1943
Dec. 9
1945
May 25

BETWEEN:

HIS MAJESTY THE KING, on the Information of the Attorney General of Canada,

PLAINTIFF,

AND

BRITISH COLUMBIA ELECTRIC RAILWAY COMPANY, LIMITED

DEFENDANT.

Revenue—Income Tax—Income War Tax Act, R.S.C. 1927, chap. 97—Secs. 9B. (2) (a), 9B. (4), 9B. (9), 84, 86, 87—Canadian debtor—Company resident where central control and management abides—Nationality of company determined by country of incorporation—Intention to tax must be expressed in clear and unambiguous terms—New obligation not to be extracted from doubtful and ambiguous language—Presumption that Parliament does not assert or assume jurisdiction beyond limits of consent of nations.

Section 9B. (2) (*a*) of the Income War Tax Act, in effect from April 1, 1933, imposes a tax on non-residents of Canada in respect of dividends received from Canadian debtors. By section 9B. (4) the debtor is required to collect such tax, withold its amount from the non-resident and remit it to the Receiver General of Canada and by section 84 he is made liable, if he fails to collect it, for the amount he should have collected.

The action is against the defendant to recover the amount of its alleged liability for failure to collect and remit the tax in respect of dividends declared and paid by it to its non-resident stockholders during the period between April 1, 1933, and April 29, 1941. The defendant was incorporated in England in 1897 under the Companies Acts, 1862-1893, and had its registered office and register of members in London, England. It was registered in British Columbia in 1898 as an extra provincial company under the Companies Act, 1897, of British Columbia, and kept its Colonial register of members resident in Canada at its head office at Vancouver, B.C. The defendant carries on the business of supplying electric power and light and running electric railways and motor buses in British Columbia. During the period in question the business of the defendant, except the fulfilment of its statutory and articles of association requirements, was conducted and carried on in Canada, its officers and directors were residents of Canada, its directors' and general meetings were held in Canada, its assets, with some exceptions, were situate in Canada, the income from which it paid its dividends was earned in Canada, the dividends were declared in Canada, but were payable and were paid in London, England, to its stockholders except those on its Colonial register and those on its London register, whose addresses were in Canada. The defendant did not withhold any portion of the dividends paid by it and contended

that it was not under any duty to do so, on the ground that it was not a Canadian debtor within the meaning of section 9B. (2) (*a*) of the Income War Tax Act.

Held: That it is not the function of the Court to make any particular state of facts fit into a supposed scheme of taxation. The scheme does not exist apart from the language by which it is expressed and if a person is not clearly caught by the scheme as expressed in words he is not subject to it. The Court must not assume any governing purpose to tax to be given effect to in doubtful cases or any intention to tax apart from the words by which the tax is imposed nor may it infer any such intention from ambiguous words. The Court must deal with the Act as it stands. If defects in the tax structure are found, it is for the appropriate legislative authority, and not for the Court, to cure them.

2. That the Defendant is not a "Canadian debtor" within the meaning of section 9B. (2) (*a*) of the Income War Tax Act, notwithstanding its residence in Canada; it is only upon such a debtor that the duty of tax collection and remission is imposed by section 9B. (4); and no such duty having been cast upon the defendant it cannot be liable under section 84 for failure to perform it.

3. That the term "Canadian debtor", as used in sec. 9B. (2) (*a*) of the Income War Tax Act, does not "clearly and unambiguously" apply to a non-Canadian company, such as the defendant; that the plaintiff has, therefore, failed to show that the duty of tax collection and remission under section 9B. (4) has been imposed upon the defendant in such clear and explicit terms as the law requires in such cases; and that, no duty having been imposed in "clear and unambiguous" terms, there can be no liability under section 84 for failure to perform it.

4. That in the absence of clear and explicit expression to the contrary the term "Canadian debtor" in section 9B. (2) (*a*) should be interpreted as being confined to a company incorporated in Canada and as not including a company incorporated outside of Canada.

INFORMATION exhibited by the Attorney General of Canada to recover from defendant the amount of its alleged liability for failure to collect taxes under the Income War Tax Act in respect of dividends declared and paid by defendant to its non-resident stockholders.

