In the Privy Council.

No. 43 of 1941.

ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO.

BETWEEN

THE TREASURER OF ONTARIO ... ... (*Plaintiff*) *Appellant*,

AND

MRS. FRANCES EUGENIA BLONDE, FLORENCE MAISONVILLE AND EMILY F. LYNCH, Executrices of the Estate of Albert Theodore Montreuil, and ALFRED GEORGE THOMCZEK, LOUISE MATILDA THOMCZEK, EUGENIE THOMCZEK, FLORENCE MAISONVILLE AND RAYMOND GIRARDOT ... ... (*Defendants*) *Respondents*.

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

Vacher.—77239.

In the Privy Council.

No. 43 of 1941.

ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO.

BETWEEN

THE TREASURER OF ONTARIO ... ... (*Plaintiff*) *Appellant,*

AND

MRS. FRANCES EUGENIA BLONDE, FLORENCE MAISONVILLE AND EMILY F. LYNCH, Executrices of the Estate of Albert Theodore Montreuil, and ALFRED GEORGE THOMCZEK, LOUISE MATILDA THOMCZEK, EUGENIE THOMCZEK, FLORENCE MAISONVILLE AND RAYMOND GIRARDOT ... ... (*Defendants*) *Respondents.*

RECORD OF PROCEEDINGS.

In the Supreme Court of Ontario.

No. 1. Endorsement of Plaintiff's claim in Writ of Summons, 17th July, 1940.

No. 1.

Endorsement of Plaintiff's Claim in Writ of Summons.

The Plaintiff's claim is against Mrs. Frances Eugenia Blonde, Mrs. Florence Maisonville and Emily F. Lynch in their capacities as Executrices of the Estate of Albert Theodore Montreuil for balance of duty in the amount of $93,869.93 payable by the Defendants under the provisions of the Succession Duty Act applicable upon certain shares of the capital stock of Briggs Manufacturing Company and Pfeiffer Brewing Company by reason of the death of the said Albert Theodore Montreuil late of the City of Windsor, in the County of Essex on or about the 2nd day of October, 1936, together with such adjustments for interest as are authorised by the Succession Duty Act.

The Plaintiff's claim is against Alfred George Thomczek, Louise Matilda Thomczek, Eugenie Thomczek, Mrs. Florence Maisonville and Raymond

In the Supreme Court of Ontario.

No. 1. Endorsement of Plaintiff's claim in Writ of Summons, 17th July, 1940—*continued.*

Girardot in their personal capacities as beneficiaries under the last will and testament of the said Albert Theodore Montreuil of (inter alia) the said shares of the capital stock of Briggs Manufacturing Company and Pfeiffer Brewing Company for duty in the amount of $93,869.93, 1/5 of the said amount of $93,869.93 being payable by each of the said beneficiaries out of the shares of the capital stock of Briggs Manufacturing Company and Pfeiffer Brewing Company under the provisions of the Succession Duty Act applicable by reason of the death of Albert Theodore Montreuil, together with such adjustments for interest as are authorised by the Succession Duty Act.

And the Plaintiff claims the costs of this action.

No. 2. Special Case and Schedules, 2nd August, 1940.

No. 2.

Special Case and Schedules.

Writ issued the 17th day of July, 1940.

1. Albert Theodore Montreuil, late of the City of Windsor, in the County of Essex and Province of Ontario, Industrialist, deceased, died on the second day of October, 1936, domiciled in the Province of Ontario, although his industrial enterprises were carried on in the City of Detroit, in the State of Michigan, one of the United States of America.

2. The said deceased made his Last Will and Testament dated the fourteenth day of July, 1936, Letters Probate of which were granted out of the Surrogate Court of the County of Essex, to the defendants, Frances Eugenia Blonde, formerly Frances Eugenia Byrne, Florence Maisonville and Emily F. Lynch, on the twenty-ninth day of October, 1936. A true copy of the said Letters Probate is hereto annexed as Schedule " A " and forms part of this case.

3. The said deceased died leaving an estate of the aggregate value as defined by the Succession Duty Act, 1934, and as fixed for succession duty purposes of $1,096,325.27.

4. On the date of the death of the said deceased he was the owner of 8,000 fully paid non par value shares of the capital stock of Briggs Manufacturing Company, the value of which for the purposes of this case, and as included in the said aggregate value, is agreed to be $480,000.00. The said shares were registered in the name of the said Albert Theodore Montreuil, and the certificates representing the said shares were at the date of his death, in his possession, being contained in his safety deposit box in the said City of Windsor. A specimen copy of such certificates is hereto annexed as Schedule " B " and forms a part of this case.

5. The said Briggs Manufacturing Company was incorporated under the laws of the said State of Michigan, on the twenty-ninth day of November, 1909, and has its Head Office in the City of Detroit, in the said State of Michigan.

6. On the twenty-seventh day of December, 1924, the said Briggs Manufacturing Company, by a resolution duly passed by the Board of Directors, appointed the Security Trust Company (now known as Detroit Trust Company) of the said City of Detroit, and the New York Trust Company, of the City of New York, in the State of New York, one of the United States of America, agents of the Company, each with the title " Transfer Agent " for the transfer of shares of the non-par value capital stock of the Briggs Manufacturing Company. The appointment of the Security Trust Company was effective as of December 27th, 1924, and the appointment of the New York Trust Company was effective as of January 2nd, 1925. A copy of the said resolution is hereto annexed as Schedule " C " and forms a part of this case.

7. The said Detroit Trust Company, pursuant to the authority conferred upon it by the said resolution, maintains a register of transfers of shares of Briggs Manufacturing Company at the office of Detroit Trust Company, in the said City of Detroit, in the said State of Michigan, and the said New York Trust Company, pursuant to the authority conferred upon it by the said resolution, maintains a register of transfers of shares of Briggs Manufacturing Company at the office of the New York Trust Company in the said City of New York, in the said State of New York, and all transfers of shares of the capital stock of Briggs Manufacturing Company are made by the said transfer agents and recorded by them in the said register of transfers in accordance with and in the manner provided by the said resolution.

8. The said Briggs Manufacturing Company does not, and did not at the date of the death of Albert Theodore Montreuil, itself maintain a register of transfers of shares of its capital stock, nor itself make and record transfers of the shares of its capital stock, and has not, nor did it have at the date of the death of the said Albert Theodore Montreuil, any agent for the transfer of shares of its capital stock, other than the Detroit Trust Company and the New York Trust Company, as aforesaid.

9. On the date of the death of the said Albert Theodore Montreuil, he was the owner of 41,000 fully paid no par value shares of the common stock of Pfeiffer Brewing Company, the value of which for the purposes of this case, and as included in the said aggregate value, is agreed to be $425,375.00. The said shares were registered in the name of the said Albert Theodore Montreuil, and the certificates representing the said shares were at the date of his death, in his possession, being contained in his safety deposit box in the said City of Windsor. A specimen copy of such certificates is hereto annexed as Schedule " D " and forms a part of this case.

10. The Pfeiffer Brewing Company was incorporated under the laws of the said State of Michigan, on the fifth day of February, 1926, and has its Head Office in the said City of Detroit.

11. On the fifth day of June, 1933, the said Pfeiffer Brewing Company by a resolution duly passed by the Board of Directors, appointed Detroit Trust Company of the said City of Detroit, in the said State of Michigan, and City National Bank & Trust Company of the City of Chicago, in the State

In the Supreme Court of Ontario.

No. 2. Special Case and Schedules, 2nd August, 1940— *continued.*

of Illinois, one of the United States of America, agents for the transfer of the shares of its common capital stock. A copy of the said resolution is hereto annexed as Schedule " E " and forms a part of this case. On the twenty-first day of March, 1934, by a resolution duly passed by the Board of Directors, Pfeiffer Brewing Company discontinued the services of City National Bank & Trust Company as transfer agent as aforesaid, and retained said Detroit Trust Company as sole agent for the transfer of the said no par value shares of its common stock. A copy of the said resolution passed on the twenty-first day of March, 1934, is hereto annexed as Schedule " F " and forms a part of this case. By a resolution duly passed by the Board of Directors on the nineteenth day of July, 1935, Pfeiffer Brewing Company also appointed Guaranty Trust Company of New York, of the said City of New York, as an agent in the said City of New York in the said State of New York, for the transfer of the said no par value shares of the common stock of Pfeiffer Brewing Company. A copy of the said resolution passed on the nineteenth day of July, 1935, is hereto annexed as Schedule " G " and forms a part of this case.

12. The said Detroit Trust Company, pursuant to the authority conferred upon it by the said resolutions of Pfeiffer Brewing Company, maintains a register of transfers of shares of Pfeiffer Brewing Company at the office of Detroit Trust Company in the said City of Detroit in the said State of Michigan, and the said Guaranty Trust Company, pursuant to the authority conferred upon it by the said resolutions, maintains a register of transfers of shares of Pfeiffer Brewing Company at the office of Guaranty Trust Company in the said City of New York, in the said State of New York, and all transfers of any of the said shares of the capital stock of Pfeiffer Brewing Company are made by the said transfer agents and recorded by them in the said registers of transfers in accordance with and in the manner provided by the said resolutions.

13. The said Pfeiffer Brewing Company does not, and did not at the date of the death of the said Albert Theodore Montreuil, itself maintain a register of transfers of shares of its capital stock, nor itself make and record transfers of the shares of its capital stock, and has not, nor did it have at the date of the death of the said Albert Theodore Montreuil, any agent for the transfer of the shares of its said capital stock, other than the Detroit Trust Company, and the Guaranty Trust Company as aforesaid.

14. The certificates representing the shares of capital stock of Briggs Manufacturing Company, owned by the said Albert Theodore Montreuil at the date of his death, were issued and recorded by Detroit Trust Company in its capacity as transfer agent for Briggs Manufacturing Company, in the said City of Detroit, and notice thereof was duly given to the New York Trust Company in its capacity as transfer agent for Briggs Manufacturing Company, in the said City of New York. The certificates representing the shares of Pfeiffer Brewing Company owned by the said Albert Theodore Montreuil at the date of his death, were issued and recorded by the Detroit Trust Company in its capacity as transfer agent for Pfeiffer Brewing Company

In the said City of Detroit, and notice thereof was duly given to Guaranty Trust Company in its capacity as transfer agent for Pfeiffer Brewing Company in the said City of New York.

15. As will be seen by a reference to the Will of the deceased, the assets of the estate were to be held by the trustees during the lives of the deceased's two sisters, Cecile C. La Pierre, and Matilda A. Selleck, to whom was to be paid two-fifths of the income from the estate during her lifetime to the former, and three-fifths of the income of the estate during her lifetime to the latter, and if one sister die, then her share of income was to be paid to the seven persons hereinafter named.

16. Matilda A. Selleck died on the second day of September, 1937, not having lived out the period of her life expectancy upon which succession duty was calculated, and her share of the income became payable to the said seven persons.

17. After the death of both of the said sisters the assets were then to be divided among the following persons, share and share alike :—Marie Josephine Byrne (now Blonde) ; Frances Eugenia Byrne (now Blonde) ; Alfred George Thomczek ; Louise Matilda Thomczek ; Eugenie Thomczek ; Florence Maisonville, and Raymond Girardot, or the survivors.

18. It has been agreed by the parties hereto that succession duty upon the respective interests of all the parties interested in the said estate, including the succession duty upon the interests in remainder, shall be calculated as of the time of the death of the said Albert Theodore Montreuil, and upon the assumption that the word " survivors " used in his said will means survivors at the death of the deceased.

19. While two of the above named seven persons are resident of and domiciled in Ontario, five of them were at the date of the death of the said deceased, and still are, resident of and domiciled in the said State of Michigan, the five persons so domiciled being the last five mentioned above in paragraph 17 hereof.

20. The executrices and trustees of the said estate have paid to the Province of Ontario the sum of $149,063.14, being in full of the succession duty upon all of the property of the deceased admittedly situate in the Province of Ontario on the date of his death, and the said sum includes the succession duty in respect of the interests of the two residuary legatees mentioned in paragraphs 17 and 19, resident and domiciled in Ontario, in the said shares of the capital stock of Briggs Manufacturing Company and Pfeiffer Brewing Company, the plaintiff claiming and the defendants denying that the said shares were at the death of the said deceased property situate in the Province of Ontario, and that succession duty was payable to the Province of Ontario thereon so far as the interests of the five persons resident in the State of Michigan are concerned.

21. The question for the opinion of the Court is : Were the said shares of capital stock of Briggs Manufacturing Company, and Pfeiffer Brewing

In the Supreme Court of Ontario.

No. 2. Special Case and Schedules, 2nd August, 1940— *continued.*

Company, property locally situate in the Province of Ontario at the death of the said Albert Theodore Montreuil, for the purposes of the Succession Duty Act, and as so locally situate, subject to Succession Duty ?

22. If the Court shall be of opinion in the affirmative, then judgment shall be entered in favour of the plaintiff, for $93,869.93, as a balance of duty, together with costs of suit, subject, however, to such adjustments for interest as are authorised by the Succession Duty Act.

23. If the Court shall be of opinion in the negative, then judgment shall be entered in favour of the defendants, dismissing the action with costs of suit.

24. The parties propose that this action should be tried at Toronto.

" C. R. MAGONE "
Solicitor for the Plaintiff.

" J. H. RODD "
Solicitor for the Defendants.

Dated at Toronto, this second day of August, 1940.

Schedule A. Probate of last will and testament of Albert Theodore Montreuil, 27th December, 1939.

This is Schedule " A " referred to in the annexed Special Case.

Canada (Coat of Arms) Province of Ontario

In His Majesty's Surrogate Court of the County of Essex.

Seal.

In the Matter of the Estate of Albert Theodore Montreuil, late of the City of Windsor, in the County of Essex, in the Province of Ontario, Industrialist, deceased.

I, Angus Alexander Mackinon, of the City of Windsor, in the County of Essex, Registrar of His Majesty's Surrogate Court of the County of Essex at the said City of Windsor, in the County of Essex, Do Hereby Certify that the paper writing hereunto annexed contains a true and correct copy of the Letters Probate, bearing date the twenty-ninth day of October, 1936, issued in the matter of the estate of Albert Theodore Montreuil, late of the City of Windsor, in the County of Essex, Industrialist, deceased, to

Frances Eugenia Byrne, of the Town of Riverside, in the County of Essex, Secretary,

Florence Maisonville, of the City of Detroit, in the State of Michigan, Married Woman, and

Emily F. Lynch, of the City of Windsor, in the County of Essex, Barrister-at-Law, the executrices named in the will of the said deceased.

And I Further Certify that the said Letters Probate are, at the date hereof, of record in this Court and, so far as the records of this said Court show, are in full force and effect and the said executrices still acting in the capacity in which they were appointed.

Witness My Hand and the Seal of this Said Court at the Said City of Windsor, in the County of Essex, this 27th day of December, 1939.

A. A. MACKINNON,
Registrar, S.C.C.E.

Grant No. 309.

Canada (Coat of Arms) Province of Ontario

In His Majesty's Surrogate Court of the County of Essex.

Be It Known that on the twenty-ninth day of October, in the year of our Lord one thousand nine hundred and thirty-six, the Last Will and Testament of Albert Theodore Montreuil, late of the City of Windsor, in the County of Essex, Industrialist, deceased, who died on or about the second day of October, in the year of our Lord one thousand nine hundred and thirty-six, at the City of Windsor, and who at the time of his death had a fixed place of abode at the said City of Windsor, in the County of Essex, was proved and registered in the said Surrogate Court, a true copy of which said Last Will and Testament is hereunder written and that the administration of All and Singular the property of the said deceased and in any way concerning his Will was granted by the aforesaid Court to Frances Eugenia Byrne, of the Town of Riverside, in the County of Essex, Secretary, Florence Maisonville, of the City of Detroit, in the State of Michigan, Married Woman, and Emily F. Lynch, of the City of Windsor, in the County of Essex, Barrister-at-Law, the Executrices named in the said Will they having been first sworn well and faithfully to administer the same by paying the just debts of the deceased and the legacies contained in his Will so far as they are thereunto bound by law and by distributing the residue (if any) of the property according to law and to exhibit under oath a true and perfect Inventory of All and Singular the said property and to render a just and true account of their Executorship whenever thereunto lawfully required.

Witness His Honour John J. Coughlin, Esquire, Judge of the said Surrogate Court at the City of Windsor, in the County of Essex, the day and year first above written.

