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*Nov. 4, 5, 6.
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*Feb. 4.

HARRIET W. SMITH AND OTHERS (DEFENDANTS) ..... } APPELLANTS;

AND

THE PROVINCIAL TREASURER FOR THE PROVINCE OF NOVA SCOTIA (PLAINTIFF) ..... } RESPONDENT;

AND

THE PROVINCE OF QUEBEC ..... INTERVENANT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Constitutional law—Succession duties—Bank stock—Mobilia sequuntur personam—Head office of bank—Local registry—Situs of property—"Bank Act," 3 & 4 Geo. V. c. 9, s. 43.

To determine the situs of personal property liable to succession duties on the death of the owner the rule to be applied is that expressed in the maxim *mobilia sequuntur personam.*

The head office of the Royal Bank is in Montreal, but under sec. 43 of the "Bank Act" a share registry office has been established in Halifax, where all shares owned by persons residing in Nova Scotia must be registered and all transfers made.

Held, per Davies C.J. and Idington and Brodeur JJ., Mignault J. *contra*, that if the maxim *mobilia sequuntur personam* cannot be applied, the situs of shares of the stock of the bank transmitted by death of the owner, a resident of Halifax, is in Halifax, the place of registration, rather than in the place where the head office is located.

APPEAL from the judgment of the Supreme Court of Nova Scotia (1), in favour of the respondent on a case stated for the opinion of the court.

The appellants are executors of the estate of the late Wiley Smith, of Halifax, N.S., and the question for decision is whether the Province of Nova Scotia or the Province of Quebec is entitled to collect succession duties on stock of the Royal Bank held by the executors. The Province of Quebec intervened in this appeal.

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*PRESENT:—Sir Louis Davies C.J. and Idington, Anglin, Brodeur and Mignault JJ.

(1) 35 D.L.R. 468.

Henry K.C. for the appellant. Section 43 of the "Bank Act" was never intended to deprive one province, in this case Quebec, of its right to tax property of great value and give that right to another.

The situs of the property must be determined by the rule as to partnership. See Lindley on Partnership (7 ed.) pages 628-9.

As to partnership property the situs is the place where the partnership business is carried on. *In re Goods of Ewing* (1), at page 23; *Laidlay* v. *Lord Advocate* (2), at page 483; *New York Breweries Co.* v. *Attorney General* (3), at pages 69 and 70.

If section 43 was intended to change the situs of property it is *ultra vires*. Lefroy on Canada's Federal System, page LX. No. 48. *Attorney-General of Ontario* v. *Attorney-General for Canada* (4), *per* Lord Watson, at pages 359-60; *City of Montreal* v. *Montreal Street Railway Co.* (5), at pages 345-6, *per* Lord Atkinson.

Geoffrion K.C. and *Lanctot K.C.* for the Province of Quebec, intervenant, supported the argument for appellant citing *Nickle* v. *Douglas* (6); *Hughes* v. *Rees* (7), and *City of Montreal* v. *Montreal Street Railway Co.* (5).

Newcombe K.C. and *Jenks K.C.* for the respondent. Section 43 is *intra vires* as parliament can pass laws for purposes ancillary to banking. *Cushing* v. *Dupuy* (8), at page 415; *Grand Trunk Railway Co.* v. *Attorney-General of Canada* (9).

(1) 6 P.D. 19.
(2) 15 App. Cas. 468.
(3) [1899] A.C. 62.
(4) [1896] A.C. 348.
(5) [1912] A.C. 333; 1 D.L.R. 681.
(6) 35 U.C.Q.B. 126.
(7) 5 O.R. 654.
(8) 5 App. Cas. 409.
(9) [1907] A.C. 65.

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The situs should be at the place where the property can be effectively dealt with. Dicey on Conflict of Laws (2 ed.), page 310. See also *Attorney-General* v. *Higgins* (1); *In re Clark* (2).

In any case the situs should follow the rule *mobilia sequuntur personam*. *Fernandes' Executors, Case* (3); *Rex* v. *Lovitt* (4), *per* Lord Robson, at page 218.

THE CHIEF JUSTICE.—This appeal comes to us from a judgment delivered by the Supreme Court of Nova Scotia on a special case stated under the provisions of the Nova Scotia "Judicature Act."

The facts agreed upon which are essential for decision of the appeal are that one Wiley Smith departed this life intestate at Halifax, Nova Scotia, on the 28th day of February, 1916, and at the time of his death had his domicile within the said Province of Nova Scotia; that the aggregate value of the property passing on the death of the said intestate exceeded (within the meaning of the "Succession Act," 1912) one hundred thousand dollars, consisting *inter alia* of 2,076 shares of capital stock of the Royal Bank of Canada of the value of $442,168 or thereabouts; that the bank had its head office in Montreal, Province of Quebec, and at the time of the passing of said property, and previously thereto, had maintained within the Province of Nova Scotia a share registry office under the provisions of section 43 of the "Bank Act" (Canada), at which the shares of shareholders resident within the Province of Nova Scotia were required to be registered, and that the shares in question were so registered there.

The question for our opinion is whether under the circumstances stated the said shares are subject to succession duty for the use of the province.

(1) 2 H. & N. 339.
(2) [1904] 1 Ch. 294.
(3) 5 Ch. App. 314.
(4) [1912] A.C. 212.

I am of opinion that inasmuch as the deceased died intestate domiciled in Nova Scotia owning these shares in the bank the shares are liable to succession duty in that province.

The judgment now in question was based on the ground that as the shares were registered in the Province of Nova Scotia in the registry established pursuant to the 43rd section of the "Bank Act," where alone they could be registered, transferred or otherwise effectively dealt with, their situs was in Nova Scotia and succession duty was payable on them there.

The only doubt I have had is whether that ground is the true and proper one on which to base the conclusion the court reached. In other words, whether the liability to pay succession or legacy duty does not depend upon the application of the principle *mobilia sequuntur personam.* I am inclined to think that that principle is the one that should govern and that the law of domicile prevails over that of the locality of the property taxed.