The action was tried before the Honourable Mr. Justice Thorson, President of the Court, at Ottawa.

F. P. Varcoe, K.C. and *Robert Forsyth, K.C.* for plaintiff.

Aimé Geoffrion, K.C. and *A. B. Robertson,* for defendant.

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

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THE PRESIDENT, now (May 25, 1945) delivered the following judgment:

During the period between April 1, 1933, and April 29, 1941, the defendant declared and paid dividends to non-residents of Canada on its fully registered 5 per cent. cumulative perpetual preference stock. It is alleged that it should have withheld five per cent of such dividends and remitted the same to the Receiver General of Canada and that having failed to do so it is liable therefor together with interest at the rate of ten per cent per annum. This action is brought to recover from the defendant the amount of such alleged liability.

The claim is based upon certain sections of the Income War Tax Act, R.S.C. 1927, chap. 97, as enacted by chap. 41 of the Statutes of Canada, 1932-1933, the sections relied upon being 9B. (2) (*a*), 9B. (4) and 84, which provide respectively as follows:

"9B. (2) In addition to any other tax imposed by this Act an income tax of five per centum is hereby imposed on all persons who are non-residents of Canada in respect of

(*a*) All dividends received from Canadian debtors irrespective of the currency in which the payment is made,

9B. (4) In the case of interest or dividends in respect of fully registered shares, bonds, debentures, mortgages or any other obligations, the taxes imposed by this section shall be collected by the debtor who shall withhold five per centum of the interest or dividend on the obligation and remit the same to the Receiver General of Canada.

84. Any person who fails to collect or withhold any sum of money as required by this Act or regulations made thereunder, shall be liable for the amount which should have been collected or withheld together with interest at the rate of ten per centum per annum."

These amendments were deemed to have come into force on April 1, 1933, and remained in force until April 30, 1941, when the increase in the rate of tax to fifteen per cent became effective. During this period the defendant declared and paid to the holders of its 5 per cent cumulative perpetual preference stock, whose addresses in its register of members were elsewhere than in Canada, 16 dividends totalling $2,780,682.37. It did not withhold any portion of such dividends, and contends that it was not under any duty to do so, on the ground that it was not a Canadian debtor within the meaning of section 9B. (2) (*a*) of the Act. The amounts paid to non-residents of Canada within the meaning of the section

was not proved at the trial, it being agreed that if the defendant were found liable the amount of its liability would be determined by a reference for such purpose.

The issue depends upon the interpretation of the term "Canadian debtors" in section 9B. (2) (*a*). If it is not clearly applicable to the defendant the action must fail. Under the scheme set up by the sections referred to a tax is imposed upon non-residents of Canada in respect of dividends received from Canadian debtors; the tax is levied upon the non-resident, not upon the Canadian debtor. The Canadian debtor is required to collect the tax, to withhold the amount of it from the non-resident creditor and remit it to the Receiver General. A duty of tax collection and remission is imposed upon him and, if he fails to perform it, he is liable for the amount he should have collected. The duty is a statutory one and so is the liability. If, therefore, the defendant is not a "Canadian debtor", it is free from any duty of tax collection or remission and any liability for failure to perform it.

The facts are not in dispute. The defendant was incorporated in England in 1897 under the Companies Acts, 1862 to 1893, of the United Kingdom of Great Britain and Ireland, and has always had its registered office and kept its register of members in respect of its 5 per cent cumulative perpetual preference stock in London, England. It was registered in British Columbia in 1898 as an extra-provincial company under the Companies Act, 1897, of British Columbia. Under section 103 of the Companies Act, 1929, of the United Kingdom, 19 & 20 Geo. V, chap. 23, it has kept a Dominion register, called "the Colonial register", of members resident in Canada, at its office at Vancouver, British Columbia. Stock on this register can be transferred only on such register, but all other stock can be transferred only on the register kept in London, England. The defendant carries on the business of supplying electric power and light and operating electric railways and motor buses in British Columbia, and has its head office at Vancouver. During the period under review the whole business of the defendant, except such formal administrative business as was required by the statutes governing it or by its articles

