1946
Dec. 23

REA CALLONA AND ANOTHER v. GEORGE GARANIS AND ANOTHER.

[JACKSON, C.J., AND HALID, J.]

(Dec. 20, 23, 1946)

REA CALLONA AND ANOTHER, *Appellants*,

v.

GEORGE GARANIS AND ANOTHER, *Respondents*.

(*Civil Appeal No.* 3799.)

Will—Construction—"Out of the cash (μετρητὰ) *that will be found on my death"—Meaning of* "μετρητὰ" (*cash*).

The testator by his will, written in Greek, *inter alia*, bequeathed to a married niece a legacy of £1,200 by words which, as they appear in the English translation of the will, were as follows: "also a sum of £1,200 out of the cash that will be found on my death." The Greek word "μετρητὰ" was rendered as "cash" in the English translation. Apart from a house and a field, the testator's estate consisted of cash found in his house, £4. 11*s*. 0*p*.; cash at bankers payable on demand amounting to £225; shares in two companies specifically bequeathed; dividends accrued, £38. 10*s*. 0*p*.; a mortgage debt of £114. 5*s*. 0*p*.; three debts owing from three persons, of which one was a debt of £1,186 payable at sight or on demand; and other small sums, personal effects, etc., valued at £175. The whole estate was assessed for Estate Duty at £5,620, of which £3,210 represented the value of the immovables. The question arose as to the construction of the Greek word "μετρητὰ" translated as "cash".

Held: (1) The testator used the word "μετρητὰ" in his will to mean not only actual currency under his hand at the time of his death but also money which had actually accrued due at the time of his death and money then payable on demand.

(2) Since the Greek word "μετρητὰ" has more than one meaning, in interpreting a will the Court must ascertain as between various usual meanings which is the correct interpretation of the particular document in the light of the context and other relevant circumstances without any presumption that the word bears one meaning rather than another.

Judgment of the District Court of Nicosia (Application No. 110/45) affirmed.

M. Fuad Bey with *Ch. D. Ioannides* for the appellants.

F. Markides for one of the legatees.

G. N. Chryssafinis for the respondent executors.

The facts are fully set out in the judgment of the Court which was delivered by:

JACKSON, C.J.: This is an appeal from the decision of the Full District Court of Nicosia interpreting certain provisions in a will. The testator was a Cypriot Greek and died on the 9th March, 1944. His will was dated the 31st December, 1943, a little less than two and a half months before his death. The will was written in Greek and, in accordance

with practice, no English translation was registered with it when it was admitted to probate. An English translation was prepared in the Registry of the District Court for the use of the Court which comprised an English President. That translation is attached to the record; it is not certified but reference appears to have been made to it by the Judges in the District Court, and by the parties, at the hearing of the summons, and no material objection was taken to its accuracy either during those proceedings or at the hearing of this appeal.

The principal beneficiaries under the will were three named nieces of the testator. Two of them were unmarried at the date of the will. The third was then married and living abroad. The testator demised his house in Nicosia to his two unmarried nieces in equal undivided shares. He also divided, approximately equally among his three nieces, certain shares which he held in two limited companies trading in Cyprus. To the married niece, who was to have no share in the house in Nicosia, the testator bequeathed a legacy of £1,200 by words which, as they appear in the English translation of the will, were as follows: "also a sum of £1,200 out of the cash that will be found on my death." The words in the will itself indicating the source from which the legacy was to be paid are "εὑρεθησομένων μετρητῶν" and the case turned upon the interpretation to be given to the second of these two words which was rendered as "cash" in the English translation.

Having made the bequests already mentioned, the testator went on to direct that, "after my above wishes are carried out", £100 was to be paid to his old school, as a token of his gratitude to it, and £100 to a named nephew in America. There was provision of "about £200" for the purchase of a family tomb and a final direction that all the remainder of the testator's estate was to be divided between his three nieces in equal shares.

It is to be observed that the clause of the will bequeathing the two legacies of £100 contains at its beginning words which in the English translation are as follows: "from the cash left over on my death." These words clearly apply to the first of the two legacies of £100, the legacy to the testator's old school, and may possibly apply to the second. It may be that the words in this clause translated as "on my death" should be translated as "after my death", but nothing turns on that difference. The point to be noted is that the word translated as "cash" is the same word as the testator used when bequeathing the earlier legacy of £1,200 to his married niece. In both instances the word is used in the plural and in the nominative plural that word is "μετρητά."

1946
Dec. 23

REA CALLONA AND ANOTHER v. GEORGE GARANIS AND ANOTHER.

