1916
*Oct. 19, 20.
1917
*Feb. 6.

IDA LILLIAN BOYD AND OTHERS (PETITIONERS) ..... } APPELLANTS;

AND

THE ATTORNEY-GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA ..... } RESPONDENT;

AND

THE ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO } INTERVENANT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Succession duties—Partnership property—Owners not domiciled in Province—Interest of deceased partner—R.S.B.C. 1911, *c.* 217, *s.* 5, *s.-s.* 1*a*—*Taxation—Legislative jurisdiction—"B.N.A. Act,* 1867," *s.* 92.

By section 5 of the "Succession Duties Act" of British Columbia (R.S.B.C. [1911] ch. 217), on the death of any person his property in the province "and any interest therein or income therefrom * * * passing by will or intestacy" is subject to succession duty whether such person was domiciled in the province or elsewhere at the time of his death. M. B. and his brother were partners doing business in Ontario and owning timber limits in British Columbia. The firm had no place of business nor man of business in that province and never worked the limits. The partnership articles provided: "8. If either partner shall die during the continuance of the partnership his executors and administrators shall be entitled to the value of his share in the partnership assets. 9. On the expiration or other determination of the said partnership a valuation of the assets shall be made and after providing for payment of liabilities the value of such property stock and credits shall be divided equally between the partners, etc." M. B. having died while the partnership existed his share in the partnership assets passed by his will to executors. The Province of British Columbia claimed that his interest in the timber limits was subject to succession duty.

Held, Davies and Anglin JJ. dissenting; that under the terms of the articles of partnership M. B. at the time of his death had an interest

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

in the timber limits in British Columbia which passed by his will and such interest was subject to duty under section five of the B.C. "Succession Duty Act."

Held, also, that the imposition of the duty, if taxation, was "direct taxation within the province" and within the competence of the Legislature of British Columbia.

APPEAL from a decision of the Court of Appeal for British Columbia(1) affirming the order of the Chief Justice who dismissed the appellants' petition.

The essential facts will be found in the above headnote. The proceedings commenced by petition to the Supreme Court of British Columbia praying for a declaration that no succession duty was payable by the estate of Mossom Boyd in respect to the lands in the Province.

Lafleur K.C. and *David Henderson* for the appellants. The share of a deceased partner is situate where the partnership business is carried on. Hanson on Death Duties, pages 109, 113; *In re Ewing*(2), at page 22; *Commissioners of Stamp Duties* v. *Salting*(3), at page 453.

A partner's property consists of his proportion of the surplus assets after conversion and payment of liabilities. Lindley on Partnership, 8 ed., pages 402, 403; *In re Ritson*(4).

J. A. Ritchie for the respondent. This case is governed by the decision of the Privy Council in *Rex* v. *Lovitt*(5), on the Succession Duty Act of New Brunswick which is substantially the same as that of British Columbia.

Nesbitt K.C. for the intervenant, the Attorney-

(1) 23 B.C. Rep. 77.
(2) 6 P.D. 19.
(3) [1907] A.C. 449.
(4) [1898] 1 Ch. 667; [1899] 1 Ch. 128.
(5) [1912] A.C. 212.

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General for the Province of Ontario, referred to *Cotton* v. *The King*(1); *In re Muir Estate*(2); *Attorney-General* v. *Hubbuck*(3).

THE CHIEF JUSTICE.—I think this case must be governed by the decision in *Rex* v. *Lovitt*(4). The only question is whether the fact that the lands were, as is alleged, the property of the partnership instead of being vested in an individual can make any difference, and I do not see that it can.

It is said that all that those claiming under the deceased would be entitled to would be a share in the surplus of assets over liabilities of the partnership. How does this differ from the ordinary case of a residuary legatee who is only entitled to the balance of the testator's estate after payment of debts? In the judgment in *Rex* v. *Lovitt*(4) it was said:—

> The tax is on the gross sum though it may be money used in trade and as such be subject to many deductions before it can fairly be treated as not property.

The case has been argued as if it depended solely upon the law governing such matters in the absence of express agreement. I am far from satisfied that that is the correct view. Paragraphs 8 and 9 of the articles of partnership are certainly not apt for providing for the usual sale, winding-up and division of the surplus of the partnership. It may well be that on a division and execution of proper releases and instruments, such as is contemplated by paragraph 9, each of them, the executors and the surviving partner, would hold one-half of the lands, the only difference being that they would hold divided instead of undivided shares.

(1) [1914] A.C. 176.
(2) 51 Can. S.C.R. 428.
(3) 13 Q.B.D. 275.
(4) [1912] A.C. 212.

Be this as it may I am satisfied that this real estate in the Province of British Columbia passes under the will and I do not think it possible that payment of succession duty can be avoided on any allegation that the devise may be subject to answer possible liabilities of the partnership.

I do not wish to embarrass the case by suggesting unnecessary points of doubt, but it is remarkable that though the testator appointed executors and trustees of his will, there is no devise or bequest to them of any property whatever. If the land passes under the devise in the will to the widow and three sons of the testator there would seem a still stronger case why they should be liable for payment of the succession duty.

That the lands must be considered as personal property is, I think, a question that chiefly concerns the intervenant, but it must be noted that in most, at any rate, of the cases to which reference has been made the question for decision has been whether the property was liable for probate duty.

The claim that the share of a deceased partner is situate where the business of the partnership is carried on, does not, I think, further the appellant's case. The distinction is overlooked between the locality where the asset forming part of the partnership property is situated and the place where the share of the partnership is considered to be situate. So far as this particular asset is concerned the business of the partnership must, I think, be considered to have been carried on in British Columbia. In *Beaver* v. *The Master in Equity of the Supreme Court of Victoria*(1), where a firm carried on business in London, Melbourne and Adelaide, it was held

(1) [1895] A.C. 251.

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that the interest of a deceased partner in the business carried on at Melbourne was locally situate in the Colony of Victoria so as to be liable to probate duty in respect of his will.

DAVIES J. (dissenting).—The question to be determined on this appeal is whether the share or interest of Mossom Martin Boyd, deceased, in certain real estate situate in British Columbia standing at his death in his name and in that of his partner William T. C. Boyd, is liable for succession duties under the "Succession Duties Act" of British Columbia, R.S.B.C. 1911, ch. 217.

