact and  
Law on  
behalf of  
Respon-  
dent, 20th  
September  
1944.

This is an appeal by the Treasurer of Ontario from the judgment  
 of The Honourable Mr. Justice Kelly pronounced on the 27th day of May,  
 1944 after the trial of a proceeding under Section 31 of The Succession  
 Duty Act, 1939 and the Amending Act, 1940. The said Trial Judge  
 declared that the assets of the deceased, James D. Aberdein, were not  
 30 situate within the Province of Ontario and were not liable to succession  
 duty.

The said judgment then, perhaps unnecessarily, declared, first, that  
 the Treasurer of Ontario was bound to allow, in arriving at the aggregate  
 value of the estate, the debts, the costs of administration which were  
 allowable under the law of the place of domicile of the deceased at the  
 time of his death ; and secondly, that the Treasurer of Ontario was entitled  
 to add to the gross value of the estate the sum of ten per centum representing  
 the premium in Canadian funds on the aggregate value of the assets  
 expressed in United States funds.

40 The relevant facts are few and simple ; and were agreed upon by  
 counsel for the executors and beneficiary and for the Treasurer of Ontario.  
 The signed statement and supplementary statement which appear at

*In the  
Court of  
Appeal.*

No. 15.  
Statement  
of Fact and  
Law on  
behalf of  
Respon-  
dent, 20th  
September  
1944,  
*continued.*

pages 14 to 16 inclusive of the Record set forth the relevant facts ; and need not be repeated here.

The grounds upon which the executors and the sole beneficiary submit that the judgment appealed from in its first declaration is correct appears in the Notice of Appeal from the assessment of succession duty at pages 10 to 12 of the Record and in the Notice of Dissatisfaction which appears at page 13 of the Record.

*Taxing Section.*

The taxing section of the Act within which the Treasurer of Ontario must bring himself is Section 5 (a) of The Succession Duty Act 1939 reading 10 as follows :—

“ 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.”

*The Issue.*

The issue on this Appeal is whether the shareholdings of the deceased, James D. Aberdein, particulars of which are set forth in the Agreed Statement of Facts, were at the date of death, property situate in Ontario ; 20 and, therefore, subject to taxation under The Ontario Succession Duty Act.

The leading cases with respect to the situs of intangible property were, in England :—

*The Authorities.*

*Attorney General vs. Higgins*, 2 H. & N. page 339 ;  
and in Canada :—

*Brassard vs. Smith* [1925] A.C. 371.

Certain principles affecting the determination of situs of the intangible property were laid down in the decision of the Privy Council in the case of

*Provincial Treasurer of Alberta vs. Kerr* [1933] A.C. 710, 30 particularly page 721.

In 1941 the Court of Appeal for Ontario dealt with the problem where there were two alternative transfer agents in different States of the United States ; and held that the function of the Ontario Court was to determine whether or not the shares had a situs in Ontario ; and that if they had not such a situs the Ontario Court was not required to find where, elsewhere, they had a situs.

*Treasurer of Ontario vs. Blonde* (1941) O.R. 227.

The sub-section in question and its exact language were interpreted by the Judicial Committee of the Privy Council in 1942 in

*The Williams Case.*

*Rex vs. Williams.*

At Trial : (1940) O.R. page 320 ;

On Appeal to the Court of Appeal for Ontario : (1940) O.R. page 403 ;

On Appeal to the Judicial Committee of the Privy Council : [1942] A.C. page 541.

In [1942] A.C., at page 559, Viscount Maugham says :—

“ Their Lordships are now in a position to deal with the problem arising from the existence of two valid registries, one in Ontario and one in Buffalo. They observe that the solution must be the same in this case as it would have been if the testator died domiciled in another Province of Canada, say in Quebec, instead of in New York, and if all the other facts had been as they were in fact, including the existence of a separate registry in Quebec. It has been argued that in a case where shares can be effectively dealt with in registries existing in different fiscal areas, a possible view is that the case of *Brassard vs. Smith* and following decisions, above referred to, have no application, and that a completely different test or tests of situs should be applied, e.g., that of head office or principal place of business, or domicile, leaving out of account the principle laid down in *Brassard vs. Smith*. Their Lordships did not accept this view. The principle seems to them not to have lost all weight even if in certain cases a choice has to be made as between more than one place where the shares can be effectively transferred. Moreover, to search through all the surrounding circumstances for a completely new ground for attributing a situs to the shares would certainly not be keeping within the ‘coherent system of principles’ by which the courts ought to be guided in such a case. One or other of the two possible places where the shares can be effectively transferred must, therefore, be selected on a rational ground.”

