

THE MINISTER OF NATIONAL
REVENUE

APPELLANT;

1967
*Feb. 15
Feb. 27

AND

CLARE LECKIE, Executrix of the
Estate of Adam Newton Leckie ..

RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Estate tax—Provincial tax credit—Situs of shares—Register of transfers or place of transfer—Estate Tax Act, 1958 (Can.), c. 29, ss. 9(1)(a), 9(8)(d).

At the time of his death, the deceased was domiciled in Ontario. Included in his estate were shares of a company incorporated in Newfoundland and all the issued shares of a company incorporated in Manitoba. The Newfoundland company maintained several registers for the transfer of shares, including one in Ontario. The Manitoba company maintained only one such register and that was at its head office in Winnipeg. The estate claimed that it was entitled, in computing the estate tax payable, to a provincial tax credit in respect of these shares because their situs was in Ontario, a prescribed province. The Exchequer Court held that the shares of both companies were situated in Ontario. The Minister appealed to this Court.

Held: The Minister's appeal as to the shares in the Manitoba company should be allowed; the Minister's appeal as to the shares in the Newfoundland company should be dismissed.

As was held by the Tax Appeal Board and by the Exchequer Court, the situs of the shares of the Newfoundland company was in Ontario.

As to the shares in the Manitoba company, the condition prescribed in s. 9(8)(d)(i) of the *Estate Tax Act* was not fulfilled. Consequently for the purposes of the Act, the situs of these shares was governed by s. 9(8)(d)(ii). The wording of s. 9(8)(d) is mandatory and appears to be clear and free from any ambiguity. Under its terms, the shares in the Manitoba company were deemed to be situated in Manitoba.

Revenu—Impôt successoral—Crédit pour taxes provinciales—Situs des actions d'une compagnie—Registre de transferts ou lieu de transfert—Loi de l'impôt sur les biens transmis par décès, 1958 (Can.), c. 29, arts. 9(1)(a), 9(8)(d).

Lors de son décès, le *de cujus* était domicilié en Ontario. Parmi les biens de sa succession se trouvaient des actions d'une compagnie ayant été incorporée à Terre-Neuve et toutes les actions d'une compagnie ayant été incorporée au Manitoba. La compagnie de Terre-Neuve tenait plusieurs registres de transferts d'actions, dont l'un en Ontario. La compagnie du Manitoba tenait un seul de ces registres qui était à son bureau-chef à Winnipeg. La succession prétend avoir droit, dans le calcul de son impôt successoral, à un crédit pour taxes provinciales

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concernant ces actions parce que leur situs était en Ontario, une province prescrite. La Cour de l'Échiquier a jugé que les actions des deux compagnies étaient situées en Ontario. Le Ministre en appela devant cette Cour.

Arrêt: L'appel du Ministre concernant les actions de la compagnie du Manitoba doit être maintenu; l'appel du Ministre concernant les actions de la compagnie de Terre-Neuve doit être rejeté.

Tel que l'ont décidé la Commission d'Appel de l'Impôt et la Cour de l'Échiquier, le situs des actions de la compagnie de Terre-Neuve était en Ontario.

Quant aux actions de la compagnie du Manitoba, la condition prescrite par l'art. 9(8)(d)(i) de la *Loi de l'Impôt sur les biens transmis par décès* n'a pas été remplie. Conséquemment pour les fins du statut, le situs de ces actions était déterminé par l'art. 9(8)(d)(ii). Le langage de l'art. 9(8)(d) est obligatoire et semble être clair et libre de toute ambiguïté. En vertu de ses termes, les actions de la compagnie du Manitoba sont réputées situées dans le Manitoba.

APPEL d'un jugement du Juge Gibson de la Cour de l'Échiquier du Canada¹, en matière d'impôt successoral. Appel maintenu en partie.

APPEAL from a judgment of Gibson J. of the Exchequer Court of Canada¹, in an estate tax matter. Appeal allowed in part.

D. G. H. Bowman and G. V. Anderson, for the appellant.

Donald A. Keith, Q.C., and *Frank K. Roberts*, for the respondent.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This is an appeal from a judgment¹ of Gibson J. allowing an appeal by the respondent and dismissing a cross-appeal by the appellant from a decision of the Tax Appeal Board and declaring that under the provisions of the *Estate Tax Act*, Statutes of Canada 1958, 7 Elizabeth II, c. 29, certain shares owned by the deceased Adam Newton Leckie were property situate in the Province of Ontario, which is a prescribed province.