The 5th section of this Act, sub-sec. (*a*), enacts that:—

> On the death of any person the following property shall be subject to succession duty. All property of such deceased person situate within the province and any interest therein or income therefrom whether the deceased person owning or entitled thereto was domiciled in the province at the time of his death or was domiciled elsewhere passing either by will or intestacy.

The case came before the courts on the petition of the executors of M. M. Boyd's estate praying for a declaration that the properties in question were not liable for succession duties because they were acquired by the partnership the "Mossom Boyd Company" and were paid for out of the partnership funds; and although standing and held in the names of the individual partners were so held by them on behalf of and as part of the assets of the partnership—and that as the business of the partnership was carried on in Ontario, where the head office was and where the books were kept, the interest of the deceased partner in these partnership lands was not liable to succession duty under the British Columbia Act.

The Chief Justice of British Columbia dismissed the petition without stating his reasons. On appeal

to the Court of Appeal for that province the court was equally divided and the judgment of the Chief Justice therefore stood.

I think the evidence shews that the partnership carried on its business in Ontario at Bobcaygeon where its head office was and its books were kept and that it had no partner or paid agent to transact business in British Columbia though it purchased and sold lands there as elsewhere in Canada under the terms of the partnership deed.

I think also it is clearly shewn that the lands in question were purchased and paid for out of the partnership funds and that although they stood in the names of the individual partners they did so in trust for the partnership and must on the death of one of the partners and for the purposes of succession duty be treated as partnership property of the firm.

I am also of opinion that the shares of the individual partners in these real properties of the firm must be treated in the absence of any binding agreement between the parties as personalty: *Attorney-General* v. *Hubbock*(1).

The reasons why this must be so are clearly explained by Brett, M.R., at page 285, and Bowen, L.J., at page 289.

But in my judgment it does not matter for the determination of the question on this appeal as to the liability of the property in question to pay succession duties whether it is treated as personalty or realty.

The sole question is whether the interest, whatever it may be, of the deceased partner comes within the section of the Act I have quoted.

The section clearly overrides and excludes the

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rule of law based upon the maxim "*mobilia sequuntur personam*" and therefore, though the deceased's domicile was in Ontario and the lands were treated as personalty, they would not escape liability on that ground.

That point being disposed of by the express terms of the statute, we must determine whether the other judicial rules relating to partnership property have also been set aside or overruled by the statute.

It is contended on the part of the appellants, that although the lands were situated in British Columbia and the title stood in the individual names of the partners, still, as they were partnership property of a firm carrying on its business in Ontario, they were not liable under the Act for the succession duties.

The contention was made and I agree with it that as under the facts the deceased partner had in law and equity no interest in these lands within the meaning of the statute they were simply these British Columbia assets of the partnership and must be held at its dissolution and for the purposes of succession duty to be situate in Ontario where the business of the partnership was carried on—and that the only right or interest the deceased partner or his representative had at the time of his death was a right to share in the surplus assets of the partnership.

The law on this subject as above stated is clearly put in Lindley on Partnership, 8th ed., pp. 402 and 403, and Halsbury, vol. 22, p. 55, where the authorities are collected.

Mossom Martin Boyd's interest in the partnership property under these authorities consisted at the time of his death of the surplus assets of the partnership after its debts and liabilities were paid and discharged and this is the only interest which passed or could pass on his death to his representatives.

The only right of the executors of the will of the deceased partner, the petitioner in this court, is a right to have such share of the deceased properly ascertained and paid. The right of the British Columbia Legislature to change and displace these rules of law and to make the interest of a deceased partner in partnership property situate in British Columbia liable to succession duties is not disputed.

The question is: Has it done so in the section of the statute quoted above, either expressly or by necessary implication? If it has not so changed and displaced these judicial rules with reference to the interest of a deceased partner in partnership property situated within the province, then *cadit questio.*

In the case of *Rex* v. *Lovitt*(1), so much relied upon by the two learned Judges in the Court of Appeal as supporting the right of the province to claim the succession duties in this case, the Judicial Committee did certainly determine that a competent legislature may if so minded and by the use of apt language in its legislation impose a succession duty on property within its jurisdiction, even if in so doing it displaces the rule of law based upon the maxim *mobilia sequuntur personam.*

Their Lordships first decided that the monies there in question being deposits made by the deceased testator in his lifetime in a branch bank in New Brunswick of the Bank of British North America whose head office was in London, England, were primarily at least payable in St. John, New Brunswick, where the branch bank was and came therefore within the words of the statute

property within the province.

(1) [1912] A.C. 212.

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They held further that the rule of law based upon the maxim *mobilia sequuntur personam* had been expressly displaced by the language of the section which made all such property liable to succession duties *though the testator's domicile may have been outside of the province.*

But the decision in that case does not help the Crown in the case before us because the British Columbia statute does not profess to displace any of the rules of law relating to partnership property or to alter the rights of a deceased partner or his representatives on his death in or to such property.

I am quite at a loss to understand what words in the section now under discussion can be invoked to displace any of such judicial rules. If none can then these rules must be given effect to.

The mere fact that the property stood in the individual names of the two partners cannot affect the question.

It was partnership property and the partners held it in trust for the partnership.

The only interest which the partner held was a right to share in the surplus assets of the partnership and as the business was carried on outside of the province the succession duties, if any such were payable at all, would be payable in the province where the business was carried on.

The words of the section relied upon as displacing by implication the ordinary rules of law relating to partnerships and the interest of the partners therein are no doubt these,

> all property of such deceased person situate within the province and any interest therein or income therefrom.

From what I have already said it will be apparent

that my conclusions are that the deceased partner had no interest in these properties at his death within the meaning of the section in question and that any interest he had with respect to them or that his representatives had under his will was a right to have them treated as partnership properties and to share in the surplus assets of the partnership the business of which was carried on in Ontario and not in British Columbia. In other words, the property was not that of the deceased partner nor had he any interest in it. His sole right and that of his representatives on his death was the right to have the property treated as a partnership asset in winding-up its affairs in Ontario.

The answer to the argument arising out of the title to the lands standing in the individual names of both partners at the decease of Mossom Martin Boyd is that previously stated by me, namely, that it being shewn to be partnership property purchased with partnership funds the deceased and his partner would be held respecting them to be trustees for the partnership and the executors of the deceased's will would be compelled to join in a sale of the properties for partnership purposes or otherwise to convey and assure the properties to the surviving partner for partnership purposes. No interest other than his right to a share of the surplus assets of the partnership was held or possessed by the deceased partner at his death or could be disposed of by his will in these properties.