“ The certificates, endorsed and signed as they were, cannot be regarded as mere evidence of title. They were valuable documents situate in Buffalo and marketable there and a transferee was capable of being registered as holder there without leaving the State of New York or performing any act in Ontario. On the testator’s death his legal personal representatives in the State of New York became the lawful holders of the certificates, entitled to deal with them there. Any sale by them would be ‘in order’ and the purchaser could obtain registration in the Buffalo registry. If we contrast the position in Ontario the difference is obvious. Nothing effective could lawfully be done without transferring the certificates, and the legal personal representatives in Buffalo could not be compelled to part with them to enable the transfers to be effected in Ontario rather than at Buffalo. In a business sense, the shares at the date of death could effectively be dealt with in Buffalo and not in Ontario.”

The judgment of first instance and of the Court of Appeal in Ontario was sustained and the shareholdings in question declared not to be “property situate in Ontario” and, therefore, not subject to taxation under The Succession Duty Act in the Province of Ontario.

*Distinctions between the Williams case and the present case.*

There are two clear distinctions between the facts in the *Williams case* just referred to and those in the present case as follows :—

(A) In the *Williams case*, the share certificates had been endorsed by the testator during his lifetime. The certificates in the present *Aberdein case* were not so endorsed.

*In the Court of Appeal.*

No. 15.  
Statement of Fact and Law on behalf of Respondent, 20th September 1944, *continued.*  
The principle of *Brassard vs. Smith* still applicable.

Rational ground to be found for selection of one of two possible places.

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*In the  
Court of  
Appeal.*

No. 15.  
Statement  
of Fact and  
Law on  
behalf of  
Respon-  
dent, 20th  
September  
1944,  
*continued.*

New ground  
must be  
broken in  
present  
Appeal.

(B) In the Williams case the share certificates so endorsed were situate and the deceased was domiciled in the State of New York, within which State a register was maintained upon which a purchaser from the personal representatives of the deceased might effectively have been recorded as owner. In the present Aberdeen case the decedent was domiciled and the shares were situate in the Commonwealth of Massachusetts. The share register upon which the certificates were recorded, and where they might have been effectually dealt with, was in the State of New York.

In the *Williams case*, the Judicial Committee of the Privy Council 10 declined to express any opinion as to the conclusion which the Board would have come to if the certificates had not been endorsed and signed in blank by the testator (p. 560). It is apparent, therefore, that new ground must be broken in the present litigation to determine what effect upon the interpretation of the Statute is to be given to the two distinctions above noted between the facts in the present case and the facts in the Williams case.

If the first declaration in the judgment at trial, namely that the property in question is not property situate in Ontario be sustained, then the Respondents have no interest in maintaining the other declarations 20 in the judgment and submit that they need not have been made in the judgment in question.

It is, however, established that :—

(A) Succession duty charged upon property attaches only to so much of the estate of the deceased as comes to the hands of the executors within the taxing jurisdiction; and that deductible charges against the estate are determined by the law in place of domicile.

*Blackwood vs. Rex* 8 A.C. page 823.

(B) The Province cannot by its own legislation make that 30 property within the Province which by general rules of law is not so situate.

*The King vs. The National Trust Company* (1933) S.C.R. p. 670 at p. 673.

The Respondents submit that the Appeal should be dismissed on the main issue and the judgment of the Trial Judge maintained upon the following among other

#### REASONS.

1. The shares in question were not property situate " within Ontario " 40

*Attorney General vs. Higgins*, 2 H. & N. page 339.

*Brassard vs. Smith* [1925] A.C. 371.

*Re MacFarlane* (1933) O.R. page 44.

*Treasurer of Ontario vs. Blonde* (1941) O.R. page 227.

*Toronto General Trusts Company vs. The King* (1938) 75 Q.J.R. ; (1938) 1 D.L.R. page 40.

*Rex vs. Williams.*

At Trial : (1940) O.R. page 320 ;

On Appeal to the Court of Appeal for Ontario : (1940) O.R. page 403 ;

On Appeal to the Judicial Committee of the Privy Council : [1942] A.C. page 541.

*In the Court of Appeal.*

— —  
No. 15.