In the case of *Harding* v. *Commissioner of Stamps for Queensland* (1), which was approved of in the case of *Lambe* v. *Manuel* (2), it was held that section 4 of Queensland's "Succession and Probate Duties Act," 1892, defining a "succession" (being the same as section 2 of the English "Succession Duty Act" of 1853) must be read in the sense affixed to the English Act by the English tribunals; and that it did not include movables locally situated in Queensland which belonged to a testator whose domicile was in Victoria; and it was held further that the amendment Act of 1895, section 2, was not retrospective in its operation.

(1) [1898] A.C. 769.
(2) [1903] A.C. 68.

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The amendment which was held not to be retrospective provided that succession duty was chargeable with respect to all property within Queensland although the testator or intestate may not have had his domicile in Queensland, but that if it had been retrospective it would have been conclusive. This finding of the Judicial Committee no doubt was reached because the powers of the legislature in that colony were plenary and not limited, and they could, if they chose to do so, displace the domicile rule.

But I am of opinion that the powers granted to the provinces of Canada under the 92nd section of the "British North America Act," 1867, are not plenary but limited.

Among the legislative powers granted to them under sec. 92 of the said Act is subsec. 2

direct taxation within the province for the raising of revenue for provincial purposes.

The taxation imposed, therefore, must be on property "within the Province" and what is personal property "within the Province" must be determined by the rule so firmly established in Great Britain with respect to it at the time of the passing of the "British North America Act" as that embodied in the maxim *mobilia sequuntur personam* under which all the decedent's personal property wheresoever situate is brought within the province or country of his domicile and made liable for all succession or legacy duties there imposed upon it.

After a careful study, not for the first time, of all the cases cited at bar bearing upon the question before us, I have reached the same conclusion with respect to the domicile being the determining factor as to what property is liable for succession and legacy duties as my brother Anglin and I concur in his reasons for the conclusion reached by him.

The broad ground on which that judgment rests is that the maxim *mobilia sequuntur personam* embodies the principle applicable to the succession of property of a domiciled decedent of any province of Canada for succession and legacy duties, as distinct from probate or estate duties; that in regard to those special succession and legacy duties the domicile of the decedent and not the physical or artificial situs of the property must prevail; that this was the law in England decided in a series of cases before the "British North America Act" was passed and that the power of taxation within the province granted to the provinces in subsec. 2 of sec. 92 of that Act must be construed in accordance with the English law as it then was decided to be; that accordingly each province has the power of levying succession and legacy duties only upon the personal property passed by a domiciled decedent of the province, which either is locally situate therein physically or by virtue of the maxim *mobilia sequuntur personam* is drawn into such province by reason of the domicile; that while the Imperial Legislature itself or a colony possessing plenary powers of taxation could at any time overrule the principle embodied in the maxim (see *Harding* v. *Commissioner of Stamps for Queensland* (1), above quoted), the several provinces of Canada being limited in their powers cannot do so or by any enactment of their own enlarge or extend the powers of taxation granted to them by section 92 of the "British North America Act;" that any other construction of these powers of taxation would create endless, if not insuperable, difficulties and would subject the same property to possible double liability to succession duty taxation, one in the province where the domiciled decedent owned the property and the other

(1) [1898] A.C. 769.

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in which it was locally situated at his death. The result of the holding, in which I concur, would be that the domicile of the decedent would be the test in Canada of the right to levy succession duties upon his personal property wherever it might be locally or physically situate and that such taxation could only be levied by the province of the domicile.

If I am wrong in my concurrence with my brother Anglin that the domicile of the decedent is the determining factor on the right of the province to levy succession and legacy duties, then I would uphold the judgment appealed from on the ground it is based, namely, that the bank shares in question were at the time of the death of the domiciled decedent registered in the Province of Nova Scotia, where alone "they could be registered" and where alone "and not elsewhere" they could be transferred or effectively dealt with.

I do not think the mere fact of the head office of the bank being in Montreal and the board of directors meeting there to manage the affairs of the bank, could be held to affect or alter the situs of the shares from their place of registry where alone they could be effectively dealt with.

IDINGTON J.—The question raised herein by a stated case is the right of respondent to collect, from appellants, succession duty upon shares held by the testator in the Royal Bank of Canada, having at his death its head office in Montreal.

In the stated case it is, with other things, admitted as follows:—

1. Wiley Smith departed this life intestate at Halifax, in the County of Halifax, Province of Nova Scotia, on the 28th day of February, A.D. 1916, and at the time of his death had his permanent domicile and residence within the said Province of Nova Scotia.

2. Letters of administration were on the 6th day of March, 1916, duly granted to Harriet W. Smith, L. Mortimer Smith, and the Montreal Trust Company by the Probate Court for the probate district of the County of Halifax.

* * * * *

6. The said the Royal Bank of Canada, on and previous to the said 28th day of February, 1916, as well as after the said date, had its head office in Montreal, in the Province of Quebec.

7. The said The Royal Bank of Canada, at the time of the passing of said property, and previously thereto, maintained within the Province of Nova Scotia a Share Registry Office under the provisions of section 43 of the "Bank Act" (Canada), at which the shares of shareholders resident within the Province of Nova Scotia were required to be registered.

The claim to collect succession duties must rest upon the following sections of the Act:—

The "Succession Duty Act," 1912 (Nova Scotia), being chap. 13 of the Acts of 1912 as amended by chap. 57 of the Acts of 1913, and chaps. 14 and 36 of the Acts of 1915.

Section 2. For the purpose of raising a revenue for provincial purposes, save as is hereafter otherwise expressly provided, there shall be levied and paid, for the use of the province, a duty at the rates hereinafter mentioned upon all property which has passed on the death of any person who has died on or since the 1st day of July, 1892, or passing on the death of any person who shall hereafter die, according to the fair market value of such property at the date of the death of such person.

Section 6. The following property, as well as all other property subject to succession duty, shall be subject to duty at the rates hereinafter imposed:

(1) All property situate in Nova Scotia, and any income therefrom passing on the death of any person whether the deceased was at the time of his death domiciled in Nova Scotia or elsewhere.

The place of residence of the executors is not stated, but in argument as I understood admitted, as to the Smiths, to be in Nova Scotia.

The Supreme Court of Nova Scotia held that the appellants were liable.