If the legislature intended to make any such interest liable to succession duties they would have used express language to displace the rules of law respecting it as they did when they desired to displace the rule of law respecting personal property founded on the maxim *mobilia sequuntur personam.*

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I would therefore allow the appeal and grant the declaration prayed for.

IDINGTON J.—The late Mossom Martin Boyd carried on business in Ontario along with his brother under articles of partnership which I will presently refer to, and having made a will, also to be referred to, died 8th June, 1914, when amongst other assets they held timber lands situate in British Columbia.

These lands had been acquired and registered in the names of the said Mossom Martin Boyd and his said brother William Thorncroft Cust Boyd and were held as partnership property.

The question raised herein is whether the Province of British Columbia can, under its "Succession Duties Act," R.S.B.C. 1911, ch. 217, sec. 5, claim that any interest in said lands or income therefrom was subject to succession duties.

Said section 5 so far as directly dealing with the matter involved, is as follows:—

> 5. (1) Save as aforesaid the following property shall be subject on the death of any person, to succession duty as hereinafter provided, to be paid for the use of the province over and above the probate duty prescribed in that behalf from time to time by law;
>
> (*a*) All property of such deceased person situate within the province, and any interest therein or income therefrom whether the deceased person owning or entitled thereto was domiciled in the province at the time of his death, or was domiciled elsewhere, passing either by will or intestacy.

It is denied by appellant that this enables the province to collect duties in any case of death of a partner when the partners had carried on business and resided beyond the province at the time of such death.

We have been by means of the liberal citation of cases invited to consider the probate duties, the succession duties, the death duties, the legacy duties

payable heretofore and now under a variety of English statutes, the voters' franchise and legislation bearing thereon, and in the same way the several Acts in force in England and her colonies bearing respectively upon such like duties or rights not overlooking sundry other Acts such as "Locke King's Act," and last but not least the "Mortmain Acts," in order to be helped to a proper understanding of the sections just quoted.

Briefly put the argument was based upon the theory that land held by the members of a partnership was held as joint tenants and therefore the share of one dying would by due course of law become vested in the survivor or survivors to be held subject to the terms of the articles of partnership as part of the assets of the firm and only be accounted for by the survivor or survivors in course of his or their winding-up the firm business or default through the court which necessarily must observe the doctrine of equity jurisprudence by which all the assets must be treated as personal property and as there could be no claim made by the personal representative of a deceased partner to any of the assets and only a possible claim to share in the residue of the proceeds realized by survivor or court in Ontario in due course of liquidation there was nothing for the said statute to operate upon.

I have in deference to the course which that argument has taken in the hands of able counsel considered all these cases, but I cannot say that I am much helped thereby to a solution of the actual problem presented to us to determine. Many of these cases cited to us had to distinguish between what should be held to be real and what personal property in certain contingencies for the purpose of applying the Act imposing a pro-

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bate duty, or for other purposes the equitable doctrines properly relevant in certain cases wherein land had in fact furnished the basis of the dispute but in such view had to be treated as personal property.

We have no such distinctions to make herein or at least if such like distinction has to be observed it rests upon other conditions than those arising in many of the cases cited.

It matters not whether the interest that passes by this testator's will is real or personal or a mixture of both. Whatever it is the clear purpose of the Act is, if we study its provisions as a whole and regard its purview, to see that whatever passes shall be taxed.

There are some rather cogent reasons for holding that under the state of the law in England nothing in said land would have, if governed thereby, passed by such a will but the possible share of the personal representatives of deceased in the ultimate residue of the realized assets of the firm. But when I come to try and apply such reasons to this particular statute and its entire purpose and the relation thereof to the peculiar facts of the case and to the laws of British Columbia to which I am about to advert, I must hold that something in the nature of an interest in the property or the income thereof has passed.

It would surprise the appellants to be told that nothing in British Columbia passed by the will.

It is self-evident that everyone concerned felt the necessity of holding that something else than suggested in argument passed; else why resort to the British Columbia Probate Court for ancillary letters through the statutory provision for recognition of the Ontario probate?

And when we go a step further we find that, in

order to make a title to any purchaser of the British Columbia lands in question, or even to one of those concerned in the event of a partition thereof, it seems necessary in order that there should be any title pass in either such case (the provisions of the "Land Registry Act" are such) that the parties concerned must resort to the will and probate and only by means thereof can title be made.

These features seem to me to furnish the crux of the case to be considered and decided.

There does not seem to be anything in the nature of a transmission to the surviving partner such as formerly enured in England and does yet, by reason of the title being one of joint tenancy.

That phase of the English law of real property seems to be practically taken away by reason of the provision of the "Land Registry Act," ch. 127, of the Revised Statutes of British Columbia, 1911, sec. 52, which enacts as follows:—

Section 52. Where by any letters patent, conveyance, assurance, or will, or other instrument made and executed after the twentieth day of April, 1891, land has been or is granted, conveyed or devised to two or more persons, other than executors or trustees, in fee-simple, or for any less estate, it shall be considered that such persons took or take as tenants in common, and not as joint tenants, unless a contrary intention appears on the face of such letters patent, conveyance, assurance, or will, or other instrument, that they are to take as joint tenants.

It will be observed that executors or trustees are the only grantees who may receive a title in joint tenancy to be governed by the incidents of survivorship peculiar to such a tenure unless by express provision to the contrary.

There is no such implication to be presumed from the mere fact of the existence of a partnership between the grantees.

There is no such statutory provision in England,

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so far as I can find, and certainly the text books indicate that the presumption of a grant to more than one person whether partners or not is, unless otherwise expressed, a grant to hold as joint tenants with all the incidents of survivorship incidental to joint tenancy.

I need not dwell on the exceptions presumed from circumstances. It may be observed that many English decisions and some of those cited to us turn upon this conception of the law in England

The right of survivorship in law founded thereon has often enabled surviving partners to deal properly and advantageously with the partnership estate and even wind it up.

We must also remember that the jurisdiction of courts of equity over the administration of partnership is so comprehensive that the views of these courts, treating the entire property of such partnerships for that and like purposes as personal property, being that to which everything in the last resort is reducible by the process they adopt, dominate legal minds.