Statement of Fact and Law on behalf of Respondent, 20th September 1944.

*continued.*

Transfer office not in State where deceased was domiciled.

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2. The fact that the place of transfer was not in the same State as that in which the testator was domiciled cannot have any effect upon the question of situs. The place of domicile does not affect the determination of situs for intangible property ; nor does the place where the share certificates are located at the date of death.

*Treasurer of Alberta vs. Kerr* [1933] A.C. 710, particularly page 721.

The personal representatives could effectually deal with the property in question without coming into Ontario ; and the legal personal representatives of the deceased in the Commonwealth of Massachusetts “ could not be compelled to part with them (i.e. the share certificates) to enable the transfers to be effected in Ontario rather than at ” New York. “ In a business sense the shares at the date of death could effectively be dealt with in the (State of New York) and not in Ontario.”

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Adapting the Judgment of Viscount Maugham in the Williams case, pages 559–60.

3. With respect to the shares of Nipissing Mines Limited, the certificate of which was in the name of the deceased and Mrs. Alice R. L. Aberdein as joint tenants with the right of survivorship and not as tenants in common, Mrs. Aberdein upon presenting these particular certificates with proofs of the death of James D. Aberdein to the transfer agents at New York would have been entitled to a new certificate in her own name.

Joint tenancy of Nipissing Mines shares.

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Evidence of Harry A. Harding, Record p. 35, ll. 16–31.

4. It is difficult to see how the question of endorsement or non-endorsement of the share certificates by the deceased in his lifetime could affect the question of situs. The title to the intangible property vested in the personal representatives at the moment of death, and they alone could effect a transfer. In addition, under the practice in both Canada and United States a mere endorsement upon the share certificate by the registered owner does not convert it into a street certificate transferable by delivery. The signature must be guaranteed by a recognized bank, or Trust Company, or member of a recognized Stock Exchange. It is difficult to believe that any bank, Trust Company or Stock Exchange member would guarantee signatures after death to convert into “ street ” form certificates which represent shares which had become vested in personal representatives.

Effect of non-endorsement of certificates.

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In any event, in order to make an effectual transfer of the shares represented by the certificates, the endorsement of

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1944,  
*continued.*  
Ground for  
not selecting  
Ontario as  
situs.

the deceased in his lifetime had to be guaranteed. The regularity of the endorsement by the personal representatives after death would have to be guaranteed by the production of Letters Probate. The endorsement by the deceased in his lifetime, therefore, did not facilitate the sale and transfer of the shares represented by the certificate.

5. The *Williams case* pointed out that where there are two alternative places of transfer "one or other of the two possible places where the shares can be effectively transferred must therefore be selected on a rational ground." 10

The Respondents submit that the following, among others, are rational grounds upon which the situs of the shares would not be within Ontario :—

(1) To find the situs to be in Ontario would subject the property to double taxation.

(2) International Comity :—The Federal authorities of the United States of America and Canada have now agreed, with respect to Federal taxation, that the only taxing authority shall be that of the place of domicile.

(3) The decedent and the sole beneficiary had and have 20 no connection whatever with Ontario.

(4) The natural thing for the United States' executors was to administer the estate and effect the transfers within their own country.

(5) The domicile of the decedent and of the sole beneficiary and the situs of the shares at the date of death was in the Commonwealth of Massachusetts.

(6) The shares might have been sold anywhere in the United States with the transferee duly recorded as a shareholder of the Company at any time without coming into 30 the Province of Ontario.

In a business sense, the shares could have been effectively dealt with outside of Ontario.

(7) The executors required no aid from any Court or authority in Ontario to effect a transfer into their names or into the names of transferees from the executors.

*The King vs. Lovitt* [1912] A.C. page 212 at page 225.

(8) The executors could not have been compelled to bring the certificates into Ontario.

(9) With regard to the Nipissing shares, Mrs. Aberdein 40 was a joint tenant with right of survivorship. She needed only to present the certificate and proof of the death of James D. Aberdein to be registered as the owner of these shares.

(10) The relationship between a shareholder and a company is a contractual one

*In re Wm. Metcalfe & Sons Limited* (1933) Chancery page 143 at page 154.



and one term of the contract was that the decedent could effectually transfer his shares within the United States of America.

*In the Court of Appeal.*

No. 15.  
Statement of Fact and Law on behalf of Respondent, 20th September 1944,  
*continued.*

Dome Mines Limited a Dominion Company.