The answer to the question submitted seems to me to be concluded by the case of *Lambe* v. *Manuel* (1), and in principle the case of *The Attorney-General* v. *Higgins et al* (2). The former decision was upon a

(1) [1903] A.C. 68. (2) 2 H. & N. 339.

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claim by the appellant therein representing the Province of Quebec and claiming upon its behalf succession duties upon shares held, by a testator residing in Ontario, in the Merchants Bank of Canada, having its head office in Montreal, as well as in respect of other bank shares. The Quebec courts held respondent there was not liable to pay duties, in respect of such shares, to the Province of Quebec, and this holding was maintained by the court above in a judgment written by the late Lord Macnaghten, whose opinion alone must ever be held as entitled to the highest respect.

True the Quebec Act has been changed since and rendered more intelligible, as the result, I presume, of the case of *Cotton* v. *The King* (1).

But in principle, so far as relates to the claim of that province herein, I am unable to see any distinction resting upon such amendment that can be made relevant to this case distinguishing it from *Lambe* v. *Manuel* (2).

The domicile of the testator in question there was in Ontario, and that of the testator in question herein was in Nova Scotia. And as far as the "Banking Act" and its operation is concerned in relation to the situs of the property in shares, the Act has been amended by section 43 of that Act rendering it imperative to have a local provincial register where shares can be transferred, and thereby strengthening the claim of the province where the testator at death was domiciled.

In conformity with such requirement the bank in question had, as stated, a provincial register in Nova Scotia. That provision seems to put beyond doubt what, in the then doubtful frame of the Act, very able counsel in the *Manuel Case* (2) had at their hand, to

(1) 45 Can. S.C.R. 469; 1 D.L.R. 398; [1914] A.C. 176; 15 D.L.R. 283.

(2) [1903] A.C. 68.

press, and no doubt did press for all it was worth, the argument founded upon the registry for transfers of shares there in question being in Quebec.

I have considered the constitutional argument put forward relative to the limitations of the Dominion Parliament in regard to property and civil rights.

I cannot accede thereto. Indeed it seems to me futile in view of the language of section 91 of the "British North America Act" assigning to

the exclusive authority of the Parliament of Canada

by subsection 15

banking, incorporation of banks, and the issue of paper money,

and ending that section as follows:—

And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the provinces.

There does not seem to me to be the slightest foundation for pretending that the power conferred by this enactment has been exceeded by the requirement for a local registry of shares. I repeat that this case falls in principle within the case of the *Attorney-General* v. *Higgins* (1), so far as what has to be determined under the Nova Scotia "Succession Duties Act" can be affected by legislation defining the character and situs of shares in a corporation, but the respondents' claim does not rest upon that alone.

The *primâ facie* effect of the observance of the maxim *mobilia sequuntur personam*, subject to its many limitations which have to be borne in mind, when the necessity arises, for determining what may or not fall within the legislative jurisdiction of a province to impose a succession duties tax supports respondents' claim.

(1) 2 H. & N. 339.

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For example, we had to determine recently the situs of a debt due under an Alberta mortgage, registered there, and payable there, to a testator dying in Ontario. We held its situs to be in Alberta and that province entitled, under an Act worded similarly to that of the Nova Scotia Act here in question, to recover the succession duties alleged to be payable in respect of said mortgage.

And in passing I may say that the supposed case presented in argument, of shares in an insolvent bank being wound up might, though I express no definite opinion in that regard, in like manner give rise to very different considerations from those we have herein to deal with.

Again, on the other hand, we should bear in mind the provision in the "Banking Act," sec. 51, subsecs. (*a*), (*b*) and (*c*), which read as follows:—

Section 51:—

Notwithstanding anything in this Act, if the transmission of any share of the capital stock has taken place by virtue of the decease of any shareholder, the production to the directors and the deposit with them of

(*a*) Any authenticated copy of the probate of the will of the deceased shareholder, or of letters of administration of his estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same, or by any court or authority in England, Wales, Ireland, or any British colony, or of any testament, testamentary or testament *dative expede* in Scotland; or

(*b*) An authentic notarial copy of the will of the deceased shareholder, if such will is in notarial form according to the law of the Province of Quebec; or

(*c*) If the deceased shareholder died out of His Majesty's dominions, any authenticated copy of the probate of his will or letters of administration of his property, or other document of like import, granted by any court or authority having the requisite power in such matters, shall be sufficient justification and authority to the directors for paying any dividend, or for transferring or authorizing the transfer of any share, in pursuance of and in conformity to the probate, letters of administration, or other such document as aforesaid.

I submit it impliedly recognizes the place where probate should issue as the situs of the property, and I infer the registration of any transfer by the executors must be transferred by registration in the province at all events when the executors resided there.

I asked counsel if anything more explicit in the Act but they could not refer me to anything further on the subject.

The argument put forward as to the bank shares being analogous to property in a partnership, I submit to be effective must be addressed elsewhere, in light of the decision we arrived at in the recent case of *Boyd* v. *The Attorney-General for British Columbia* (1).

Like the *mobilia sequuntur* rule we found that the ordinary rule as to the situs of what had been partnership property, could not have a universal application determining either the situs of such property or its taxability by a province.

This case is not within the lines presented in *The King* v. *Lovitt* (2), though regard may well be had to what was in fact involved therein, when it was held that a deposit in a New Brunswick branch of a bank was taxable within the terms of the Act there in question. The testator there in question was domiciled in Nova Scotia.

If the proposition put forward by appellants and left by them to be maintained by the Province of Quebec, appearing as an intervenant herein, be tenable, that all shares in banks having a head office in Montreal are properly situate there, then not only can that province tax all such bank shares by way of death duties, but also from year to year for ordinary purposes. I imagine such an exercise of its alleged power which would apply also to the Canadian Pacific

(1) 54 Can. S.C.R. 532; 36 D.L.R. 266. (2) [1912] A.C. 212.

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Railway Company shareholders, might awaken some people and they might produce a realization of how little dependence can be placed on mere theories no matter how plausible, and only useful as arguments to be tried on a court.

