TYSER, C.J. & FISHER, J. 1914

March 30

[TYSER, C.J. AND FISHER, J.]

ELENI K. PAPADOPOULOS AND OTHERS

v.

THE LAW UNION AND ROCK INSURANCE COMPANY.

WILLS AND SUCCESSION LAW, 1895—INTESTACY—CLAIM BY HEIRS—OBLIGATION TO TAKE OUT LETTERS OF ADMINISTRATION—MEJELLE, ART. 1642.

The Plaintiffs claimed, as heirs of one Constantino Papadopoulos of Limassol, certain policy moneys due on a policy effected by the deceased with the Defendant Company.

The deceased died intestate. At the hearing before the District Court evidence was called to prove that the Plaintiffs were the persons entitled to the policy moneys as heirs of the deceased. This evidence was uncontradicted but it was contended on behalf of the defendant Company that they could not be called upon to pay to anyone other than a person who had taken out letters of administration under the Wills and Succession Law, 1895.

HELD: *That the Wills and Succession Law, 1895, imposed no obligation to take out letters of administration in cases of intestacy, there being no words in the Law expressly imposing such an obligation, nor anything from which an intention to alter the existing law could be inferred.*

This was an appeal by the Plaintiffs from a judgment of the District Court of Limassol.

The facts sufficiently appear from the head-note and the judgments.

Lanitis for the Appellants.

Russell, K.A., for the Respondent Company.

Judgment: THE CHIEF JUSTICE: This is an action for £500 (afterwards reduced to £181 10*s*. by consent) on a policy of life insurance. The facts are as follows:—

On the 28th July, 1908, the defendant Company granted a policy for £500 to Constantino Panaghi Papadopoulos on his own life. The sum assured was made payable " aux héritiers légitimes du dit Constan- " tin Panaghi Papadopoulos." The following conditions were endorsed on the policy:—

Paiment des sommes assurées. Les sommes assurées sont payable au siège social de la Compagnie à Londres.

Juridiction. Toutes les questions qui pourraient être soulevées à l'occasion de la police seront soumises aux tribunaux de la Chypre.

On the 14th September, 1912, the assured died, and the sum insured became payable. Evidence was called to shew that the Plaintiffs are the *héritiers légitimes* of the deceased. The only question raised before the District Court was, as we are informed by the learned President

of the District Court, whether it is necessary for the Plaintiffs to take out letters of administration before they can recover. This assumes that the Plaintiffs are proved to be *héritiers légitimes*.

The District Court held that the estate of the deceased vested in the Court at the moment of death, and that any person wishing to recover any part of the estate must obtain letters of administration from the Court.

In support of this judgment it was argued by the King's Advocate that English Law applies, because this is a foreign action, and by Sec. 24 the Court in a foreign action shall apply English Law as modified or altered by Cyprus Statute Law. That by English Law letters of administration must be taken out because by Sec. 19 of the Probate Act of 1858 the assets vested in the Court. That therefore the Plaintiffs are bound to take out letters of administration, whether it is necessary by Cyprus Law or not.

By Clause 3 of the Cyprus Courts of Justice Order, 1882, English Law means the Common Law, the Rules of Equity, and the Statutes of general application which were in force in England on the 21st day of December, 1878.

If the Probate Act of 1858 is a Statute of general application within the Order in Council, and the Ottoman Law which was in force before the Occupation is now law in Cyprus, it follows that where a person entitled to inherit from a deceased Ottoman subject by the Law of Cyprus seeks to recover part of the inheritance from a non-Ottoman subject, it must be held that the estate vested in the Probate Court as it previously did in the Ordinary (Sec. 19), if he sues an Ottoman subject we must hold that the estate vested in him as heir on the death of his ancestor. This seems anomalous. It may be the logical result of the Order in Council but if it is so, if an action is brought against a non-Ottoman subject in what Probate Court does the property vest. There was no such Court in 1882 in Cyprus for Ottoman subjects. There is no Probate Court in Cyprus now. There are a variety of District Courts which can grant probate but no Probate Court. It cannot vest in the Probate Court in England. If it did it would only vest in the same way as it did previously in the Ordinary and it never vested in the Ordinary at all.

The Court of Probate Act was in force in England on the 21st December, 1878, but in my opinion it is not a Statute of general application within the meaning of Clause 3 of the Cyprus Courts of Justice Order, 1882, and therefore it is not to be applied by the Court in a foreign action in Cyprus. There was no other Statute bearing on the matter relied on.

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Then the King's Advocate argues that by Cyprus Statute Law it is necessary to take out letters of administration and he refers to the law of 1895.

To construe that Act it is necessary to know what was the law at the time when the Act was passed.

By Art. 1642 of the Mejellé any heir can sue for a debt due to the deceased, and this is an every day occurrence in the Courts of Cyprus. Unless recent legislation has altered the law it would seem clear that any heir could bring an action for the sum due, and after proof judgment would be given for all the heirs. An heir suing would however only recover the amount due to him. It follows that if all the heirs sued they would recover the whole debt.

The law of the Orthodox Church is the same. "The person having "a legal share in the inheritance has the same rights as the dead man" (Armenopoulos, E. Title, H. 54).

By the Roman Law the *sui hoeredes* and by the French Law the *héritiers légitimes* are considered as carrying on the person of the deceased. (3, Planiol, 344).