10 6. The Provincial Legislature cannot constitutionally interfere with the operations of a Company incorporated by Dominion authority. It is submitted that the right of the shareholders of a Dominion Company freely to transfer their shares is an essential right flowing from Dominion incorporation; and cannot be taken away by Provincial Legislation. Sections 38, 39 (2) and 40 of the Dominion Companies Act 24-5 Geo. V Cap 33 expressly confer upon the shareholder of the Dominion Company the right to transfer his shares.

“38. (1) Subject to subsection two of this section and to the power of the Company by by-law to prescribe the form of transfer and to regulate the mode of transferring and registering transfers of its shares, the right of a holder of fully paid shares of a public company to transfer the same may not be restricted.

20 (2) Where the letters patent, supplementary letters patent or by-laws of a company confer that power on the directors, they may decline to permit the registration of a transfer of fully paid shares belonging to a shareholder who is indebted to the company except in the case of shares listed on a recognized stock exchange. R.S., c. 27, s. 80, am.”

*Great West Saddlery Company vs. The King* [1921] 2 A.C. 91.

*John Deere Plow Company Limited vs. Wharton* [1915] A.C. page 330.

30 Masten & Fraser, “Company Law,” 4th edition, page 259 *et seq.*

The Respondents, therefore, submit that this Appeal should be dismissed with costs payable by the Treasurer of Ontario.

Dated at Toronto this 20th day of September, 1944.

JOHN JENNINGS,

Of Counsel for the Respondent.

No. 16.

REASONS FOR JUDGMENT DELIVERED BY ROBERTSON, C.J.O., dated 16th February 1945.

No. 16.  
Reasons for judgment delivered by Robertson, C.J.O., 16th February 1945.

40 ROBERTSON C.J.O.: This is an appeal from the judgment of Kelly J., dated 27th May 1944, in a proceeding taken under s. 31 of The Succession Duty Act, 1939, by way of appeal by the executors of the estate of James D. Aberdein, deceased, from the decision of the Treasurer of Ontario, confirming a statement of the amount of succession duty claimed to be payable in respect of the said estate.

*In the  
Court of  
Appeal.*

No. 16.  
Reasons for  
judgment  
delivered by  
Robertson,  
C.J.O., 16th  
February  
1945,  
*continued.*

The deceased James D. Aberdein died on the 11th December 1940. At the time of his death he resided, and was domiciled, in the Commonwealth of Massachusetts. At his death he was the holder of 4,000 shares of the capital stock of Dome Mines Limited, a company incorporated under The Companies Act of Canada, with head office in the Province of Ontario. These shares were represented by 40 certificates of 100 shares each, and the certificates were, at the time of the death of James D. Aberdein, in a safety deposit box in a bank at Boston, Massachusetts. None of the share certificates had been endorsed for transfer, in blank or otherwise.

The company had appointed a transfer agent in the City of New York, and another in the City of Toronto, Ontario. The shares in question were entered in the name of Aberdein on the company's register, at both of these places, and the shares were transferable at the office of either transfer agent. 10

James D. Aberdein was also, at the time of his death, the holder of 200 shares of the capital stock of Nipissing Mines Limited, a company incorporated under The Companies Act of Ontario, with its head office in the Province of Ontario. The share certificates were in the names of James D. Aberdein and Mrs. Alice R. Aberdein as "joint tenants with right of survivorship and not as tenants in common." Alice R. Aberdein was the wife of the deceased, and she survived him. She has been at all times a resident of the United States of America and is domiciled there. None of the share certificates had been endorsed for transfer in blank or otherwise. This company had appointed transfer agents at the City of New York, and at Toronto, Ontario. The shares were on the register of the company, both in New York and in Toronto, in the same names as appeared on the share certificates, and they were transferable at the transfer office at either New York or Toronto. The certificates for these shares and for the shares of Dome Mines Limited were located in Massachusetts at the time of the death. 20 30

James D. Aberdein appears also to have been the holder of 2,000 shares of Kerr Lake Mines Limited, and the holder of shares of two other mining companies, all of these companies being Ontario companies, but, presumably, none of them had provided a transfer office outside Ontario. No question is before us with respect to these shares, and they were, in any event, of little value. \$260 is the value placed on the shares of Kerr Lake Mines Limited, and no value at all is assigned to the other mining shares. The only purpose in mentioning them is this, that I presume it was to enable the Massachusetts executors to deal with these shares in Ontario, that they filed the affidavit hereinafter mentioned, the filing of which led directly to the present proceeding. 40

