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Commentary

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a minority, interfere in the internal affairs of a company, when the irregularity could be cured by ratification by the majority. In this case the Supreme Court of Canada, having held that the transfer of shares was incidental to the incorporation of companies by the Dominion, and therefore part of its internal management, should I submit, have held that they could not interfere in a transaction between two independent companies, which could be ratified by the majority. Whether the deal was “just” or not is irrelevant. The only question that should have been dealt with by the court was whether the transaction was “legal”. In my submission it was, and the “order to the contrary” should not have been issued.

M.L.D.

C. CONFLICTS OF LAW


On October 20, 1952, a Quebec man while driving his car in the State of Maine crashed into another car being driven by a resident of that state. As a result of the accident, the Maine driver died and thereupon his wife and sons instituted an action for damages against the Quebec driver in the Province of Quebec. By the law of Maine, because the victim of the accident died intestate, the action had to be taken in the name of an administrator. However, the widow and her sons neglected to do this, though one of the sons, in fact, had been appointed administrator.

In Samson v. Holden the Supreme Court of Canada upon these facts affirmed the Court of Appeal in Quebec and held the defendant Samson liable.

The main issue before the Court was whether the action was enforceable by the plaintiffs from Maine in Quebec. This depended on two subsidiary problems.

First, how was the court to characterize the law of Maine which required the administrator to bring the action in his own name? Fauteux J. who wrote the majority judgment came to the conclusion that it was a matter of procedure and not capacity.

Je dirais que la prépondérance de la preuve sur la loi du Maine établit que cette disposition de l'article 10 prescrivant que l'action droit être postée par et au non du 'personal representative' en est une de précédé.

Taschereau J. who dissented stated it was a matter of capacity, governed by the law of Maine. The learned judge in his judgment adopted the view of Taschereau J. who likewise dissented in the Court of Appeal of Quebec. Both judges chose to believe the expert witnesses for the defendant who testified that the requirement of an administrator was fundamental to the bringing of the action. The majority of

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2 Ibid., at p. 380.
the court on the other hand felt that they should not disturb these findings of fact made in reference to the foreign law by the trial judge. One is inevitably led to the conclusion that the foreign law was characterized by the *lex loci delicti*.

The second question in relation to the main issue before the Court was what rule of law applied to the case where the tort was committed in the State of Maine but the action brought in the Province of Quebec. Fauteux J. relied on the English common law rule that in such a situation the tort must be actionable in Quebec and unjustified in Maine where the action arose. The learned judge cited the authority of *McLean v. Pettigrew* as an application of this principle in the Province of Quebec. Whether this principle is applicable in Quebec has been subject to much criticism by the text writers and has been the result of frequent litigation. It has been argued that the English principle does not apply in Quebec because of *Civil Code*, Article 6(3), which has been interpreted to mean that the *lex loci delicti* applies exclusively in a case of a tort occurring in one state and action taken in another.

*Samson v. Holden* thus reaffirms the view expressed by the Supreme Court of Canada on previous occasions that the English principle operates in Quebec as well as the other Provinces.

J.G.W.

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In this decision, the Supreme Court of Canada speaking through Cartwright J. restated the well-established principle that one country does not enforce the revenue laws of another unless there is a specific agreement to the contrary. It is submitted that this decision extends the principle so that it now reads that one country will not enforce, either *directly* or *indirectly*, the revenue judgments of another.

The appellant government was attempting to enforce a judgment of an American district court for the recovery of over $600,000 in income taxes against the respondent who had since become a resident of the province of British Columbia. The case was brought to trial in British Columbia and an appeal was taken by the appellant to the British Columbia Court of Appeal. The Supreme Court of Canada followed the two preceding courts and dismissed the appellant’s claim.

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