ALUMINUM COMPANY OF CANADA LIMITED ..... } APPELLANT;

AND

THE CORPORATION OF THE CITY OF TORONTO ..... } RESPONDENT.

1944

*May 9, 10, 11.
*June 12.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Assessment and taxation—Assessment Act, R.S.O. 1937, c. 272—Company assessed under s. 8 (1) (e) for business assessment, and also, under s. 9 (1) (b), in respect of income received by way of dividends or interest from other companies—Nature and operations of the latter companies in relation to company assessed—Income assessable as not being derived from business in respect of which the company was assessable under s. 8 (1) (e).

Appellant was a company incorporated by letters patent under the Dominion *Companies Act* and had its head office in Toronto, Ontario. It manufactured aluminum products at its plant in Toronto and was assessed in Toronto as a manufacturer for business assessment under

*PRESENT:—Rinfret C.J. and Kerwin, Hudson, Taschereau and Rand JJ.

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s. 8 (1) (*e*) of *The Assessment Act*, R.S.O. 1937, c. 272. It was also assessed by the City of Toronto, under s. 9 (1) (*b*) of said Act, in respect of certain income and it disputed its liability to such income assessment. It received said income by way of dividends on shares in, or interest on moneys advanced to, certain other companies, hereinafter called "subsidiaries", whose operations, all necessary for appellant's purposes, included, by one or other of the subsidiaries, the mining of bauxite (in British Guiana), water and rail transportation, wharf and dock operation, and production and sale of power. Appellant owned all the issued shares of all the subsidiaries except one and in that it owned over half of the issued shares. There was a degree of connection between appellant and each subsidiary in directorate personnel. The subsidiaries did service for or business with others besides appellant. Appellant contended that the businesses of the subsidiaries were integral parts of appellant's business in respect of which appellant was assessed under s. 8; that the subsidiaries acted as agents, or under such arrangement as constituted them agents, of appellant in its said business; and were operated in such a way in relation to appellant as made that operation the carrying on of appellant's said business; and that the income in question was not assessable, having been derived from the business in respect of which appellant was assessed for business assesment.

Held, affirming the judgment of the Court of Appeal for Ontario, [1944] O.R. 66, that appellant was assessable, under s. 9 (1) (*b*), in respect of the income in question, as not being derived from the business in respect of which it was assessed under s. 8. The businesses respectively carried on by the subsidiaries were in each case the subsidiary's own business and not the business or part of the business of appellant in respect of which it was assessable for business assessment. (*City of Toronto* v. *Famous Players' Canadian Corp. Ltd.*, [1936] S.C.R. 141, distinguished.)

APPEAL by the Aluminum Company of Canada, Limited, from the order of the Court of Appeal for Ontario (1) dismissing its appeal from the order of the Ontario Municipal Board (2), which held that the said company should be assessed in the city of Toronto, under s. 9 (1) (*b*) of *The Assessment Act*, R.S.O. 1937, c. 272, for the sum of $1,802,678.82 (in addition to the sum of $9,127, admittedly so assessable), as being income received by it in the year 1939 (assessable in 1940) not derived from the business in respect of which the company was assessable in the city of Toronto for business assessment under s. 8 of said Act. The appellant was assessed in the city of Toronto for business assessment under s. 8 in respect of its plant premises in Toronto as a manufacturer. It received the income in question by way of dividends on shares in, or

(1) [1944] O.R. 66; [1944] 1 D.L.R. 435; [1944] C.T.C. 1.

(2) [1943] O.W.N. 107; [1943] C.T.C. 114.

interest on moneys advanced to, certain other companies, all the issued shares of which the appellant owned except in the case of one company and in that the appellant owned 53½ per cent. of the issued shares. The facts are more fully stated in the reasons for judgment *infra,* and are also discussed at length in the judgments (cited *supra*) of the Court of Appeal and the Ontario Municipal Board. The appellant contended that the businesses of the said other companies were integral parts of the appellant's business in respect of which the appellant was assessed under s. 8; that the said other companies acted as agents, or under such arrangement as constituted them agents, of the appellant in its said business; and were operated in such a way in relation to the appellant as made that operation the carrying on of the appellant's said business; and that the income in question was not assessable, having been derived from the business in respect of which the appellant was assessed for business assessment under s. 8.