A business tax has been successfully imposed in some such like cases (see *Bank of Toronto* v. *Lambe* (1)), but I respectfully submit that proceeded upon an entirely different basis.

I am of the opinion that the appeal should be dismissed with costs of the respondent, and that the intervenant should have no costs.

ANGLIN J.—The late Wiley Smith, who was domiciled and died intestate at Halifax, in the Province of Nova Scotia, owned 2,076 shares in the Royal Bank. The head office of that bank is at Montreal, in the Province of Quebec, but it maintains a share registry office at Halifax, under subsec. 4 of sec. 43 of the "Bank Act," and, as prescribed by that subsection, Smith's shares were registered and transferable there and not elsewhere. The question presented by the stated case before us is whether these shares are liable to taxation under the Nova Scotia "Succession Duties Act" (2 Geo. V. ch. 15). Had they a situs in contemplation of law at Montreal or at Halifax? If at Montreal, does the Nova Scotia statute, properly construed, apply to them? If it does, is such taxation within the legislative power of the province under sec. 92 (2) of the "British North America Act"—is it

direct taxation within the province in order to the raising of a revenue for provincial purposes?

These were the questions discussed at bar.

(1) 12 App. Cas. 575.

I cannot agree with Mr. Newcombe's suggestion that bank shares may have no situs other than the Dominion of Canada at large because that is

> the locality of the business of the bank, of its legislative control, and of probate or administration for any purpose looking to the realization or enjoyment of the property.

For the purposes of taxation, probate and succession bank shares must have a local situs. Neither can I accede to Mr. Henry's contention that if change of situs would result from the operation of section 43 (4) of the "Bank Act," as enacted in 1913, that fact would render it *ultra vires*. The control exercised by that provision over the registration and transfer of bank shares is, I think, undoubtedly within the legislative jurisdiction conferred on the Dominion under subsec. 15 of sec. 91—"banking (and) the incorporation of banks"—a power which, as Lord Watson says in *Tennant* v. *Union Bank of Canada* (1),

> is not confined to the mere constitution of corporate bodies with the privilege of carrying on the business of bankers (p. 46),

and

> may be fully exercised although with the effect of modifying civil rights in the province (p. 48).

See, too, *Cushing* v. *Dupuy* (2), and compare *Grand Trunk Railway Co.* v. *Attorney-General of Canada* (3).

"The pith and substance" of the enactment being clearly *intra vires* any interference with civil rights which follows as an incidental consequence cannot affect its constitutional validity. Whether section 43 (4) in fact changes or affects the situs of bank shares to which it applies is, of course, quite another question and one by no means free from difficulty.

As at present advised I am not convinced that for some purposes the situs of the shares now in question

(1) [1894] A.C. 31. (2) 5 App. Cas. 409, 415.
(3) [1907] A.C. 65, 68.

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was not at the head office of the bank. The authorities cited by the learned judge who delivered the judgment of the Supreme Court of Nova Scotia are certainly not conclusive in favour of a situs at the place of registry. The case chiefly relied upon as

most directly in point, if not on all fours with the present case,

was *Attorney-General* v. *Higgins* (1). The question there at issue was liability for probate duty, not succession duty. The head office and the place of registration were identical. Of three learned judges who heard the case only one, Martin B.—no doubt a judge of eminence—took the place of registration of the railway shares there in question as decisive of their situs. Watson B. merely alludes to the fact that "the railway is in Scotland." Pollock C.B. only determines that the shares did not cease to be property in Scotland because a statute intended to facilitate their transfer provided for the registration of it on production of an English probate. That was indeed all the case really decided. In *Attorney-General* v. *Sudeley* (2), at p. 361, Lord Esher M.R. says of *Attorney-General* v. *Higgins* (1):—

> The head office of the railway company was in Scotland. The shares were, therefore, payable in Scotland.

A reference to the foot-note (*d*) will shew that the passage cited by the learned Nova Scotia judge from 13 Halsbury Laws of England, at p. 310, likewise affords little or no assistance. In *Attorney-General* v. *New York Breweries* (3), a modern case cited for its approval of the *Higgins* decision, both the head office and the registry of shares were situated in England—as both had been in Scotland in the *Higgins Case* (1). Liability to probate duties was likewise the question at issue. The situs for that purpose was held to be in England.

(1) 2 H. & N. 339.
(2) [1896] 1 Q.B. 354.
(3) [1898] 1 Q.B. 205; [1899] A.C. 62.

In the view I take, however, I find it is not necessary to determine the situs of these bank shares for any purpose other than their liability to succession duties under the Nova Scotia statute. In none of the taxation cases cited in the judgment below did the statute under consideration resemble it.

Although the duty is imposed by the Nova Scotia Act on the principal value of all property which passes on the death of the owner and is made payable at his death, or within eighteen months thereafter, but before distribution, by his personal representative to the extent of the property received by him—in these respects somewhat resembling an estate duty—having regard to the exemption of all bequests under $500, of all bequests for religious, charitable or educational purposes to be carried out in the province, and of bequests to certain classes of relatives where the estate does not exceed $25,000, to the higher rate of duty imposed where property passes to beneficiaries other than immediate relatives of the decedent owner, and to the fact that the legislature has itself styled the statute a succession duty Act, I am disposed to think that the taxes imposed by it should be classed as succession duties rather than estate duties. *In re Earl Cowley's Estate* (1), at pages 374-5; *Winans* v. *Attorney-General* (2), at pages 39-41. Lord Gorrell thus sums up the difference between the two classes of Acts:—

> The broad point with regard to the duties is that the first three ("probate duty," "account duty" and "temporary estate duty") dealt with the duty on the amount of property passing, whatever its destination, while the other two ("legacy duty" and "succession duty") dealt with the duty on the value of the interests taken, and the duty varied with the relationship of the person taking to the person from whom the interest was derived or the predecessor.

Although the Nova Scotia statute does not impose the tax on the transmission itself, as is the case in the

(1) [1898] 1 Q.B. 355. (2) [1910] A.C. 27.