By the Court

" A. A. MACKINNON "

Registrar.

(Seal)

This is the last Will and Testament of me, Albert T. Montreuil, of the City of Detroit, in the State of Michigan, one of the United States of America, formerly of the City of Windsor, in the County of Essex, in the Province of Ontario.

I hereby revoke all former wills or other testamentary dispositions by me at any time heretofore made and declare this only to be and contain my last will and testament.

I appoint Frances Eugenia Byrne, of the City of Windsor, in the County

In the Supreme Court of Ontario.

Schedule A. Probate of last will and testament of Albert Theodore Montreuil, 27th December, 1939—*continued.*

of Essex, in the Province of Ontario, Florence Maisonville, of the City of Detroit, in the State of Michigan, and Emily F. Lynch, of the said City of Windsor, hereinafter called " my trustees " to be the executors and trustees of this my will.

I give, devise and bequeath all my real estate of every kind and all my personal estate and effects whatsoever, not otherwise disposed of by this my will unto my said trustees, and the survivor of them in trust to make the following disposition thereof.

1. To pay to my sister, Cecile C. LaPierre, of the said City of Windsor, two-fifths of the income from my said estate, during the term of her natural life.

2. To my sister, Matilda A. Selleck, of the Town of Riverside, in the County of Essex, three-fifths of the income of my said estate, during the term of her natural life.

3. Upon the death of either of my said sisters, I direct my trustees to pay the income, formerly paid or directed to be paid to said sister, to Marie Josephine Byrne, Frances Eugenie Byrne, Alfred George Thomczek, Louise Matilda Thomczek, Eugenie Thomczek, Florence Maisonville and Raymond Girardot or the survivors, in equal shares.

4. I empower my trustees to sell any of my real or personal estate as they may deem proper and to invest the proceeds thereof, and any such other moneys that form the corpus of my estate, which they may receive from time to time, in Dominion of Canada bonds, the income therefrom representing the income from the investment which they replace and shall become part of the income of my estate and be distributed as hereinbefore directed.

5. Upon the death of my remaining sister, I direct my said trustees to call in and convert into money the same or such part thereof of my estate as shall not consist of money and to divide the corpus and undistributed income among the said Marie Josephine Byrne, Alfred George Thomczek, Louise Matilda Thomczek, Eugenie Thomczek, Frances Eugenia Byrne, Florence Maisonville and Raymond L. Girardot or the survivors, in equal shares.

6. I direct my said trustees to pay the income of my estate as above directed every six months.

7. I further empower my trustees to postpone the conversion of any part of my estate for so long as they shall deem proper, in order that the same shall not be sold during the low market, and the income of any property remaining unconverted shall from the time of my death be applied in the same manner as the proceeds would have been payable and applicable for the time being, if the same had been converted.

8. I further empower my executors and trustees herein named to appoint a person to fill the vacancy caused by the death of any one of my said trustees and such appointees shall carry out the directions contained in this my will.

9. All the rest and residue of my estate I give, devise and bequeath unto Marie Josephine Byrne, Alfred George Thomczek, Louise Matilda Thomczek, Eugenia Thomczek, Frances Eugenia Byrne, Florence Maisonville and Raymond L. Girardot, or the survivors, in equal shares.

In witness whereof I have hereunto set my hands this 14th day of July, 1936.

Schedule A. Probate of last will and testament of Albert Theodore Montreuil 27th December 1939—*continued.*

Signed Published and Declared by the above named Albert T. Montreuil, Testator, as and for his last will and testament, in the presence of us both present at the same time, who at his request and in his presence have hereunto subscribed our names as witnesses.

" ALBERT T. MONTREUIL "

" CHRISTENA SHEPHERD "

" GREATIS MOLYNEAU "

This is Schedule " B " referred to in the annexed Special Case.

Schedule B. Copy of Share Certificate in Briggs Manufacturing Co.

Number DC 1 U

Shares 1,000

Briggs Manufacturing Company

Incorporated under the Laws of the State of Michigan.

This certificate is transferable in the City of New York or in Detroit.

This certifies that Albert T. Montreuil is the owner of one thousand fully paid and non-assessable shares, without any nominal or par value of the Capital Stock of Briggs Manufacturing Company, transferable in person or by duly authorized attorney upon surrender of this certificate properly endorsed. This certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar. Witness the seal of the Corporation and the signatures of its duly authorized officers.

Dated July 9, 1936.

L. A. LARK, Secretary. Seal. M. L. BRIGGS, Vice-President.

Registered : July 9, 1936.

National Bank of Detroit (Detroit) Registrar.

By ?
Authorized Officer.

Countersigned
Detroit Trust Company (Detroit) Transfer Agent.

By ?
Authorized Officer.

In the Supreme Court of Ontario.

Schedule C. Copy of Resolution of Board of Directors of Briggs Manufacturing Co., 31st December, 1924.

This is Schedule " C " referred to in the annexed Special Case.

Certified Copy of Resolution
of
Board of Directors
of
Briggs Manufacturing Company.

This is to Certify, that at a Meeting of the Board of Directors of the Briggs Manufacturing Co. (hereinafter called " Corporation "), duly and regularly convened and held on the 27th day December, 1924, at which a quorum for the transaction of business was present, the following Resolutions were duly adopted.

Resolved :

First : That Security Trust Company of City of Detroit, State of Michigan, and The New York Trust Company be and they are hereby appointed agents of this Corporation, each with the title Transfer Agent, for the transfer of certificates for the non-par value stock of this Corporation. The appointment of Security Trust Company of the City of Detroit, Michigan, is effective as of December 27, 1924, and the appointment of The New York Trust Company is effective as of January 2, 1925.

Second : That for the purpose of the original issue of the certificates representing the stock, Security Trust Company of Detroit, Michigan, is hereby directed.

(1) To record and countersign as Transfer Agent certificates in such names, and for not exceeding

2,025,000 shares of such non-par value stock,

when executed by a Vice-President and an Assistant Secretary of this Corporation and in such amounts as this Corporation may direct in writing, signed by the President and Secretary under the seal of this Corporation, and

(2) To deliver the certificates to the Registrar of this Corporation located in the city where the Transfer Agent so counter-signing is located, viz. :

2,025,000 such shares	in Detroit, Michigan
and none	in New York City

for registration and countersignature, and

(3) To deliver such certificates, when so countersigned by such Registrar, to or upon the written order of the President and Secretary of this Corporation ;

Provided, However, that the amount of the stock to be originally issued by each Transfer Agent is hereby limited as follows :

Security Trust Company of Detroit, Michigan.	2,025,000 shares of such non-par value stock.
The New York Trust Company.	no shares of such non-par value stock.

In the Supreme Court of Ontario.

Schedule C. Copy of Resolution of Board of Directors of Briggs Manufacturing Co., 31st December, 1924—*continued.*

Third: That the Transfer Agents, and each of them, be and they are hereby authorised and directed to make transfers from time to time upon the books of this Corporation of such certificates for such capital stock, as may be surrendered for transfer, properly endorsed and duly stamped as may be required by the laws of Michigan, of New York, and of the United States, and signed by the proper officers of this Corporation as provided in paragraph Second of these resolutions, and countersigned by any Transfer Agent and any Registrar, and to record and countersign new certificates accordingly when they shall have been signed by the proper officers of this Corporation, as provided in paragraph Second of these resolutions, and to deliver the certificates to the proper Registrar for countersignature, as provided in paragraph Second, and when so countersigned to deliver them as therein provided.

Fourth: It is the intention and purpose of these resolutions that certificates of the stock of this Corporation shall be interchangeably transferable in the Cities of Detroit, Michigan, and The City of New York, N.Y. The fact of the recording and countersignature of new certificates, whether by way of an original issue or upon a transfer shall be advised immediately by mail by the Transfer Agent countersigning them to the other Transfer Agents; and such reports of transfers made by said Transfer Agents to each other shall be sufficient authority to the Transfer Agents receiving such reports, to post the stock ledger in accordance therewith; and each Transfer Agent shall be fully protected and held harmless by this Corporation by reason of its failure or refusal to transfer any certificates countersigned by another Transfer Agent when it shall not have received such notice of the issue or registry and countersignature of such certificates.

Fifth: That specimen signatures of the officers of this Corporation authorised to sign certificates of stock as aforesaid and of the officers of the respective Transfer Agents and Registrars authorised to sign for the respective Transfer Agents and Registrars be lodged forthwith with each of the Transfer Agents to be used by them and each of them for purposes of comparison with signatures appearing on the certificates of stock of this Corporation presented to them or either of them in their respective capacities, and that the Transfer Agents and each of them be protected and held harmless in recognising and acting upon any signature believed in good faith to be genuine. When any officer of this Corporation or of any Transfer Agent or Registrar shall no longer be vested with authority to sign for this Corporation or for a Transfer Agent or Registrar, as the case may be, written notice thereof shall immediately be given to each Transfer Agent and until receipt of such notice the Transfer Agents shall be fully protected and held harmless in recognising and acting upon certificates bearing the signature of such officer or a signature believed by them or any of them in good faith to be such genuine signature.

Sixth: That from time to time additional officers may be appointed by resolutions of the Board of Directors of this Corporation not inconsistent with its by-laws, to sign certificates of stock on behalf of this Corporation, and in like manner additional officers may be appointed to sign on behalf of the respective Transfer Agents and Registrars, and in each such case certi-

In the Supreme Court of Ontario.

Schedule C. Copy of Resolution of Board of Directors of Briggs Manufacturing Co., 31st December, 1924—*continued.*

fied copies of the resolutions affecting the appointments and specimen signatures of such officers shall forthwith be lodged with each Transfer Agent.

Seventh: That when any Transfer Agent deems it expedient, it may apply to Beaumont, Smith & Harris, of City of Detroit, State of Michigan, counsel for this Corporation, or to its own counsel, for instructions or advice, and for any action in accordance with such instructions or advice this Corporation will fully protect and hold it harmless from any and all liability. None of the Transfer Agents shall be in any manner liable for any act or omission of any other Transfer Agent.

Eighth: In the event that any such certificate shall become lost or destroyed before any new certificate or certificates shall be issued in lieu thereof, a satisfactory bond shall be required in such amount as may be provided by the by-laws of this Corporation, and in any event not less than the value of such certificate, wherein the Transfer Agent shall be named as one of the obligees. The bond shall be in a form satisfactory to the Transfer Agent countersigning the new certificate.

Ninth: That the authority of the Transfer Agents, and each of them, as such Transfer Agents shall extend to such additional issues of stock as may be authorized by this Corporation.

Tenth: That the Secretary of this Corporation be and he hereby is directed to certify a copy of these resolutions under the seal of this Corporation, and to lodge the copy, together with specimen certificates of the stock of this Corporation in the forms duly adopted by it, certified copies of the charter or certificate of incorporation and all amendments thereto (properly certified by the Secretary of State) and of the by-laws of this Corporation, with each of the Transfer Agents, and to furnish to each of the Transfer Agents certified copies of any amendments that may from time to time be made to the charter or certificate of incorporation or bylaws.

I Further Certify that the annexed schedule or signature card or cards, set forth the officers of Security Trust Company, of Detroit, Michigan, and the New York Trust Company, Transfer Agents, and Union Trust Company of Detroit, Michigan, and Bankers Trust Company, Registrars, authorized to sign such certificates, and that the signatures set opposite their respective names are specimens of the genuine signatures of such officers.

I Further Certify that the Corporation was duly organized under the laws of the State of Michigan and that under the accompanying charter or certificate of incorporation and all amendments thereto, certified by the Secretary of the State, the Corporation has an authorized capital stock of $1,000.00 divided into 100 shares of the par value of $10.00 each of common stock, 2,025,000 shares of non-par value stock.

That the signatures of officers authorized by the foregoing resolutions to sign certificates of stock are as follows:

President	will sign
Vice-President	will sign
Vice-President	will sign
Secretary	will sign

Schedule C. Copy of Resolution of Board of Directors of Briggs Manufacturing Co. 31st December, 1924—*continued.*

Treasurer will sign

Asst. Secretary will sign

Asst. Treasurer will sign

The address of this Corporation is 11,631 Mack Avenue, Detroit, Michigan.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Corporation, this 31st day of December, 1924.

M. W. GRIFFITH,
Secretary.

(Corporate Seal)

This is Schedule "D" referred to in the annexed Special Case.

Schedule D. Copy of Share Certificate of the Pfeiffer Brewing Company.

Number CC0528 Shares 1,000

Incorporated under the laws of

the State of Michigan.

Pfeiffer Brewing Company.

Authorized capital 750,000 shares common stock no par value.

This Certifies that Albert T. Montreuil and Evelyn H. Montreuil, as joint tenants with right of survivorship and not as tenants in common, is the owner of One Thousand full paid and non-assessable shares without par value of the Common Capital Stock of Pfeiffer Brewing Company transferable only on the books of the Corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed. This certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

Witness the seal of the Corporation and the facsimile signatures of its duly authorized officers, dated June 28, 1934.

CARLETON S. SMITH, Secretary. (Seal) FRANK J. CONRAD, President.

Registered June 29, 1934

Union Guardian Trust Company,
(Detroit) Registrar.

By CHAS. BOYLE,
Authorized Officer.

Countersigned
Detroit Trust Company
(Detroit) Transfer Agent.

By ?
Authorized Signature.

In the Supreme Court of Ontario.

Schedule E. Copy of Resolution of the Directors of Pfeiffer Brewing Co. 16th June, 1933.

This is Schedule "E" referred to in the annexed Special Case.

City National Bank and Trust Company of Chicago,
Chicago, Illinois.
Co-Transfer Agents and Registrars.
Certified Copy of Resolutions
of the Board of Directors
of Pfeiffer Brewing Company.

Whereas, This Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan and has an authorized capital stock consisting of 750,000 shares of Common Capital stock of no par value a share; and

Whereas, This Corporation desires to appoint Transfer Agents and Registrars for the issuance, transfer and registration of certificates of its Common Capital stock and to define their duties;

Now, Therefore be it Resolved:

First: That the following Banks, Trust Companies or Corporations be, and they hereby are, appointed Transfer Agents and Registrars of certificates representing the shares of the stock of this Corporation, as hereinafter set forth, in the following cities, viz.:

Chicago, Illinois.

Transfer Agent:	Registrar:
City National Bank and Trust Company of Chicago.	American National Bank and Trust Company of Chicago.

Detroit, Michigan.

Transfer Agent:	Registrar:
Detroit Trust Company.	Union Guardian Trust Company.

Second: That this Board of Directors hereby certifies to said Transfer Agents and Registrars that this Corporation's authorized shares, its shares outstanding and its shares authorized but unissued are as follows:

Class.	Par Value.	Shares Authorized.	Shares Outstanding.	Shares Authorized but unissued.
Only one (1) class	None	750,000	204,706	545,294

and that all such shares are, or when issued will be, fully paid and non-assessable in the hands of the respective holders thereof.

Third: That, for the purpose of the original issue of certificates (either in temporary or in permanent form) representing shares not heretofore outstanding, each Transfer Agent is hereby directed to record and countersign as Transfer Agent and each Registrar is hereby directed to register as Registrar certificates for not exceeding the following number of shares of stock:

Class	Shares
In Chicago	None
In Detroit, Mich.	295,294

when signed by the President or a Vice-President, and the Treasurer or an Assistant Treasurer or Secretary or an Assistant Secretary of this Corporation, and before registration countersigned by the Transfer Agent in the same city as the Registrar so registering such certificates issued in such names and for such number of shares as the Transfer Agents may be directed in written orders signed in the name of this Corporation by its President or a Vice-President and attested by its Secretary or an Assistant Secretary under its corporate seal, and to deliver such certificates as directed in such written orders, making the total authorization to date of said Transfer Agents and Registrars, including the additional issue mentioned in this paragraph "Third" hereof and all previous authorizations, cover :

Class	Shares
	500,000 shares.

Fourth : (1) That each of said Transfer Agents be and it hereby is authorized and directed from time to time upon the surrender to it, properly endorsed or accompanied by instruments of assignment and duly stamped as may be required by law, of

(*a*) the certificates, if any, issued pursuant to the foregoing paragraph "Third" of these resolutions ;

(*b*) the certificates, if any, representing shares of stock of this Corporation heretofore issued and now outstanding, namely, 204,706 shares of stock and

(*c*) the certificates previously issued in transfer or substitution of other certificaties for a like number of shares of the same class of stock, by any of said Transfer Agents and countersigned by any of said Registrars or any successor or additional Transfer Agent or Registrar appointed by the Corporation, including certificates issued in substitution for and upon surrender of any temporary certificates at any time outstanding ;

to make transfers on the books of this Corporation, of the shares represented by the certificates so surrendered in accordance with the assignments on the surrendered certificates, and to issue, record and countersign new certificates for a like number of shares of the same class of stock when they shall have been signed by the proper officers of this Corporation and to deliver the new certificates to the Registrar of the Corporation in the same city for registration and countersignature.