S. A. Hayden K.C. and *R. M. Fowler* for the appellant.

J. P. Kent K.C. for the respondent.

The judgment of the Chief Justice and Rand J. was delivered by

RAND J.—The appellant is the parent company of an aluminum enterprise which in scope extends from the mining of the raw material through all stages and agencies to the finished products. Its interest in bauxite, the base mineral of aluminum, in British Guiana is through a company organized under the English *Companies Act* of which it is the owner of all the shares except those qualifying directors. The rail and water transportation facilities from the mine to and down the Demarara River, on the Atlantic and up the river St. Lawrence to Port Alfred, Ha Ha Bay, on the Saguenay River, Quebec, and from that port to the manufacturing plant at Arvida, are likewise controlled by wholly owned subsidiaries. The power furnished at Arvida is produced by a company of which it owns 53 per cent. of the capital stock. The product of the plant at Arvida consists of pig or ingot aluminum. To convert this material into articles of trade, subsidiary plants have been established at Toronto and Kingston, Ontario. The head office

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is at Toronto. Under that corporate control there has been organized a chain of connecting industrial operations co-ordinated into a productive unity.

The activities of these various units, however, are not confined to the requirements of the main enterprise. Not all of the bauxite produced is sold to the company. The transportation on the Demarara River is not confined to the goods of the company. The rail service to Arvida is by a subsidiary operating under a Quebec charter as a common carrier. The power company sells a substantial part of its product to other persons and for other purposes.

The controversy in appeal concerns the assessment of the company by the City of Toronto. The scheme of taxation provided by the Ontario *Assessment Act,* so far as it is pertinent to this dispute, provides primarily for the assessment of persons occupying or using land for the purposes of specified businesses; and, in addition to that, for an assessment of income other than that arising from the business so assessed.

It will be convenient at this point to set forth the relevant sections of the Act:

8. (1) Irrespective of any assessment of land under this Act, every person occupying or using land for the purpose of any business mentioned or described in this section shall be assessed for a sum to be called "business assessment" to be computed by reference to the assessed value of the land so occupied or used by him, as follows:

* * *

(*e*) Subject to the provisions of clause *j* every person carrying on the business of a manufacturer for a sum equal to sixty per centum of the assessed value, and a manufacturer shall not be liable to business assessment as a wholesale merchant by reason of his carrying on the business of selling by wholesale the goods of his own manufacture on such land.

* * *

(11) Every person assessed for business assessment shall be liable for the payment of the tax thereon and the same shall not constitute a charge upon the land occupied or used.

* * *

9. (1) Subject to the exemptions provided for in sections 4 and 8,—

(*a*) every corporation not liable to business assessment under section 8 shall be assessed in respect of income;

(*b*) every corporation although liable to business assessment under section 8 shall also be assessed in respect of any income not derived from the business in respect of which it is assessable under that section.

(2) The income to be assessed shall be the income received during the year ending on the 31st day of December then last past.

10. Subject to subsection 6 of section 39 the income of a partnership, or of an incorporated company, if assessable, shall be assessed against the partners at their chief place of business, and against the company at its head office, or if the company has no head office in Ontario, at its chief place of business in the municipality.

The issue raised is, therefore, this: does the business of the appellant on Sterling Road, Toronto, within the meaning of *The Assessment Act,* extend to that of the bauxite company or any of the other subsidiaries mentioned?