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Quebec legislation (*Lambe* v. *Manuel* (1); *Cotton* v. *Rex* (2)), it imposes it on the property transmitted—the property passing on the death—"the succession"—as was the case under the English "Succession Act" of 1853 (16 & 17 Vict. ch. 51, secs. 1 and 10; Hanson's Death Duties, 6th ed., p. 614), and the duty varies with the relationship of the person taking to the person from whom the interest is derived or the predecessor.

The features of the New Brunswick "Succession Duty Act" which led Lord Robson in *Rex* v. *Lovitt* (3) at p. 223, to treat it as imposing a tax rather in the nature of probate duty than a succession duty are entirely absent from the Nova Scotia statute.

The actual situs of tangible effects, the situs imputed by law to intangible effects, without regard to the domicile of the owner, carried with it liability to probate or estate duty. But under the English "Legacy Act" and "Succession Duty Act" the contrary rule has prevailed and the maxim *mobilia sequunter personam* has been applied to subject to these imposts foreign movables of domiciled decedents and to exempt from their operation the English assets of foreigners. *Winans* v. *Attorney-General* (4), at pages 31-34. Succession duty is exigible only in respect of movables which pass under English law—to which the beneficiary obtains title under English law. *Wallace* v. *Attorney-General* (5), at pages 6-9; Dicey on Conflict of Laws (2nd ed.), pp. 750 *et seq.*

By the law of England, therefore, which obtains in Nova Scotia, for the purpose of succession duties, as distinguished from probate duties and estate duties,

(1) [1903] A.C. 68.
(2) [1914] A.C. 176; 15 D.L.R. 283.
(3) [1912] A.C. 212.
(4) [1910] A.C. 27.
(5) 1 Ch. App. 1.

personal property has its situs at the domicile of the decedent owner. I therefore reach the conclusion that whatever should be deemed their situs for other purposes, for that of the succession duties imposed by the Nova Scotia statute the bank shares in question had a situs under English law at Halifax, because of the applicability of the maxim *mobilia sequuntur personam* —because title to them passed under the law of Nova Scotia.

Although the Nova Scotia Act is not expressly made applicable, as was the New Brunswick statute dealt with in *Rex* v. *Lovitt* (1),

to all property whether situate in this province or elsewhere,

there are in it some indications of an intent to subject foreign personal property of a domiciled decedent to its operation. Thus by section 2 the duty is declared to be leviable and payable in respect of all property which passes on the death of any person. By clause (*b*) of subsec. 1 of sec. 3 property includes everything real and personal capable of passing on the death of the owner. Section 6 enacts that "the following property" (*inter alia* "property situate in Nova Scotia"),

as well as all other property subject to succession duty shall be subject to duty at the rates hereinafter imposed.

Sections 3 (*a*) and 6 (1) ,on the other hand, leave no room whatever to doubt that the intention of the legislature was that the personal property of a non-domiciled decedent situate in Nova Scotia should be liable for the duties imposed by the Act. The intention to exclude the application of the maxim *mobilia sequuntur personam* in regard to such personal property is abundantly clear. With the validity of the imposts on this class of property, however, we are not now

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

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concerned. But see *Boyd* v. *Attorney-General for British Columbia* (1). The presence of these latter provisions, however, does not suffice to take from the statute its distinctive character as a succession duty Act.

Although the statute makes no distinction between real and personal property it would seem to me impossible that the legislature meant to attempt to tax foreign real estate of a domiciled decedent. Following the principles established by *Thomson* v. *Advocate-General* (2); *In re Ewing* (3); *Wallace* v. *The Attorney-General* (4); and *Harding* v. *Commissioner of Stamps for Queensland* (5), at pages 773-4, I would also be inclined to hold that the words "person" and "property" in section 2 should be restricted respectively to a person domiciled in Nova Scotia and to property which may properly be made the subject of succession duties according to English law. For the same reason I would construe "all property situate in Nova Scotia" in clause 1 of section 6 as meaning property having a physical situs in that province; (*Cotton* v. *Rex* (6), at p. 186); and the words

all other property subject to succession duty

in the opening paragraph of section 6 as intended to bring in personal property which, although it has not a physical situs in the province, English law would regard as within it for the purpose of succession duties. While, having regard to the constitutional limitation on its powers of taxation, I should, if it imposed probate or estate duties, hesitate to find in the provisions of the Nova Scotia Act to which I have referred a

(1) 54 Can. S.C.R. 532; 36 D.L.R. 266.
(2) 12 Cl. & F. 1.
(3) 1 C. & J. 151.
(4) 1 Ch. App. 1.
(5) [1898] A.C. 769.
(6) [1914] A.C. 176; 15 D.L.R. 283.

sufficiently clear expression of intention to subject to them personal property having a physical situs or an artificial situs in contemplation of law outside of the province, there is certainly nothing in the Act calculated to prevent the maxim *mobilia sequuntur personam* having the full operation given to it by English law for the purpose of succession duties in the case of all personal assets of the domiciled decedent.

The only authority at all in conflict with this view is *Woodruff* v. *Attorney-General for Ontario* (1). But the conflict is more apparent than real. The property there in question consisted of bonds and debentures of a foreign company which were at the date of their transfer and remained in the custody of a New York deposit company. The transmission of them was not by will or upon an intestacy but by instruments *inter vivos* which took effect under the law of the State of New York. There was no succession or transmission by virtue of Ontario law. The ground on which the maxim *mobilia sequuntur personam* is applied in this case, therefore, did not exist in *Woodruff's Case* (1). Moreover, in speaking of that case in *Cotton* v. *Rex* (2), at p. 196, Lord Moulton delivering the judgment of the Judicial Committee said:—

> The circumstances of that case were so special, and there is so much doubt as to the reasoning on which it is based, that their Lordships have felt that it is better not to treat it as governing or affecting the present decision.

Before parting with this appeal I desire to reiterate my dissent already expressed in *Lovitt* v. *The King* (3), at p. 161, and *Boyd* v. *Attorney-General for British Columbia* (4), at p. 536-7, from the view that a provincial legislature whose powers of taxation are restricted to "taxation within the province" may, for

(1) [1908] A.C. 508.
(2) [1914] A.C. 176; 15 D.L.R. 283.
(3) 43 Can. S.C.R. 106.
(4) 54 Can. S.C.R. 532; 36 D.L.R. 266.