Hence we find the propositions laid down, perhaps rather broadly, by high authority that all partnership property is personal. Obviously the expressions so quoted relate to such cases as happen to be dealt with for some purpose incidental to a partnership as such, or to the view of courts of equity in administering partnership assets.

I cannot accede to such a proposition as of universal application and covering cases where the partners see fit expressly to provide for an entirely different treatment of their assets.

What a court of equity may do and find necessary to do in the course of administering a partnership estate in order that third parties may get their share, when no other provision has been made therefor, and

the principles and practice of proceeding in a court of equity have to be observed, is one thing. But when third parties have not to be protected and the partners have by their contract between themselves made ample provision for the manner of dealing with partnership assets, it is entirely another thing, and I venture to think that in such a case no court of equity would interfere with that provision or the mode of carrying it out, but rather would aid in the due execution thereof according to the agreement.

Now what is the condition of things existent in the partnership we have to deal with and to which we have to apply if we can the statute now in question?

The articles of partnership are in the case and dated 23rd November, 1892, subsequent to the coming into operation of the statute I have quoted above relative to the nature of the tenure under which the lands acquired by the firm should be held, and constituting it, presumptively at least, a tenancy in common.

I may remark here that in Ontario there had long existed a statutory provision from which I imagine the British Columbia Legislature copied that which I quote above, substituting the year 1891 for that of 1834 in the Ontario enactment.

This fact is, of course, of no further consequence than to suggest the mode of thought likely to prevail with business men of Ontario when acting as partners they enter into a bargain for the management of and dealing with their property including real estate at home and abroad. It may require that due heed should be paid to that circumstance in interpreting the language they have used in framing their articles of partnership and the agreement therein for the winding-up of their estate.

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When due heed is paid thereto and to the language used in such articles and they are thus found to possess a meaning in accord with what a business man would read therein freed from the hampering preconceptions lawyers often have of what men are about, I submit no court should interfere with, but try to execute, the purpose in the business man's mind.

The articles of partnership in question herein provided for its continuation for ten years from the date thereof or until the partnership had been determined by either party giving six months' notice to the other.

Following such provisions are articles 8 and 9 which are as follows:—

8. If either partner shall die during the continuance of the partnership his executors and administrators shall be entitled to the value of the partnership property, stock and credits to which the deceased partner would have been entitled on the day of the date of his death.

9. On the expiration or other determination of the said partnership, a full written account shall be taken of all the partnership property, stock, credits and liabilities, and a written valuation shall be made of all that is capable of valuation, and such account and valuation shall be settled, and provision shall be made for the payment of the liabilities of the partnership, and the balance of such property, stock and credits shall be divided equally between the partners, and each shall execute to the other proper releases and proper instruments for vesting in the other, and enabling such other to get in such property, stock and credits.

Clearly this partnership ended by the testator's death and what article 9 provided, probably was duly carried out. And however that may be it is to be presumed it was so until the contrary appears.

We are not informed on all this as we might have been. Probably a full exposition of the results of the provisions just quoted and what done pursuant thereto, would have deprived the theoretical argument submitted of much of its application.

The will of the testator is produced and assuming it was intended thereby, as suggested by counsel on the

argument, to deal with the interest of the deceased in the lands in question it furnishes an illuminating commentary on the pretensions set up in argument.

The will provides a period of ten years is to be allowed for carrying out the greater part of the provisions made therein, in order to prevent any loss to this testator's estate by too hasty a realization of the assets.

Is not the fair inference that the testator well knowing the above quoted provisions for the settlement of the partnership affairs expected and intended that there should be no enforced winding-up thereof in the manner contemplated in the argument herein, but that after the valuation there should be a division of the lands as well as goods available for partition and the trustee executors be enabled thereby to execute the testator's directions. Every one of long experience in Canada knows the need that exists for dealing with timber limits and lands as this testator directs.

Such seems to me to have been the scope and purpose of both the articles of partnership and the will, and that there was thereby a transmission of the testator's interest in the lands in question clearly within the meaning of the statute in question rendering it liable beyond peradventure to the payment of succession duties in British Columbia.

In that view there is no need for speculation as to the possible outcome of a winding-up of the partnership by a sale of the assets and on the realization thereof a payment of money in Ontario where the surviving partner and the executors presumably would execute their respective duty or trust and the money be payable.

There also seems clearly in such a view no room for the argument presented on the basis of the results of such a speculative way of looking at the matter.

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Even in such an alternative I by no means have a doubt as to what the legislature intended.

The expression of that intention might well have been better put, so as to cover the grounds taken in argument.

However that may be, there is in sub-section (*d*) of section 5 a provision made against the possible vesting of an estate in a joint tenancy whereby the beneficial owner might under the strict literal terms of sub-section (*a*) escape.

This provision against any possible resorting to such subterfuge clearly suggests, that the case of any other analogous result arising from the doctrine of survivorship in a joint tenancy was not expected as a thing that could arise under the law of British Columbia.

It is difficult to imagine a more tangible asset possessing a local situs than land in any country and especially so where both by virtue of the provisions I have quoted the tenancy would be presumed to be a tenancy in common and by the provision of the "Land Registry Act" it is contemplated that each of the parties named in the registry as owners, or their representatives, must join in order to effect a transfer of the entire estate.

The provision of section 25 of the "Partnership Act" declaring that real estate as between the partners shall "be treated" as personal or movable and not real and heritable estate, does not seem to me to affect the operation of the Act in the slightest degree so far as it relates to the situs of the property or interest therein to be taxed. It simply fits what courts of equity for purposes of administration have always, at least *primâ facie*, maintained. There may arise sometimes but cannot in this case an arguable question

as to the measure of interest of a partner in an insolvent partnership concern or one possessing little value. I express and indeed have no opinion in regard thereto.

I only refer to it to illustrate that there may be questions other than that of situs arise out of said section 5 in relation to which section 25 of the "Partnership Act" may have a bearing.

The Province of Ontario desired and was allowed to intervene. The fullest argument possible is always desirable in these cases. But we have no right, and are indeed not asked to pass upon the possible claims of that province, resting upon such theories as the argument presents, to maintain another succession duty even if the British Columbia claim is maintained. That possibility is properly suggested in argument as a reason for great care on our part.

The case of *Rex* v. *Lovitt*(1), goes a long way to maintain the respondent's claim.