I do not find it so stated, but it may safely be presumed, that probate of the will of James D. Aberdein was obtained in Massachusetts. In June 1942, almost one year and a half after the testator's death, an affidavit was made under the Ontario Succession Duty Act, 1939, by Harold E. Stevens, one of the executors of James D. Aberdein, setting forth in schedules a summary of his estate, but showing in detail the shares that the testator held at the time of his death in these several mining companies, whose head offices were in Ontario, including those with transfer offices outside Ontario, as well as the others. The schedule setting out these shares is headed with the statement "None situated in Ontario." 50

Following upon this affidavit, a statement of succession duties demanded was served on behalf of the Treasury Department of the Province of Ontario, upon the Toronto solicitors for the executors, in pursuance of s. 31 of The Succession Duty Act, 1939. The executors, through their Toronto solicitors, thereupon, pursuant to the same section, served notice of appeal from the assessment of succession duty. This was followed, in due course, by a notice of the Treasurer's decision confirming the statement that had been served. This, in turn, was followed by a notice of dissatisfaction, served under the same section of the statute, by  
 10 the Toronto solicitors of the executors. The Treasurer of Ontario thereupon served his reply, which again confirmed the original statement.

Section 31 of The Succession Duty Act provides that when the parties appealing against the assessment have taken the steps hereinbefore outlined, and the Treasurer has finally confirmed his assessment of succession duty, the parties appealing may pay such part of the succession duty demanded as is then claimed to have become payable, and give security for any part thereof that has not yet become payable, and, upon further giving security for costs, may file in court true copies of the notices that have been so exchanged, and of the affidavit originally filed, and the documents so filed  
 20 shall constitute the record, and the proceedings shall thereupon become a cause in the Supreme Court of Ontario, and may be entered for trial, either by the persons appealing against the assessment or by the Treasurer. The executors accordingly paid to the Treasurer the sum of \$13,446.78, being the amount of succession duty demanded, with certain interest thereon, and, having filed copies of the necessary documents, these, thereupon, formed the record upon which this case was tried.

Other grounds of dissatisfaction with the assessment of succession duty were stated in the notice served upon the Provincial Treasurer on behalf of the executors, than their objection to any assessment whatever  
 30 in respect of the shares of Dome Mines Limited and Nipissing Mines Limited. We are concerned, however, on this appeal with only one of these further grounds of dissatisfaction. With the affidavit of the executor, Harold E. Stevens, filed with the Provincial Treasurer in June 1942, was a statement of debts and expenses of administration, amounting to a total of \$95,335.11. The executors claimed the right to deduct the whole of this amount from the aggregate value of the estate, for the purpose of the assessment of succession duty. Under s. 6 of The Succession Duty Act, 1939, the amount of succession duty payable upon the property  
 40 passing to any one beneficiary is computed at a rate per centum of its dutiable value. The rates vary with the aggregate amount of the estate, and also with the value of the individual gifts, and with the relationship, if any, of the beneficiary to the deceased. The Treasurer, in his notice of assessment of succession duty, disallowed the greater part of the amount claimed by the executors as a deduction from the aggregate value of the estate under the heading of "Debts and Expenses of Administration." While the amount by which the deductions were decreased, and the aggregate value of the estate correspondingly increased, in the Treasurer's statement, is substantial, in the final result it does not matter a great deal in the amount of duty payable if the shares of Dome Mines Limited and  
 50 Nipissing Mines Limited are not assessable for succession duty in Ontario. If these are not assessable, the only other property in Ontario remaining

*In the  
Court of  
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No. 16.  
Reasons for  
judgment  
delivered by  
Robertson,  
C.J.O., 16th  
February  
1945,  
*continued.*

*In the  
Court of  
Appeal.*

No. 16.  
Reasons for  
judgment  
delivered by  
Robertson,  
C.J.O., 16th  
February  
1945,  
*continued.*

to be assessed for succession duty is the shares in Kerr Lake Mines Limited, valued at \$260, and the amount of succession duty applicable to that item, on the basis of the Treasurer's assessment, is very small. If, however, the shares of Dome Mines Limited and Nipissing Mines Limited are assessable for succession duty, the amount allowable for deductions is of some consequence.