Apart from his house in Nicosia and a field in the Limassol District, the testator's estate comprised, at the time of his death, the following items which appear in the inventory. A sum of £4. 11*s*. in cash found in his house; a sum of £225 at his bankers, payable on demand; the shares in two companies already mentioned; a sum of £38. 19*s*. payable as dividends on the shares in one of the two companies; a mortgage debt of £114. 5*s*.; three debts owing from three named debtors of which one was a debt of £1,186 payable at sight or on demand. There were also small sums representing rent due to the testator and a refund of Income Tax, and there were personal effects and household goods valued at £175. The whole estate was assessed for Estate Duty at £5,620, of which £3,200 represented the value of the house and £10 the value of the field.

As has been mentioned, the testator died a little less than two and a half months after the date of his will, and there was evidence to the effect that there had been no substantial change in the composition of his estate during that interval.

The question upon which the executors particularly wished for guidance was whether the sum of £225 in the testator's bank, payable on demand, and the debt of £1,186, also payable on demand, should be included in the testator's "μετρητὰ" and so applicable to the payment of the first pecuniary legacy of £1,200 to his married niece.

It was argued for the two unmarried nieces that the word "μετρητὰ", as used by the testator, included nothing but the actual cash found in the testator's house, namely, a sum of £4. 11*s*. If that argument is sound, nothing more will be available for the payment of the legacy of £1,200 to the married niece and nothing at all for the payment of the legacy of £100 to the testator's old school. The same might be the fate of the legacy of £100 to the testator's nephew. All the property, except the house and shares specifically bequeathed and what might be necessary to provide about £200 for the construction of a family tomb, will fall into the residue of the estate to be divided between the three nieces in equal shares. The married niece will obviously fare considerably worse than the other two. She will get a good deal less from the estate than the others in any case, because of the greatly enhanced value of the house which the two unmarried nieces take in equal shares. But one of the questions at issue is whether, in addition, the specific legacy of £1,200 to her is to be deemed to have lost practically the whole of its effect.

Turning now to the meaning that should be given to the word " μετρητὰ " as used by the testator, it must first be observed that the will is written in a language of which one of us who compose this bench is unfortunately entirely ignorant. Nor is that language the mother tongue of my learned colleague and he authorizes me to say that he does not consider himself proficient in it. It is therefore necessary that we should have the assistance of expert witnesses who are conversant with both languages. We cannot look only at the uncertified translation, prepared in the registry of the District Court, in which the word " μετρητὰ " is rendered as " cash ". If authority were needed for so self-evident a proposition, it could be found in the English case of In *re Manners*, (1923, 1 Chancery Division, p. 220).

Fortunately there is such evidence upon the record. There was the evidence of the Manager of the Bank of Cyprus in which the testator had been employed for 27 years, until fifteen months before his death. There was also the evidence of a Cypriot Greek accountant and there is statement of the meaning of the word given in the judgment of the District Court in which one of the two Judges was a Cypriot Greek.

The Bank Manager, called by the Executors, said that the word " μετρητὰ " has more than one meaning and that Treasury Bills and other Bills may be included in it. He said that in Bank balance sheets the word is used to cover deposits with other Banks, payable on demand, as well as money in the Bank itself. He added, however, that a bond payable after three months would not be included in " μετρητά ".

The accountant, called on behalf of the unmarried nieces, said that the word meant " ρευστὰ χρήματα ", or money available at any moment. He said that cash in hand would be " μετρητὰ ", but that a bond would not, independently of the solvency of the debtor.

The judgment of the District Court, in which, as we have said, one of the Judges was a Cypriot Greek, discussed the meaning of the word, apart from its use in the will. They said that, in addition to its narrow meaning, " hard cash or cash in hand ", it had also a wider meaning equivalent to the wide sense of the word " money " in English, and that in this sense the word " μετρητὰ " would include " deposits with Banks, shares and bonds and other debts in money ".

It seems clear from those statements that the word " μετρητὰ " has more than one meaning. That being so, in determining the particular meaning to be given to it in this particular will, we must not start with a presumption

1946
Dec. 23

REA CAILONA AND ANOTHER v. GEORGE GARANIS AND ANOTHER.

that it bears one meaning rather than another. That rule of interpretation was laid down both by Lord Simon, L.C., and by Lord Atkin in the House of Lords in the case of *Perrin* v. *Morgan* which was decided in 1943 (All England Law Reports, 1943, I, 187). In that case the Court had to interpret a direction in a home-made will disposing of " all the monies of which I die possessed ", and containing no residuary bequest. The Court held that those words included stocks, shares and debentures; securities of municipal corporations; stocks or funds of the United Kingdom or of the Dominions and in fact all the net personalty of the testator's estate of which the will did not otherwise dispose.