By Roman Law the property was regarded as the property of the family—the *sui hoeredes* were not heirs of the *pater familias* but of themselves—*αὐτοκληρονόμοι*—being regarded as having a kind of ownership during the life of their ancestor. If a man succeeded *ab intestato* as *suus hoeres* he was also *hoeres necessarius*. The *proetor* protected him from actions if he did not intermeddle with the inheritance, but the *suus hoeres* took the inheritance without any act or exercise of his own will.

So in France the law vests in the *héritiers légitimes* the seisin in the Estate. (3, Planiol, 344).

It is probable that both the law of the Orthodox Church and also the Ottoman Law follow in this the Roman Law. In England the law was always different. I refer to Book V., Chapter 1 of Williams on Executors.

It appears that in ancient times if a person died intestate the King as *parens patriæ* seized the goods of the intestate for the purpose of administering them. That subsequently the Crown invested the prelates with this part of their prerogative and the goods of the intestate vested in the Ordinary. Subsequently by the 31st Ed. III., Statute 1, the Ordinary was compelled to give administration to the next of kin.

It is not necessary to go into all the subsequent enactments. Nothing of this sort ever existed in Cyprus. By the Sher' Law the heirs can sue without taking out probate. There is no express provision in the

law of 1895 to compel the next of kin to take out letters of administration, or to divest the *klironomos* of the seisin of the estate or to vest the estate in the Court. The universal practice is for those entitled by inheritance to sue without taking out letters of administration.

I am of opinion that it would be wrong to hold that a change in the law is to be inferred from the ambiguous nature of certain of the enactments in the Law of 1895, and that the law must be held to be the same as it was before the time of the Occupation. The District Court has power to grant or decide who shall take out letters of administration but it does not follow that the property is vested in the Court. The law would be perfectly clear if the property in dispute were in Cyprus.

Is the money in question assets in England or in Cyprus? It is payable at the seat of the Company in London, but all questions concerning the policy are to be tried in Cyprus. Now if the assets are English assets, letters of administration in Cyprus would be of no use. It would be necessary to take out letters of administration in England. If the money is Cyprus assets letters of administration are not necessary. It only remains to consider the contention that Plaintiffs are not proved to be heirs. The evidence in the Court below was not seriously disputed by the advocate for the Defendants. Nor in my opinion could it be seriously disputed. There could be no doubt on that evidence that the Plaintiffs are the *héritiers légitimes* of the deceased.

FISHER, J.: In the District Court the defendant Company did not really dispute that the Plaintiffs were the persons beneficially entitled to receive the policy moneys, and the evidence called for the Plaintiffs on that, the only issue of fact, was in my view entirely satisfactory. It seems to me therefore that the only question for this Court is that of the status of the Plaintiffs as regards their capacity to sue.

In the events that have happened Cyprus is the place of payment and that being so, in my opinion, that question must be decided by the provisions of Cyprus Law which define the position of the heirs of a deceased person.

Art. 1642 of the Mejellé, in my view, clearly gives the Plaintiffs the right to sue to recover a debt due to the estate. But it is contended that the Wills and Succession Law, 1895, has imposed an obligation to take out letters of administration in cases of intestacy with the result that only a duly appointed administrator can sue on behalf of the estate. There is admittedly no express provision in the law

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to that effect and I can see no reason for holding that it must be held to impose such an obligation by necessary implication, especially in view of the fact that to so hold would involve the view that on the coming into force of that Law Art. 1642 of the Mejellé ceased to have any force in cases such as the present, and that the Law had by implication imposed a burden on the estate of intestate persons to which they were not subject before.

I think therefore that the Plaintiffs are entitled as heirs of the deceased intestate to recover the amount claimed in this action.

Appeal allowed.

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KIAMIL EFFENDI KENAN EFFENDI

v.

KYRIAKO D. SKORDI

SALE OF MORTGAGED PROPERTY—ACTION CLAIMING ORDER FOR SALE—PROCEDURE.

Where a Plaintiff claims on his writ of summons an order for the sale of property mortgaged to him by the Defendant and the Court makes such order the lodging with the Land Registry Office of an office copy of the judgment ordering the sale is sufficient authority to the Land Registry Office to sell the mortgaged property.

This was an appeal by the Plaintiff from an order of the District Court of Famagusta dismissing an application for an order to set aside a sale of immoveable property on the ground that there had been an "omission or irregularity" within the meaning of Sec. 42 of the Civil Procedure Law, 1885.

The Plaintiff was mortgagee of a house and yard belonging to the Defendant and brought an action to recover the amount of the mortgage debt, and to enforce the mortgage. Judgment was given for the amount claimed, and ordering the sale of the mortgaged property. The Plaintiff obtained a writ of execution directing the sale of the property included in the mortgage certificate, without any reservation, and the property was put up to auction and knocked down to one Demosthenes Eustratios for £10 10*s.*, which was alleged to be little more than one-fourth of its true value. There was evidence that the mortgagor had added rooms to the mortgaged property after the date of the mortgage.

Halid Effendi for the Appellant. The effect of the decision of the District Court is that the purchaser is entitled to the property as added to since the mortgage. If so he has acquired it for a very inadequate price. The smallness of the price shews that there was