(2) That each of said Registrars be, and it hereby is, authorized and directed from time to time, upon the cancellation of certificates for a like number of shares of the same class to register transfers of

(*a*) the certificates, if any, registered pursuant to the foregoing paragraph "Third" of these resolutions ;

(*b*) the certificates, if any, representing shares of stock of this Corporation heretofore issued and now outstanding, namely 204,706 shares of stock and

(*c*) the certificates previously registered and delivered upon transfers

In the Supreme Court of Ontario.

by any of said Registrars, countersigned by any of said Transfer Agents, or by any successor or additional Transfer Agent or Registrar appointed by the Corporation, including certificates issued in substitution for temporary certificates at any time outstanding,

Schedule E. Copy of Resolution of the Directors of Pfeiffer Brewing Co., 16th June, 1930—*continued.*

and to register and to countersign new certificates accordingly when they shall have been signed by the proper officers of this Corporation and countersigned and delivered to it for such purpose by the Transfer Agent, in the same city, provided, however, that the Registrars shall be under no duty whatever in connection with the names in which certificates are issued or the correctness of any transfer from one name to another.

(3) That each Transfer Agent and Registrar shall be fully protected in conclusively relying upon any certificate as to the number of shares, if any, now outstanding, or other information or data concerning the certificates of stock representing such shares furnished to it by any prior Transfer Agent and Registrar respectively or by an officer of this Corporation.

(4) The certificates of stock may be delivered at the option of the Transfer Agents and Registrars, either by the Registrar to the transferee or his agent, or returned to the Transfer Agent for delivery to the transferee or his agent.

Fifth : That said Transfer Agents may establish such rules and regulations governing the issuance and transfer of the certificates of stock as may seem advisable to them, and as may not be inconsistent with the provisions of these resolutions and may open and keep such stock or transfer book or books as may be required by law or for their own convenience in the performance of said agency. It is the intention and purpose of these resolutions that said City National Bank and Trust Company of Chicago shall act as the principal Transfer Agent of this Corporation, and maintain consolidated stockholders ledgers, which will be a record of all the certificates issued and cancelled by itself and the Co-Transfer Agent respectively ; and it will be expected to furnish the stockholders lists for annual meetings, dividend or other purposes upon a written request of the President or Vice-President, Secretary or Assistant Secretary of the Company.

Sixth : It is the intention and purpose of these resolutions that certificates of the stock of this Corporation shall be interchangeably transferable in the cities of Chicago, Illinois and Detroit, Michigan. The fact of the recording, registration and countersignature of new certificates, whether by way of an original issue or upon a transfer, shall be advised daily by mail by the Transfer Agent countersigning them to the other Transfer Agents and by the Registrar registering and countersigning them to the other Registrars, and each Transfer Agent and Registrar shall be fully protected and held harmless by this Corporation in relying on any such advice, and in its failure or refusal to transfer or register respectively any certificates countersigned by another Transfer Agent or Registrar when it shall not have received such notice of the issue or registry and countersignature of such certificates.

Seventh : That all certificates representing shares of stock shall, unless otherwise prohibited by law, be deemed officially signed on behalf of this corporation if they bear the written or facsimile signature of the officers designated herein, and that wherever in these resolutions the Transfer Agents

Schedule E. Copy of Resolution of the Directors of Pfeiffer Brewing Co., 16th June, 1930—*continued.*

and Registrars are authorized to transfer, countersign or register certificates signed by certain designated officers of this corporation or certificates bearing signatures believed by them to be genuine, such authority and direction shall, unless otherwise prohibited by law, be taken to include certificates bearing the real or facsimile signatures of such officers. That specimens or facsimiles of the signatures of the officers of this Corporation now authorized to sign stock certificates as aforesaid, or heretofore authorized to sign stock certificates which are outstanding, be lodged forthwith with each of the Transfer Agents and Registrars to be used by them for the purpose of comparison with signatures appearing on the certificates of stock of this Corporation presented to them or any of them for issue, transfer or registration respectively. When any officer of this Corporation shall no longer be vested with authority to sign for the Corporation, written notice thereof shall immediately be given to each of the Transfer Agents and Registrars and until receipt of such notice the Transfer Agents and Registrars shall be fully protected and held harmless in recognizing and acting upon certificates bearing the signature of such officer or signatures believed by them or any of them in good faith to be such genuine signature.

Eighth: That from time to time additional officers may be appointed by resolutions of the Board of Directors of this Corporation not inconsistent with its by-laws to sign certificates of stock on behalf of this Corporation, and in every such case certified copies of the resolutions of this Board effecting such appointment, and specimen signatures of such officers, shall forthwith be lodged with each of the Transfer Agents and Registrars.

Ninth: That the authority of the said Transfer Agents and the Registrars respectively shall also extend to the authentication by such Transfer Agents and Registrars of any certificate or certificates of stock which may be issued by the authority of this Corporation, evidenced by a certified copy of a resolution of the Board of Directors of this Corporation, in lieu of a lost or destroyed certificate or certificates of stock. A satisfactory indemnity bond shall be required in such amount as the Directors may designate or as may be provided by the By-laws of this Corporation, and in any event for not less than the value of such certificate, wherein this Corporation, the Transfer Agents and the Registrars shall be named as the obligees. The bond shall be in a form and amount and with surety or sureties satisfactory to this Corporation, the Transfer Agents and the Registrars.

Tenth: That when any Transfer Agent or Registrar deems it expedient, it may apply to any officer of this Corporation or to counsel for this Corporation, or to its own counsel, for instructions and advice and for any action taken in accordance with such instructions or advice this Corporation will fully indemnify, protect and hold harmless such Transfer Agent and such Registrar from any and all liability. None of the Transfer Agents and Registrars shall be in any manner liable for any act or omission of any other Transfer Agent and Registrar.

Eleventh: That each of the Transfer Agents and Registrars shall be entitled to the usual and customary compensation for all services rendered in the execution of its duties, and to reimbursement for all reasonable expenses incurred in the performance of such duties, including fees of its counsel for

In the Supreme Court of Ontario.

Schedule E. Copy of Resolution of the Directors of Pfeiffer Brewing Co., 16th June, 1930—*continued.*

advice rendered in connection with such agency, and the proper officers of this Corporation are hereby authorised to pay all bills therefor when rendered.

Twelfth: That the Transfer Agents and Registrars may employ agents or attorneys in fact, and shall not be answerable for the default or misconduct of any agent or attorney appointed by them in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; nor shall any Transfer Agent or Registrar be liable for anything whatever in connection with this agency, except its wilful misconduct. This Corporation shall indemnify and hold harmless each Transfer Agent and Registrar for any act done by it in good faith in reliance upon any instrument, order or stock certificate believed by it to be genuine and to be signed, countersigned or executed by any person or persons authorised to sign, countersign or execute the same.

Thirteenth: That the authority of the Transfer Agents and Registrars, and each of them as such Transfer Agent and Registrar, shall also extend to the issue and registration of such additional shares of stock as may be authorised by this Corporation within the limits of its charter or certificate of incorporation or any amendments thereto.

Fourteenth: That the President or Vice-President and the Secretary or an Assistant Secretary of this Corporation be, and they hereby are, directed to certify copies of these resolutions under the seal of this Corporation and to lodge a certified copy with each Transfer Agent and Registrar, together with: (1) specimens of certificates of each class of stock covered by these resolutions in the form adopted by this Corporation; (2) specimen signatures of all of the officers of this Corporation duly authorised to sign or countersign any stock certificates hereafter issued; (3) specimen or facsimiles of the signatures of all of the officers of this Corporation, heretofore authorised to sign or whose signatures appear upon stock certificates now outstanding, if any; (4) a certified copy of the Charter or Certificate of Incorporation of this Corporation, including all of the amendments thereto; (5) a certified copy of the by-laws of this Corporation, as at present in force, and to furnish each Transfer Agent and Registrar certified copies of any amendments that may, from time to time be made to the Charter or Certificate of Incorporation or By-laws, and (6) an opinion of Counsel for this Corporation as to (*a*) the validity of its organisation and (*b*) its authority to issue the shares of stock herein authorised to be transferred and registered.

We the undersigned, Frank J. Conrad, President, and Rudolph P. Dewes, Secretary, of Pfeiffer Brewing Company, do hereby certify that said Corporation is duly organised and existing under the laws of the State of Michigan; that at a meeting of the Board of Directors of said Corporation duly held and convened according to the By-laws of said Corporation on the 5th day of June, 1933, a quorum being present and voting thereon, the foregoing resolutions were unanimously adopted, and that the foregoing is a true, full and correct copy of such resolutions as they appear on the records of said Corporation.

We further certify that the signatures of the officers referred to in said resolution and authorised thereby to sign certificates of stock for and in behalf of said Corporation are as follows:

President	Frank J. Conrad	will sign	F. J. Conrad
Secretary	Rudolph P. Dewes	will sign	Rudolph P. Dewes
Treasurer	Marvin C. Leggett	will sign	

Schedule E. Copy of Resolution of the Directors of Pfeiffer Brewing Co., 16th June, 1930—*continued.*

and that said officers have been duly elected and qualified and are now serving in their respective official capacities.

We further certify that the seal impressed upon this certificate is the official or corporate seal of said Corporation.

We further certify that nothing set out in these resolutions and authorised thereby is contrary to the terms of the Charter or By-laws of said Corporation or any amendments thereto.

Hereto attached are the following documents initialed by the undersigned, to wit:

(1) Copy of the Charter or Certificate of Incorporation or Reorganisation of the Corporation and all amendments thereto, certified to by the Secretary of State, marked "Exhibit A."

(2) Copy of the By-laws and Regulations of the Corporation, together with all amendments thereto, marked "Exhibit B."

(3) Specimen certificates of stock of the corporation in the forms duly adopted by it, marked "Exhibit C."

(4) An opinion of Merlin Wiley counsel for the Corporation as to (*a*) the validity of the Corporation's organisation and (*b*) its authority to issue the shares of stock called for by the foregoing resolutions, marked "Exhibit D."

The office and place of business of said Corporation is located at 3700 Beaufait Avenue, Detroit, Michigan.

In Witness Whereof, we have hereunto signed our names in our official capacities and affixed the seal of the Corporation this 16th day of June, 1933.

FRANK J. CONRAD,
President.

RUDOLPH P. DEWES,
Secretary.

(Corporate Seal)

This is Schedule "F" referred to in the annexed Special Case.

Schedule F. Copy of Resolution of the Directors of Pfeiffer Brewing Co., 21st March, 1934.

Corporation Dept.
Trust No. 12956
Subject A
Refer to H.D.
Detroit and Security Trust Co.
Doc. No. 18.

I, Carleton S. Smith, Secretary of Pfeiffer Brewing Company, a Michigan Corporation, do hereby Certify that the following is a true and correct copy

In the Supreme Court of Ontario.

of a resolution adopted by the board of directors of said corporation at a meeting thereof held in Detroit, Michigan, on Wednesday, March 21, 1934, a quorum being present and voting in favour thereof:

Schedule F. Copy of Resolution of the Directors of Pfeiffer Brewing Co., 21st March, 1934—*continued.*

" Resolved That this corporation does hereby discontinue the services " of City National Bank and Trust Company of Chicago, the transfer agent " in Chicago, and American National Bank and Trust Company of Chicago, " the registrar in Chicago, and that the Detroit Trust Company of Detroit " be retained as the sole transfer agent of this corporation and the Union " Guardian Trust Company as the sole registrar;

" Resolved Further that the secretary be instructed to notify all such " agents immediately of the action taken as above."

Witness my hand and the seal of said corporation, this 23rd day of March, 1934.

CARLETON S. SMITH,
Secretary.

Schedule G. Copy of Resolution of the Directors of Pfeiffer Brewing Co., 12th August, 1935.

This is Schedule " G " referred to in the annexed Special Case.

Co-Transfer Agent — Corporation Dept.

Certified Copy of Resolution of the Board of Directors of Pfeiffer Brewing Company

Trust No. 12956
Subject A
Refer to H.D.
Detroit and Security Trust Co.
Doc. No. 21.

(Name of Corporation)

(Address) 3700 Beaufait Avenue, Detroit, Michigan.

Appointing Guaranty Trust Company of New York.

CO-TRANSFER AGENT

Resolved, that the Pfeiffer Brewing Company a corporation duly organised under the State Law of Michigan do, and hereby does, appoint the Guaranty Trust Company of New York, Co-Transfer Agent in New York City for the transfer of certificates of this Corporation's capital stock, consisting of 750,000 shares of stock of no par value, of one class, of which there are the following shares issued and outstanding:—390,412 shares—such appointment to include any additional stock of the same class or classes which may hereafter be authorised by an increase of this Corporation's capital stock;

Further Resolved, that for the original issue of said stock, the said Co-Transfer Agent is hereby authorised and directed to countersign as Transfer Agent and record in its transfer record, and deliver to Central Hanover Bank and Trust Company Registrar in New York, N.Y., for registration, and when countersigned by said Registrar, to deliver certificates in such names and for

Schedule G. Copy of Resolution of the Directors of Pfeiffer Brewing Co., 12th August, 1935. *continued.*

such numbers of shares as the President or Vice-President of this Corporation may in writing direct, duly attested by the Secretary or Assistant-Secretary, under seal of this Corporation, not exceeding

No.....shares of such stock of no par value ;

Further Resolved, the said Co-Transfer Agent is hereby authorised to make transfers of said certificates when presented to it for such purpose and to countersign and deliver new certificates accordingly and keep the necessary records in connection therewith.

Further Resolved, the said Co-Transfer Agent shall incur no liability for the refusal, in good faith, to accept for transfer any of said certificates, purporting to be countersigned by the Detroit Trust Company, Transfer Agent in the City of Detroit, Michigan, and by the Union Guardian Trust Company Registrar in the City of Detroit, Michigan, in case notification of the issue and countersignature of said certificates shall not have been received from the Detroit Trust Company Transfer Agent in Detroit, Michigan, it being the purpose of this resolution that the certificates countersigned by each Transfer Agent shall be transferable either in New York, or Detroit, Michigan.

Further Resolved, that the proper officers of this Corporation cause the following instruments to be filed with said Co-Transfer Agent :

1. A certificate as to the amount and classes of the total authorised capital stock of this Corporation ;

2. A copy of the Charter or Articles of Incorporation of this Corporation and all amendments thereto, certified by the Secretary of State ;

3. A copy of the By-laws of this Corporation and all amendments thereto certified by the Secretary of this Corporation ;

4. Specimens of all stock certificates adopted by this Corporation certified by the Secretary of this Corporation ;

5. List of the duly elected officers of this Corporation, with their specimen signatures certified by the Secretary of this Corporation ;

6. Opinion of counsel covering the legality of the issue and full compliance with the terms of the Securities Act of 1933, as amended.

The undersigned, Alfred Epstein (Vice-President), and L. H. Buhs (Secretary) of Pfeiffer Brewing Company, do hereby certify that the foregoing is a true and complete copy of resolutions adopted at a meeting of the Board of Directors of said Corporation, duly called and held on the 19th day of July, 1935, and that said Corporation has an authorised capital stock of 750,000 shares of stock of no par value, of one class.

That the copy of the Charter or Articles of Incorporation attached is a true and complete copy thereof and of all amendments thereto ; that the copy of the By-laws is true and complete ; that the specimens of certificates of stock are true and complete specimens of all the certificates of stock of said Corporation ; that the autograph signatures herewith attached are the genuine signatures of all the officers of said Corporation who are duly authorised to sign such certificates.

In the Supreme Court of Ontario.

Schedule G. Copy of Resolution of the Directors of Pfeiffer Brewing Co., 12th August, 1935—*continued.*

In Witness Whereof, we have hereunto set our hand and the seal of this Corporation, this 12th day of August, 1935.

ALFRED EPSTEIN (Vice-President).

Attest :

L. H. BUHS
(Secretary).

(Corporate Seal)

No. 3.