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of association to be transacted at its registered office, was conducted and carried on in Canada; all its directors and officers were residents of Canada; all such stockholders' meetings as were held and all directors' meetings were held in Canada; all its assets, except for certain records and books of account kept in London, England, and certain cash remitted there from time to time, were situate in Canada; all the income from which its dividents were paid was earned in Canada; all the dividends were declared by resolution of the board of directors in Canada and approved by resolution of a general meeting in Canada; all the dividends payable to the stockholders, except those on the Colonial register and those whose addresses on the London register were in Canada, were paid from London, England, by the defendant's registrar and paying agent there by cheque and warrants drawn and payable in London, the necessary funds for such purpose having been sent from Canada. Only the dividends payable to the stockholders on the Colonial register or those on the London register whose addresses were in Canada were paid by cheques drawn and payable at Vancouver. Only a small amount of the stock was held by such stockholders.

On these facts there can be no doubt that the defendant, although incorporated in England, was resident in Canada, certainly, at any rate, for income tax purposes. It was held by the House of Lords in *De Beers Consolidated Mines, Limited* v. *Howe* (1) that a foreign corporation may reside in the United Kingdom for the purposes of income tax, that the test of residence is not where it is registered, but where it really keeps house and does its real business, and that the real business is carried on where the central management and control actually abides. Lord Loreburn L.C. said, at page 458:

> In applying the conception of residence to a company, we ought, I think, to proceed as nearly as we can upon the analogy of an individual. A company cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see where it really keeps house and does business. An individual may be of foreign nationality, and yet reside in the United Kingdom. So may a company. . . . . The decision of Kelly C.B. and Huddleston B, in the *Calcutta Jute Mills* v. *Nicholson* and the *Cesena Sulphur Co.* v. *Nicholson* ((1876) 1 Ex. D. 428), now thirty years ago, involved the principle that a company

(1) (1906) A C. 455

resides for purposes of income tax where its real business is carried on. Those decisions have been acted upon ever since. I regard that as the true rule, and the real business is carried on where the central management and control actually abides.

On the facts the Court held that the company, although registered in South Africa, was resident in the United Kingdom. The *De Beers Case* (*supra*) was followed by the House of Lords in *Egyptian Delta Land and Investment Company Limited* v. *Todd* (1) which settled that the test of residence of a company for income tax purposes was the same for all companies, whether incorporated abroad or in the United Kingdom. In that case a company incorporated in England, which had transferred the whole of its business to Egypt and did nothing in England beyond fulfilling its statutory requirements there, was found by the Commissioners to be not resident in England. Rowlatt J. reversed this finding and his judgment was affirmed by the Court of Appeal. The House of Lords, however, unanimously reversed their judgment and held that the finding of the Commissioners should not be disturbed. Viscount Sumner in an exhaustive and illuminating judgment applied the rule that a company is resident where "the central management and control of the company abides" and rejected the contention that a company must necessarily reside at the place where it is registered and its statutory requirements must be complied with. The central management and control of the defendant was certainly in Canada, and I find that it was resident in Canada for the purposes of the Income War Tax Act.

While the defendant was thus resident in Canada, it could not, in my opinion, properly be described as a Canadian company. It was incorporated in England under the Companies Acts of that country and is subject to them. Its status is that of an English company, for it is well established that the nationality of a company, so far as such a term is applicable to it, is determined by the country of its incorporation. In *The Queen* v. *Arnaud* (2), a company incorporated in Great Britain was held not to be a foreigner although some of its shareholders were foreigners. In *Janson* v. *Driefontein Consoli-*

(1) (1929) A.C. 1.

(2) (1846) 9 Q.B. 806.

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dated Mines, Limited (1), the House of Lords regarded a company incorporated in the South African Republic as an alien although most of its shareholders were British subjects. In *Bohemian Union Bank* v. *Administrator of Austrian Property* (2) a company, which had been incorporated in Prague and was, therefore, an Austrian company, was dealt with as a Czecho-Slovakian corporation and national after the recognition of Czecho-Slovakia as an independent state. And the *Egyptian Delta Case* (*supra*) Viscount Sumner, referring to the effect of incorporation under the English Companies (Consolidation) Act, said, at page 13:

> The first effect of the incorporation is to make the new company amenable to English law and English law courts and to give it the status of an English company,

On the authority of such cases, the defendant is an English company.