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purposes of taxation, give to property a situs within the province although according to the general law of the province applicable under the circumstances its situs would be outside. If it can, the words "within the province" are practically deleted from subsec. 2 of sec. 92 of the "British North America Act"; the same property may be subject to taxation identical in character in more than one province, and the exclusive right to tax property locally situate within the province, which section 92 (2) was undoubtedly meant to confer, is non-existent. The case of *Rex* v. *Lovitt* (1), is cited as opposed to this view and no doubt certain passages from Lord Robson's judgment are in conflict with it. With great respect, however, his Lordship, in applying the decision in *Harding* v. *Commissioners of Stamps for Queensland* (2), would seem to have momentarily overlooked the fact that no restriction of its powers of taxation similar to that imposed upon Canadian provincial legislatures (taxation within the province) applied to the Legislature of Queensland. But all that the *Lovitt Case* (1), determined was that a debt (to which English law attributes a local situs at the residence of the debtor), held upon the facts to be payable at the St. John, New Brunswick, branch of the Bank of B.N.A., was liable to a New Brunswick tax which, in the opinion of the Judicial Committee, was assimilated to a probate duty. For that the *Lovitt Case* (1), is authority, but for nothing more. As Lord Moulton says of it in *Cotton* v. *Rex* (3), at p. 196:—

> In the case of *Rex* v. *Lovitt* (1) no question arose as to the power of a province to levy succession duty on property situate outside the province. It related solely to the power of the province to require as a condition for local probate on property within the province that a succession duty should be paid thereon.

I would dismiss the appeal.

(1) [1912] A.C. 212. (2) [1898] A.C. 769.
(3) [1914] A.C. 176; 15 D.L.R. 283.

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Brodeur J.

BRODEUR J.—This is a question of succession duty on the bank shares which the late Mr. Wiley Smith had in the Royal Bank. The deceased had his domicile in Nova Scotia. The Royal Bank has its head office in Montreal, in the Province of Quebec, and has a branch in Halifax, in the Province of Nova Scotia. According to the provisions of the "Bank Act" (sections 43-4), it had opened in the latter place a share registry office at which the shares of Mr. Smith had to be registered and were registered. A stated case had been submitted by the Smith estate and by the Provincial Government of Nova Scotia for the opinion of the court as to whether those shares are subject to the payment of succession duty for the use of the Province of Nova Scotia.

The Supreme Court of that province decided that those shares were subject to that duty.

An appeal has been made by the estate to this court, and the Attorney-General of the Province of Quebec has intervened to support that appeal. He contends with the appellant that the Royal Bank, in establishing a share registry office in a province, does not change the situs of the shares from the head office of the bank to the place where the registry office is kept.

The appellant and the intervenant contend also that if the section of the "Bank Act" bears that construction, it is to that extent beyond the powers of the Federal Parliament. But that constitutional aspect of the case was simply mentioned at bar and not pressed.

The "Succession Duty Act," of 1912, of Nova Scotia enacts that

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for the purpose of raising a revenue for provincial purposes * * * there shall be levied and paid for the use of the province a duty * * * upon all property * * * passing on the death of any person * * *

By section 3 of that Act it is declared that the words "passing on the death" should be construed as meaning passing immediately on the death or after an interval either certainly or contingently and either originally or by way of substitutive limitation, whether the deceased was at the time of his death domiciled in Nova Scotia or elsewhere.

By section 6 it is provided that all property situate in Nova Scotia is subject to duty. We have then to find out whether these Royal Bank shares belonging to the Smith estate are situated in Nova Scotia.

The law of the domicile of the owner governs movable property. But when it comes to determining the distinction or nature of the property, the contestation as to the possession or the rights of the Crown, the law of the situs governs. If it were a question of tangible movable property, there would be no difficulty. But when it comes to intangible property, like simple contract debts, specialty debts, bonds and bank shares, the question is more complicated.

It has been decided that specialty debts owing by persons outside of the jurisdiction are assets where the instrument happens to be. *Stamp Commissioner* v. *Hope* (1).

Simple contract debts, whether the title is evidenced or not by bills of exchange or promissory notes, are assets where the debtor resides; *Attorney-General* v. *Pratt* (2); *Attorney-General* v. *Bouwens* (3); *Rex* v. *Lovitt* (4).

In the case of bank shares, it was decided in the case

(1) [1891] A.C. 476.
(2) L.R. 9 Ex. p. 140.
(3) 4 M. & W. p. 171.
(4) [1912] A.C. 212.

of *Attorney-General* v. *Higgins* (1), that where by statute the evidence of title to shares is the register of shareholders the property is located where the register is.

I think that the latter decision has a great bearing upon the question at issue in this case because it determines conclusively that the situs of bank shares is the place where they are registered.

Formerly the banks could open branch offices in different parts of the country and could open also share registry offices where shares could be registered and transferred. Under the provisions of that Act, it was decided in a case of *Hughes* v. *Rees* (2), that shares in a bank whose head office was in Ontario, but which were registered in Quebec, were situate in Ontario. The reason of the judgment was that the change had been made by the bank for convenience sake, but that the bank stock was, however, virtually situate in Ontario.

A similar decision was also rendered in the following case of *Nickle* v. *Douglas* (3).

But it is submitted that sec. 43, subsec. 4, of the "Bank Act" has changed the law in that respect because it enacts that shares *shall* be registered at agencies within the province in the case of shares owned by residents of that province. The banks are not bound to open those branch offices, but once they have done so the law declares that all the shares of the shareholders resident within the province shall be registered at that office at which and not elsewhere such shares may be validly transferred.

It is argued that in this case it is not a question of transfer; it is a question of transmission of shares by death.

(1) 2 H. & N. 339. (2) 5 O.R. 654.
(3) 35 U.C.Q.B. 126; 37 U.C.Q.B. 51.

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I do not think that this constitutes any difference. Section 50 of the "Bank Act" says that if the transmission of shares is made by intestacy the probate of the will or the letters of administration should be produced and left with the general manager, or other officers or agents of the bank. That manager or agent shall then enter in the register of shareholders the name of the person entitled under the transmission. It may be that for convenience sake the documents shewing the title to the shares would have to be referred to the head office of the bank; but the transmission should be entered in the register of shareholders where those shares were entered. In this case the documents might have been sent to Montreal to be examined by the authorities of the bank there, but they had been entered in Halifax, where the shares were entered in the share registry office.

