Stewart Vs. Maclaren

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Court : House of Lords

Decided On : Jun-18-1920

Judge : LORD VISCOUNT HALDANE, LORD VISCOUNT FINLAY, LORD VISCOUNT CAVE, LORD DUNEDIN & LORD SHAW OF DUNFERMLINE

Appeal No. : [1920] UKHL 4

Appellant : Stewart

Respondent : Maclaren

Judgement :

Viscount Haldane.—

The litigation out of which this appeal has arisen relates to the trust-disposition and settlement of Mrs Thompson of Pitmedden in Aberdeenshire, who died on the 17th of July 1915. Shortly before her death she had made a will and three codicils. Mrs Thompson was a lady in rather infirm health, who had survived her husband and, being childless, had adopted a son who was about ten years old at the date of the testamentary documents to which I am about to refer. The lady was on intimate terms, apparently, with her sister, Miss Jessie Stewart, who is the appellant in this case, and whom she appointed one of her trustees. The respondents are Mr Duncan MacLaren of Edinburgh and his son, who, as a firm, carry on business there as Writers to the Signet. Mrs Thompson by her testamentary dispositions purported to appoint Miss Stewart and her brother, Sir David Stewart (who is now dead, which explains his absence), and the two MacLarens, who are the respondents to this appeal, as trustees.

The action is brought, not for the purpose of wholly setting aside Mrs Thompson's dispositions on the ground that she was not competent mentally to make them, but for their reduction pro tanto in so far as they appoint the two MacLarens trustees, giving each of them a legacy of 500, and allowing the taking of profit costs by the MacLarens, who were the law-agents acting in the administration of the trust. The grounds on which the action was brought were three—first, impetration, that is to say, fraud; secondly, that the senior Mr MacLaren, who prepared the will, had not discharged the burden, which it was said rested upon him, of proving that a gift to himself and another to his son, embodied in the instrument which he had prepared in his confidential capacity as legal adviser to the lady, were gifts which he had to support by proving that they originated in a completely free, intelligent, and spontaneous disposition which had been that of the lady alone. The third point raised in the case was that the last codicil was tantamount to a revocation of the intermediate codicil; that under the intermediate codicil Mr MacLaren junior had been appointed trustee; and, that codicil being gone, Mr MacLaren junior was no

longer trustee, and the implied right to his 500 therefore disappeared. These are the points before your Lordships.

Now the first observation I have to make is this. The questions of fact were tried out, and the Lord Ordinary, Lord Hunter, and the majority of the First Division have concurred in finding that there is no ground for the allegation of fraud, or of impetration; that Mr MacLaren senior has given an explanation which satisfies them as to the propriety of all that he did; and that, as the result, they have concurrently come to the conclusion of fact that Mrs Thompson knew what she was doing, and that her gifts were free and spontaneous gifts made by her with full intelligence as to their nature. From that conclusion Lord Cullen in the Inner House dissents, taking the view which has been argued at your Lordships' bar for the appellant; but his opinion is inconsistent, practically on all points, with the conclusions to which I have referred as the concurrent findings of the Lord Ordinary and the majority of the Inner House. I therefore conceive that we are bound, in the absence of circumstances of a very special order, to accept the position as established by those concurrent findings of fact.

Under these circumstances is there any principle of law which can qualify the effect of these findings? I know of none. It is quite true that, when a law-agent takes a gift by will, he has got to show very clearly, in accordance with the language used by Lord Barcaple in one of the cases cited, that the gift is the free and spontaneous gift of the testatrix, knowing what she was doing, and under no influence from him as regards the substance of the disposition. He must show, in other words, that he has confined himself strictly to his business as law-agent, and has not transgressed its very highly binding obligation of confidence. But, that burden being discharged, he is free to prepare the will, though in his own favour, provided only that it fulfils the conditions to which I have referred. The two Courts below have concurred in finding that these conditions were fulfilled, and, therefore, there is no principle which can qualify the effect of that finding.

