BETWEEN: 1953 Oct. 14, 21

THE ROYAL TRUST COMPANY ....APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE .... } RESPONDENT.

Revenue—Succession Duty—The Dominion Succession Duty Act, S. of C. 1940-1941, c. 14, s. 11A—"Duties otherwise payable under this Act"—Deduction of duties.

Held: That under s. 11A of the Dominion Succession Duty Act, Statutes of Canada 1940 and 1941, c. 14 the Minister is to make two computations, that of the duties payable by each successor on his succession in one or more provinces, and also ascertain the amount of one-half of the duty otherwise payable under the Dominion Succession Duty Act which must include the total duty otherwise payable by the appellant to the respondent in respect of his whole succession whether or not subjected to a tax by a province.

2. That "duties otherwise payable under this Act" means the amount which, but for the provisions of s. 11A, would be payable under the Act.

APPEAL under the Dominion Succession Duty Act.

The appeal was heard before the Honourable Mr. Justice Cameron at Vancouver.

R. C. Plommer for appellant.

R. V. Prenter for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

CAMERON J. at the conclusion of the trial delivered the following judgment:

This appeal is taken under the provisions of Part VI of the Dominion Succession Duty Act, Statutes of Canada, 1940 and 1941, Ch. 14 as amended.

The appellant is the duly appointed executor of the estate of Andrew Jacobson, late of New Denver, British Columbia, who died on November 24, 1950.

The gross estate of the deceased amounted to $131,844.77, of which assets situated in the Province of British Columbia totalled $51,952.42. The balance of $79,892.36 was composed of assets situate without the Province of British Columbia and consisted of shares in corporations having their head offices in the Province of Ontario.

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The liabilities of the deceased amounted to $1,228.92, leaving a net estate of $130,615.86. It is agreed that the total amount of Dominion Succession duties *before taking into consideration the provisions of s. 11-A* is $21,390.56.

The sole difference between the parties is the construction to be placed on s. 11-A, which is as follows:

> Each successor may deduct from the duties otherwise payable by him under this Act in respect of a succession derived from a predecessor dying after the 31st day of December 1946, the lesser of
>
> (*a*) The duty or duties payable by him under the laws of any province or provinces in respect of such succession, or
>
> (*b*) Fifty per centum of the duty otherwise payable by him under this Act in respect of such succession.

No succession duties were payable to the Province of British Columbia on any of the assets in the estate. To the Province of Ontario succession duties aggregating $14,592.90 were paid on the various successions as shown on Ex. 1. In computing the deductions to be allowed the appellant under s. 11-A, the respondent took the position that ss. (*b*) thereof —namely, 50 per cent of the duty otherwise payable under the Act in respect of such succession—meant only that portion of the Dominion Succession Duty which was referrable to successions which had also been subject to succession duties in a province—in this case, the Province of Ontario. His computation in respect of such successions is shown on Ex. 1. From that statement it will be seen that the Dominion Succession duties on the shares of the assets which were taxed also by the Province of Ontario aggregated $13,016.60, 50 per centum of that amount, or $6,508.30, being less than the duties of $14,592.50 paid to the Province of Ontario, the respondent allowed a deduction of that amount, namely, $6,508.30. At the trial, counsel for the Minister took the position that the computation so made was properly made under the provisions of s. 11-A.

Counsel for the appellant, however, contends that under the clear wording of that section there is no power to make any such computation. He submits that the section requires the Minister to make two computations. First he must ascertain the duty or duties payable by each successor on his succession, to one or more provinces. Then he must ascertain the amount of one-half of the duty otherwise payable by each successor under the Dominion Succession Duty

Act, and by that he means not the duty payable to the respondent in respect only of assets in his succession which have been taxed by a province, but the total duty payable by him to the respondent in respect of his whole succession, whether or not it has been subjected to tax by a province. Each successor, he says, is then entitled to deduct the lesser of these two amounts from the duties otherwise payable by him under the Act.

Ex. 2 is the schedule prepared by counsel for the appellant, and sets out the computation which he says is to be made under s. 11-A. It shows that in the case of one beneficiary, no amount of duty was payable to the Province of Ontario, but $255.00 was payable to the respondent. No deduction is claimed in respect of that beneficiary. However, in respect of all other beneficiaries who were liable to any succession duties, the computation under part (*b*) of s. 11-A was less than that under part (*a*). The total deduction so claimed amounted to $10,440.28. There is no dispute as to the figures contained in Ex. 2, it being admitted that if the appellant's contention is well founded, it is entitled to a deduction of $10,440.28 from the total Dominion duties otherwise payable, of $21,390.56.