This action was tried with the cases of *The King v. The Globe Indemnity Company of Canada* and *Maxwell et al. v. The King*. The appeal to this Court was, however, argued separately. The principal question is, as in the two cases mentioned, whether, for succession duty purposes, the shares of Dome Mines Limited and of Nipissing Mines Limited were, at the time of the testator's death, "property situate in Ontario." The Succession Duty Act to which reference must be made in this case, is the Act passed in the second session of the year 1939. 10

As in each of the other two cases mentioned, the deceased shareholder, at the time of his death, was resident in one of the United States of America in which no transfer agent had been appointed by either of the companies whose shares are in question, but there was, in the case of each company, a transfer office at the City of New York, and also a transfer office at Toronto, in the Province of Ontario. The shares of each company could be completely transferred at either New York or Toronto. 20

For the reasons stated in my judgment in the *Globe Indemnity* case, I am of opinion that the learned trial Judge was right in his conclusion that the shares held by the deceased James D. Aberdein in Dome Mines Limited and in Nipissing Mines Limited were not, at the time of his death, property situate in Ontario, and that they were not, therefore liable to be assessed for succession duty in Ontario.

With respect to the shares of Nipissing Mines Limited which were held jointly by the deceased and his wife, with right of survivorship, in view of the finding that the shares were not within Ontario it is not important, for the present purpose, to consider the provision of The Succession Duty Act in force in Ontario in relation to property held jointly. 30

Upon the question of deductions proper to be allowed for the purpose of arriving at the aggregate value of the estate, to be used in determining the rate per centum at which succession duties shall be computed upon the property within Ontario, in my opinion this matter is governed by The Succession Duty Act of Ontario under which the succession duty is levied. "Aggregate value" is defined by clause (a) of s. 1, and what is permitted to be deducted is stated in this way, "less the debts, incumbrances and other allowances authorised by subsection 5 of section 2 and less the exemptions authorised by section 4." The deductions to be made in ascertaining the amount of succession duty payable under The Succession Duty Act of Ontario upon property within Ontario, are the deductions authorised by the Ontario statute. They are only one factor in determining the rate of duty. In this particular the appeal should be allowed, and in all other respects it should be dismissed. The respondent is entitled to the costs of the appeal. 40

HENDERSON J.A. } I Agree.  
GILLANDERS J.A. }

## FORMAL JUDGMENT, dated 16th February 1945.

*In the  
Court of  
Appeal.*

IN THE SUPREME COURT OF ONTARIO.

The Honourable, THE CHIEF JUSTICE OF ONTARIO.

The Honourable Mr. Justice HENDERSON.

The Honourable Mr. Justice GILLANDERS.

No. 17.  
Formal  
judgment,  
16th  
February  
1945.

Friday, the 16th day of February 1945.

IN THE MATTER of The Succession Duty Act, 1939 and The  
Amending Act, 1940 ;

- 10 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 Estate  
of the above-named deceased.

- 20 The Appeal of the Treasurer of Ontario from the judgment of The  
Honourable Mr. Justice Kelly pronounced the 27th day of May 1944,  
having come on to be heard on the 16th day of October 1944, in the presence  
of Counsel for the Treasurer of Ontario and for the Executors of the Estate  
of James D. Aberdein ; UPON HEARING read the Notice of Appeal,  
the Affidavit of Value and Relationship, the Affidavit of Debts, the  
Statement of Duty, the Notice of Appeal from Assessment, the Notice of  
the Treasurer's Decision, the Notice of Dissatisfaction, the Reply of the  
Treasurer, the Statement of Facts Agreed upon by Counsel with the  
Supplement thereto and the evidence at the trial ; AND UPON HEARING  
30 what was alleged by Counsel aforesaid ; this Appeal having stood over for  
Judgment and coming on this day for Judgment.

1. THIS COURT DOTH ORDER that the Judgment appealed  
from be and the same is hereby amended by striking out paragraph two (2)  
thereof and substituting therefor the following :—

“ 2. AND THIS COURT DOTH FURTHER DECLARE  
that the only deductions from the gross value of the Estate for the  
purpose of arriving at the aggregate value thereof be such deductions  
as are provided for in sub-section 5 of section 2 of The Succession  
Duty Act, 1939, and section 4 of the said Act and doth adjudge the  
same accordingly.”