There are certainly substantial differences between that case and this, but certain general rules of interpretation were laid down which we think we must follow in the case before us. Referring to the use in a will of a word (in that case " money "), which has a diversity of meanings, Lord Atkin said, " . . . . . the construing Court has to ascertain what was meant, being guided by the other provisions of the will and the other relevant circumstances, including the age and education of the testator, the nature of his property at the date of his will, his relations to the beneficiary chosen, whether of kinship or friendship, the provision for other beneficiaries and other admissible circumstances. Weighing all these the Court must adopt what appears the most probable meaning . . . No will can be analysed *in vacuo* . . . . " (*supra* p. 194).

A number of cases were cited to us on behalf of the appellants. A large number were cited to the House of Lords in the case of *Perrin* v. *Morgan* (*supra*) and in commenting on that fact, the Court quoted the following passage from the judgment of Lord Wensleydale in the case of *Abbot* v. *Middleton* (28 L.J. Chancery 33) :—

> " A great many cases were cited at the bar, as they always are when the question is on the construction of wills. Generally speaking, these citations are of little use. We are no doubt bound by decided cases, but when the decision is not upon some rule or principle of law, but upon the meaning of words in instruments, which differ so much from each other in the context and the peculiar circumstances of each case, it seldom happens that the words of one instrument are a safe guide in the construction of another . . . "

That quotation is specially applicable to the case before us, for most of the authorities cited to us related to meanings given to the English word " money " and kindred

words in particular wills, while we are concerned with the meaning to be given to a particular Greek word in a particular will the whole of which was written in Greek.

Although we have examined all the cases and text books cited to us, we have not found it necessary to base our conclusions on any authority than the case of *Perrin* v. *Morgan* (*supra*), which was a decision upon rules and principles of law in the construction of wills, as well as upon the construction of the particular will with which that case was concerned. We have borne in mind not only the rules of construction that we have already quoted from that case but also the following statement of the principles of construction which appears in the judgment of Lord Simon, L.C. :—

> "The fundamental rule in construing the language of a will is to put upon the words used the meaning which, having regard to the terms of the will, the testator intended. The question is not, of course, what the testator meant to do when he made his will, but what the written words he uses mean in the particular case—what are the 'expressed intentions' of the testator."

Turning again to the will, with those principles in mind, one finds that, except for two small legacies of £100 each to the testator's old school and to a nephew in America, his three nieces are the only beneficiaries named. Apart from a sum of £200 for the provision of a family tomb, the whole of the estate was to be divided between them. It was expressly declared that the residue was to go to the three of them in equal shares and the specific bequests indicate very strongly, in our opinion, the testator's intention to treat his three nieces alike. One was married and abroad and the Nicosia house was given equally to the other two. It seems quite clear that the legacy of £1,200 to the married niece was intended by the testator to balance the equal shares in the Nicosia house which would go to the other two. Because of fluctuations in the value of house property the testator could not, of course, be sure that his division of his estate into three shares would in the event prove to be an equal division, but he seems quite clearly to have intended that it should be as nearly equal as he could arrange. It was therefore a very important part of his expressed intention, as we read his will, that this comparatively large pecuniary legacy of £1,200 should actually be paid in full.

Could he possibly have contemplated that at the time of his death he would have in his house, or directly under his hand in some similar place, a large enough sum in actual currency to pay that legacy in full? In addition there was

1946
Dec. 23

REA CALLONA AND ANOTHER v. GEORGE CARANIS AND ANOTHER.

the legacy of £100 to his old school, for which he showed so strong an affection, and possibly also the legacy of £100 to his nephew, to be paid out of a source which the testator described by the same word, "μετρητά". We know the composition of his estate at the time of his death and there was evidence to show that it had not substantially changed since his will was made.

It would be very unusual, to say the least, for any man, even a very rich man, which the testator certainly was not, to keep under his hand a sum in actual currency as large as £1,300 or £1,400. Quite apart from the fact that, at the time when the will was made, the hoarding of currency was penalised by Defence Regulations, there is no evidence whatever to suggest that the testator dealt with his money in that way and strong evidence to show that he did not. Except for a moderate balance of £225 in his current account at his Bank at the time of his death, and the very small sum of £4. 11*s.* in his house, the whole of his modest capital which did not exceed £2,000, apart from his immovable property, was out at interest, and the largest single item in his investments, the loan of £1,186, which is the principal item in dispute in this case, was at call.

Using words which we have already quoted from Lord Simon, we have to give to the word "μετρητά", which is capable of several meanings, the particular meaning which, having regard to the terms of the will, the testator intended. Shall we be doing that if we hold, as the appellants ask us to hold, that this particular testator used the word to mean that his legacy of £1,200 to his unmarried niece, so important to his scheme of division between the three nieces, was to be met out of such currency as he might have in his house, or directly under his hand, at the time of his death, and only to the extent that such currency might be sufficient to meet it? In this case that currency was £4. 11*s.* In our view such a construction would violently defeat the obvious intention of the testator as expressed in his will.