Under these circumstances can it be said that the defendant was a Canadian debtor within the meaning of section 9B. (2) (*a*) of the Income War Tax Act? Counsel for the plaintiff contended that the term "Canadian debtor" means a "debtor resident in Canada" and that the defendant, being resident in Canada and being a debtor in respect of dividends, came within its meaning. Counsel for the defendant, on the other hand, contended that the term when applied to a company means a "Canadian company debtor" and that the adjective "Canadian" when applied to a company is descriptive not of its residence but of its nationality or country of incorporation and means a company incorporated in Canada and cannot, therefore, apply to the defendant, since it is an English company by reason of its incorporation in England. These conflicting views present a problem which, in my opinion, is one of difficulty and importance.

The Act is clear and explicit in the distinctions drawn between a resident in Canada and a non-resident, both in the case of an individual and in that of a company, and if it had been intended to impose the duty of tax collection and remission upon a debtor resident in Canada such intention could have been clearly expressed. If that were the intent it would follow that there would be

(1) (1902) A.C. 484. (2) (1927) 2 Ch. 175.

no such duty imposed upon a Canadian company, that is, a company incorporated in Canada, that was not resident in Canada, for if the term "Canadian debtor" means a "debtor resident in Canada" it could not include both a non-Canadian company resident in Canada and a Canadian company that was not resident in Canada. If "Canadian" means "resident in Canada" it cannot also mean "non-resident in Canada".

Ordinarily a term is used in the same sense wherever it appears in an Act and it is frequently possible to determine its meaning in a particular section by reference to its use in other sections of the same Act. Unfortunately, this is not fully possible with regard to the use of the term "Canadian" in the Income War Tax Act. Even in Section 9B. itself it is used in different senses and has different meanings. The section speaks of Canadian funds in subsections 1 and 2 (*b*), of a Canadian estate or trust in subsection 2 (*d*), of Canadian residence in subsection 10, and of a Canadian company in subsection 11. In some of these cases the use of the term is purely geographical signifying merely presence in Canada, but in others it imports the idea of national character. "Canadian residence", for example, in subsection 10 clearly means residence in Canada whereas "Canadian company" in subsection 11 means a company incorporated in Canada. Some assistance may be found in other sections of the Act. In section 22A. the use of the term "any *other* Canadian debtor" in subsection (*b*) (iii) when read with subsection (*b*) (ii) indicates that a company incorporated in Canada is also a "Canadian debtor", within the meaning of that section. And in section 4 (*r*) a company incorporated in Canada is described as a Canadian company. Then in section 39A. there is a reference to "Canadian, British or foreign debtors" in such manner as to suggest that the adjectives are indicative of nationality. Such assistance as these other sections afford lends support to the contention of counsel for the defendant.

Section 9B. (2) (*a*) imposes a tax upon non-residents of Canada in respect of dividends received from Canadian debtors. The term debtor when read with the term dividend indicates that the debtor is a company, since it is

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only a company that can become a debtor in respect of a dividend. The defendant became a debtor to its stockholders when the dividends were declared and became payable. *In re Severn and Wye and Severn Bridge Railway Company* (1). It is not unreasonable, therefore, to say that the term debtor in section 9B. (2) (*a*) means a company.

Moreover, it is in accordance with the natural meaning of such terms as "Canadian" when applied to a company to regard them as descriptive of the country of its incorporation. In the United States it was a common practice to incorporate companies in Delaware or New Jersey and to call such companies Delaware or New Jersey companies regardless of where they carried on their business. Companies incorporated in the provinces of Canada are also commonly described by reference to the provinces of their incorporation. Such terms as British or English or Scottish, French, German, United States and the like, when applied to a company, are in their natural and ordinary sense descriptive of the countries of origin of such companies. They are adjectives denoting nationality or domicile and indicate the country of incorporation of the company. The term "Canadian", when applied to a company, should be dealt with similarly and be regarded as meaning a company incorporated in Canada.