- 40 2. THIS COURT DOTII FURTHER ORDER that save as aforesaid  
the Appeal of the Treasurer of Ontario be and the same is hereby dismissed.

3. THIS COURT DOTH FURTHER ORDER that the Treasurer  
of Ontario do pay to the Executors of the Estate of James D. Aberdein  
deceased, their costs of this Appeal forthwith after taxation thereof.

“ CHAS. W SMYTH,”

Registrar, S.C.O.

No. 18.

ORDER granting leave to Appeal to H.M. in Council, dated 13th September 1945.

*In the  
Court of  
Appeal.*No. 18.  
Order  
granting  
leave to  
Appeal to  
H.M. in  
Council,  
13th  
September  
1945.

IN THE SUPREME COURT OF ONTARIO.

The Honourable THE CHIEF JUSTICE OF ONTARIO.

Thursday the 13th day of September A.D., 1945.

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 ; 10AND 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 Estate  
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.* 20

## ORDER.

UPON APPLICATION by Counsel for the Treasurer of Ontario in the presence of Counsel for the Respondents for an Order admitting the appeal of the Treasurer of Ontario to His Majesty in His Privy Council, AND UPON READING the pleadings, the Judgment of The Honourable Mr. Justice Kelly, dated Saturday the 27th day of May, 1944, and the Order of the Court of Appeal, dated Friday the 16th day of February, 1945, AND UPON HEARING Counsel aforesaid

1. IT IS ORDERED that the appeal from the said Order of the Court of Appeal to His Majesty in His Privy Council be admitted. 30

2. AND IT IS FURTHER ORDERED that the costs of this application be costs in the said appeal.

" CHAS. W SMYTH,"

Registrar S.C.O.

No. 19.

CERTIFICATE OF PARTIES as to Record, dated 25th October 1945.

## CERTIFICATE OF PARTIES AS TO RECORD.

We hereby certify that the Record attached hereto is a true record of all papers and proceedings on this appeal in the Court of Appeal for Ontario.

DATED at Toronto this 25th day of October, A.D., 1945.

“ C. R. MAGONE,”

Solicitor for the Appellant.

10

“ JENNINGS & CLUTE,”

Solicitors for the Respondent.

## INDEX.

1. Appeal Book, containing—
    - (a) Notice of Appeal to the Court of Appeal for Ontario.
    - (b) Affidavit of Value and Relationship.
    - (c) Affidavit of Debts.
    - (d) Statement of Duty.
    - (e) Notice of Appeal from Assessment.
    - (f) Notice of Treasurer's Decision.
    - 20 (g) Notice of Dissatisfaction.
    - (h) Reply of the Treasurer.
    - (i) Statement of Facts agreed upon by Counsel.
    - (j) Supplement to the Statement of Facts—Exhibit 1.
    - (k) Judgment of the Trial Court (Kelly J.).
    - (l) Reasons for Judgment (Kelly J.).
  2. Evidence at the Trial.
  3. Corrections agreed upon by Counsel to be made in the transcript of Evidence at the Trial (*not printed*).
  4. Memorandum of Law and Fact on behalf of the Respondent.
  - 30 5. Memorandum of Law and Fact on behalf of the Appellant.
  6. Order of the Court of Appeal.
  7. Reasons for Judgment of the Court of Appeal.
  8. Order admitting the Appeal to the Judicial Committee of the Privy Council.
- 

*In the  
Court of  
Appeal.*

No. 19.  
Certificate  
of parties as  
to Record,  
25th  
October  
1945.

*In the  
Court of  
Appeal.*

No. 20.

**CERTIFICATE OF REGISTRAR approving Record, dated 5th November 1945.**

No 20.  
Certificate  
of Registrar  
approving  
Record, 5th  
November  
1945.

I, CHARLES WALTER SMYTH, Registrar of the Supreme Court of Ontario, DO HEREBY CERTIFY to the King's Most Excellent Majesty in His Privy Council as follows :

1. THAT the hereto annexed Record is the record of the proceedings in the Court of Appeal for Ontario.

2. THAT the solicitors for all parties have approved of the said Record as a true record of all papers and proceedings on the said appeal as appears by the certificate hereto annexed.

10

IN WITNESS WHEREOF I have hereunto set my hand and the Seal of the Supreme Court of Ontario, this 2nd "~~xth~~" day of November A.D., 1945.

" CHAS. W. SMYTH,"

Registrar Supreme Court of Ontario.

(Seal)