The actual situation of the properties and the necessity to obtain probate where situated in order to secure the recovery of it or to enable any dealing with it, were cogent reasons in that case for maintaining the claim. Both exist and are strengthened in this case by the need for compliance with the "Land Registry Act."

Moreover, in this case it was not seriously disputed in argument that the province would have the power within the jurisdiction conferred by the "B.N.A. Act" to impose direct taxation upon or in respect of the land in such a contingency as appears to result from the dissolution of a partnership by death and all involved therein.

It comes back to the narrow question of whether or not the legislature has succeeded in expressing it-

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self within the meaning of that power. I think it has. The act of doing or attempting to do so has to bear the test of its being fitted to British Columbia laws and the condition of things created thereby, or flowing therefrom. Neither the power nor the mode of expressing its exercise can be very adequately helped by analogous cases founded on other laws and other conditions of things.

I think the appeal should be dismissed with costs.

DUFF J.—The Mossom Boyd Company was a firm composed of two members, Mossom Boyd and William Boyd, carrying on (*inter alia*) a lumber business with its head office at Bobcaygeon in Ontario. The partnership was formed on the 23rd November, 1892, and by the articles was to last for ten years; but the partners continued to carry on business as a partnership at will down to the death of Mossom Boyd in June, 1914. Both partners were domiciled in Ontario. Certain timber lands and timber leases were acquired in British Columbia and, it is admitted, became partnership property, and were partnership property on the death of Mossom Boyd. These properties were acquired and were registered in the names of the partners as individuals, as tenants in common in fee simple or as lessees.

The partnership acquired property in Saskatchewan, Manitoba and Quebec as well as in Ontario and British Columbia. There was no place of business in British Columbia and, excepting the acts done in acquiring the properties mentioned, in the payment of rent and taxes and license fees and in other acts incidental to the ownership of the property, it did not at any time carry on business in British Columbia.

The question is whether the deceased Mossom

Boyd had in these properties in British Columbia an interest that on his death became subject to succession duties under section 5, sub-sec. 1*a* of the "Succession Duty Act," R.S.B.C. 1911, which enactment is in the following words:—

Sec. 5 (1). Save as aforesaid, the following property shall be subject, on the death of any person, to succession duty as hereinafter provided, to be paid for the use of the province over and above the probate duty prescribed in that behalf from time to time by law:—

(*a*). All property of such deceased person situate within the province, and any interest therein or income therefrom, whether the deceased person owning or entitled thereto was domiciled in the province at the time of his death, or was domiciled elsewhere, passing either by will or intestacy.

That no such interest was vested in the decedent is alleged for the reason that by the law of British Columbia as well as by that of Ontario the "share" of a partner in the partnership assets is not an interest in any specific asset of the partnership but is merely a right ultimately to receive his share of the proceeds of the sale of the surplus assets after payment of the partnership liabilities. This right, it is said, is of the nature of personal property and the right had its situs, it is alleged (referring to the right of Mossom Boyd), in Ontario where the head office of the business is and where for many purposes the business must be deemed to have been carried on.

The conclusions to which we are asked to assent as flowing from this are, first, that no interest devolved under the will of Mossom Boyd which was "property" belonging to him

situate within the province

and secondly, that any attempt to subject this right of the decedent to succession duty would be *ultra vires* as not being

taxation within the province

according to the meaning of sec. 92 "B.N.A. Act."

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The second of the questions raised presents little difficulty. The title to land and to interests in land within the boundaries of the province is a subject within the exclusive jurisdiction of the province and no question can be raised touching the authority of the legislature to declare that on the devolution of a registered title consequent upon the death of one of two tenants in common the land or the undivided half interest vested in him whether as trustee or otherwise shall be charged with the payment of a duty to the Crown or that a condition of the registration of the title devolving by reason of his death or of the recognition as *jura in re* of the rights of the beneficiaries for whom that title is held in trust shall be the payment of such a duty. The extent of the legislative jurisdiction with respect to lands within the province may be gathered by reference to the decision of the Privy Council in *McGregor* v. *Esquimalt and Nanaimo Railway Co.*(1). This observation is subject to one qualification and only one, and that is that such legislation would not be effective if it appeared that, although "taxation," it did not when its real purpose was considered, fall within the description "direct taxation." *Payne* v. *Rex*(2), at page 560.

The first proposition stated above rests upon the assumption that at the time of his death Mossom Boyd had no interest in the partnership lands in British Columbia which could be described as "property" or interest in "property" within the meaning of the "Succession Duty Act." With his brother as co-partner he was registered tenant in common, having vested in him an undivided moiety in the "absolute fee" in the timber lands and being joint lessee under the

(1) [1907] A.C. 462. (2) [1902] A.C. 552.

timber leases. It is argued, however, that the "absolute fee" vested in the partners as individuals was held by them as bare trustees for the "partnership."

The discussion of the question thus raised will be simplified by adverting to some of the fundamental principles of the English law of partnership. For our present purpose it is most suitable to quote a passage of Lord Lindley's from the 5th edition, Lindley on Partnership, at page 111:—

> The firm is not recognized by lawyers as distinct from the members composing it. In taking partnership accounts and in administering partnership assets, courts have to some extent adopted the mercantile view, and actions may now be brought by or against partners in the name of their firms; but speaking generally, the firm as such has no legal recognition. The law, ignoring the firm, looks to the partners composing it; any change amongst them destroys the identity of the firm; what is called the property of the firm is their property, and what are called the debts and liabilities of the firm are their debts and their liabilities.

Notwithstanding the change effected by the "Judicature Acts" alluded to in this passage "we have not yet" as James L.J. says in *Ex parte Blain*(1), at page 533:

> introduced into our law the notion that a firm is a *persona*.

When it is said therefore that property held in the names of the partners as partnership property is held "in trust for the partnership" it should be understood that what is meant is not that the partners are not the beneficial as well as the legal owners of the property but that as between the partners themselves and those claiming under them the property is dedicated to the purposes of the partnership, and that each partner holds his interest in trust for such purposes. The partners are owners in the fullest sense both at law and in equity.

(1) 12 Ch.D. 522.