In the case of *Attorney-General* v. *Sudeley* (1), the Master of the Rolls said that the head office of the railway company in question in that case was in Scotland and that the shares were, therefore, payable in Scotland.

The case of *In re Clark* (2) is conclusive on the point.

In that case a testator domiciled in England by his will bequeathed all his personal estate in the United Kingdom to certain persons whom he calls his home trustees upon certain trusts, and he bequeathed all his personal estate in South Africa to certain other persons whom he calls his foreign trustees upon other trusts. At the time of his decease, the testator was possessed of bonds payable to bearer of a waterworks company in South Africa, and of shares in mining companies in South Africa. The mining companies were constituted

(1) [1896] 1 Q.B. 354. (2) [1904] 1 Ch. 294.

according to the laws of Transvaal and Orange Free State, and had their head office in South Africa where the registry of shareholders was kept and where the directors met; but they also had an office in London, where a duplicate registry was kept and the shares could be transferred. The testator's name was on the London register of the company and all his bonds and share certificates were at his bankers in London.

It was held that the shares passed under the bequest to the home trustees.

Lord Justice Farwell, deciding the case, said:—

> The property I have to deal with is a share and that is represented by a certificate without which no transfer can take place. The actual effective transfer can be done equally effectually in South Africa or in England, and the only conceivable distinction that I can discover in point of locality is the possession of the certificate which for this purpose is essential to complete the title to the shares. Therefore I hold that where the certificates of the shares in these companies were in England they passed under the gift of property situated in England, and not under the gift of property in South Africa.

In the case of *Clark* (1) the transfer could have been made in two places, in South Africa and in England. In this case, I think, under a proper construction of the "Bank Act," that the transfer could be made only at Halifax where the shares were already registered. I may quote in support of that contention *Stern* v. *The Queen* (2); *Winans* v. *Attorney-General* (3); *Attorney-General* v. *New York Breweries* (4).

For these reasons I have come to the conclusion that the situs of those bank shares was in Halifax and that they were liable to succession duty in the Province of Nova Scotia.

The appeal should be dismissed with costs.

(1) [1904] 1 Ch. 294.
(2) [1896] 1 Q.B. 211.
(3) [1910] A.C. 27.
(4) [1898] 1 Q.B. 205.

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Mignault J.

MIGNAULT J.—This is an appeal from a judgment of the Supreme Court of Nova Scotia *in banco*, on a stated case submitted by the respondent (plaintiff in the court below) and the appellants (defendants in the court below), under the provisions of the Nova Scotia "Judicature Act," order 33. The Attorney-General of the Province of Quebec (claiming to have an interest in the question at issue) has intervened before this court and prays for the reversal of the judgment.

The whole question is whether succession duty can be claimed by Nova Scotia in respect of 2,076 shares of the Royal Bank of Canada, which the late Wiley Smith, of the City and County of Halifax, in the Province of Nova Scotia, owned at the time of his death. Wiley Smith died intestate at Halifax on the 28th February, 1916, and the appellants are his administrators. At the time of his death, and ever since, the head office of the Royal Bank was in Montreal, Province of Quebec, but the bank had in Nova Scotia a share registry office, where the shares of shareholders resident within that province were required to be registered under section 43 of the "Bank Act," and the shares in question were duly registered there at and before Smith's death. The Provincial Treasurer of Nova Scotia, under the provisions of the Nova Scotia 'Succession Duty Act," 1912 (2 Geo. V. ch. 13), claims to be entitled to the payment of succession duty on these shares, and the question submitted, and which the court below has answered in the affirmative, is whether, under the said Act, succession duty is payable upon the said shares.

The provisions of the Nova Scotia "Succession Duty Act," 1912, so far as pertinent to the present inquiry, may be briefly stated.

It is provided by section 2 that

For the purpose of raising a revenue for provincial purposes, save as is hereafter otherwise expressly provided, there shall be levied and paid for the use of the province, a duty at the rates hereinafter mentioned upon all property which has passed on the death of any person who has died on or since the 1st day of July, 1892, or passing on the death of any person who shall hereafter die, according to the fair market value of such property at the death of said person.

Section 3 defines certain terms. I will quote two of these definitions given respectively by subsections (*a*) and (*b*).

(*a*) The words "passing on the death" mean passing either immediately on the death or after an interval either certainly or contingently, and either originally or by way of substitutive limitation, whether the deceased was at the time of his death domiciled in Nova Scotia or elsewhere.

(*b*) "Property" includes real and personal property of every description and every estate and interest therein, capable of being devised or bequeathed by will or of passing on the death of the owner to his heir or personal representatives.

By section 6 it is provided:—

6. The following property, as well as all other property subject to succession duty, shall be subject to duty at the rates hereinafter imposed:

(1) All property situate in Nova Scotia, and any income therefrom passing on the death of any person, whether the deceased was at the time of his death domiciled in Nova Scotia or elsewhere.

(2) Debts and sums of money due and owing from persons in Nova Scotia to any deceased person at the time of his death, on obligation or other specialty, shall be property of the deceased situate in Nova Scotia without regard to the place where the obligation or specialty shall be at the time of the death of the deceased.

It is also provided by section 9 as follows:—

9. Any portion of the estate of any deceased person, whether at the time of his death such person was domiciled in Nova Scotia or elsewhere, which is brought into this province to be administered or distributed, shall be liable to the duty in this chapter imposed.

The concluding portion of section 9 need not be given here. Its effect is merely to provide that if the property so brought into the province has paid succession duty elsewhere equal to or greater than the duty payable in Nova Scotia, no duty shall be paid; if the amount so paid elsewhere is less than that payable in Nova Scotia, the difference in amount has then to be paid.

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It is under these provisions that succession duty is claimed on the bank shares owned by the intestate, who at the time of his death was domiciled in the Province of Nova Scotia.