In the case of *Perrin* v. *Morgan* (*supra*) Lord Atkin referred to the thraldom, as he called it, which had bound the Judges in some earlier cases, a thraldom which he though had often been self-imposed, to give a meaning to wills which they knew to be contrary to the testator's intentions. And he referred to the place of certain earlier decisions in what he called a competition for bad pre-eminence in departure from the true meaning of wills. We are fully satisfied that we would win for ourselves a very high place in that competition if we construed the will before us as the appellants ask us to do. But since the case of *Perrin* v. *Morgan* that thraldom is no more.

We have still to ask ourselves what property of this testator should be included in the word "μετρητά", as used in his will, if the word is not to be limited to actual currency found directly under his hand at the time of his death. Clearly, in our opinion, the word must include the balance of £225 at his Bank payable on demand. But is it to be limited to that? We think not. The word is capable of meaning more than that; the testator knew its various meanings; for 27 years he had been an official in a Bank and the word is given a wider meaning in banking practice. One would expect such a man to know very well what property he had and what form it took. He even mentions in his will the precise number of shares that he had in different trading concerns and the precise number that he had in different categories in the same concern. He can hardly be supposed to have been so ignorant of the amount of the average balance in his current account at his bank that he could have believed that this balance, actually £225 at his death, would ever amount to £1,300 or £1,400 out of his total capital of less than £2,000, apart from immovable property.

All those considerations, arising out of the actual terms of will, which led us to conclude that the testator used the word "μετρητά" to mean more than actual currency under his hand at the time of his death, compel us to conclude also that he used it to mean more than his actual balance in his current account at his Bank at the time of his death. To hold otherwise would be to defeat what seems to us to be the clearly expressed intentions of the testator.

The District Court decided that the testator used this particular word in his will to mean, not only actual currency under his hand at the time of his death but also "money" due to him. If by those concluding words the Court meant, as we think they did, money which had actually accrued due at the time of his death and money then payable on demand, we think they were entirely right. Applying that decision to those items in the inventory of the testator's estate which were not specifically disposed of, the word "μετρητὰ" would include the sum of £4. 11*s*. found in his house at the time of his death; the balance of £225 at his Bank payable on demand; the sum of £38. 10*s*. representing dividends on shares if those dividends had actually accrued at that time; the sum of £17. 10*s*. in respect of rent if, again, that amount was actually then due, and the sum of £4. 6*s*., being a refund of income tax. The word would also include the debt of £1,186 which was shown by evidence to be payable on demand. There was no evidence as to three other items, Nos. 7, 8 and 10 in the inventory, being three debts amounting together to

1946
Dec. 23

REA CALLONA AND ANOTHER v. GEORGE GARANIS AND ANOTHER.

£226. 8*s*. 7*p*. If they were payable on demand, they also, like the other items we have mentioned, would be available to meet bequests which the testator directed to be paid from his "μετρητά". The field in Limassol, of course, would not.

It follows from what we have said that in our opinion this appeal must be dismissed. It seems somewhat of a hardship that the costs of an appeal in which there is so little merit should have to come out of this small estate, but we feel that, on the whole, we must so order and if, in the event, there is a residue out of which they can be paid, two-thirds of them will fall on the appellants and the hardship will be mitigated to that extent.

1947
July 7

[GRIFFITH WILLIAMS, Ag. C.J., AND MELISSAS, Ag. J.]

(July 7, 1947)

THE CLUB "LIMASSOL PATRIOTIC UNION",
Appellants,

v.

DEMETRIOS COUVAS, *Respondent*.

(*Civil Appeal No.* 3782.)

Practice—Action against Club—Club name—Corporate body—Service on secretary of club—Registration of Clubs Laws, 1930 and 1933—Corporate Bodies (Immovable Property Registration) Laws, 1908 and 1931.

The appellants, who were a club registered under the Registration of Clubs Laws, 1930 and 1933, were sued in the club name for the recovery of a sum of money, and the writ of summons was served on the secretary of the club. The appellant club, having entered a conditional appearance, applied to the District Court to set aside the writ and service thereof, on the ground that they could not be sued in the club name. The trial Court held that a club is a corporate body and that service of the writ on the secretary was good.

Held, that a club is not a corporate body either by virtue of the Corporate Bodies (Immovable Property Registration) Laws, 1908 and 1931, or the Registration of Clubs Laws, 1930 and 1933, and, therefore, the appellant club could not be sued in the club name; and that service of the writ on the secretary was bad and should be set aside.

Judgment of the District Court of Limassol (Action No. 246/45) reversed.

Z. Rossides for the appellants.

J. Eliades for the respondent.