Formal Judgment.

No. 3. Formal Judgment, 19th February, 1941.

In the Supreme Court of Ontario.

The Honourable the Chief Justice of the High Court. Wednesday, the 19th day of February, A.D. 1941.

Between :—

The Treasurer of Ontario ... ... Plaintiff,

and

Mrs. Frances Eugenia Blonde, Florence Maisonville and Emily F. Lynch, Executrices of the Estate of Albert Theodore Montreuil,

(Seal)

and

Alfred George Thomczek, Louise Matilda Thomczek, Eugenie Thomczek, Florence Maisonville and Raymond Girardot ... ... Defendants.

1. This action coming on for trial on Monday and Tuesday, the 7th and 8th days of October, 1940, and again this day at the sittings holden at Toronto for the trial of actions without a Jury, in presence of Counsel for all parties, upon hearing read the Special Case stated by the parties hereto under Rule 126, and upon hearing what was alleged by Counsel aforesaid, and this Court, being of the opinion that the shares of the capital stock of Briggs Manufacturing Company and Pfeiffer Brewing Company in the Special Case referred to were property locally situate in the Province of Ontario at the date of the death of Albert Theodore Montreuil for the purposes of The Succession Duty Act and as so locally situate are subject to succession duty and that judgment should be entered in favour of the Plaintiff for $105,313.95, being $93,869.93 balance of duty as set out in Paragraph 22 of the said Special Case and interest thereon amounting to $11,444.02 to the date of judgment ;

2. This Court doth Therefore Order and Adjudge that the Plaintiff do recover from the Defendants Mrs. Frances Eugenia Blonde, Florence Maisonville and Emily F. Lynch, Executrices of the Estate of Albert Theodore Montreuil the sum of $105,313.95, to be levied against the goods and chattels, lands and tenements which were of the said Albert Theodore Montreuil

In the Supreme Court of Ontario.

No. 3. Formal Judgment, 19th February, 1941—*continued.*

at the time of his death or which shall hereafter come to the hands of the said Defendants to be administered if they have so much thereof in their hands to be administered, and that of the said sum of $105,313.95 the Plaintiff do recover the sum of $21,062.92 from each of the Defendants Alfred George Thomczek, Louise Matilda Thomczek, Eugenie Thomczek, Florence Maisonville and Raymond Girardot, such last mentioned sum in the case of the Defendant Eugenie Thomczek and the Defendant Florence Maisonville to be levied out of the separate properties of the Defendants Eugenie Thomczek and Florence Maisonville which they are now or may hereafter be possessed of or entitled to, and any property which they may hereafter while discovert to be possessed of, or entitled to and not otherwise; but this judgment shall not render available to satisfy the same any separate property which the said Defendants were or may be restrained from anticipating unless by reason of Section 10 of The Married Women's Property Act such property shall be available to satisfy the judgment notwithstanding such restriction.

3. And This Court Doth Further Order and Adjudge that the Defendants do pay to the Plaintiff his costs of this action forthwith after taxation thereof to be levied in the case of Mrs. Frances Eugenia Blonde, Florence Maisonville and Emily F. Lynch, Executrices of the Estate of Albert Theodore Montreuil, against the goods and chattels, lands and tenements which were of the said Albert Theodore Montreuil at the time of his death or which shall hereafter come to the hands of the said Defendants to be administered, and in the case of Eugenie Thomczek and Florence Maisonville which they are now or may hereafter be possessed of or entitled to, and any property which they may hereafter while discovert be possessed of, or entitled to and not otherwise; but this judgment shall not render available to satisfy the same any separate property which the said Defendants were or may be restrained from anticipating unless by reason of Section 10 of The Married Women's Property Act such property shall be available to satisfy the judgment notwithstanding such restriction.

Judgment signed this 24th day of March, A.D. 1941.

"CHAS. W. SMYTH,"
"Registrar, S.C.O."

"Entered J.B. 79 page 159–160, March 24, 1941. H.F."

No. 4.
Reasons for Judgment.

No. 4. Reasons for Judgment of Chief Justice Rose.

Tried before The Honourable The Chief Justice of the High Court, at Toronto, Ontario, October 7 and 8, 1940, and February 19, 1941.

Counsel:

C. R. Magone, K.C. ... For the Plaintiff.
J. H. Rodd, K.C. ... }
Walker Whiteside, K.C. } For the Defendants.

Delivered orally February 19, 1941.

ROSE, C.J.H.C.:

In the Supreme Court of Ontario.

No. 4. Reasons for Judgment of Chief Justice Rose—*continued.*

The question in the case is whether the shares of certain companies were property situate in Ontario at the death of the testator for the purposes of the Succession Duty Act that was in force at the time.

The statute is The Succession Duty Act of 1934, chapter 55, section 6 (1). It is set out in Mr. Justice McTague's judgment in *Williams* v. *The King* (1940), O.R. 320. On the plain wording of the statute, the duty is imposed only if the shares are situate in Ontario. The testator was domiciled in Ontario and the share certificates were in his possession in Windsor. The companies were companies organized under the laws of Michigan. They had their head offices in Detroit, but the shares were transferable not at the head offices but at the offices of transfer agents, and indeed the share certificates in the first instance were issued not from the company's head office but from the office of a company appointed for the purpose of such issue. In each instance the company whose shares are in question had two of these transfer agents, one in Michigan and the other in New York. The transfer agents had equal authority. The shares that are in question could have been transferred either in Detroit or in New York. Neither company had any transfer office in Ontario.

At the time of the trial and of the argument the case of *Williams* v. *The King* had been decided by Mr. Justice McTague and was standing for argument in the Court of Appeal. After the judgment of the Court of Appeal had been given (it is now reported in (1940) O.R. 403) and I had read the judgment of Mr. Justice Masten, I intimated to counsel for the Provincial Treasurer that if he so desired I should be prepared to hear argument on the question whether the second of the grounds taken by Mr. Justice Masten—namely, that the share certificates, being under seal, as they are in this case, were specialties, and that the location of the specialty obligation is where the specialty is found at the time of the obligee's death—was applicable to the present case and ought to be adopted as a basis of the decision. Counsel desiring that further argument, arrangements were made for the hearing of it, and to-day I have had the benefit of arguments by Mr. Magone and Mr. Rodd.

Mr. Magone contends that what Mr. Justice Masten said applies to this case and ought to be adopted. Mr. Rodd contends that what Mr. Justice Masten said is not binding upon me, in that, although the remarks are not obiter, expressing as they do one of the reasons of one of the learned Justices of Appeal for coming to the conclusion to which the Court came, they are not a necessary part of the reasons of the Court and are not adopted by any other member of the Court, unless it be Mr. Justice Fisher in the short statement on page 420 that he agrees with the reasons and conclusions of his brother Masten.

In the view that I take of the case, it was not necessary for me to hear Mr. Magone in reply, and perhaps it was unnecessary that I should hear this further argument, because, having had the opportunity of reading the cases that were cited to me on the occasion of the first argument, I have come to the conclusion, apart altogether from this point that has been discussed to-day, that the judgment ought to be in favour of the Provincial Treasurer ; but I think it was better that the point should be discussed so that, in case I am wrong in the reasoning by which I have reached my conclusion, there

shall be no doubt that it is open in appeal. The position has definitely been taken on behalf of the Treasurer that effect ought to be given to Mr. Justice Masten's reasoning, and, just as definitely, the validity of that reasoning has been called in question by the defendants, and the point is open, but I did not call upon Mr. Magone to reply, because I think it is not incumbent upon me to discuss the question debated to-day, and indeed that it is not desirable that I should express an opinion in respect of it. Even if I had formed the opinion that Mr. Justice Masten's reasoning was unsatisfactory I should have had great hesitation in deciding that I was free to give effect, and ought to give effect, to my own view, and so I propose to say nothing whatever about that point but to confine myself to the question that I have really studied.

Frequently in cases in which the right to collect a tax or duty has arisen the courts have been called upon to choose between the place in which the owner of shares was domiciled or resident and had his certificates and the place in which an effectual transfer of the shares could be made. The classic case in which that choice has had to be made is *Attorney General* v. *Higgins*, 2 Hurlstone and Norman 339, and 157 English Reports 140, in which the choice was the place in which was located the office in which the transfer could be made. That case has been referred to and discussed many times, notably by Mr. Justice Anglin in *Smith* v. *Provincial Treasurer*, 58 S.C.R. 570, at 584, and in *Brassard* v. *Smith* [1925] A.C. 391, and it is not necessary to restate its facts or the precise point that was decided. In *Brassard* v. *Smith* it was treated as settling the law. All this is set out in Mr. Justice McTague's judgment in *Williams* v. *The King*. The courts also have had to choose as between two places in which an effective transfer of the shares could be made, and I think that in all of those that I have seen when the owner or the deceased owner was domiciled and had the certificates in the place where one of the transfer offices was situate, that place has been adopted as the place at which the shares were held to be. In *Rice* v. *The King*, a recent Quebec case, reported in (1939) 4 D.L.R. 701, the fact that the certificates were in Montreal, where there was a registry, was taken to be sufficient, although the deceased owner had been domiciled in New York, where also there was a registry. In the latest Ontario case, *Williams* v. *The King*, the shares were transferable in New York, where the testator had been domiciled and where he had had possession of the certificates. The certificates were also transferable in Ontario, where the head office of the company was situate, but their location was taken to be in New York, not Ontario. I do not find in the judgments in that case a statement that the fact that the owner had been domiciled and had had the certificates in New York furnished the reason for the judgment ; but something in the Williams case, as in many of the other cases, had to turn the scale, and I think that that something was the fact that the deceased owner had been domiciled or resident and had had the certificates at the place of the one registry rather than at the place of the other registry. That fact, I think, has always been found to be sufficient, and sometimes less has sufficed.

I need not multiply examples. *Ivey* v. *The King* (1939), 1 D.L.R. 631, is one of them. *Re Macfarlane* (1933), O.R. 44, I think, is another. (I am

In the Supreme Court of Ontario.

No. 4. Reasons for Judgment of Chief Justice Rose—*continued.*

not taking them in order.) *In re Clark* (1904), 1 Ch. 294, which is not a taxation case, is a case in which a similar choice had to be made. The testator having been domiciled in England, the certificate being in England, and the only distinction, as it was put, in point of locality being the possession of the certificate, which was essential to complete the title, which title could be transferred either in England or in South Africa, the shares were held to pass under a bequest of personal property in England. In *In re Aschrott*, (1927), 1 Ch. 313, shares of which the certificates were in England, where there was a registry, but not the sole registry, were held to be locally situate in England, although the owner had been domiciled and had died in Germany. In *Toronto General Trusts Corporation* v. *The King* (1938), 1 D.L.R. 40, the real situation of the shares that were in question was held to be in Ontario, where the deceased had been domiciled and had had the certificates and where there was a registry, although there was a registry also at the head office of the company in Montreal.

What has been said does not settle the present case, because the present is like those cases which the present Chief Justice of Canada foresaw as likely to arise. In his judgment in *The King* v. *National Trust Company*, in the passage just preceding the passage quoted by Mr. Justice Masten, he says (at page 674):

> " In the evolution of the legal principles derived from the rules " governing the earlier practice and their application to new states of " fact, novel questions will naturally arise. A corporation debtor may " have more than one residence, and, consequently, it may be necessary " to determine which of these is the residence of the corporation for the " purpose of the inquiry."

That is not exactly the case that has arisen here: we are not concerned with a corporation debtor, but we are concerned with a novel question, to which the principles, if they can be discovered, of the cases that have been decided, ought to be applied. The courts have decided, as I have said, in cases akin to this, against the place in which the certificates are found and in favour of the place in which the shares can be transferred, and they have decided which of two places in which the shares can be transferred is to be preferred, but they have not decided as between a place in which the certificates are found but where the shares cannot be transferred and one or another of several places in which the shares can be transferred.

Mr. Rodd says—and no doubt he is perfectly right—that the province professed to tax, and in fact had jurisdiction to tax or to impose duty upon, only property that was within the province. He argues, then that it is not necessary for me to find where outside the province the property in question was located, but that the Treasurer's case is at an end unless I can find positively that the property was located in the province; and he says—and I think, as far as my reading goes, he is right in saying—that the mere domicile of the owner and the presence of the certificate in a place has not in any of the cases been held to stamp that place as the place in which the shares were located. So he says that, although in this particular instance there would be difficulty in saying whether the location of these shares was

in Detroit or New York, I ought to say, " Let Michigan and New York fight " out that question if they desire to do so, but I must not hold that the " shares are here, because I have no authority for so holding." Mr. Magone says, on the other hand, that you do not find in the cases a decision against the place where the owner was domiciled and the certificates were located and in favour of the place where there can be an effectual transfer if there are two transfer offices equally available, and I think he is right in saying that there is no authority in the books for so doing. So, having to deal with this new point, finding no decided case which entirely covers it, I think that what is to be done is to follow the course approved by the Chief Justice of Canada and to try to decide as nearly as possible in harmony with the course of the earlier decisions.

I cannot find in this particular instance that any one office is the office in which a transfer of the shares can be made effective, so I cannot apply *Attorney-General* v. *Higgins* and the cases that have followed it ; but I have a whole series of cases in which some effect has been given to the fact that the owner of the shares had the certificates with him in the place of his domicile, and I think that, there being nothing else that can be seized upon, I ought to take that fact, which the cases show to be important in some circumstances, as being the governing fact in the circumstances of this case, and for that reason ought to decide in favour of the Provincial Treasurer.

It has been made apparent that I am proceeding upon the assumption that, when the applicability of an enactment of the nature of sec. 6 (1) of the Ontario Act of 1934 or the power of a province to impose a tax is under consideration a local situation is to be attributed to shares. The question whether such an assumption is justified, or is in all cases justified, was by the Privy Council left open in *Brassard* v. *Smith ;* but it is an assumption which lies at the root of many cases that are binding upon a trial Judge, and I have thought that I ought to make it, and ought to consider merely how, following a course suggested by the cases, I can find the place in which these shares were situate at the time of the testator's death. If they were situate somewhere, and if, like the mortgage debts in *Toronto General Trusts Corporation* v. *The King* [1919], A.C. 679, which could not be situate in two provinces at once, they are to be deemed to have had only one local situation, and if that situation is not to be discovered by considering the location of the head office of the companies, and if the principle *mobilia secuuntur personam* is no guide—the reason why it is not a guide is given in *Provincial Treasurer of Alberta* v. *Kerr* [1933], A.C. 710—then (leaving aside Mr. Justice Masten's second reason for his judgment in *Williams* v. *The King*) I do not find in the cases any surer guide than the one that I have followed.

There was some discussion when we were here before as to what the form of the judgment was to be. I have looked at my notes of it, and I have read again the extension of the reporter's notes, and I do not know that even now I know how to word the endorsement on the record. What seemed to be said, or what both counsel seemed to favour, was a direction for judgment for $93,869.93, with a reference to determine whether, pursuant to the statute, interest, and if so how much, is to be added, or whether interest, and if so how much, is to be credited. I do not know whether in the interval

In the Supreme Court of Ontario.

No. 4. Reasons for Judgment of Chief Justice Rose—*continued.*

they have considered the matter any further and can suggest a better endorsement than that or not. I confess I do not really understand what the referee would be doing if there was a reference pursuant to such a direction.

Can you help me at all, or can you agree on something that will obviate the necessity of any reference ?

Mr. Whiteside : I think we could agree on an amount and then give that to your Lordship.

Mr. Magone : We will do that, my Lord. We will agree on an amount and give that amount to your Lordship to incorporate.

His Lordship : That is much the simpler course, if you can do that.

Mr. Magone : We can do that, my Lord.

His Lordship : Then what shall I do ? Refrain from endorsing the record at all to-night ?

Mr. Magone : Yes, my Lord. We will do it to-morrow.

His Lordship : Do you think you can do that ?

Mr. Magone : We will do it right away. My friend says he does not know whether he can do it to-morrow or not, but we will do it at once.

His Lordship : Then shall I refrain from endorsing the record ?

Mr. Magone : I think that would be well, my Lord, yes.

His Lordship : Very well.

Tell me also, if it is necessary to tell me, this : You make the claim against the executrices, then you make it against the beneficiaries—this is from the endorsement on your writ of summons—and then you say as regards each of the beneficiaries that the sum is payable out of the shares of the capital stock of these two companies, and so on. Now, is there any need for anything of that in the endorsement ?