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It is true nevertheless that as between the partners themselves and those claiming under them and generally speaking as between the creditors of the partnership and the creditors of an individual partner the share of an individual partner in the partnership assets is merely the share to which he may prove to be entitled in the clear surplus of the assets after the partnership affairs have been wound up, the property sold and the debts and liabilities paid. This rule and its effect through the operation of the equitable doctrine of conversion are explained in a well-known passage by Kindersley V.-C. in *Darby* v. *Darby*(1), referred to with approval by the Court of Appeal in *Attorney-General* v. *Hubbock*(2). The passage is in the following words:—

> Now it appears to me that, irrespective of authority and looking at the matter with reference to principles well established in this court, if partners purchase land merely for the purpose of their trade and pay for it out of the partnership property, that transaction makes the property personalty and effects a conversion out and out. What is the clear principle of this court as to the law of partnership? It is that on the dissolution of the partnership all the property belonging to the partnership shall be sold, and the proceeds of the sale, after discharging all the partnership debts and liabilities, shall be divided among the partners according to their respective shares in the capital. That is the general rule and it requires no special stipulation; it is inherent in the very contract in partnership. That the rule applies to all ordinary partnership property is beyond all question; and no one partner has a right to insist that any particular part or item of the partnership property shall remain unsold, and that he should retain his own share of it in specie.

It is said to be involved in this doctrine that a partner has no right or interest in any specific asset of the partnership and further that the share of each partner in the assets is a right, the situs or constructive locality of which has no necessary relation to the situs in fact of the individual items and that the true rule of law is that for all purposes this share or interest of

(1) 3 Drew. 495. (2) 13 Q.B.D. 275.

the individual partner has its seat in contemplation of law at the firm's principal place of business.

The crucial question in the present controversy is whether Mossom Boyd had at the time of his death an interest in the British Columbia assets which the statute lays hold of. The question whether or not these assets became notionally converted into personal property on the acquisition of them by the partnership is not immaterial, but it is not the precise point involved.

In the present appeal these questions must as Mr. Ritchie argued be considered with reference to the terms of the partnership articles and the relevant provisions are these:—

WHEREAS the parties hereto are desirous of carrying on the business of manufacturing lumber in all its branches and the purchase and sale of real estate or such other ventures as may from time to time be agreed upon between said parties, and have concluded to enter into and form a partnership according to the true intent and meaning of these presents.

* * * * *

8. If either partner shall die during the continuance of the partnership his executors and administrators shall be entitled to the value of the partnership property, stock and credits to which the deceased partner would have been entitled on the day of the date of his death.

* * * * *

9. On the expiration or other determination of the said partnership, a full written account shall be taken of all the partnership property, stock, credits and liabilities, and a written valuation shall be made of all that is capable of valuation, and such account and valuation shall be settled, and provision shall be made for the payment of the liabilities of the partnership, and the balance of such property, stock and credits shall be divided equally between the partners, and each shall execute to the other proper releases and proper instruments for vesting in the other, and enabling such other to get in such property, stock and credits.

These terms of the contract between the parties seem either to exclude or greatly to restrict the application of the doctrine of *Darby* v. *Darby*(1), even as be-

(1) 3 Drew. 495.

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tween the partners themselves. Primarily the business of the firm was lumbering and *primâ facie*, I think, the arrangements of the partners did not contemplate the disposal of such properties as were purchased in British Columbia by sale of them as lands except as the result of agreement between the partners. It is quite true that no lumbering appears to have been carried on by the firm in British Columbia but we are not entitled to assume, I think, that the purchase of the timber lands and the acquisition of the leaseholds were operations merely in the business of "buying and selling real estate."

It should be noted that the "charge" arising out of the partnership articles was not registered.

Treating these timber lands as part of the assets of a firm whose business was lumbering it would follow that in law neither partner would as between himself and his co-partner during the existence of the partnership have the right to sell them without the concurrence of the other, a possibility which no doubt never entered the mind of either of them. Then the terms of section 9 exclude the right of either partner, conferred by law in the absence of agreement to the contrary, to insist upon a sale of the partnership property at dissolution, a right which as Lord Justice Cotton pointed out in *Ashworth* v. *Munn*(1), at page 374, is not merely a right to insist upon a sale for the payment of the debts but a right in each partner in his absolute discretion to insist upon a sale even after the debts have been paid. This British Columbia property cannot therefore be treated as (to use the words of Bowen L.J. in *Attorney-General* v. *Hubbock*(2)):

> in the end subject to a trust for sale;

(1) 15 Ch.D. 363. (2) 13 Q.B.D. 289.

and this, I think, is sufficient evidence of the existence of a "contrary intention" within the meaning of section 25 of the "Partnership Act," R.S.B.C. (1911), ch. 175. The general rule therein laid down that where such "contrary intention" does not appear partnership property is as between the partners and the heirs and personal representatives of a deceased partner to be treated as personal estate, consequently does not apply.

Section 8 must of course be considered. That section, I think, should be read with section 9 and its office appears to be to fix the date in relation to which the value of the partnership assets is to be ascertained.

In this view it cannot be affirmed that no interest in the British Columbia assets devolved on the death of Mossom Boyd as part of his estate. At his death an undivided interest in these assets was vested in him as land, subject to the operation of the stipulation of section 9.

True the effect of section 9 is to provide a method of distribution which in the result might give the whole of the British Columbia assets to the surviving partner; but at the death of the deceased partner his interest was an undivided interest in the partnership assets as a whole, including the British Columbia assets, an undivided interest in every item of the assets subject to a charge for payment of debts.

Some light is thrown upon the question of the nature of the partner's legal status with reference to the real property assets of the partnership during the existence of the partnership, by a consideration of the practice existing prior to the passing of the "Partnership Act" as regards the taking in execution of a partner's share for his separate debt. Before the passing of that Act partnership property could be seized un-

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der a writ of *fi. fa.* upon judgment against one of the partners for his separate debt, the sheriff seizing such of the partnership effects as might be requisite and could be seized under the writ and selling the undivided share of the judgment debtor in them. The legal effect of such seizure and sale is described in Lindley on Partnership (5 ed.), at page 358. The purchaser being a stranger unconnected with the firm acquired for his own benefit all the judgment debtor's interest in the property comprised in the sale and became as regards such property tenant in common with the judgment debtor's co-partners. The purchaser, however, held this interest subject to all the equities which the co-partners had upon it and subject therefore to their right to have all the creditors of the firm paid out of the assets of the firm and *consequently pro tanto out of the property seized by the sheriff.*

It is clear, therefore, notwithstanding the fact that a suit in equity was formerly necessary or might have been necessary in such a case to have the partnership accounts taken and to have the partnership property correctly applied, that each of the partners had an interest in specific assets of the partnership which could be seized and sold under a judgment against him for his separate debt.