By the decision of this Court in the case of *City of Toronto* v. *Famous Players' Canadian Corporation Ltd.* (1), it is now settled that the business of one company can embrace the apparent or nominal business of another company where the conditions are such that it can be said that the second company is in fact the puppet of the first; when the directing mind and will of the former reaches into and through the corporate façade of the latter and becomes, itself, the manifesting agency. In such a case it is not accurate to describe the business as being carried on by the puppet for the benefit of the dominant company. The business is in fact that of the latter. This does not mean, however, that for other purposes the subsidiary may not be the legal entity to be dealt with.

The question, then, in each case, apart from formal agency which is not present here, is whether or not the parent company is in fact in such an intimate and immediate domination of the motions of the subordinate company that it can be said that the latter has, in the true sense of the expression, no independent functioning of its own. The facts here are not in dispute. There is no doubt of the control of policy generally by the parent company. There is also a degree of connection in directorate personnel, but it is quite impossible to say, for instance, that the bauxite company does not function in its own right as a corporate body exercising discretion, directing its local affairs and generally serving the purpose for which its incorporation was intended. It is not a puppet company and the business which it actually carries on is its own. We have here, then, a condition which in each case effectively delimits and differentiates the corporate activity of the

(1) [1936] S.C.R. 141.

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parent company from that of the subsidiary. The appellant has confused the scope of the business properly and legally attributable to the premises on Sterling Road with a totality of co-ordinated operations between self-functioning members of an industrial family. It was only one unit of those operations that was assessed on Sterling Road, and the income received by the appellant and now in question accrued from other units disjunctive in the sense of the statute.

The appeal, therefore, should be dismissed with costs.

The judgment of Kerwin, Hudson and Taschereau JJ. was delivered by

KERWIN J.—This is an appeal by Aluminum Company of Canada, Limited, from the Court of Appeal for Ontario in an assessment dispute between the Company and the City of Toronto. The appellant is incorporated by letters patent issued under the Dominion *Companies Act*. Its head office is in certain offices in the Canada Life Building on University Avenue in Toronto. It occupied land for the purpose of carrying on the business of a manufacturer at 158 Sterling Road, Toronto, and was assessed for business assessment at that location as a manufacturer under paragraph (*e*) of subsection 1 of section 8 of the Ontario *Assessment Act*, R.S.O. (1937), c. 272. It did not occupy land at its head office in the Canada Life Building for the purpose of its business and was not assessed for any business assessment there. It was, however, there assessed in respect of certain income which the City alleged was not derived from the business in respect of which it was assessed for business assessment, and the question before us is whether the Ontario Municipal Board and the Court of Appeal were right in deciding on their construction of paragraph (*b*) of subsection 1 of section 9 of *The Assessment Act* that a certain part of that income was not derived from the business in respect of which it was assessed at 158 Sterling Road.

Subsection 1 of section 9 is as follows:

9. (1) Subject to the exemptions provided for in sections 4 and 8,—

(*a*) every corporation not liable to business assessment under section 8 shall be assessed in respect of income;

(*b*) every corporation although liable to business assessment under section 8 shall also be assessed in respect of any income not derived from the business in respect of which it is assessable under that section.

The part of the income now in question arises entirely from dividends or interest received by the appellant from five other incorporated companies which, speaking generally, it controls. It was urged that the present case resembled *City of Toronto* v. *Famous Players' Canadian Corporation, Limited* (1). There, however, the Municipal Board was of the opinion that the only business of Famous Players' Canadian Corporation, Limited, could best be described as that of "theatre controller and operator", that the assessment roll should be amended to so read, and that all its income was derived from that business. This Court agreed with that conclusion. What that company did, however, is not in any way analogous to the operations of the present appellant. In my view, the principle of our decision in *Rogers-Majestic Corporation, Limited* v. *City of Toronto* (2) applies.

A concise summary of the appellant's argument before us is found in the statement by the Municipal Board as to the Company's argument before it. That argument is based on the fact that the appellant had been incorporated with very wide powers and on the contention that its business was the production of aluminum goods from the mining of bauxite to the manufacture of aluminum products, including all the intermediary steps, and, that being its business, all income derived from that business is exempt under section 9, subsection 1 (*b*), of the Act.