To give effect to the contention of counsel for the plaintiff that the term "Canadian debtor" means a "debtor resident in Canada" involves amendment rather than interpretation of it. It would be quite erroneous to describe an individual as Canadian merely because of his residence in Canada. The residents of Canada are not all Canadian and there are many persons not resident in Canada who are, nevertheless, Canadian. The adjective "Canadian" is not an apt one to describe residence. It is, if possible, even a more strained use of it, when applied to a company, to import into it the attribute of residence in Canada, for not only is such use not natural or ordinary, but it is also contrary to the established jurisprudence.

Counsel for the plaintiff advanced a subsidiary argument that the term "Canadian debtor" means a person who owes a Canadian debt and that the debt of the defen-

(1) (1896) 1 Ch. 559.

dant to its stockholders in respect of dividends was a Canadian debt. In support of this view he relied upon the fact that the dividends were declared in Canada, and put this forward as an important factor in determining that the debt was a Canadian one and subject to Canadian law. No authority for such a proposition was cited and I am unable to accept it. It is established that the domicile of a company is in the country of its incorporation and that such domicile "clings to it throughout its existence". While it may change its residence, it cannot change its domicile. *Gascue* v. *Inland Revenue Commissioners* (1). And it is fundamental that the rights of the members of a company are governed by the law of its domicile. *Colonial Bank* v. *Cady and Williams* (2). In that case the House of Lords was dealing with a problem affecting the share certificates of a company incorporated in New York, and Lord Watson, in the course of his judgment, said at page 275:

> The Company and its undertaking are American, and the rights of its shareholders, as well as the effect of its stock certificates, are admittedly governed by the law of the State of New York.

The defendant, having been incorporated in England, has its domicile there, notwithstanding its residence in Canada, and is consequently subject to the law of England in matters affecting the relationship between it and its members. The rights of the stockholders, including the right to dividends are determined by the law of England. The conditions subject to which dividends are payable are prescribed by such law. It is, no doubt, a condition precedent of indebtedness in respect of dividends that they should be duly declared, but I am unable to see how the place of declaration can affect the character of the resulting debt. Once the dividends were declared, no matter where the declaration was made, the defendant owed a debt to its stockholders. Such debt arose either under an English contract on the subscription for the stock or as an incident of the ownership of the stock attached by English law. Moreover, it was payable to the non-resident stockholders in England. Under these circumstances the debt of the defendant to its non-resident stockholders was, in my opinion, an English debt.

(1) (1940) 2 K.B. 80 at 84. (2) (1890) 15 A.C. 267.

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It was also urged that the debt was a Canadian one because it could be enforced in Canada. No doubt the non-resident stockholder who had not been paid a declared dividend could sue the defendant in Canada, since it was resident and has its assets here. But there is also no doubt that he could bring his suit in England. While the defendant was resident in Canada, and not in England, for income tax purposes, it is clearly resident in England for the purposes of founding jurisdiction in the English courts to entertain an action against it. The debt to the non-resident stockholders was payable in England, the defendant has its registered office and its register of members there, and it is subject to winding-up proceedings in the English courts. The rights of the non-resident stockholders against the defendant are clearly within the jurisdiction of the English courts to enforce.

Section 84 of the Income War Tax Act imposes a statutory liability for failure to perform the statutory duty of tax collection and remission required to be performed by section 9B. (4). Both the duty and the liability for failure to perform it are new and do not exist apart from the terms of the Act. Before the plaintiff can succeed in an action to recover the amount of the liability for failure to perform the duty, he must show that the requirement of performance of the duty has been imposed upon the defendant in clear and explicit terms. If he cannot do so the action must fail. This statement is, I think, in accord with accepted canons of construction.

The rules to be applied in interpreting an Act which imposes a tax or duty are well established. They have been expressed by the House of Lords in many cases. In the leading case of *Partington* v. *Attorney General* (1) Lord Cairns said:

> If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

It is the letter of the law rather than its spirit that governs in a taxing Act. And in a later case, *Cox* v. *Rabbits* (2), the same judge said:

(1) (1869) L.R. 4 H.L. 100 at 122. (2) (1878) 3 A.C. 473 at 478.

a Taxing Act must be construed strictly; you must find words to impose the tax, and if words are not found which impose the tax, it is not to be imposed.