A few sentences from Lord Justice Lindley's judgment in *Helmore* v. *Smith*(1), at page 447, may be advantageously quoted:—

> A writ of *fi. fa.* was issued against one of the two partners in the business of coal merchants. Let us consider what the sheriff could do under that *fi. fa.* He could seize all such of the assets of the firm as are seizable under a *fi. fa.*, but he could not seize book debts or goodwill. The *fi. fa.* does not touch such things; *and it is a mistake and a very serious mistake, to suppose that when the sheriff, under a separate execution against one of the several partners, seizes the partnership goods, and sells*

(1) 35 Ch.D. 436.

the share and interest of the execution debtor in those goods, the sheriff can or does in practice sell the whole of the execution debtor's interest in the partnership. Such a case is conceivable, but *in practice it never arises, because there are always in practice assets which cannot be reached by a fi. fa.* What the sheriff has got to sell is not the share and interest of the execution debtor in the partnership, but the share and interest of the execution debtor in such of the chattels of the partnership as are seizable under a *fi. fa.*

I find some difficulty in holding that an interest which could be seized under a *fi. fa.* in British Columbia and sold by a sheriff under the authority of the writ is not an interest in property situated in British Columbia, and therefore subject to duty under section 5 of the "Succession Duty Act."

In 1897 the law of British Columbia was changed by the "Partnership Act;" by section 24, sub-sec. 1, of that Act it was provided that a writ of execution should not issue against any part of the partnership property except on a judgment against the firm. By sub-section 2 another remedy is submitted. A judgment creditor having a judgment against a partner is given a right to obtain an order charging the debtor's interest in the property of the firm and subsequently to have a receiver appointed to get in that interest.

It seems probable that section 24 would not apply to the property of a partnership such as that of the Mossom Boyd Company, which had no place of business in British Columbia, which carried on business in other jurisdictions and had its principal place of business elsewhere; and if the section does not apply then the old law still remained applicable to the British Columbia assets of this firm and at the time of Mossom Boyd's death his interest in the partnership chattel property in British Columbia was exigible under a judgment against him in accordance with the old law.

If section 24 does apply then the second sub-sec-

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tion could only take effect as authorizing a charging order upon the partner's interest in the property in British Columbia and the appointment of a receiver to realize that interest. On this hypothesis the observation made above as to the difficulty of holding that an interest capable of being so dealt with is not an interest situated within the province and not an interest within section 5 of the "Succession Duty Act," is equally pertinent.

In 1897 when the "Partnership Act" was introduced into British Columbia and for a number of years afterwards land and interests legal and equitable in land including charges on land and the moneys thereby secured could be seized and sold under a writ of *fi. fa.* and I can see no reason why the interest of a partner in the firm's real estate should not be subject to be taken in execution under that writ just as his interest in the firm's chattels was. It is useful also to refer to *Ashworth* v. *Munn*(1), at pages 370 and 374, cited by Mr. Ritchie as shewing that a partner's interest in the assets of a partnership which possesses land among its assets is an interest in land.

Ashworth v. *Munn*(1), is an illuminating case. The decision was that a bequest in favour of a charity of the residue of a testator's real and personal property, part of which consisted in money to be derived from the sale of his share of the partnership assets which in part were land, was hit by the "Mortmain Act" and void, the share in the partnership assets being, as the court held, an interest in land. Lord Justice James, at page 369, says:—

> It appears to me that in a private partnership which has got land it is difficult to say that the partner has not an interest in land * * *

(1) 15 Ch.D. 363.

their interest is exactly in proportion to what the ultimate amount coming due to them upon the final taking and adjustments of the accounts may be.

The partnership in question, it may be noted in passing, was one to which the doctrine of *Darby* v. *Darby*(1), applied. But the case is chiefly valuable because all their Lordships agreed that their decision must be governed by the judgment of Lord Cairns in *Brook* v. *Badley*(2). In effect the court held that Lord Cairns' reasoning, the substance of which is given in a passage I am about to quote, extends to the interest of a partner where land is included in the partnership assets. "If a testator," says Lord Cairns, at page 674,

> devises his land to be sold, and the proceeds given, not to one person, but to four persons in shares, and if one of those four persons afterwards makes his will, and gives either his share of the proceeds or all his property to charity, the position of that second testator with regard to the estate which is to be sold is in substance *that of a person who has a direct and distinct interest in land.* The estate is in the hands of trustees, not for the benefit of those trustees but for the benefit of the four persons between whom the proceeds of the estate are to be divided when the sale takes place. It may very well be that no one of those four persons could insist upon entering on the land, or taking the land, or enjoying the land *quâ* land, and it may very well be that the only method for each one of them to make his enjoyment of the land productive is by coming to the court and applying to have the sale carried into execution, but nevertheless the interest of each one of them is, in my opinion, an interest in land; and it would be right to say in equity that the land does not belong to the trustees, but to the four persons between whom the proceeds are to be divided.

Even on the assumption that "value" in section 8 of the partnership articles means value in money, I am unable to agree that no interest devolved having a situs in British Columbia.

I do not think the effect of section 8 on that assumption, is to convert the tenancy in common of the partners into a joint tenancy. The interest of the de-

(1) 3 Drew. 495. (2) 3 Ch. App. 672.

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ceased partner in the partnership assets existing at his death which is explicitly recognized by section 8 would devolve in the usual course subject to the rights created by sections 8 and 9 according to which the surviving partner would be entitled and compellable to take over that interest on payment of its value ascertained under section 9; and in any view there would be a charge on the whole of the partnership assets for the purpose of paying the sum thus due from the surviving partner: *Ashworth* v. *Munn*(1). The registered title to the undivided moiety of the British Columbia real estate vested in Mossom Boyd at the time of his death would devolve upon his heirs and devisees and the surviving partner, I think, would not be entitled to demand a transfer except upon paying this sum.

I can see no difficulty in ascertaining the portion of this sum which ought properly to be regarded as compensation for the interest in the British Columbia lands since the total amount is determined by the valuation of these lands among the other assets; and I have great difficulty in understanding upon what grounds it can be alleged that the charge upon these lands for the payment of the moiety of their value plus the registered title in fee to that moiety does not constitute an interest dutiable under section 5, subsection 1*a* of the "Succession Duty Act." See *In re Hoyles*(2).