Mr. Magone : Well, I think probably, my Lord, that each of the beneficiaries is not to be subject to a judgment for the whole amount, but only for her share.

His Lordship : If in a direction to the Registrar to enter a judgment I used the words of this claim as endorsed on the writ of summons, I am afraid that the poor Registrar would be in a difficulty as great as the one I am in at the moment. Can you come to that also ?

Mr. Whiteside : I think we could. At the moment there is security posted with the Provincial Treasurer to cover the whole claim, so I think we can work that out.

His Lordship : Well, do you not agree with me that a direction in this form to the Registrar would simply have you both back——

Mr. Whiteside : That is right ; we will agree on that too.

His Lordship : ——contending as to what that meant and what he ought to put in his judgment ?

Are costs asked for ?

Mr. Magone : Yes, my Lord.

No. 5.

Defendant's Notice of Appeal.

In the Supreme Court of Ontario.

No. 5. Defendants' Notice of Appeal, 4th March, 1941.

In the Court of Appeal for Ontario.

Between : The Treasurer of Ontario .. .. Plaintiff (Respondent)

and

Mrs. Frances Eugenia Blonde, Florence Maisonville and Emily F. Lynch, Executrices of the Estate of Albert Theodore Montreuil, and Alfred George Thomczek, Louise Matilda Thomczek, Eugenie Thomczek, Florence Maisonville and Raymond Girardot .. .. .. Defendants (Appellants)

Take Notice that the Defendants hereby appeal to the Court of Appeal for Ontario from the judgment pronounced herein by The Honourable The Chief Justice of the High Court, on the nineteenth day of February, 1941 directing judgment to be entered for the Plaintiff for his claim in full, with interest and costs, and ask that the judgment may be reversed and that judgment may be entered in favour of the Defendants dismissing the action with costs, upon the following among other grounds :

1. The shares of stock in question in the action were not property locally situate in the Province of Ontario at the death of the deceased for the purposes of the Succession Duty Act, and the Learned Chief Justice erred in finding in effect that the answer to the question set out in Paragraph 21 of the Special Case should be answered in the affirmative, and in holding that such shares were subject to succession duty within the Province of Ontario.

2. The shares in question, being shares of foreign companies, having no place of registry within Ontario, the Learned Chief Justice erred in not applying to this case the established principle of law that the local situation of such shares is, for succession duty purposes, the place where they can be effectively dealt with.

3. There is no foundation in law for holding that when there are two places of registry, neither of which are within the Province seeking to tax, that, therefore, the actual situs of the shares for such duty purposes is where they are found, and the Learned Chief Justice erred in so finding.

4. The shares in question could be effectively dealt with only at places outside of the Province of Ontario, and they were not, therefore, subject to succession duty within the Province of Ontario even though such shares were found within the Province at the death of the deceased domiciled in Ontario.

5. The shares in question cannot, and could not at the death of the deceased, be effectively dealt with, within Ontario, and could not, therefore,

In the Supreme Court of Ontario.

No. 5. Defendants' Notice of Appeal, 4th March, 1941—*continued.*

properly be found to be locally situate in Ontario for succession duty purposes and subject to succession duty, no matter where else these shares could be effectively dealt with nor in how many places this could be done.

Dated at Windsor, Ontario, this fourth day of March, 1941.

Rodd, Wigle, Whiteside & Jasperson,
1102 Canada Building,
Windsor, Ontario.
Solicitors for the Defendants (Appellants).

To: C. R. Magone, Esq.,
Solicitor for the Plaintiff (Respondent).

In the Court of Appeal.

No. 6. Defendants' Statement of facts and law, 31st March, 1941.

No. 6.

Defendants' Statement of Facts and Law.

1. Albert T. Montreuil, late of the City of Windsor, in the County of Essex and Province of Ontario, Industrialist, died on the second day of October, 1936, domiciled in the Province of Ontario, having first made his Last Will and Testament dated the 14th day of July, 1936, probate of which was duly granted by the Surrogate Court of the County of Essex to Frances Eugenia Blonde (formerly Byrne), Florence Maisonville and Emily F. Lynch, the Executrices therein named, on the 29th day of October, 1936. The value of the assets of the estate amounted to over one million dollars.

2. At the death the deceased was the owner of eight thousand fully paid shares of the capital stock of the Briggs Manufacturing Company, valued at $480,000.00, and forty-one thousand fully paid up shares of the capital stock of the Pfeiffer Brewing Company, valued at $425,375.00. Both of these companies were incorporated under the laws of Michigan and had their head offices at the City of Detroit in that State. The certificates for the shares, however, were with the deceased within Ontario at the time of his death.

3. Neither of these companies had a registry of transfer of shares within the Province of Ontario, but did maintain such registers in the City of Detroit and in the City of New York, the shares in question, however, being registered with the Detroit Trust Company at Detroit, one of the duly appointed transfer agents of the said companies.

4. By the Last Will and Testament of the deceased certain life interests in the income of the assets of the estate were given to two sisters in the proportions named in the will, and upon the death of either the income of the one so dying was to be paid to seven nephews and nieces of the deceased, and upon the death of the surviving sister the whole of the assets was to be divided among these seven persons. Of these persons five live in the City of Detroit and two in the Province of Ontario.

5. Succession duty to the amount of something over one hundred and forty-nine thousand dollars has been paid to the Province in respect of all

of the assets locally situate within the Province of Ontario and upon the succession to the two resident persons who share in the residue in respect of the value of the foreign assets above referred to, and the whole question in dispute between the parties is whether or not the shares of stock in the above companies can, under the circumstances, be considered to be locally situate within the Province of Ontario for the purposes of the Succession Duty Act.

6. His Lordship, the Chief Justice, on the 19th day of February, 1941, gave judgment in favour of the Province of Ontario for the sum of $105,313.95, made up of $93,869.93 balance of duty, and the sum of $11,444.02 interest on the said sum to the date of judgment.

7. From that judgment the Appellants now appeal, and will upon the argument refer to the following among other cases :—

Attorney-General vs. *Higgins* (1857), 2 H. & N. 349.
In re Ewing (1881), 6 P.D. 19.
Attorney-General vs. *Lord Sudeley, et al.* (1896), 1 Q.B. 354.
Attorney-General vs. *New York Breweries Co.* (1898), 1 Q.B. 205.
Commissioners of Stamps vs. *Hope* [1891], A.C. 476.
Toronto General Trusts Corp. vs. *The King* [1919], A.C. 679.
In re MacFarlane (1933), O.R. 44.
Brassard vs. *Smith* [1925], A.C. 371.
Royal Trust Co. vs. *Attorney-General for Alberta* [1930], A.C. 144.
The King vs. *New York Trust Co.* (1933), S.C.R. 670.
In re Clarke, McKecknie vs. *Clarke* (1904), 1 Ch. 294.
Attorney-General of Nova Scotia vs. *De Lamar, et al.* (1922), 61 D.L.R. 251.

Untermeyer vs. *Attorney-General of British Columbia* (1929), S.C.R. 84.
Aschrott, Clifton vs. *Strauss* (1921), 1 Ch. D. 313.
King vs. *Cutting* (1932), S.C.R. 410.
Toronto General Trusts Corp. vs. *The King* (1938), 1 D.L.R. 40.
Ivey vs. *The King* (1939), 1 D.L.R. 631.
Rice vs. *The King* (1939), 4 D.L.R. 701.
Receiver-General of New Brunswick vs. *Rosborough* (1915), 24 D.L.R., p. 354.

Erie Beach Co. Ltd. vs. *Attorney-General for Ontario* [1930], A.C. 161.
Provincial Treasurer of Alberta vs. *Kerr* [1933], A.C. 710.
Cotton vs. *The King* (1912), 45 S.C.R. 469 at p. 521.
Williams vs. *The King* (1940), O.R. 320.

Dated the thirty-first day of March, 1941.

J. H. RODD,
of Counsel for Appellants.

In the Court of Appeal.

No. 7. Plaintiff's Statement of facts and law, 4th April, 1941.

No. 7.
Plaintiff's Statement of Facts and Law.

MEMORANDUM OF FACTS.

This is an appeal from the judgment of the Honourable the Chief Justice of the High Court herein dated the 19th day of February, 1941, in which he found under the circumstances hereinafter recited that the shares of the capital stock of Briggs Manufacturing Company and the Pfeiffer Brewing Company were property locally situate in the Province of Ontario at the date of death of Albert Theodore Montreuil for the purposes of The Succession Duty Act and as so locally situate are subject to succession duties.

The facts are set out in the Special Case and are as follows :—

Albert Theodore Montreuil of Windsor died on the 2nd day of October, 1936, domiciled in the Province of Ontario. At the date of his death he owned 8,000 shares of the capital stock of Briggs Manufacturing Company registered in the name of the said Albert Theodore Montreuil, and 41,000 shares of the common stock of the Pfeiffer Brewing Company registered in the name of the said Albert Theodore Montreuil. The certificates representing the above shares were found in his safety deposit box in the City of Windsor.

Both Corporations were incorporated under the laws of the State of Michigan and the head offices of both Corporations were in the City of Detroit in the State of Michigan.

Neither Company maintained a register for the transfer of shares nor did it record transfers of shares of its capital stock at the head office. Both Corporations had, however, appointed trust companies, in the City of Detroit and in the City of New York as transfer agents and the said shares could be transferred at either transfer office in the City of New York or in the City of Detroit upon production of the share certificates.

The share certificates in question were all sealed with the corporate seals of the Companies.

MEMORANDUM OF LAW.

The Respondent submits that the judgment of the Honourable the Chief Justice of the High Court is right for the reason therein stated and for the additional reason that the said share certificates being under seal were specialties and therefore had a situs where they were found at the time of the death of the said Albert Theodore Montreuil, namely, in the Province of Ontario.

On The First Ground.

The date of death of the deceased was the 2nd day of October, 1936 ; therefore the statute which applies is The Succession Duty Act, 1934, Chapter 55, Section 6(1), which reads as follows :—

" 6.—(1) All property situate in Ontario and any income therefrom " passing on the death of any person, whether the deceased was at the " time of his death domiciled in Ontario or elsewhere, and every trans- " mission within Ontario owing to the death of a person domiciled

" therein of personal property locally situate outside Ontario at the " time of such death, shall be subject to duty at the rate hereinafter " imposed."

Shares in a corporation which are transferable in one province only have been held to have a situs for the purposes of taxation in that province, notwithstanding that the certificate may have been found in some other province and that the head office of the Company is in some other province.

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

Erie Beach Company Limited vs. *Attorney-General for Ontario* [1930] A.C. 161.

Provincial Treasurer of Alberta vs. *Kerr* [1933] A.C. 710.

Attorney-General vs. *Higgins* 2 H. & N. 339.

For the purposes of taxation, probate and succession shares must have a local situs.

Smith vs. *Provincial Treasurer of Nova Scotia* (1919) 58 S.C.R. 570.

Anglin J. at Page 583

and immovables can for the purpose of taxation have only one situs.

King vs. *National Trust Company* (1933) S.C.R. 670.

Duff C.J. at Page 673.

Where the share can be effectively dealt with in more than one jurisdiction the place where the certificate is found is the determining factor.

Stern vs. *The Queen* (1896) 1 Q.B. 211.

Attorney-General vs. *Bouwens* (1838) 4 M. & W. 171, 150 E.R. 1390.

In Re Clark (1904) 1 Ch. 294.

In Re Aschrott (1927) 1 Ch. 313.

It is submitted that the following cases are conclusive that a share cannot have a situs in the State or Province where there is :—

i. a transfer office only,

ii. a head office only,

iii. a transfer office and a head office,

unless the share certificate is also found in such States or province, and under these cases, therefore, the shares in Briggs Manufacturing Company and Pfeiffer Brewing Company cannot have a situs either in the State of Michigan or in the State of New York.

Re McFarlane (1933) O.R. 44 (C.A.).

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

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

Ivey vs. *The King* (1939) 1 D.L.R. 631 (Que. C.A.).

In the Court of Appeal.

No. 7. Plaintiff's Statement of facts and law, 4th April, 1941— *continued.*

In a case in which the ordinary rule as to specialties could not be applied the Court considered all the circumstances.

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

The legal representative authorized by the Ontario probate were entitled to take possession of the certificates and to deal with them.

Attorney-General vs. *Newman et al* (1899) 31 O.R. 340 (J.) at 345.

Attorney-General of Ontario vs. *Newman*, 1 O.L.R. 511 (C.A.) at 514.

Blackwood vs. *The Queen* [1882] 8 A.C. 82 at Page 91.

and the certificates have to be surrendered before transfer could be effected (Record, Pp. 11, 15).

On the Second Ground.

That the shares in question because they are sealed with the seal of the Company are specialties and have a situs where they are found.

It is submitted that in no case in which it has been held by the Court that a share has a situs where it may be effectively dealt with is there anything to indicate that the shares in question were sealed with the seal of the Company and that such cases do not therefore apply.

Attorney-General vs. *Higgins* 2 H. & N. 339.

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

Erie Beach Company Limited vs. *Attorney-General for Ontario* [1930] A.C. 161.

Provincial Treasurer of Alberta vs. *Kerr* [1933] A.C. 710.

In the case of the *Attorney-General* vs. *Higgins*, Baron Martin stated that the evidence of title to these shares is the registry which is in Scotland, and in the case of *Brassard* vs. *Smith* the stock in question was bank stock. In both cases, therefore, the shares in question were in the nature of book stock.

It is submitted that the certificates in question were in the nature of specialties because they were sealed with the seal of the Company and, therefore, have a situs where they are found, i.e., in the Province of Ontario.

Stroud's Judicial Dictionary—Page 1915—" Specialty."

Stroud's Judicial Dictionary
Volume 4, Supplement —Page 537—" Specialty."

Williams vs. *The King* (1940) O.R. 403 (C.A.)—and cases therein cited.

For the above reasons and for the reasons that may be advanced in argument on this appeal, it is submitted that the appeal should be dismissed with costs.

C. R. MAGONE,
of Counsel for the Plaintiff.

April 4th, 1941.

No. 8.

Formal Judgment.

In the Court of Appeal.

No. 8. Formal Judgment, 24th June, 1941.

In the Court of Appeal for Ontario.

The Honourable The Chief Justice for Ontario
The Honourable Mr. Justice Middleton
The Honourable Mr. Justice Masten
The Honourable Mr. Justice Henderson
The Honourable Mr. Justice Gillanders

Tuesday, the 24th day of June, 1941.

Between :

The Treasurer of Ontario .. .. .. (Plaintiff) Respondent,

and

Mrs. Frances Eugenia Blonde, Florence Maisonville and Emily F. Lynch, Executrices of the Estate of Albert Theodore Montreuil, and Alfred George Thomczek, Louise Matilda Thomczek, Eugenia Thomczek, Florence Maisonville and Raymond Girardot .. .. (Defendants) Appellants.

Upon motion made unto this Court on the ninth and tenth days of April, 1941, by counsel on behalf of the Appellants, above named, in the presence of counsel for the Respondent, above named, by way of appeal from and to set aside the judgment of The Honourable The Chief Justice of the High Court pronounced herein on the nineteenth day of February, 1941, upon hearing read the Special Case stated by the parties and the proceedings in the action and the judgment aforesaid, and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the appeal stand over for judgment, and the same coming on this day for judgment, this Court, with The Honourable Mr. Justice Masten dissenting, being of the opinion that the shares of capital stock of Briggs Manufacturing Company and Pfeiffer Brewing Company were not property locally situate in the Province of Ontario at the date of the death of Albert Theodore Montreuil for the purposes of the Succession Duty Act, and, therefore, not subject to succession duty.

1. This Court Doth Order and Adjudge that the appeal of the said Appellants from the said judgment of the Chief Justice of the High Court be and the same is hereby allowed.

2. And this Court Doth Further Order and Adjudge that this action be and the same is hereby dismissed.

In the Court of Appeal.

No. 8. Formal Judgment, 24th June, 1941— *continued.*

3. And this Court Doth Further Order that the above named Respondent do pay to the above named Appellants the costs of the said action and of this Appeal forthwith after the taxation thereof.

" CHAS. W. SMYTH "
Registrar S.C.O.

Approved
" C. R. MAGONE "
Sol. for the Respondent.

Entered O.B. 179, page 258
July 2, 1941,
" E. B."
(Seal)

No. 9. Reasons for Judgment. (A) Robertson C.J.O. (concurred in by Gillanders and Middleton JJ.A.).