The powers of the appellant, conferred by its charter, which are particularly relied upon by it are summarized in its factum as follows:

(*a*) To construct or acquire by purchase or otherwise all buildings, water and electrical works necessary for the business of the Company.

(*b*) To manufacture and deal in aluminum and all other metals from the ores to the finished products thereof.

(*c*) To construct, acquire, maintain, operate, use and manage works, machinery and appliances for the production of electricity, etc.

(*d*) To mine, quarry or otherwise extract or remove ores.

Undoubtedly the appellant is interested in controlling in one way or another every step from the mining of the

(1) [1936] S.C.R. 141.
(2) [1943] S.C.R. 440.

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bauxite to the manufacturing of aluminum products. The bauxite is mined in British Guiana by a company incorporated under the laws of that country, the shares of which are wholly owned by the appellant, which company carries the bauxite to a river's mouth where it is loaded into larger boats. Not all of that company's business comes from the appellant, although undoubtedly most of it does. It should be further noted that that company operates a short line of railway and, while the appellant may carry on business not only in Canada but in all parts of the world, its charter specifically prohibits it from constructing or working railways.

The bauxite is brought by a third company (all of whose shares are owned by the appellant) from British Guiana to Port Alfred, Quebec, where it owns certain water lots and a wharf. This company carries other freight as well as the appellant's bauxite. A fourth company operates a railway from Port Alfred to Arvida. The appellant owns all the shares of that company which, however, transports not only the appellant's goods but is obliged to carry other freight as well. The prohibition in the appellant's charter against operating railways applies, of course, to this undertaking. The fifth company concerned is a power company which produces and sells power as well to the appellant as to others. The respondent owns the majority of the issued shares thereof.

Even if the appellant were correct in its objections to some of the details as stated by the Chief Justice of Ontario with reference to the mining company, I think the latter's conclusion is inevitable that the mining business in British Guiana, under the agreements and leases referred to by him, is the business of the company incorporated for that purpose and is not the business of the appellant Company. As to the other four companies, in view of the fact that they do business with and for other people or corporations, the argument that they are the agents of the appellant, so as to make their business part of the appellant's manufacturing business, cannot be substantiated.

This disposes of the only income in question before us. The City originally advanced a claim for the income

derived by the appellant from its manufacturing operations at Arvida. There the bauxite is turned into aluminum ingots, ninety-five per cent. of which are sold in that form by the appellant. The remainder is shipped to the appellant's factories at Kingston, Ontario, and at 158 Sterling Road, Toronto. There the ingots are manufactured into aluminum sheet, foil, pistons, etc. This part of the City's claim was disallowed by the Municipal Board and no appeal as to it was taken and we are not concerned with that problem. On the only issues which are before us, the appellant fails and the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *McCarthy & McCarthy.*

Solicitor for the respondent: *W. G. Angus.*

CASIMIR DESSAULLES (PLAINTIFF)... APPELLANT;

AND

THE REPUBLIC OF POLAND (DEFENDANT) ..... RESPONDENT.

1944
Mar. 20, 21.
June, 22.

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

International law—Foreign state—Suit brought against it by a lawyer for professional services—Jurisdiction of Canadian courts—Proceedings of a disciplinary nature instigated by foreign state before council of Bar—Whether acceptance of jurisdiction by foreign state—Waiver of the exemption—Declinatory exception.

A sovereign state cannot be impleaded before the courts of a foreign country.

Such indisputable principle is based on the independence and dignity of the state, and international courtesy has always honoured it.

Proceedings of a disciplinary nature instigated against a lawyer before the council of the Bar by a foreign state cannot be considered as tantamount to a renunciation by that state of its privilege of immunity.

An action for fees for professional services and an accounting, directed against the Republic of Poland and impleading the Bar of Montreal as mis-en-cause, should be dismissed for want of jurisdiction.

PRESENT:—Rinfret C.J. and Kerwin, Hudson, Taschereau and Rand JJ.