

Herbert Lambe Williams - - - - - *Appellant*

v.

Edgar Roderic Williams - - - - - *Respondent*

FROM

THE SUPREME COURT OF BERMUDA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 27TH MARCH, 1952

Present at the Hearing :

LORD NORMAND
LORD RADCLIFFE
LORD TUCKER
LORD ASQUITH OF BISHOPSTONE

[*Delivered by* LORD RADCLIFFE]

This is an appeal from a judgment of the Supreme Court of Bermuda dated the 30th January, 1950. It is concerned with a short point that arises on the construction of the Will of a testator, James Nelmes Lambe who died on the 25th March, 1936, leaving a legacy of £5,000 to the respondent Edgar Roderic Williams. The question at issue is as to the effect of this legacy in the events that have happened since the testator's death.

The date of the Will is the 30th September, 1927. At that date the testator was carrying on a business of wine and spirit merchants in partnership with one Lightbourn under the firm name of J. E. Lightbourn & Company. His Will consisted of six clauses, of which the first and second were concerned with directions for payment of his debts and testamentary expenses and the appointment of the respondent and Lightbourn as his executors. Clause 3 ran as follows:—

“ I give and bequeath to my nephew the said Edgar Roderic Williams the sum of five thousand pounds of the capital I have invested in the partnership business carried on in the said Islands ” [the Islands of Bermuda] “ under the firm name of J. E. Lightbourn & Company ”.

Clause 4 consisted of a gift of five pecuniary legacies of which the first was:—“ To my sister Florence Isidora Lambe the sum of two thousand pounds ”. The others were given in similar form. By Clause 5 the residue of the personal estate was bequeathed to four legatees, of whom the appellant is one and the respondent another : and Clause 6 contained a devise of real estate.

The testator was predeceased by his partner Lightbourn, who died on the 2nd April, 1929. Under their Articles of Partnership, which had been entered into in 1924, a surviving partner had power to purchase the share of a deceased partner, and this power the testator exercised,

paying a sum of £32,800 for Lightbourn's share. Thus at his death the business had become his sole property. It is not suggested by the appellant that this circumstance had the effect of adeeming the respondent's legacy: nor, on the other hand, can it be treated as altering the construction of the words which the testator had used when he made his Will in 1927.

According to the affidavit evidence filed in the proceedings the capital of the business at the testator's death was £20,000. There is room for uncertainty as to what exactly this statement means, or how this £20,000 relates to the sum of £20,191 which the evidence shows to have been standing to the credit of the testator's capital account with the partnership firm in July, 1927. It appears however that the business was continued as a going concern after the testator's death, the respondent being authorised to continue it in his capacity as executor but receiving a salary for his services. By the 30th June, 1949, at which date a Balance Sheet of the business was made up, the net value of the assets amounted to £161,765 18s. 3½d. It was no doubt this striking rise in the fortunes of a business which is stated to have been incapable of meeting its liabilities at the date of the testator's death that made it desirable to obtain a ruling of the Court as to the nature and effect of the respondent's legacy. For if it was in some way the equivalent of a gift of a proportionate share in the business itself he would have become entitled to receive a much larger sum than £5,000.

Accordingly he took out an Originating Summons in the Supreme Court, making the appellant and others defendants to the proceedings in respect of their interests in the residuary estate. The question asked by the Summons was as follows: "Did Clause Three of the said Will give the said Edgar Roderic Williams a participation in the capital of the firm of J. E. Lightbourn & Co. in the proportion that £5,000 bore to the total capital of the partnership firm at the death of the said James Nemes Lambe or was this gift a legacy in the sum of £5,000 to be paid from the capital account of that firm?"

The summons was heard by the learned Chief Justice, who gave his judgment on the 30th January, 1950. It was not a reasoned judgment—indeed there is not a great deal of reasoning that can usefully be devoted to a point of construction of this kind. By it he held that it was the intention of the testator to give the respondent "a participation in the capital of the firm of Messrs. J. E. Lightbourn in the proportion that £5,000 bore to the total capital of the partnership firm at the date of his death". From this judgment the appellant has appealed to the Board.

Their Lordships think that the true view is that Clause 3 of the Will contained nothing more elaborate than a legacy of a sum of £5,000. It is very difficult to see how the sum of £5,000 given in this way could have the qualities of a specific legacy: but, putting aside distinctions between specific and demonstrative legacies, the main point is that the respondent cannot succeed in establishing that his legacy entitles him to more than £5,000 (with interest) unless he can show that the effect of the gift to him is somehow to constitute him a part-owner of the assets of the business which has been so successfully conducted under his management. Despite the persuasive argument of his counsel their Lordships are satisfied that the Will did not place him in this position.

The nature of the testator's gift seems reasonably plain if one recalls the circumstances that he was contemplating when he made his Will. The capital that he had invested in the partnership business was not at that time an identifiable piece of property. Whatever he had contributed originally in money or money's worth had gone into the assets of the partnership as they might be from time to time, and his contributions had no doubt been increased since the start by any undrawn profits belonging to him which had been credited to his capital account in the partnership books. This capital account represented an account between

himself and the firm, for the satisfaction of which the partnership assets would be available when dissolution came, according to the partners' respective rights under the Partnership Articles. Regarded as the source of a legacy to be paid on the testator's death the "capital I have invested in the partnership business" could only mean the monies which would accrue to his estate on his death in respect of his investment in that business. They might come either by dissolution and winding up of the business or by the exercise of the purchase option by his partner if he survived: in either case they would consist of a sum of money of which the testator intended that £5,000 should belong to the respondent. In neither case could the "capital invested" represent a share of the business itself which ex hypothesi would be wound up or purchased on the testator's death. In point of fact there was no partnership business at all when the testator died, so that the events that he was contemplating never took place. But that circumstance could not improve the respondent's position.

There is this to be said for attaching some special meaning to the words of Clause 3 different from what appears to be its natural meaning, that the gift is "Five thousand pounds of the capital," not "Five thousand pounds out of the capital", as might have been expected: and the form of gift in Clause 3 is certainly markedly different from the form in which the pecuniary legacies are bequeathed by Clause 4. But neither of these points lead to any conclusion. As to the latter, there is no reason why the testator should not have conceived the wish to give the respondent that form of security that is conferred by a demonstrative legacy. In any event, the special form of wording adopted in Clause 3 is more likely to have been due to a wish to associate the respondent, who had been connected with the business in the past, with the testator's rights to what was coming from the business on his death than to any more technical reason. As to the former, once it is appreciated that the words "capital . . . invested in the . . . business" can only refer to a fund of money arising in the future, there is no difference in practical significance between "of" and "out of".

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be allowed and that the judgment of the Supreme Court of Bermuda of 30th January, 1950, should be set aside. In its place there should be an Order declaring that upon the true construction of the Will of 30th September, 1927, of the testator James Nelmes Lambe deceased the legacy given to the respondent by Clause 3 of the Will was a legacy of the sum of £5,000 to be paid out of the testator's interest in the business carried on under the name of J. E. Lightbourn & Co., and directing that the costs of all parties of and incidental to the Originating Summons in the Supreme Court, taxed as between solicitor and client, should be paid out of the testator's residuary estate. The circumstances of this case are somewhat special, and their Lordships think that the costs of both parties of this appeal, as between solicitor and client, including their costs of the appellant's petition to adduce further evidence which was granted by their Lordships on the 26th February, 1951, and the costs of adducing that evidence, should be paid by the respondent out of the same estate.

In the Privy Council

HERBERT LAMBE WILLIAMS

v.

EDGAR RODERIC WILLIAMS

DELIVERED BY LORD RADCLIFFE

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