No. 9.

Reasons for Judgment.

(A) ROBERTSON C.J.O. (concurred in by Gillanders and Middleton JJ.A.):

An appeal from the judgment of the Chief Justice of the High Court, dated 19th February, 1941. The matter came before him by way of a special case stated by the parties.

Albert Theodore Montreuil, late of the City of Windsor, in the Province of Ontario, died on the 2nd October, 1936, domiciled in Ontario. He left a will, of which probate was granted by the Surrogate Court of the County of Essex to the respondents, the defendants in the action, on the 29th October, 1936. The deceased left an estate, the aggregate value of which as fixed for succession duty purposes, is over $1,000,000.

At the time of his death the deceased was the owner of 8,000 fully paid, non-par value shares of the capital stock of Briggs Manufacturing Company, the value of which for the purposes of the case is agreed to be $480,000 These shares were registered in the name of the deceased, and the share certificates were at the time of his death in his possession in a safety deposit box at Windsor.

The Briggs Manufacturing Company is incorporated under the laws of the State of Michigan, and its head office is at the City of Detroit in that State. The Company was incorporated on the 29th November, 1909. On the 27th December, 1924, the Company appointed a trust company, now known as Detroit Trust Company, of the City of Detroit, and the New York Trust Company, of the City of New York, as its agents, with the title transfer agent, for the transfer of shares of its capital stock. The appointment of the Detroit Trust Company was effective as of December 27th, 1924, and the appointment of the New York Trust Company was effective as of January 2nd, 1925. The Detroit Trust Company maintains a register of transfers of shares of the Briggs Manufacturing Company at its office in the City of Detroit, and the New York Trust Company maintains a similar register at its office in the City of New York. Somewhat detailed instructions were issued to the transfer agents on their appointment, but it is not necessary

to set them out. There was no distinction made between the two transfer offices as to the shares that might be transferred there. Any and all of the issued shares could be transferred at the office of either transfer agent. The form of share certificate states that the shares are transferable in person, or by duly authorised attorney, upon surrender of the certificate properly endorsed. The Briggs Manufacturing Company itself did not, at the date of the death of the deceased, maintain and it has not since, maintained a register of transfers of shares, nor itself make and record such transfers, and it had no other agent for the transfer of shares than the two trust companies mentioned.

At the date of his death the deceased was also the owner of 41,000 fully paid, non-par value shares of the common stock of Pfeiffer Brewing Company, the value of which is agreed to be $425,375. These shares were also registered in the name of the deceased, and the share certificates were in his possession in a safety deposit box in Windsor.

The Pfeiffer Brewing Company was incorporated under the laws of Michigan on 5th February, 1926, and its head office is at the City of Detroit. On the 5th June, 1933, Pfeiffer Brewing Company appointed Detroit Trust Company and City National Bank and Trust Company, of the City of Chicago, agents for the transfer of shares. On 21st March, 1934, the Company discontinued the services of City National Bank and Trust Company as transfer agent, and retained Detroit Trust Company as its sole transfer agent. Then, on 19th July, 1935, the Company appointed Guaranty Trust Company of New York as transfer agent in the City of New York. Each of these trust companies maintains a register of transfers of shares of Pfeiffer Brewing Company, the one at its office in Detroit, and the other at its office in the City of New York. All transfers of shares are made by these transfer agents and recorded by them, no distinction being made between them as to which of the common shares they may transfer and record. The certificate for shares of Pfeiffer Brewing Company states that the shares are transferable only on the books of the Corporation by the holder thereof in person or by attorney, upon surrender of the certificate properly endorsed. Pfeiffer Brewing Company itself did not, at the date of the death of the deceased, and it has not since, maintained a register of transfer of shares, nor itself make and record such transfers, and it had not at the date of the death of the deceased, and has not since had any transfer agent other than the two trust companies named.

The certificates for the shares of Briggs Manufacturing Company held by the deceased were issued and recorded by Detroit Trust Company as transfer agent, notice thereof being given to the New York Trust Company. The certificates for the shares of the Pfeiffer Brewing Company owned by the deceased were also issued and recorded by Detroit Trust Company as transfer agent, and notice thereof was duly given to Guaranty Trust Company.

A copy of the probate is annexed to the special case and forms part of it. The special case also sets out some facts with respect to the persons who take interests under the will. There are seven persons among them, after certain life interests, the estate is to be divided. Two of these persons are resident and domiciled in Ontario, and the remaining five are and were at

In the Court of Appeal.

No. 9. Reasons for Judgment. (A) Robertson C.J.O. (concurred in by Gillanders and Middleton JJ.A.)— *continued.*

the death of the testator, resident and domiciled in the State of Michigan. The executrices and trustees of the estate have paid to the Province of Ontario a sum in full of the succession duty upon all the property of the deceased admitted to be situate in the Province of Ontario on the date of his death. The sum paid also includes succession duty in respect of the interests taken under the will by two residuary legatees who are resident and domiciled in Ontario, in the shares of Briggs Manufacturing Company and the Pfeiffer Brewing Company that are in question. This duty was no doubt paid as on a " transmission within Ontario " under s. 6 of The Succession Duty Act, of 1934, 24 Geo. V, c. 55.

The plaintiff in the action claims, and the defendants deny, that these shares were at the death of the deceased, property situate in the Province of Ontario, and that succession duty was also payable to the Province of Ontario thereon so far as the interests of five legatees resident in the State of Michigan are concerned. The claim of the plaintiff for duty is presumably based on sub-sec. 1 of s. 6 of the Succession Duty Act, which provides for duty on " all property situate in Ontario passing on the death " of any person, whether the deceased was at the time of his death domiciled in Ontario or elsewhere.

The question stated for the opinion of the Court is :

" Were the said shares of capital stock of Briggs Manufacturing " Company, and Pfeiffer Brewing Company, property locally situate in " the Province of Ontario at the death of the said Albert Theodore " Montreuil, for the purposes of the Succession Duty Act, and as so " locally situate, subject to Succession Duty ? "

If the opinion of the Court is in the affirmative, then judgment is to be entered in favour of the plaintiff for an agreed sum, with costs, subject to some adjustment. If the opinion of the Court is in the negative, then judgment is to be entered for the defendants, dismissing the action with costs.

The learned Chief Justice of the High Court was of the opinion that, assuming that a local situation is to be attributed to shares, then the shares in question in this case must be held to have been locally situate in the Province of Ontario at the death of the deceased, as contended by the respondent, and he gave judgment accordingly.

The learned Chief Justice arrived at this conclusion after a review of many cases that deal with questions as to the method of determining the place where personal property of one kind and another is situated for the purpose of succession duty, some of them being cases where the property consisted of shares in a corporation. While recognising that the place where the shares can be transferred is in ordinary circumstances the situs of the shares, that being the place where they can be effectively dealt with, as determined in such cases as *Attorney-General* v. *Higgins* (1857) 2 H. & N. 330 ; and *Brassard* v. *Smith* [1925] A.C. 371, the Chief Justice was of opinion that special circumstances prevented the application of these decisions here. The fact that, in the case of each of the companies whose shares are in question there are two places where its shares can be transferred, and that there is nothing stated in the special case from which it can be determined that one of these places rather than the other is the situs of the shares, made it im-

possible, in the opinion of the Chief Justice, to find that the shares are situated within the jurisdiction in which either transfer office is established. It, therefore, became necessary, in his opinion, to disregard both places and to find a different place. He held that the situs of the shares in the circumstances of this case was determined by the testator's domicile, that being also the place where the testator had in his possession at the date of his death the certificates for the shares.

With great respect I think the learned Chief Justice has erred in two respects. In the first place, the learned Chief Justice has failed to appreciate the essential character of the requirement that the property can be effectively dealt with there in determining the local situation of intangible property. In the case of shares in a company, that has been held to mean that the shares can be transferred within the jurisdiction. As was said in *Brassard* v. *Smith* (supra) at p. 376, " That is, in their Lordships' opinion, the true test, where " could the shares be effectively dealt with ? "

In the second place, the question stated for the opinion of the Court did not require him to determine the situs of the shares as between Detroit and New York. " Were the shares property locally situate in the Province " of Ontario " is the question asked. One is not entitled to assume that the parties have agreed upon and have set forth in the special case all the facts relevant to another question not submitted.

The question whether intangible property can have a local situation has been raised frequently, but the respondent cannot raise that question here. Not only is the question stated for the opinion of the Court based upon the assumption that these shares had a local situation, but the statute where it levies succession duty upon property, levies it only upon property situate in Ontario. The Provincial Legislature is limited by the British North America Act to direct taxation within the Province (s. 92, 2), and the form which the Succession Duty Act had taken in the revision of 1934 was to a great extent dictated by the need to keep within the two limitations of direction taxation on the one hand, and taxation within the Province on the other. Not being able to tax the executors or trustees because that would not be direct taxation, and not being able to impose the tax on the succession because the persons benefitted by the succession were resident and domiciled out of Ontario, there was only the property itself upon which the duty could be imposed, and that only if the property was within the Province. Respondent has assumed the burden of establishing that it was so locally situated at the death of the testator.

It was not by the application of the rule mobilia sequuntur personam that the learned Chief Justice fixed the situs of the shares at the place of the testator's domicile. Notwithstanding that in *Smith* v. *Provincial Treasurer for Nova Scotia* (1918) 58 S.C.R. 570, that rule was held to govern in determining the local situation of shares for the purpose of succession duty, it must be taken to be definitely settled by later decisions that the rule is not to be so applied. The rule mobilia sequuntur personam is not in fact a rule for determining the situs of mobilia. It is a rule for determining, regardless of the local situation of the property, the law that governs it for the purpose of disposition in his lifetime and succession on his death. As

In the Court of Appeal.

No. 9. Reasons for Judgment. (A) Robertson C.J.O. (concurred in by Gillanders and Middleton JJ.A.)—*continued.*

was said by Lord Selborne in *Freke* v. *Lord Carbery* (1873) L. R. 16 Eq.461 at p. 466, " When ' mobilia ' are in places other than those of the person " to whom they belong, their accidental situs is disregarded and they are held " to go with the person." In the same judgment Lord Selborne said that certain words of Lord Loughborough which Story had quoted with approbation in his " Conflict of Laws," were simply a translation into the phraseology of the English law of the maxim mobilia sequuntur personam. The words quoted are from the judgment in *Sill* v. *Worswick* (1791), 1 H.B.1 665, and are as follows :

" It is a clear proposition, not only of the law of England, but " of every country in the world, where law has the semblance of science, " that personal property has no locality. The meaning of that is, not " that personal has no visible locality, but that it is subject to that " law which governs the person of the owner. With respect to " the disposition of it, with respect to the transmission of it, either " by succession or the act of the party, it follows the law of the person. " The owner in any country may dispose of his personal property. " If he dies it is not the law of the country in which the property is, " but the law of the country of which he was a subject, that will regulate " the succession."

Obviously, a rule so defined can have no place in determining the " locality " that it ignores.

That a " local situation " ascribed to intangible property is not a wholly fictitious thing, is stated by Duff J. (now Chief Justice of Canada) in his judgment in *Smith* v. *Levesque* (1923) S.C.R. 578 at pp. 585-6, where he cites the language of Lord Abinger in *Attorney-General* v. *Bouwens* (1838) 4 M. & W. 171 at p. 191 of that report as to the limited jurisdiction of the ordinary. Immediately following that passage the Chief Baron continued with certain examples, as follows :—

" As to the locality of many descriptions of effects, household and " moveable goods, for instance, there never could be any dispute ; but " to prevent conflicting jursidictions between different ordinaries, with " respect to choses in action and titles to property, it was established as " law, that judgment debts were assets, for the purposes of jurisdiction, " where the judgment is recorded ; leases, where the land lies ; specialty " debts, where the instrument happens to be ; and simple contract " debts, where the debtor resides at the time of the testator's death. . . . " In truth, with respect to simple contract debts, the only act of ad- " ministration that could be performed by the ordinary would be to " recover or to receive payment of the debt, and that would be done by " him within whose jurisdiction the debtor happened to be."

It is not only for the purpose of ascertaining the jurisdiction of the ordinary, and for the kindred purpose of defining the authority of an executor or administrator as in *New York Breweries Co.* v. *Attorney-General* [1899] A.C. 62, that it became important to ascribe a local situation to mobilia. There is the case where an owner dies intestate leaving no next-of-kin. The rule " mobilia sequuntur personam " does not apply, there being no suc-

cession in these circumstances, but his " mobilia " being dealt with as bona vacantia, the right to it depends upon its local situation; *In re Barnett's Trusts* (1902) 1 Ch. 847. There is a discussion of the matter of " local situation " of intangibles, particularly of simple contract debts in *English, Scottish and Australian Bank Ltd.* v. *Inland Revenue Commissioners* [1932] A.C. 238, where many cases are cited and examples are given. For purposes of taxation, where the tax is imposed upon the property itself and not upon the owner of it, a local situation within the jurisdiction of the taxing authority is necessary, for one state does not recognise the revenue laws of another. This is of particular importance in the case of the Canadian provinces, for not only is their power to tax limited to taxation within the province, but a province cannot itself prescribe the conditions fixing the situs of intangible property to enlarge its powers of taxation: *The King* v. *National Trust Co.* (1933) S.C.R. 670 at p. 673. For these and other purposes it has been found necessary to recognise the existence of a local situation for chattels—notwithstanding that they are moveable—and in the case of intangible perhaps even to assume its existence in contemplation of law, if not physically. In any event, to attribute a local situation to intangible property is not something that depends upon mere fancy. There are established rules to govern it, and the essential thing that determines the local situation is the circumstance that it is there that the intangible property can be effectively dealt with.

In the case of shares, to effectively deal with them means to do such things as to have them duly registered in the name of the personal representative, or of the person to whom they are bequeathed, so that they may receive the dividends upon them and vote upon them and dispose of them, as, for example, by transfer to a purchaser on a sale in the course of administration. These things can be completely done only at a place where the transfer of the shares may be recorded.

In the nature of things no other place can be preferred as the local situation of shares, that is, as the place where they may be effectively dealt with, to the place where they can be transferred. That there are two places, at either one of which transfer of the shares may be made, does not in the slightest degree serve to qualify another place where the shares cannot be transferred, as their local situation, no matter what difficulties there may be in distinguishing between the two places first mentioned. By no sort of analogy can such another place be regarded as the place where the shares may be effectively dealt with, in any event while there exists a place where a transfer of the shares may be properly made. It was not by way of analogy the Court proceeded in such cases as *Rex* v. *Williams* (1940) O.R. 320 and 403. While it is not so stated in any of the judgments in that case, it is reasonably clear that the place of the testator's domicile was preferred as the situs of the shares over another place when there were transfer offices at both places, because that was the normal place for obtaining probate, and where probate had in fact been granted. It is only in this supplementary way that the testator's domicile was given weight in determining the situs of the shares. Not in any sense whatever was domicile regarded as being in itself within the description of a place where the shares could be effectively dealt with. Even if the dictum of Lord Westbury in *Enchin* v. *Wylie* (1862) 10 H.L. Cases 1,

In the Court of Appeal.

No. 9. Reasons for Judgment. (A) Robertson C.J.O. (concurred in by Gillanders and Middleton JJ.A.).—*continued.*

as to there being a prior right in the jurisdiction of domicile to grant probate, puts the matter too strongly—see *Ewing* v. *Orr Ewing* [1885] 10 A.C. 502—the practical convenience of preferring the place of domicile is obvious, as it is the place where probate will normally be applied for, and where any appropriate tax will be demanded.

No doubt in the present case, if it has not already been done, at some time it will be necessary to record a transfer of the shares now in question from the testator's name into the names of the trustees, or of some one else, at one of the transfer offices, and for that purpose it will be necessary to prove the will in that jurisdiction. It may be illogical to say that the local situation of the shares at the death of the testator will in that way be determined, but it is nevertheless not to be lost sight of that the factors that lead the executors to apply for probate in one of the places where the shares may be transferred, rather than in the other, may likewise serve to determine that, at the death of the testator, that place had the better claim to be named as the situs of the shares.