Lord Cairns explained what is meant by the rule that a taxing Act is to be construed strictly in *Pryce* v. *Monmouthshire Canal and Railway Companies* (1) in the following terms:

the cases which have decided that Taxing Acts are to be construed with strictness, and that no payment is to be exacted from the subject which is not clearly and unequivocally required by Act of Parliament to be made, probably meant little more than this, that, inasmuch as there was not any *a priori* liability in a subject to pay any particular tax, nor any antecedent relationship between the taxpayer and the taxing authority, no reasoning founded upon any supposed relationship of the taxpayer and the taxing authority could be brought to bear upon the construction of the Act, and therefore the taxpayer had a right to stand upon a literal construction of the words used, whatever might be the consequence.

The Judicial Committee of the Privy Council has taken the same view. In *Oriental Bank Corporation* v. *Wright* (2) Lord Blackburn stated it as a rule:

that the intention to impose a charge on the subject must be shown by clear and unambiguous language,

It is not the function of the Court to make any particular state of facts fit into a supposed scheme of taxation. The scheme does not exist apart from the language by which it is expressed and if a person is not clearly caught by the scheme as expressed in words he is not subject to it. The Court must not assume any governing purpose to tax to be given effect to in doubtful cases or any intention to tax apart from the words by which the tax is imposed nor may it infer any such intention from ambiguous words. The Court must deal with the Act as it stands. If defects in the tax structure are found, it is for the appropriate legislative authority, and not for the Court, to cure them. These principles have been laid down in numerous cases. In *Partington* v. *Attorney General* (*supra*) Lord Cairns said, at page 122:

if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.

In *Tennant* v. *Smith* (3) Lord Halsbury L.C. stated a fundamental principle:

(1) (1879) A.C. 197 at 202. (2) (1880) 5 A.C. 842 at 856.
(3) (1892) A.C. 150 at 154.

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> In a taxing Act it is impossible, I believe, to assume any intention, any governing purpose in the Act, to do more than take such tax as the statute imposes . . . . . Cases, therefore, under the Taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation.

In *Brunton* v. *Commissioner of Stamp Duties* (1) Lord Parker, speaking for the Judicial Committee, said:

> the intention to impose a tax or duty, or to increase a tax or duty already imposed, must be shown by clear and unambiguous language and cannot be inferred from ambiguous words:

And, in *Greenwood* v. *F. L. Smidth & Co.* (2), Lord Buckmaster took a strong stand against attempting to extract new obligations from doubtful and ambiguous language:

> It is, I think, important to remember the rule which the Courts ought to obey, that, where it is desired to impose a new burden by way of taxation, it is essential that this intention should be stated in plain terms. The Courts cannot assent to the view that if a section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the taxpayer.

While the rules to which I have referred are those governing the interpretation of taxing Acts, I see no sound ground of principle for not applying them with equal force to the interpretation of enactments, such as section 9B. (4) and section 84 of the Income War Tax Act, by which a new statutory duty and liability are imposed. Words must be found in the Act to impose such duty and liability, and such words must be clear and unambiguous. If the requirement of performance of the duty is not expressed in clear and unequivocal terms, the imposition of it is not to be assumed nor may it be inferred from ambiguous language. It follows that if the duty is not clearly and explicitly imposed there can be no liability for failure to perform it.

I have come to the conclusion that this action cannot succeed. In my opinion, the defendant is not a "Canadian debtor" within the meaning of section 9B. (2) (*a*) of the Income War Tax Act, notwithstanding its residence in Canada; it is only upon such a debtor that the duty of tax collection and remission is imposed by section 9B. (4); and no such duty having been cast upon the defendant, it cannot be liable under section 84 for failure to perform it.

(1) (1913) A.C. 747 at 760. (2) (1922) 1 A.C. 417 at 423.