That disposes of the main part of the appeal before your Lordships; but there remains another point. The will was executed when Mrs Thompson was ill, and Mr MacLaren went up to Aberdeen from Edinburgh for the purpose. The first codicil was also executed the next day,

the 13th of June 1915, when he was there. The second codicil was a codicil which had to be executed as the result of discussion and communications which had taken place, and he again went to Aberdeen for that purpose. The second codicil was executed by the lady in a very shaky handwriting. Mr MacLaren, who appears to have been careful and a little nervous, observed that someone who was present took the testatrix's hand and guided it, and, as he thought, unduly added a second edition of her signature. When he got back to Edinburgh he appears to have taken a pen and struck this out as a thing which had not been the script of the testatrix herself. He then took the advice of counsel, who advised that probably the codicil was all right—she had known what she was doing, and the first signature, although very ill written, would be sufficient to carry the codicil. But counsel suggested that it would be wise to have a confirmatory codicil, and, accordingly, Mr MacLaren went again to Aberdeenshire and prepared the third codicil, in which he inserted words of confirmation. He explains that, as the testatrix was in a very shaky condition and he thought the codicil should be executed before himself acting notarially, he took the view that the codicil should not contain any direct bequest to his son or himself, and

he drew the confirming clause in the codicil as confirming only the trust-disposition and the first codicil dated the 13th of June.

Now, the question is,—Under what circumstances is the Court to approach the question of construction? The question of construction arises simply upon these words: “I hereby confirm the said Trust Disposition and Settlement and relative Codicil thereto dated respectively twelfth and thirteenth June Nineteen hundred and fifteen.” Your Lordships observe that there is no reference to the codicil of the 28th June. Mr MacLaren has given an explanation why, as he was signing notarially the testatrix's third codicil, he did not think it proper to make any reference to the codicil which benefited his son. It may or may not have been a good reason—probably it was a foolish reason—but, at any rate, it is found by the Courts that Mr MacLaren was an honest gentleman, and they cast no doubt upon the freedom of his motives from anything sinister. Under those circumstances it is suggested, on the one hand, that nobody who drew a document of this kind which confirmed only the will and the first codicil could possibly have meant to confirm the document that is omitted, namely, the second codicil. It is suggested, on the other hand, that the explanation I have referred to is a satisfactory explanation of motive. Upon these respective contentions the observation I have to make to your Lordships is that they appear to me to be wholly irrelevant to the real point. The only thing that can be looked at is the language, and we have to look at the language scientifically and apply to it the rules usually applied in these matters. One of these rules is that the words of revocation must be clear; that it is only the words you can look at, and that you cannot speculate one way or the other, because the law does not permit of it. Now, looking at the words, what happens here is that the lady says she confirms the original will and the first codicil. It may well be that these did not want confirmation, and that the words therefore are wholly inept. Can one draw from the fact that she has used language which purports to make such a confirmation, a confirmation which may be altogether unnecessary, the inference that she intended to revoke another instrument, valid by itself, which she does not embrace in these words of confirmation? I think not. I think the words must be read as meaning just what they say, and no more than they say. She elects to put words of confirmation as applicable to two instruments, and the third, for some reason or another upon which we are not at liberty to speculate, she leaves to take its chance.

Now, the evidence has satisfied the Courts below that there is no reason for setting aside that second codicil, the codicil of the 28th June, and therefore it stands so far as any allegation of improper conduct is concerned. For these reasons I am of opinion that it also stands so far as the last codicil is concerned, and that it was not revoked by that codicil. Under these circumstances it seems to me that this appeal fails; that the interlocutors of the Court below must be affirmed, and this appeal be dismissed; and I move your Lordships accordingly.

Viscount Finlay.—

I am of the same opinion.

There are two questions in this case. The first is as to the validity of the appointment of the two trustees, Mr Duncan MacLaren and his son Alasdair, and the second is as to the effect on the codicil of the 28th of June of the notarial codicil of the 10th of July. [His Lordship examined the evidence and gave his reasons for holding that the appointments were valid.]

The other part of the case relates to a question of law, and on that we have had the advantage of a very able and interesting argument from Mr Normand. The question is,—Did the notarial codicil of the 10th of July revoke the codicil of the 28th of June, in which codicil alone Mr Alasdair MacLaren is appointed a trustee? There is a signature to the codicil of the 28th of June made under somewhat peculiar circumstances which have been described, the lady's hand being assisted, and that signature was afterwards erased by Mr Duncan MacLaren. But there was also a signature which had been made by the lady unassisted, but which is extremely illegible. Under these circumstances doubt was felt as to whether that codicil could be considered to have been properly executed, and, accordingly, a notarial codicil of the 10th of July was prepared, and notarially executed by Mr Duncan MacLaren himself as notary. He states that the portion of the codicil of the 28th of June about the appointment of his son was not reproduced in that of the 10th of July on account of his thinking that it would invalidate the instrument if such a provision in favour of his son were contained in an instrument which he notarially executed.