So long as there is a place where the shares can be transferred, whether that place is Michigan or New York need not be determined in order to reach the conclusion that Ontario is not the situs of the shares. The special case agreed upon by the parties does not say, and one is not entitled to assume that there are set forth in the special case all the facts that will merit consideration when the respective claims of Michigan and New York to be the situs of the shares come to be investigated. In *New York Life Insurance Co.* v. *Public Trustee* (1924) 2 Ch. 101, there was a question as to the local situation of certain simple contract debts owing by a corporate debtor. The company had more than one " place of residence," so that something more had to be done than merely to apply the rule that the residence of the debtor is deemed to be the local situation of a simple contract debt. In the circumstances the Court considered that it was entitled to look at the terms of the contract creating the debts, and finding there that although the head-office of the debtor was in New York, the promise in each contract was to pay in London, it was held that the debts were property situate in England, where the Company also had an office.

I think I should also refer to the case of *Toronto General Trusts Corporation* v. ~~*Regina*~~ [1919] A.C. 679, for some expressions in that judgment may at first seem to lend colour to the contentions of the respondent. In that case the testator was mortgagee of real estate in Alberta. He resided at Ottawa and at the time of his death he had in his possession at Ottawa duplicate originals of his mortgages. Other duplicate originals were in the office of the Registrar of Land Titles in Alberta. The mortgagors resided in Alberta and the place of payment named in each mortgage was in Alberta. Succession duty having been claimed in Alberta the administrator contended that the mortgages were situate not in Alberta, but in Ontario, at the death of the testator, citing the rule that the locality of a specialty debt is the place where the specialty itself is found. Viscount Cave said at p. 684: " In these circumstances any argument which goes to show that, under the " rule which fixes the locality of a specialty debt in the place where the

" specialty is found, the debts in this case were situate in Ontario at the " testator's death, is equally effective to prove that they were situate in " Alberta ; and yet is plainly impossible to hold that they were situate in " both Provinces at once. . . . The truth appears to be that in such cases " the rule gives no guidance on the question of the locality of the debt and " regard must be had to the other circumstances of the case."

This language, although it relates not to shares but to specialty debts, which are in another category, may appear to afford some support to the views of the learned Chief Justice in the present case, who thought the location of a transfer office no guide if there were two of them. In reality it does the opposite. Viscount Cave was discussing a case where the dispute was as to which of two places, in each of which original duplicates of the mortgages were alike found, was to be deemed the locality of the debt. He did not think of discarding both of them. When he speaks of the rule giving no guidance in such a case, he means only that it gives no guidance in determining as between these two places. There is no suggestion that in such circumstances neither Alberta nor Ontario was the situs, and that some third place must be chosen in which no specialty was found. On the contrary the rule cited was given its full effect, so far as it goes, and served to confine the enquiry to these two places in each of which duplicate mortgages were found. As a guide to determine further as between the two places which one of them was the locality, the rule did not serve and something additional was needed. Alberta was found to be the true situs on grounds that they have no relevance here. So in the present case having two places at either of which the shares may be transferred, one of them must be the situs.

The fact that the head-office of each of the companies whose shares are in question is in Detroit, and that the share-certificates held by the testator were issued in Detroit, may be found to warrant a finding that there is the local situation of the shares. There may be some principle of law applicable to the property in the foreign jurisdiction that will have weight in fixing the situs. These are matters that are not essential to the determination of this case, even if to establish some one place other than Ontario as the local situation of the shares would have been the most convincing answer to respondent's claim.

Certain other propositions are put forward in support of respondent's contentions, but the learned Chief Justice did not pronounce upon them. It is argued that in fact the shares could have been sold by the executors in Ontario without reference to any transfer office. This submission was based upon the assumption that the share-certificates are in such form, or can be put in such form by the executors, acting under the authority of the probate issued to them in Ontario, that the mere delivery of the certificates will effect a complete transfer of the property in the shares. This assumes that the share-certificates are endorsed, or that the executors themselves, under their present authority, can sufficiently endorse them in the manner referred to in such cases as *Smith* v. *Rogers* (1898) 30 O.R. 256 ; *McLeod* v. *Brazilian Traction, Light & Power Co.* (1927) 60 O.L.R. 253.

The initial difficulty in giving effect to this contention is that the share-certificates are not endorsed with the signature of the testator, in whose name

In the Court of Appeal.

No. 9. Reasons for Judgment. (A) Robertson, C.J.O. (concurred in by Gillanders and Middleton JJ.A.)— *continued.*

they are registered, and unless and until the executors obtain authority to act as the testator's representative in a jurisdiction in which the transfer can be registered, their signatures in that capacity go for nothing; *New York Breweries Co. Ltd.* v. *Attorney-General* [1899] A.C. 62; *Fidelity Trust Co.* v. *Fenwick* (1921) 51 O.L.R. 23 at p. 35.

The fact that the executors might sell the shares in Ontario—if it is a fact—does not assist in fixing their local situation. As was said by Lord Lindley in *Muller & Co.'s Margarine, Lim's case* [1901] A.C. 217 at p. 238, referring to the conclusion of Rigby L.J. in *Smelting Co. of Australia* v. *Commissioners of Inland Revenue* (1897) 1 Q.B. 175, that as the property there in question was saleable and sold in England, it could not be regarded as locally situate out of it, "any property situate anywhere can be agreed "to be sold or purport to be sold in any other country and the test of locality "relied upon by the Lord Justice was not, I think, the true one. The patent "was not assignable without registration in Australia, and the view of the "Lord Justice is, I think, opposed to *Attorney-General* v. *Diamond*, the case "of French rentes." Also see *English, Scottish and Australian Bank Ltd.* v. *Inland Revenue Commissioners* (supra).

The nature of the testator's property in shares registered in his own name as here, is to be distinguished from that which is taken by one who holds the certificates for shares registered in the name of another who has signed in blank a form of transfer endorsed on the certificates, and has then delivered the certificates so endorsed. The property held by the transferee in the latter case is described in *Colonial Bank* v. *Cady*, 15 A.C. 267 (per Lord Watson at p. 277) as being in the nature of a jus ad rem and not a jus in re. "Delivery does not invest him with the ownership of the shares in the sense "that no further act is required in order to perfect the right." The original transferor who is entered as owner in the certificate and register continues to be the only shareholder recognised by the company and "delivery passes, "not the property of the shares, but a title legal and equitable, which will "enable the holder to vest himself with the shares without risk of his right "being defeated by any other person deriving title from the registered owner." Whether or not the interest in or right to the shares held by such a transferee may differ in its "local situation" from the property in the shares, is a question that does not arise in this case. See *Stern* v. *The Queen* (1896) 1 Q.B. 211. The property that this testator owned was shares registered in his own name.

The further point was argued and is referred to in the judgment of the Chief Justice of the High Court, that the certificates for the shares being under the company's seal are specialties, and that the shares are, therefore, to be deemed to be locally situated where the share-certificates were at the death of the testator. In support of this contention is cited the judgment of Masten J.A. in the case of *Williams* v. *The King* (supra) at p. 413 et seq.

With great deference to so eminent an authority on all matters relating to company law and practice, I was unable to concur in the opinion of Mr. Justice Masten in the Williams case on that point, and I am unable to agree now that the share-certificates in the possession of this testator at the time of his death fix the local situation of the shares at Windsor. No doubt there

are definitions to be found of the word " specialty " that will include any document sealed and delivered, but that is not its common meaning. The certificates in this case are mere statements of the ownership of the shares and of their being transferable in the manner stated, but they are not the primary record even of these matters. " The certificate is not the title but " evidence of the title to the shares." *Union Bank* v. *Morris* (1900) 29, O.A.R. p. 396 at p. 409 ; and see *Shropshire Union R.W. & Canal Co.* v. *Regina* (1875) L.R. 7 H.L. 496 at p. 509, per Lord Cairns and at p. 512 per Lord Hatherley. The certificates are not in themselves contracts. They do not contain the statement of any debt, obligation or promise, and in themselves they are not evidence of any. In the cases where it has been held that an unpaid dividend or an unpaid call is a specialty debt, it will generally, if not always, be found that this is founded upon statute or the terms of the certificate, or some deed to which the shareholder is a party.

In *Royal Trust Co.* v. *Attorney-General for Alberta* [1930] A.C. 144 at p. 151-2, it was pointed out that the bonds there in question, which were specialties, were not to be likened to the shares of a joint stock company which had been in question in *Brassard* v. *Smith* (supra).

I am further of the opinion that so far as this Court is concerned we are precluded in any event by a series of cases binding on us, from giving effect to either of the two contentions of the respondent that I have last dealt with. Some of the most recent of these cases are *Brassard* v. *Smith* (supra) ; *Erie Beach Co.* v. *Attorney-General for Ontario* [1930] A.C. 161 ; *Provincial Treasurer of Alberta* v. *Kerr* [1933] A.C. 710.

I would allow the appeal with costs, and dismiss the action with costs.

(B) MASTEN J.A. :

The appellants (defendants in the action) appeal from the judgment of Rose C.J., dated the 19th February, 1941, whereby he adjudged that the respondent (plaintiff in the action) should recover from the appellants, the executors of one Albert Theodore Montreuil the sum of $105,313.98 as succession duty and interest ; and whereby it was further adjudged that of the said sum of $105,313.98 the sum of $21,062.92 should be recoverable severally from each of the five individual residuary legatees (appellants) they being beneficiaries resident in the State of Michigan.

The facts are accurately and briefly summarised by the learned Trial Judge as follows :—

" The testator was domiciled in Ontario and the share certificates
" were in his possession in Windsor. The companies were companies
" organised under the laws of Michigan. They had their head offices
" in Detroit, but the shares were transferable not at the head office
" but at the offices of transfer agents, and indeed the share-certificates
" in the first instance were issued not from the company's head office
" but from the office of a company appointed for the purpose of such
" issue. In each instance the company whose shares in question had two
" of these transfer agents, one in Michigan and the other in New York.

In the Court of Appeal.

No. 9. Reasons for Judgment. (B) Masten J.A.— *continued.*

" The transfer agents had equal authority. The shares that are in ques-
" tion could have been transferred either in Detroit or in New York.
" Neither company had any transfer office in Ontario."

The will is dated July 14th, 1936, and the testator died on October 2nd of the same year.

The provisions of the will of Albert Theodore Montreuil so far as relevant to the question arising in the present case are as follows :

" I Give Devise and Bequeath all my real estate of every kind and
" all my personal estate and effects whatsoever, not otherwise disposed
" of by this my will unto my said trustees, and the survivor of them in
" trust to make the following disposition thereof.

" 1. To pay to my sister, Cecile C. LePierre, of the said City of
" Windsor, two-fifths of the income from my said estate, during the
" term of her natural life.

" 2. To my sister, Matilda A. Selleck, of the Town of Riverside, in
" the County of Essex, three-fifths of the income of my said estate,
" during the term of her natural life.

" 3. Upon the death of either of my said sisters, I direct my trustees
" to pay the income, formerly paid or directed to be paid to said sister,
" to Marie Josephine Byrne, Frances Eugenie Byrne, Alfred George
" Thomczek, Louise Matilda Thomczek, Eugenie Thomczek, Florence
" Maisonville and Raymond Girardot or the survivors, in equal shares.

" 4. I empower my trustees to sell any of my real or personal estate
" as they may deem proper and to invest the proceeds thereof, and any
" such other moneys that form the corpus of my estate, which they may
" receive from time to time, in Dominion of Canada bonds, the income
" therefrom representing the income from the investment which they
" replace and shall become part of the income of my estate and be
" distributed as hereinbefore directed.

" 5. Upon the death of my remaining sister, I direct my said trustees
" to call in and convert into money the same or such part thereof of my
" estate as shall not consist of money and *to divide* the corpus and un-
" distributed income among the said Marie Josephine Byrne, Alfred
" George Thomczek, Louise Matilda Thomczek, Eugenie Thomczek,
" Frances Eugenie Byrne, Florence Maisonville and Raymond L. Girardot
" or the survivors, in equal shares."

It is to be observed that the will does not bequeath his shares in specie ; on the contrary he directs a conversion into money of his whole estate of which these shares form a part and bequeaths to each of the Michigan beneficiaries a deferred legacy consisting of one-seventh of the residuary fund arising from such conversion. The conversion is done by the executors and trustees to whom probate was issued by the Surrogate Court of Essex, and gives rise to a fund for which they are accountable in that Court.

Specimens of the share certificates in question are made part of the special case and read as follows :

" Number DC 1 U — Shares 1000

Briggs Manufacturing Company

Incorporated under the Laws of the State of Michigan.

This certificate is transferable in the City of New York or in Detroit.

This Certifies that Albert T. Montreuil is the owner of One Thousand fully paid and non-assessable shares, without any nominal or par value of the Capital Stock of Briggs Manufacturing Company, transferable in person or by duly authorised attorney upon surrender of this certificate properly endorsed. This certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar. Witness the seal of the Corporation and the signatures of its duly authorised officers.

Dated July 9, 1936.

L. A. LARK, Secretary.

M. L. BRIGGS, Vice-President.

Registered: July 9, 1936
National Bank of Detroit
(Detroit) Registrar

By ?
Authorised Officer.

Countersigned
Detroit Trust Company
(Detroit) Transfer Agent.

By ?
Authorised Officer."

" Number CC0528 — Shares 1000

Incorporated under the laws of the State of Michigan.

Pfeiffer Brewing Company.

Authorised capital 750,000 shares common stock no par value.

This Certifies that Albert T. Montreuil and Evelyn H. Montreuil, as joint tenants with right of survivorship and not as tenants in common, is the owner of One Thousand fully paid and non-assessable shares without par value of the Common Capital Stock of Pfeiffer Brewing Company transferable only on the books of the Corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed. This certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

In the Court of Appeal.

No. 9.
Reasons for Judgment. (B) Masten J.A.—
continued.

Witness the seal of the Corporation and the facsimile signatures of its duly authorised officers, dated June 28, 1934.

CARLETON S. SMITH, Secretary. (Seal) FRANK J. CONRAD, President.

Registered June 29, 1934,
Union Guardian Trust Company
(Detroit) Registrar.
By CHAS. BOYLE,
Authorised Officer.

Countersigned
Detroit Trust Company,
(Detroit) Transfer Agent.
By ?
Authorised Signature."

For the respondent it is submitted that these certificates, physically located in Windsor in the actual possession of the testator domiciled and resident in Ontario, and the shares to which they relate, constituted during the testator's lifetime property of his situate in Ontario, (*a*) as pieces of paper; (*b*) as muniments of title to shares which, according to the terms of the certificates were " transferable upon surrender of this certificate properly " endorsed "; (*c*) because the beneficial interest of the testator in the shares was effectively saleable by him in Ontario.

The respondent further claims that the certificates and all rights arising out of them, together with the beneficial interest in the shares passed on testator's death to his trustees and executors subject to the terms of the will as quoted above and that being property in Ontario at testator's death the interest passed in Ontario on his death.

The testator having died in 1936 the relevant statute is the Succession Duty Act of 1934, chapter 55, section 6 (1) of which provides as follows:

" (1) All property situate in Ontario and any income therefrom " passing on the death of any person, whether the deceased was at the " time of his death domiciled in Ontario or elsewhere, and every trans- " mission within Ontario owing to the death of a person domiciled therein " of personal property locally situate outside Ontario at the time of " such death, shall be subject to duty at the rates hereinafter imposed."

By sub-section (*f*) of section 2 of the Act, the term " passing on the death " is defined as follows:

" ' Passing on the death ' shall mean passing either immediately on the " death or after an interval, either certainly or contingently, and either " originally or by way of substitutive limitation, whether the deceased " was at the time of his death domiciled in Ontario or elsewhere ";

Under the words of this statute the right of Ontario to recover succession duty depends on the answer to the question, did any property situate in Ontario pass on the death of Albert Theodore Montreuil, for if it did then under this statute the Province has power to impose succession duty on that property.

I agree with the respondent's submissions that the share certificates, as physical assets and as muniments of title, constituted property of the testator situate in Ontario and which on his death passed in Ontario to his executors and trustees and I have nothing to add.

I desire, however, to discuss further the " passing " of the beneficial interest in the shares in question.

The present action was tried on a special case, agreed and signed by the solicitors for the plaintiff, and for the defendants, respectively.

Paragraph 20 of the special case, after reciting the payments theretofore made to the plaintiff in respect to undisputed items of claim proceeds as follows :

" The plaintiff claiming, and the defendants denying, that the said " shares (referring to the shares here in question) were at the death of " the said deceased property situate in the Province of Ontario, and that " succession duty was payable to the Province of Ontario thereon so " far as the interests of the five persons resident in the State of Michigan " are concerned."

