

[HALLINAN, C.J., AND ZEKIA, J.]
(April 17, 1954)

1954
April 17

JOHN G. ELIADES, *Appellant*,
v.

JOHN G.
ELLADES
v.

1. THE EXECUTOR
OF THE WILL OF
THE DECEASED
N.P. LANITIS.
2. SIR PANAYIOTIS
CACOYANNIS

1. THE EXECUTOR OF THE WILL OF THE
THE DECEASED NICOLAS P. LANITIS,
2. SIR PANAYIOTIS CACOYANNIS,
AS EXECUTOR OF THE WILL, *Respondent*.

(Civil Appeal No. 4078)

*Estate duty – Apportionment among beneficiaries – Wills and
Succession
Law, section 32.*

Nicolas P. Lanitis, deceased, by his will, bequeathed share in a bank as a specific legacy to the appellant. The appellant contended that estate duty on this legacy should be paid out of the residuary estate which was sufficient to pay all deceased's debts including death duties. The trial Court rejected this contention.

Upon appeal,

Held: The express provision in the Wills and Succession Law, section 32, must prevail over the decisions of the English Courts, and the appellant must pay death duty proportionate to the value of his legacy.

Appeal dismissed.

Appeal by plaintiff from the judgment of the District Court of Limassol (Action No. 75/53) in favour of defendants.

M. Houry for appellant.

G. Cacoyannis with *Mrs. Stella Souliotis* for the respondent.

Judgment was delivered By:

ZEKIA, J. : The late Nicolas P. Lanitis of Limassol a few days before his death on the 10th April, 1952, made his will and bequeathed under Clause 3 of the said will to his nephew John G.

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Eliades, the appellant, 1,100 shares in the Banque Populaire de Limassol, Ltd. The said testator at the time of his death held 1,863 of such shares, the nominal value of each being £5 and the market value for each £9. The will was probated some time later in 1952. The net value of the deceased's estate, without deducting the death duty, is estimated at a sum over £200,000, and the estate duty payable at £60,000. It appears that the residuary estate is of sufficient value to meet the amount exigible as estate duty.

The trial Court found that the bequest of the 1,100 shares in favour of the appellant was in the nature of a specific legacy. This finding was not contested. The only point which falls for the decision of this Court is whether the appellant is entitled to the said 1,100 shares without the liability of payment of a proportionate estate duty. The answer to this depends on the interpretation, if such interpretation is needed at all, of section 32 of the Estate Duty Law (Cap. 294).

Appellant's grounds of appeal were mainly two:

- (1) It has been submitted that section 32 of the Estate Duty Law read together with sections 80 and 81 of the Wills and Succession Law (Cap. 220) leads one to the conclusion that specific legacies are exonerated from the payment of estate duty and that such estate duty in the same way as the other just debts of the deceased should be paid out of the funds available for general legacies and the residuary estate.
- (2) Section 32 of the Estate Duty Law is not applicable to specific bequests such as the one under consideration and if it is found to apply to the present case the deceased must be understood to have "directed otherwise" by his will in view of the fact that the legacy is a specific one.

Section 81 (1) of the Wills and Succession Law reads:

"Specific legacies shall take rank and be liquidated after the payment of the just debts, and, unless the will shows a contrary intention, shall be liquidated before the general legacies."

Section 32 of the Estate Duty Law reads :

" As between the several persons beneficially interested in the property of a deceased person on which the executor is, under the provisions of this Law, authorised or required to pay estate duty,

all such duty paid in, respect of such property shall be regarded as a debt incurred by the deceased person, and shall, unless such deceased person has otherwise directed by his will, if any, be apportioned among such persons in proportion to the values of their interests in the property of such deceased person."

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It has been argued that by virtue of the last quoted section the estate duty payable on the property of a deceased person is regarded as a debt incurred by the said deceased and its mode of payment out of the estate of the deceased should be the same as the other just debts of the deceased and should be paid off by the funds available for the general legacies and residuary estates without touching the specific legacies as indicated by section 81 (1) just cited. This should be so so long as the estate is solvent, and there are sufficient funds to meet such duty out of the residuary estate and general legacies.

In respect of ground 2 it has been submitted that section 32 does not apply to specific legacies because its scope is limited to such kind of property or interest in property which the testator was not competent to dispose of at the time of his death although such property or interest passes at his death to persons beneficially interested. If we correctly understood him, the counsel for the appellant in his argument before this Court slightly modified this ground of appeal and submitted that section 32 provides for an apportionment of estate duty between the executor, who by section 28 is required to pay estate duty in respect of property of which deceased was competent to dispose at his death, and persons who benefit from other property of the estate, that is property which the deceased was not competent to dispose at his death. In support of this view our attention was directed to sections 28, 29 and 30 of the Estate Duty Law.

It is admitted that appellant is one of the persons beneficially interested in the property of the deceased on which the executor is required to pay estate duty.

It is also clear that Finance Acts dealing with estate duty contain no provision similar to our section 32. However, counsel for the appellant submitted on the authority of *Re Bourne* (1893) 1 Ch. 188, and *Robertson v. Broadbent* (8, A.C. 812) that the specific legacy should be exonerated from payment of estate duty. The principle established in *Robertson v. Broadbent* in the words of Lord Selborne is as follows :

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"The principle of the exemption of personal estate specifically bequeathed is, that it is necessary to give effect to the intention apparent by the gift. If the bequest is of a particular chattel, such as a horse or a ship, it is manifest that the testator intended the thing itself to pass unconditionally and in *status quo*, to the legatee; which could not be if it were subject to the payment of funeral and testamentary expenses, debts, and pecuniary legacies." .

In *Re Bourne Stirling* J. in following *Robertson v. Broadbent* remarked :

" The acts which impose the duty contain no directions as to the property out of which it is payable. In that respect they are very different from the Legacy Duty Act which contains elaborate provisions which shew that the duty is to fall upon the legatee."

It may be gathered from the authorities cited that, the rule in *Robertson v. Broadbent* was adopted as there was no statutory provision prescribing out, of what property the estate duty is exigible. Section 32, already cited, in plain language provides: Subject to a direction to the contrary made by the testator in his will, there should be an apportionment of the estate duty among persons beneficially interested in proportion to the value of their interest in the property of the deceased.

In the present case there is no such direction and the presumption that a testator desires a legatee to get the specific legacy bequeathed to him free of any tax or duty, cannot in our view amount to a direction added to his will and moreover such presumption is considerably weakened owing to the fact that section 32 left it to the testator if he so desired to direct another. mode of payment of the estate duty than the one prescribed and notwithstanding such testator elected to keep silent in his will.

As to the second ground, we have considered carefully the sections of the Law we have been referred to and there appears to be no reason, and indeed it would be inconsistent with the words expressed in the section, to restrict the operation of section 32, either exclusively to the persons who succeed to an interest without the mediation of the executor, or to confine its scope to an apportionment of estate duty between the executor and such persons. As Lord Greene said: -

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"If there is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the, words expressly used." (Re a Debtor (1948) 2 All Eng. Rep. 536).

We may quote also Tindall, C.J., (in Sussex Peerage Case) : –

" The only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in. such case best declare the intention of the lawgiver."

The appeal is therefore dismissed. Costs of litigation here and in the Court below to be borne by the residuary estate.