There is no dispute as to the facts.

The questions which arise are as to the situs for the purpose of section 9 of the *Estate Tax Act* of (i) 30,003

¹ [1966] C.T.C. 310, 66 D.T.C. 5237.

common shares and 165 preferred shares of the capital stock of Leckie Enterprises Limited and (ii) 300 shares of the capital stock of Anglo-Newfoundland Development Company Limited.

As to the shares in Anglo-Newfoundland Development Company Limited, the Court at the conclusion of the argument of counsel for the appellant stated that it was not necessary to call upon counsel for the respondent as on this point we were all in agreement with the reasons and conclusion of the Tax Appeal Board which were concurred in by Gibson J.

It remains to consider the question as to the shares in Leckie Enterprises Limited, hereinafter called "The Company".

The relevant provision of the *Estate Tax Act* is s. 9(8)(d) which reads as follows:

9. (8) A reference in this section to the situs of any property passing on the death of a person shall be construed as a reference to the situs of that property at the time of the death of that person, and, for the purposes of this section except sub-section (3), the situs of any property so passing, including any right or interest therein of any kind whatever, shall, where that property comes within any of the classes of property mentioned in paragraphs (a) to (d) of this section, be determined in accordance with the following rules:

* * *

- (d) shares, stocks and debenture stocks of a corporation and rights to subscribe for or purchase shares or stocks of a corporation (including any such property held by a nominee, whether the beneficial ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated
 - (i) in the province where the deceased was domiciled at the time of his death, if any register of transfers or place of transfer is maintained by the corporation in that province for the transfer thereof, and
 - (ii) otherwise, in the place where the register of transfers or place of transfer nearest to the place where the deceased was ordinarily resident at the time of his death is maintained by the corporation for the transfer thereof;

At the time of his death Adam Newton Leckie, hereinafter referred to as "the deceased", was domiciled and ordinarily resident at Oakville in the County of Halton in the Province of Ontario. He was the beneficial owner of the 30,003 common shares which were all the issued common shares of the Company and the registered owner of all of these except two used to qualify directors who were his nominees and acted entirely on his instructions. The

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preferred shares had no voting rights and it is not questioned that the deceased was at all times in complete control of the company.

The Company was incorporated pursuant to the provisions of the *Manitoba Companies Act* on October 2, 1957. Its head office was at all times in the City of Winnipeg. It maintained only one register for the transfer of shares and that register was at its head office in Winnipeg.

Section 346(1) of the *Manitoba Companies Act* provides as follows:

346. (1) The register of transfers of every corporation with capital stock shall be kept at the head office of the corporation, and one or more branch registers of transfers, at which transfers may be validly registered, may be kept at such office or offices of the corporation or other place or places within or without the province as the directors, from time to time, appoint. Both registrars and transfer agents may issue and deliver share certificates in such manner as the directors of the company from time to time authorize.

The directors did not authorize a branch register to be kept at any office of the Company in Ontario or at any other place in Ontario.

On this state of facts it seems plain that the condition prescribed in clause (i) of paragraph (d) of subsection 8 of section 9 of the *Estate Tax Act*, quoted above, was not fulfilled and for the purposes of that Act the situs of these shares is governed by clause (ii) of that paragraph and accordingly they shall be deemed to be situated in the place where the register of transfers or place of transfer nearest to the place where the deceased was ordinarily resident at the time of death was maintained by the company for the transfer thereof.

The wording of this provision is mandatory and appears to me to be clear and free from any ambiguity. On the admitted facts it has the inevitable result of declaring that the shares in question shall be deemed to be situated in Manitoba.

For the reasons stated by Mr. W. O. Davis, who gave the decision of the Tax Appeal Board, and those briefly set out above, I would allow the appeal as to the shares in Leckie Enterprises Limited, dismiss the appeal as to the shares in Anglo-Newfoundland Development Company Limited and

direct that the assessment be referred back to the appellant for re-consideration and re-assessment in accordance with these reasons.

While the value of the shares in respect of which the appellant has succeeded is much greater than that of those in respect of which he has failed, success has been divided throughout and in all the circumstances of the case I would direct that there be no order as to costs in the Exchequer Court or in this Court.

Appeal allowed as to the shares of the Manitoba Company; appeal dismissed as to the shares of the Newfoundland Company; no order as to costs.

Solicitor for the appellant: E. A. Driedger, Ottawa.

Solicitors for the respondent: Keith, Ganong, Mahoney & Keith, Toronto.

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