" 21. The question for the opinion of the Court is, were the said " shares of capital stock of Briggs Manufacturing Company and Pfeiffer " Brewing Company, property locally situate in the Province of Ontario " at the death of the said Albert Theodore Montreuil for the purposes " of the Succession Duty Act, and as so locally situate subject to suc- " session duty ? "

While the question was presented before us at the argument in the somewhat academic and metaphysical aspect involved in the question : " What " was the proper location of the share in question," yet I think that under the terms of the special case, as above quoted, we are at liberty to determine not any abstract question, but rather whether the legacies which passed to the appellant beneficiaries under the will of the testator arise out of property which at the death of the testator was situate in Ontario and passed as such on his death.

The words of the statute have been already quoted and need not be repeated.

The appeal raises an interesting question respecting the nature of a share. Is it an indivisible entity incapable of being dealt with except as a whole, that is by the combined concurrence of three parties, viz., the vendor, the purchaser and the company, or is it a bundle of mutual rights and obligations such that there may be an effective transfer as between the vendor and the purchaser of the beneficial interest in the share quite apart from any recognition of the purchaser by the company ?

The question falls to be determined on the words of the statute of Ontario quoted above and not otherwise. Did property in Ontario pass on the death of the testator ? The expression " passing on death " is not used in any technical sense further than is defined by the provision already recited. Lord Parker, in *Attorney-General* v. *Milne* [1914] A.C. at p. 779, stated that it " is evidently used to denote some actual change in the title or possession " of the property as a whole, which takes place at the death, and it is

In the Court of Appeal.

No. 9. Reasons for Judgment. (B) Masten J.A.— *continued.*

"absolutely immaterial to whom or by virtue of what disposition the property "passes." This dictum appears to have been quoted with approval in subsequent judgments in the House of Lords and in the High Court.

There can be no question but that the testator, Montreuil, owned these shares in his lifetime; It is so stated in the special case; and I think it follows that he owned them as property locally situated in Ontario, where he lived and was domiciled; for there can be no question but that it was in his power as the registered owner of these shares and holder of the certificates to deal with them effectively in the Province of Ontario by selling the shares in Windsor, or elsewhere in Ontario, transferring them to the purchaser by endorsement of the certificates which were in his possession in Windsor, and handing over the certificates so endorsed to the purchaser. Having done that he had completely dealt with and disposed in Ontario of his whole beneficial interest in the shares.

In *Castleman* v. *Waghorn, Gwynn & Co.* (1908) 41 S.C.R. at p. 96, Duff J. (as he then was) states the law as follows:

> " Under an executory sale of shares in such a company the vendor " undertakes to execute a valid transfer of shares which he has the " right to transfer by somebody else who has the right to transfer them. " He does not undertake, I think, to procure the entry of the vendee's " name in the register. On that point I respectfully concur with the " observations of Lord Blackburn (then Blackburn J.) in *Maxted* v. " *Paine*, L.R.; 6 Ex. 132, at pages 150 and 151, and with the decision " of the Court of Session in *Stevenson* v. *Wilson* (1907) Sessions Cases, " at p. 445.
>
> " On the contrary it is, I think, as stated by Lord Blackburn in the " passage referred to, the duty of the vendee to procure the registration " of himself or some other person as holder of the shares sold and thus " to relieve the vendor from any burdens which may arise from the fact " that the shares are registered in his name."

And, later, he adds:

> " the delivery of a share certificate accompanied by a transfer executed " in blank by the registered holder may pass to the person receiving such " documents ' a title legal and equitable which will enable the holder " ' to vest himself with the shares.' "

citing *Colonial Bank* v. *Cady*, 15 A.C. 267. See also *Smith and Osberg Ltd.* v. *Hollenbeck* (1939) 4 D.L.R. 119, and the note in Masten and Fraser, Company Law, 4th ed. at pp. 245.

There is nothing to prevent the executors after taking out probate in Essex from endorsing the certificates which are in their possession and so converting them into " street certificates," as they are called in commercial language.

No doubt a complete title to the shares cannot be acquired by a purchaser without going to Detroit or New York and procuring his registration as a shareholder in the proper office, and no doubt a prudent Ontario purchaser would inquire whether on applying for registration and a new certificate he would first be required to pay succession duties in Michigan or New York

and the price of the shares would have to be adjusted accordingly. But all that has no bearing on the question, was there a beneficial interest in these shares which the testator in his lifetime and his executors and trustees after his death had power effectively to deal with as a commercial asset in Ontario ?

Under these circumstances I am of opinion that the shares were in the lifetime of Montreuil property in Ontario which, on his death, devolved on his executors as property of Montreuil in Ontario.

On this broad and simple ground, I am clearly of opinion that apart altogether from the reasons stated by Rose C.J. in his judgment, and apart from the ground that share-certificates are specialties, the shares in question constituted in fact property in Ontario which, under the terms of the will, passed as such in Ontario to his executors and trustees on his death.

I adhere to the opinion suggested in *Williams* v. *The King* (1940) O.R. 403, viz., that a share certificate bearing the corporate seal of the company is a specialty.

The legal relationship of a shareholder to the company is created by an offer or application for a share and its acceptance by the Company when the share is allotted. The result is a contract whereby the shareholder undertakes certain obligations to the company and the company on its part enters into a contract with the shareholder conferring on him a right to a proportionate part of the assets of the company, whether by way of dividend or by way of distribution of assets in a winding-up, and also a right to attend and take part in shareholders' meetings in such manner as is provided by the Act, Charter and by-laws.

In *Welton* v. *Gaffery* [1897] A.C. 299, Lord Herschell said (p. 315) : " It " is quite true that the articles constitute a contract between each member " and the company."

In *Borlands Trustee* v. *Steel Brothers &c.* L.R. (1901) Ch. D. at 288, Farwell J. said : " share is an interest measured by a sum of money and " made up of various rights contained in the contract including a right to a " sum of money of more or less amount."

See also Palmers Company Law, 15th Ed. at page 34, and 5 Halsbury, par. 256 at page 142.

The share certificate which the shareholder is entitled by law to receive from the company evidences this obligation of the company, and being under the corporate seal is, in my opinion, a specialty obligation. *Re Drogheda Steam Packet Co. Ltd.* (1903) 1 Ir. Rep. 542 ; *Smith* v. *Cork & Bandon Ry. Co.*, Ir. Rep. 5 Eq. 65 ; 22 L.J.C.P. 198 ; *Re Arlizans Land and Mortgage Corporation* (1904) 1 Ch. 796 ; *Benson* v. *Benson*, 1 P. Wms. 130 ; *Buck* v. *Robson*, L.R. 10 Eq. 639.

If the share certificates in question are specialties then the shares which they evidence were locally situate in Windsor, where the certificates were found at the death of the testator. *Commissioner of Stamps* v. *Hope* [1891] A.C. 476.

It is to be observed in this connection that in the case of *The King* v. *National Trust Company* (1933) S.C.R. 670, the attribute of a specialty found in Ontario was held superior to a combination of head office and registration

In the Court of Appeal.

No. 9. Reasons for Judgment. (B) Masten J.A.— *continued.*

office in Quebec, with the result that the claim of Quebec to succession duty on bonds found in Ontario was negatived.

I should add that I agree with the view expressed by Rose C.J. that the existence of transfer offices in two places (New York and Detroit) weakens if it does not entirely destroy the foundation of the rule that the location of the shares should be determined by the place of registration and transfer.

This circumstance differs the present case from any and all of the decided cases, so that the rules and tests formulated in the old ecclesiastical courts are not applicable, and the solution of the question must be sought by a consideration of the words of the Ontario statute of the existing circumstances and of the attributes of the property in question. *The King* v. *National Trust Company* (1933) S.C.R. 670.

Not only so but the group of cases, of which *Attorney-General* v. *Higgins* (1857) 2 H. & N. 339, and *Brassard* v. *Smith* [1925] A.C. 371, are outstanding representatives, relate to the right of taxation by way of probate duty which might in the present case be imposed by the State of Michigan as a condition precedent to recognition in Michigan of the letters probate, and as a preliminary to the entry of the executors' names as shareholders in the transfer and registration. See the observations of Anglin J. in *Smith* v. *Provincial Treasurer &c.* (1919) 58 S.C.R. at p. 584. These decisions fail to afford any assistance in determining whether property in these shares passed in Ontario on the death of Montreuil.

I think that the present question falls to be dealt with on the principle stated by Lord Dunedin in *Brassard* v. *Smith* [1925] A.C. at p. 376, where he says :

> " In the present case Duff J., dealing no doubt with the ' no local " situation ' argument, said as follows : ' And the Chief Baron's judgment, " ' I think, points to the essential element in determining situs in the " ' case of intangible chattels for the purpose of probate jurisdiction " ' as " the circumstances that the subjects in question could be effec- " ' tively dealt with within the jurisdiction." ' This is, in their Lord- " ships' opinion, the true test. Where could the shares be effectively " dealt with ? The answer in the case of these shares is in Nova Scotia " only, and that answer solves the question."

In the present case, as already pointed out, the whole beneficial interest in the shares in question could in my opinion, be effectively dealt with in Ontario by the testator in his lifetime and by his executors after his death, in accordance with the principles laid down in such cases as *Attorney-General*, v. *Bouwens* (1836) 4 M. & W. 171 ; *Stern* v. *The Queen* (1896) 1 Q.B.D. 211, and *Crosby* v. *Prescott* (1923) S.C.R. 146.

While it is true that the provincial legislature cannot apply the doctrine of mobilia sequuntur to fix the situs of intangible property within the province, it may nevertheless modify the maxims and practice derived from the ecclesiastical law by declaring that " *all property* situate in Ontario " shall be subject to succession duty.

It then becomes a question whether the beneficial interest in the shares

in question coupled with the legal title and actual possession in Ontario of the share certificates constituted " property in Ontario."

I would dismiss the appeal with costs.

(c) HENDERSON J.A. :

An appeal from the judgment of the learned Chief Justice of the High Court, dated February 19th, 1941, upon a special case agreed on by the solicitors for the plaintiff and defendants, the question for the opinion of the Court being : " Were the said shares of capital stock of Briggs Manufacturing " Company, and Pfeiffer Brewing Company, property locally situate in the " Province of Ontario at the death of the said Albert Theodore Montreuil, " for the purposes of the Succession Duty Act, and as so locally situate, " subject to Succession Duty ? "

I am in entire agreement with the statement of facts and the review of the authorities found in the reasons for judgment of the learned Chief Justice. With the greatest respect I find myself unable to agree with the conclusion he reached.

The point for decision is stated by the learned Chief Justice in his reasons for judgment as follows :—

" That is not exactly the case that has arisen here ; we are not " concerned with a corporation debtor, but we are concerned with a " novel question, to which the principles, if they can be discovered, of the " cases that have been decided ought to be applied. The courts have " decided, as I have said, in cases akin to this, against the place in which " the certificates are found and in favour of the place in which the shares " can be transferred, and they have decided which of two places in which " the shares can be transferred is to be preferred, but they have not " decided as between a place in which the certificates are found but where " the shares cannot be transferred and one or another of several places " in which the shares can be transferred. Mr. Rodd says—and no " doubt he is perfectly right—that the province professed to tax, and in " fact had jurisdiction to tax or to impose duty upon, only property " that was within the province. He argues, then, that it is not necessary " for me to find where outside the province the property in question was " located, but that the Treasurer's case is at an end unless I can find " positively that the property was located in the province ; and he says— " and I think, so far as my reading goes, he is right in saying—that the " mere domicile of the owner and the presence of the certificate in a " place has not in any of the cases been held to stamp that place as the " place in which the shares were located. So he says that, although in " this particular instance there would be difficulty in saying whether " the location of these shares was in Detroit or New York, I ought to " say, ' Let Michigan and New York fight out that question if they " ' desire to do so, but I must not hold that the shares are here, because " ' I have no authority for so holding.' Mr. Magone says, on the other " hand, that you do not find in the cases a decision against the place " where the owner was domiciled and the certificates were located and " in favour of the place where there can be an effectual transfer if there

In the Court of Appeal.

No. 9. Reasons for Judgment. (c) Henderson J.A.— *continued.*

" are two transfer offices equally available, and I think he is right in " saying that there is no authority in the books for so doing. So, having " to deal with this new point, finding no decided case which entirely " covers it, I think that what is to be done is to follow the course ap- " proved by the Chief Justice of Canada and to try to decide as nearly " as possible in harmony with the course of the earlier decisions."

Following this, the learned Chief Justice came to the conclusion that as he could not find that any one office is the office in which a transfer of the shares could be made effective, he should conclude that the place where the domicile of the testator was at the time of his death, together with his possession of the share certificates in that domicile, which was in this case Ontario, should determine the matter. With this I am unable to agree.

The special case does not disclose what was done by the executors, if anything, with reference to the share certificates between the date of the death and the bringing of this action. It may be that having obtained probate in Ontario, they presented the share certificates standing in the name of the testator, together with assignments endorsed thereon, signed by them as executors to themselves, and had these shares transferred into their own names either in Detroit or in New York as they might see fit. They had a choice and could have it done in either place, but the fact remains that they could not effect this without the production of probate or an exemplification of it, exhibiting their title to have the shares transferred because the shares stood in the name of their testator in the companies' register. I refer, in this connection, to a discussion by Lord Watson in *Colonial Bank* v. *Cady and Williams*, 15 A.C. 267, commencing with page 275.

The fact that there were two offices, one in Michigan and one in New York State where the shares could be effectively transferred, and any difficulty that might arise in determining which of these had priority over the other, if any, does not in my opinion give a local situs to the shares in Ontario. *Attorney-General* v. *Higgins*, 2 H. & N. 239, is referred to as a classic case on this subject. There, in the case of domicile of a testator in England, and having in his possession shares in a railway company whose head office was in Scotland, and whose only register of shares was at its head office, it was held that the situs of the shares was in Scotland. Suppose the facts had been different to this extent that the railway company in question should have had a transfer office in Ireland where the shares could be transferred in addition to its head office in Scotland, could it be said that this would change the situs of the shares of the testator so that it could be held to be in England ?

I am in agreement with the argument put forward by Mr. Rodd and cited by the learned Chief Justice, that it is for the defendants to take whatever course they may be advised to determine whether Michigan State or New York State is the situs of the shares, but being of opinion that in any event the local situs is not in Ontario, I am of opinion that the appeal should be allowed and the action dismissed with costs.

No. 10.

Order granting leave to appeal to His Majesty in Council.

No. 10. Order granting special leave to appeal to His Majesty in Council, 11th September, 1941.

In the Supreme Court of Ontario.

The Honourable Mr. Justice Middleton. Thursday, the 11th day of September, A.D. 1941.

Between :

The Treasurer of Ontario ... ... Plaintiff,

(Seal) and

Mrs. Frances Eugenia Blonde, Florence Maisonville and Emily F. Lynch, Executrices of the Estate of Albert Theodore Montreuil, and Alfred George Thomczek, Louise Matilda Thomczek, Eugenie Thomczek, Florence Maisonville and Raymond Girardot ... ... Defendants.

ORDER.

Upon the application of Counsel for the Plaintiff, the Treasurer of Ontario, no one appearing for the Defendants although duly served with a copy of the Notice of Motion for an Order admitting the appeal of the Plaintiff to His Majesty in His Privy Council, and upon reading the pleadings, the Judgment of the Honourable the Chief Justice of the High Court, dated Wednesday, the 19th day of February, 1941, and the Order of the Court of Appeal, dated Tuesday, the 24th day of June, 1941, 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.

2. And it is Further Ordered that the costs of this application be costs in the said appeal.

" W.E.M. J.A."

" CHAS. W. SMYTH "
" Registrar S.C.O."

In the Privy Council.

No. 43 of 1941.

ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO.

BETWEEN

THE TREASURER OF ONTARIO (*Plaintiff*) *Appellant*,

AND

MRS. FRANCIS EUGENIA BLONDE, FLORENCE MAISONVILLE AND EMILY F. LYNCH, Executrices of the Estate of Albert Theodore Montreuil, and ALFRED GEORGE THOMCZEK, LOUISE MATILDA THOMCZEK, EUGENIE THOMCZEK, FLORENCE MAISONVILLE AND RAYMOND GIRARDOT ... ... (*Defendants*) *Respondents*.

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,
17, Victoria Street, London, S.W.1.,
for the Appellant;

LAWRENCE JONES & CO.,
Lloyd's Building,
Leadenhall Street, E.C.3.,
for the Respondents.