Even if this positive reason for dismissing the action were not entirely free from doubt, there is what might be called a negative one. On the strength of the rules governing the interpretation of an Act such as the one under review it should, I think, be held that the term "Canadian debtor", as used in section 9B. (2) (*a*) of the Income War Tax Act, does not "clearly and unambiguously" apply to a non-Canadian company, such as the defendant; that the plaintiff has, therefore, failed to show that the duty of tax collection and remission under section 9B. (4) has been imposed upon it in such clear and explicit terms as the law requires in such cases; and that, no duty having been imposed in "clear and unambiguous" terms, there can be no liability under section 84 for failure to perform it.

There is a further reason why the term "Canadian debtor" should, in the absence of clear and unambiguous expression of a contrary intention, be interpreted as excluding the defendant. In this connection, consideration must be given to certain sections of the Act, in addition to those already cited. Section 9B. (9) provides:

> 9B. (9) Every agreement for payment of interest or dividends in full without allowing any such deduction or withholding shall be void.

And sections 86 and 87 read:

> 86. No action shall lie against any person for withholding or deducting any sum of money as required by this Act or regulations made thereunder.
>
> 87. The receipt of the Minister for any sum of money collected, withheld or deducted by any person as required by this Act or regulations made thereunder shall constitute a good and sufficient discharge of the liability of any debtor to his creditor with respect thereto to the extent of the amount referred to in the receipt.

It is apparent from these sections, when read with sections 9B. (2) (*a*), 9B. (4) and 84, that it was intended not only that the non-resident should be taxed in respect of the dividends received from a Canadian debtor, but also that he should actually bear the tax himself and not be able to pass it back to the debtor. No tax is imposed upon the debtor; it is the non-resident, not the debtor, who is the taxpayer; the debtor is made a tax collector; if he collects the tax and remits it, he is free from any liability to anyone. Payment of the tax to the Receiver General is a pro tanto discharge of the debtor's liability to

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the creditor. The contract to pay the dividend in full is avoided and the creditor's right of action for its payment in full is barred. The scheme of legislation thus expressed purports to alter the rights of non-resident creditors against a Canadian debtor, to assume control over the indebtedness and to provide a statutory pro tanto discharge of it. There can be no objection in law to such statutory action where the Canadian debtor is a company incorporated in Canada and the indebtedness is in respect of dividends, for the relationship between such a company and its members, whether resident in Canada or not, is governed by Canadian law and their rights in respect of dividends are subject to alteration by competent Canadian legislative authority. Every shareholder would know that his rights in respect of his shares or the dividends from them would be determined by Canadian law. The situation is otherwise, however, in the case of a non-Canadian company where the rights of its members are regulated by the law of another country. There is a presumption that Parliament does not assert or assume jurisdiction which goes beyond the limits established by the common consent of nations. 31 Hals. para. 658. And it is a rule that statutes are to be interpreted, provided that their language admits, so as not to be inconsistent with the comity of nations. 31 Hals. para. 659. It has already been pointed out that the debt of the defendant in respect of dividends was payable to its non-resident stockholders in England and that their rights against the defendant are regulated by English law and are within the jurisdiction of the English Courts to enforce in accordance with such law. Halsbury points out that the presumption to which I have referred must give way before an intention clearly expressed. But where there is no such clear expression of intention it should be applied. It cannot be said in the present case that the term "Canadian debtor" clearly and explicitly refers to a non-Canadian company such as the defendant. The scheme of legislation under discussion, of which this term is an integral part, should, therefore, I think, be interpreted in accordance with the presumption and rule referred to in such a way as not to assume an intention on the part of Parliament to alter the rights of persons in another country, conferred upon

them pursuant to the law of such country and within the jurisdiction of the courts of such country to enforce. In the absence of clear and explicit expression to the contrary, the term "Canadian debtor" in section 9B. (2) (*a*) should be interpreted as being confined to a company incorporated in Canada and as not including a company incorporated outside of Canada. By such interpretation full effect can be given to the scheme of legislation without running counter to the presumption and rule of interpretation referred to. Such an interpretation, of course, places the defendant outside the scheme.

For the reasons given, there will be judgment dismissing the action with costs.

Judgment accordingly.