A number of decisions of the highest authority were cited in which, as between the place of domicile of the partners and the place where the assets were and where the business was wholly carried on, the courts had to decide which place was in point of law

(1) 15 Ch.D. 370. (2) [1910] 2 Ch. 333; [1911] 1 Ch. 179.

the situs of the share of a deceased partner in the partnership assets considered as an entirety; and in such a case it was held that the share had its situs where the assets and the business were: *Commissioners of Stamp Duties* v. *Salting*(1); *Beaver* v. *Master in Equity*(2); *Laidlay* v. *Lord Advocate*(3).

These authorities decide nothing as to a case where the question in dispute relates to a partnership having immovable assets purchased for the purposes of the partnership business in different jurisdictions and where the partnership articles contemplate carrying on business in those jurisdictions with a principal place of business in one of them; I think they establish no principle which governs the construction of the "Succession Duty Act" in its application to such a case.

The appeal should be dismissed.

ANGLIN J. (dissenting).—The late Mossom Martin Boyd was domiciled at Bobcaygeon, in the Province of Ontario. He was a member of the firm of Mossom Boyd & Co. which had its chief place of business at Bobcaygeon where all its affairs were managed. It had neither an office nor a resident agent in the Province of British Columbia. Amongst the partnership assets, bought with the firm's moneys, were certain timber lands and timber limits in British Columbia, title to which was registered in the names of the two partners but was held by them in trust for the firm. The question presented is whether an interest in this property devolved under the will of the late Mossom Martin Boyd which is liable to payment of succession duties under sec. 5 of the British Columbia "Succession Duties Act" (R.S.B.C. 1911, ch. 217).

(1) [1907] A.C. 449. (2) [1895] A.C. 251.
(3) 15 App. Cas. 468.

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What passed under the will was the share or interest of the testator in the partnership assets. While living he had no enforceable claim upon or interest in any particular piece of property belonging to the partnership in specie. His only right was to be paid his share out of the surplus assets of the partnership. That and nothing more is the right which he transmitted to his personal representatives: *Re Ritson*(1), at page 131; Lindley on Partnership (8 ed.), 694-5. It is a right similar to that of a legatee of a share in the residue of an estate, which does not give him a share or interest in any particular property of the estate in specie, but merely entitles him to have the estate as a whole duly administered and to receive the designated share of the clear residue: *Sudeley* v. *Attorney-General*(2), at page 21.

So far as the firm's assets consisted of lands, in the absence of any binding agreement between the partners to the contrary they are to be regarded as personal estate (*Re Bourne*(3), at pages 432-3) as between the partners themselves and as between persons claiming under them; *In re Wilson*(4), at page 343; and they are so to be regarded in cases where the Crown is concerned as well as in other cases: *Attorney-General* v. *Hubbock*(5), at page 499.

Whatever the character is that is impressed on the property when the breath leaves the body of the owner, that is its character for the purpose of the fiscal duties which are alleged to attach upon it: *Attorney-General* v. *Hubbock*(6), at page 280.

The operation of a contractual provision, the performance of which can only affect the property after the death, need not be considered: *ibid*, page 286. I

(1) [1899] 1 Ch. 128.
(2) [1897] A.C. 11.
(3) [1906] 2 Ch. 427.
(4) [1893] 2 Ch. 340.
(5) 10 Q.B.D. 488.
(6) 13 Q.B.D. 275.

find no binding "agreement between the partners" which prevented their interests in the British Columbia timber lands of Mossom Boyd & Co. being regarded as personalty at the moment of Mossom Boyd's death.

The situs of a share of a deceased partner is where the business is carried on: *Stamp Commissioners* v. *Salting*(1), at page 453. A partnership may of course control several separate businesses each carried on in a distinct locality. That was the case in *Beaver* v. *Master in Equity*(2). It is not the case here. All the firm affairs were carried on as one business, managed and directed in and from Bobcaygeon, Ontario. As Lord Herschell said in *Laidlay* v. *The Lord Advocate*(3), at page 485:—

> The question to be determined is what is the local situation of the asset with which we have to deal, because that the testator's interest in the partnership, however it is to be described, was one of his assets is beyond dispute.

In my opinion the share of Mossom Boyd in the partnership which devolved under his will was locally situate in Ontario.

If it be competent for a legislature whose powers of taxation are restricted to

> taxation within the province

to declare that property, to which the general law of the province applicable under the circumstances attributes a situs outside the province, shall nevertheless, for the purpose of this or that species of taxation, be deemed situate within the province (I respectfully adhere to the view which I have more than once expressed that such a legislature has not that power: *Lovitt* v. *The King*(4), at page 161; *The King* v. *Cotton*(5), at pages 534-5); the legislature of British Columbia has

(1) [1907] A.C. 449.
(2) [1895] A.C. 251.
(3) 15 App. Cas. 468.
(4) 43 Can. S.C.R. 106.
(5) 45 Can. S.C.R. 469.

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not attempted to abrogate the general principles of partnership law to which allusion has been made, as it was held in *Lovitt's Case*(1), at pages 221-2—unnecessarily as I view it—the legislature of New Brunswick had done in regard to the application of the maxim *mobilia sequuntur personam* to moveable property of a non-domiciled decedent having a situs within that province. On the contrary, by sections 23 (2), 25 and 46 of the "Partnership Act" (R.S.B.C., ch. 175) so far as they go, those principles have been affirmed to be the law of the province.

It is perhaps unnecessary to state that the duties are claimed not in respect of the bare legal estate in the lands, which, although it of course devolves in, and under the law of, British Columbia, has no tangible value, but upon the beneficial interest held in trust for the partnership purposes.

I am, for these reasons, with great respect, of the opinion that the share of Mossom Martin Boyd in the partnership of Mossom Boyd & Co. which devolved under his will was not an interest in property situate in the Province of British Columbia within section 5 of the "Succession Duties Act."

I also think that the duties in question cannot be regarded as fees payable for services rendered by the provincial authorities of British Columbia in granting ancillary probate: *Re Muir Estate*(2), at page 458.

I would, therefore, allow this appeal.

Appeal dismissed with costs.

Solicitors for the appellants: *Pooley, Luxton & Pooley.*
Solicitors for the respondent: *Elliott, Maclean & Shandley.*

(1) [1912] A.C. 212.

(2) 51 Can. S.C.R. 428.