S. 11-A was not a part of the original Act, but was added thereto by Statutes of Canada, 1946, ch. 46, s. 2. So far as I am aware, it has not been judicially considered heretofore. In my view, it permits of only one possible interpretation, and that is the one contended for by the appellant. Prior to coming into effect of s. 11-A, the duty payable under the Act on a succession was computed with reference to the whole of the property in, or deemed to be included in, a succession; and it was not affected in any way by the fact that the assets in the succession were in one or in several provinces, or that some of such assets had been subjected to provincial succession duties and others had not. The question of provincial succession duties did not enter into the matter at all. The amount so computed under the provisions of the Act in respect of each succession was the duty payable by him under the Act. Now, no change was made in that computation by adding s. 11-A to the Act. The duty payable under the other provisions of the Act—or, as it is worded in s. 11-A, "the duty otherwise payable by him under the Act"—remained exactly the same. The correct

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computation of that amount for each succession in this case is shown in Column 2 of Ex. 2, and, as I have said, totals $21,390.56. That figure is accepted as correct in para. 4 of the Statement of Defence, and while it is there called "Dominion Succession Duty Assessment," there is no doubt in my mind that it is the total of the Dominion duties computed prior to the application of the provisions of s. 11-A. All that that section did was to permit the deduction therefrom of the lesser of (*a*), the provincial succession duties, or (*b*) one-half of the duty otherwise payable by the individual successor under the Act.

The phrase "duties otherwise payable under this Act" means nothing more than the amount which, but for the provisions of this section, would be payable under the Act.

Were I to give effect to the interpretation placed by counsel for the respondent upon the concluding part of s. 11-A, it would be tantamount to striking out of the last line thereof, the words "of such succession" and substituting therefor, "of that part of such succession only as had been subjected to the payment of a provincial succession duty," so that part (*b*) would then read, "50 per centum of the duty otherwise payable by him under this act in respect of that part of such succession only as had been subjected to the payment of a provincial succession duty."

To do so would be to do violence to the very words of the section, which, in my view, are clear and unambiguous.

The cardinal rule for the construction of acts of Parliament is that they should be construed according to the intention of Parliament which passed them. If the words of the section are themselves clear and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. (Craies on Statute Law, Fifth Edition at p. 64).

In my opinion, the language used in s. 11-A is so clear and explicit that it permits of one interpretation only. I can find nothing in part (*b*) which authorizes the respondent in making the computation therein provided for, to limit that allowance to that part of the succession on which duty has been paid to a province. It relates to the whole of the duty otherwise payable under the Dominion Act.

But it is submitted that if part (*b*) be interpreted in the manner I have indicated, inequities and inequalities may

result. But when the words of an Act are plain, the Court will not make any alteration in them because injustice may otherwise be done. In *Warburton* v. *Loveland* (1) it was stated:

Where the language of the Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature.

Again, in a more recent case, *King Emperor* v. *Benoari Lal Sarma* (2), Viscount Simon said in the Privy Council:

Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used.

It may well be that Parliament, in enacting s. 11-A, considered that all successions under the Dominion Act would also be subject to duty under a Provincial Succession Duty Act, and therefore made no provision for cases, such as the instant one, in which a substantial part of a number of successions paid no provincial duty. But a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made.

In *London and India Docks Co.* v. *Thames Steam Tug* (3), Lord Atkinson said at p. 23:

The intention of the Legislature, however obvious it may be, must, no doubt, in the construction of statutes, be defeated where the language it has chosen to use compels to that result, but only where the language compels to it.

Again, in *Attorney-General* v. *Earl of Selborne* (4), the Master of the Rolls said at p. 396:

Therefore the Crown fails if the case is not brought within the words of the statute, interpreted according to their natural meaning; and if there is a case which is not covered by the statute so interpreted that can only be cured by legislation, and not by any attempt to construe the statute benevolently in favour of the Crown.

I may note here that s. 11-A in the form in which I have set it out above was replaced by a new section 11-A by Statutes of Canada, 1952, ch. 24, s. 6. It may well be that, as now framed, it would authorize the Minister to treat cases arising after it came into effect in the manner now contended for by his counsel. It is not retroactive, however, and can have no bearing on this case.

It appears from the record that the appellant has paid the full amount of the assessment made upon it.

(1) (1831) 2 D. & C., H. of L. 480 at 489.
(2) [1945] Law Reports 72, Ind. App. 57 at 71.
(3) [1909] A.C. 15.
(4) [1902] 1 K.B. 388.

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For these reasons the appellant must succeed.

There will therefore be judgment allowing the appeal and declaring: (*a*) that the appellant is entitled to deduct from the Dominion duties otherwise payable by it under the Act—namely, the sum of $21,390.56—the deductions authorized by part (*b*) of s. 11-A as it was in 1950, namely, a total of $10,440.28, the net duty payable by the appellant being therefore $10,950.28; and (*b*) that the appellant is entitled to be repaid by the respondent the sum of $9,049.72, being the difference between the sum of $20,000 paid by it to the respondent and the sum of $10,950.28, being the amount of duty for which it is liable, less, of course, any portion thereof, if any, that may have been refunded to the appellant in the meantime; (*c*) that the appellant is entitled to the costs of the appeal, after taxation.

Judgment accordingly.