The court below decided that inasmuch as the shares were registered in Nova Scotia, they were property situate in Nova Scotia, and subject to succession duty under the Nova Scotia "Succession Duty Act," 1912.

After due consideration I have come to the conclusion that this is a case where the rule of law *mobilia sequuntur personam* applies. This rule has been followed in England in cases where the question to be decided was whether personal property in Great Britain accruing on the death of its foreign owner was subject to succession duty or legacy duty, properly so called, in Great Britain.

Thus in the case of *Thompson* v. *Attorney-General* (1), the testator, who was domiciled in Demarara, where the Dutch law prevailed and no legacy duty existed, had loaned money in Scotland, and the House of Lords applied the rule *mobilia sequuntur personam* to this money to the exclusion of provisions imposing legacy duty in the United Kingdom. This decision was followed by Lord Cranworth L.C. in a subsequent case, *Wallace* v. *Attorney-General* (2).

This affords a simple solution of the problem submitted to this court, and it would not be necessary to decide the question whether, in view of the fact that the bank shares were registered in Nova Scotia, they acquired an actual situs in that province. But as this latter question was argued at great length by the learned counsel of the parties, it has seemed to me advisable that I should give it full consideration.

(1) 12 Cl. & F. 1. (2) 1 Ch. App. 1.

The bank shares owned by Mr. Smith at his death were registered in the Nova Scotia share registry office of the Royal Bank, as required by section 43, subsection 4, of the "Bank Act," while the head office of the bank was in Montreal.

Subsec. 4 of sec. 43 is in the following terms:—

4. The bank may open and maintain in any province in Canada in which it has resident shareholders and in which it has one or more branches or agencies a share registry office to be designated by the directors at which the shares of the shareholders resident within the province shall be registered and at which, and not elsewhere, except as hereinafter provided, such shares may be validly transferred.

This is a comparatively recent amendment of the "Bank Act," and prior to its enactment it was optional for a shareholder to have his shares registered either at the head office of the bank or at any share registry office which the bank had opened elsewhere for the convenience of its shareholders.

Independently of the new enactment of subsec. 4 of sec. 43 of the "Bank Act," I would be of the opinion that if bank shares, being intangible or incorporeal property, can have any actual situs other than the domicile of their owner, this situs should not be placed at the share registry office where the shareholder has chosen to cause his shares to be registered.

Nor do I think, because it is now compulsory to register bank shares at the share registry office established in the province where the shareholder resides, that the situs of the shares, which previously might have been registered elsewhere, is in any way changed by the fact that they must now be registered at the provincial share registry office. It is entirely optional for the bank to open such an office, and after opening it, it may close it. Moreover, a bank might change the location of a provincial share registry office from one city to another in the same province, and then, under subsection 4, the shares of shareholders resident

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within the province would have to be registered at the new location. To maintain that the situs of the shares would thus, on account of their registration, be shifted from one place to another, while the head office and the residence of the shareholder remain unchanged, would require the support of more conclusive authority than that on which the court below relied to decide that the place of registry of the shares determines their location.

The principal authority cited by Mr. Justice Chisholm is the case of *Attorney-General* v. *Higgins* (1). There the testator domiciled in England owned shares in railway companies in Scotland, the head offices of which were also in Scotland. The Attorney-General argued that

> the chief offices of these railways are in Scotland and therefore the shares in question are personal property in Scotland.

The court was composed of Chief Baron Pollock and Barons Martin and Watson. Baron Martin said that the argument of the Attorney-General had perfectly satisfied him. He added:—

> It is clear that by the 19th section of the 8 & 9 Vict. sec. 17, the evidence of title to these shares is the register of shareholders, and that being in Scotland, this property is located in Scotland.

Neither of the two other judges expressed any opinion as to the register of shareholders determining the locality of the shares, and it is obvious that the Attorney-General merely relied on the fact that the head office was in Scotland and that, therefore, the shares were also in Scotland. If this authority has any effect, it would support the contention that shares in such a company are located at the head office, rather than the claim that their situs is at a share registry office which may have been established elsewhere.

(1) 2 H. & N. 339.

The case of *In re Clark* (1), is not more conclusive than the *Higgins Case* (2). The testator was domiciled in England and bequeathed his personal estate in the United Kingdom to certain persons whom he called his "home trustees," and his personal estate in South-Africa to other persons whom he termed his "foreign trustees." He possessed bonds and shares in South Africa companies which had offices, share registers and directors both in London and in South Africa. The testator's name was on the London register, and all his bonds and share certificates were at his bankers in London. Mr. Justice Farwell said that as between England and South Africa, the only conceivable distinction that he could discover in point of locality is the possession of the certificate which is essential to complete the title to the shares. The certificates being in England, he held that the shares went to the home trustees.

The case of *Attorney-General* v. *The New York Breweries Co.* (3), does not support the conclusion adopted in the court below that the situs of the shares was at the share registry office. This was a case where probate duty—entirely different from succession duty—was claimed on the shares of an English company, whose head office and register of shares was in England. To deal with these shares and transfer them some act had to be done in England, and this sufficed to render the shares subject to probate duty.

I find, therefore, no conclusive authority for the proposition that where a share registry office of bank shares is established in a province other than the province in which the head office of the bank is situated, the shares are located at the place where the share

(1) [1904] 1 Ch. 294. (2) 2 H. & N. 339.
(3) [1898] 1 Q.B. 205; [1899] A.C. 62.

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registry in which they are registered is kept. I would think that the authorities to which I have referred would lend more support to the contention that the shares are located at the head office of the bank rather than to the claim that their situs is at the share registry office.

It is, however, unnecessary to choose between the head office of the bank and the provincial share registry office, because the intestate being domiciled in Halifax where the share registry office was kept, the shares, in so far as liability for succession duty is concerned, must be considered as situate at his domicile under the rule *mobilia sequuntur personam.*

I would, therefore, basing my opinion on this rule, answer the question submitted in the affirmative. The appeal should be dismissed with costs against the appellants. The intervention should also be dismissed with a recommendation that the respondent be paid his costs on the same.

Appeal dismissed with costs.

Solicitor for the appellant: *W. A. Henry.*
Solicitor for the respondent: *Stuart Jenks.*