Now, under these circumstances it has been contended that, inasmuch as the notarial codicil of the 10th of July repeats textually the provisions of the codicil of the 28th of June with the exception of that which relates to the appointment of Mr Alasdair MacLaren as trustee, it must be taken that the appointment of Mr Alasdair MacLaren as a co-trustee is revoked. I do not draw that inference. It appears to me that what was desired was to make certain as to the validity of the legacies contained in the codicil of the 28th of June, and for that purpose you have the notarial execution of the codicil repeating the legacies contained in that of the 28th of June. There was nothing in the 10th of July codicil about Mr Alasdair MacLaren as trustee—it is alleged for the reason given by Mr Duncan MacLaren. I cannot draw the inference that the instrument of the 10th of July under these circumstances revoked the appointment of the trustee. It seems to me that what was intended was to remove all doubt, owing to the question as to execution, with regard to the instrument of the 28th of June so far as affected the matters which are repeated in the codicil of the 10th of July. The appointment of Mr Alasdair MacLaren as trustee was left to take its chance on the question of the validity of the execution of the codicil of the 28th of June. I cannot see how under these circumstances one would be justified in inferring that there was a revocation of that appointment.

I concur in what has been said by the noble and learned Viscount on the woolsack to the effect that this appeal ought to be dismissed.

Viscount Cave.—

I concur.

Lord Dunedin.—

I do not think that there is any conflict of authority as to the position of a law-agent who prepares a will which contains some benefit to himself. In the statement made by my noble and learned friend Lord Shaw in Forrests v. Low's Trustees I respectfully concur. It seems to me to stand thus. In the ordinary case a will which is probative proves itself, and a person founding on its provisions need do no more than produce it. Those who wish to make the will inoperative as being obtained by deception or undue influence, or because the testator did not know what he was doing, must aver relevant facts and prove them. But when the person who claims is the law-agent who

prepared the will, he is bound to do something more; he must clear himself from the idea that the gift in his favour was got by deception or undue influence, or that the testator did not know what he was about when making his will. That raises an issue of fact. On that issue we have the finding of the Judge who tried the case confirmed by a majority of the Inner House. From that finding I do not find it possible to differ.

As regards the second point I have nothing to add to what has been already said by my noble and learned friends who have preceded me.

Lord Shaw of Dunfermline.—I concur in the judgment which has been pronounced by my noble and learned friend opposite. I have nothing to add upon the first part of the case, my views upon that part of the law being already upon the records of your Lordships' House in Forrests v. Low's Trustees .

I desire, however, to say that I thought the brief, but very impressive, argument presented by Mr Normand to this House on the second point, which I shall mention, was one well worthy of consideration. The view that the learned counsel presented was this, that when a testator deliberately repeats a codicil in its entire terminology, with the exclusion, however, of one particular part, or of one particular bequest or nomination, from that repetition, then there is an implied revocation by reason of the ignoring of that part.

The law with regard to the construction of testamentary documents is that a revocation by one codicil of any part of the contents of another or of the will must either be express or by a reasonable implication. In the present case there was, upon the 28th of June, a curious looking codicil so far as the signatures were concerned, and that codicil did contain a nomination of Mr MacLaren junior as a trustee. It also contained a variety of other provisions, and it contained this further clause (which I consider of importance), that it went out of its way, so to speak, to confirm the will itself and the first codicil which had been made. Doubts having arisen in consequence of the curious signature or signatures attached to that document of the 28th of June, there was, on the 10th of July, a repetition by the testator of all the codicil of the 28th June except the nomination of Mr MacLaren junior to which I have referred. And there was an identical repetition of the confirming of the will and of the first codicil. I think that of importance, as showing that the desire of the testatrix on the 10th July was to put herself in the same position as she had occupied on the previous 28th of June. She repeated what she had done on the former date; but it so happened that the notarial apparatus would have completely failed—at least it was so feared—if the notary's son's appointment had been inserted in the codicil signed by the notary himself. Accordingly, still desiring confirmation, there was no question of revocation in her mind. She employed the confirming instrument that was at hand, and employed it without destroying it by introducing into it any doubtful matter. In my view, accordingly, it is not a reasonable implication that she meant revocation, but the reasonable implication upon the contrary is that she meant confirmation. That is my view. She did not interfere with the nomination of Mr MacLaren junior, because in the circumstances of the father being the notarial signatory she could not. She left that matter where it stood, and, as it turns out that the codicil of 28th June is good in law, the nomination within it stands. I do not find that it is a necessary implication from the ignoring of a certain provision of the codicil of the 28th of June in that of the 10th of July that the part so left out from the category of repetition was meant to disappear from the testamentary intentions of Mrs Thompson.

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