

THE HIGH COURT

1987 No.114Sp

IN THE GOODS OF BERNARD LOUIS ROWAN, DECEASED

BETWEEN

JOSEPH ROWAN

Plaintiff

and

VERA AGNES ROWAN
MICHEL LOUIS ROWAN
JACQUELINE CATHERINE DAHAN
CAROLINE ANNE ROWAN
GERALDINE MARY ROWAN
BRENDAN O'CONNELL

Defendants

J U D G M E N T

DELIVERED BY THE HONOURABLE MR JUSTICE DECLAN COSTELLO
ON 26TH JUNE 1987

These proceedings relate to the estate of the deceased Bernard Louis Rowan who died in France on 22nd April 1984.

The deceased had left a Will in which he appointed his brother, the Plaintiff in these proceedings, his executor, and he made a number of bequests in the Will, including a bequest for Masses and bequests of his estate to some of his children, leaving the residue of the estate to Mr Joseph Rowan.

Subsequently proceedings were instituted here in this country, and I heard them and gave judgment on 17th December 1986 in relation to them. The question that arose for determination in those proceedings was the domicile of the deceased at the time of his death. I made an order determining the questions asked by answering them to the effect that the deceased had died domiciled in France.

It appears that the deceased had considerable assets in France, in Switzerland and in this country amounting to £100,000.

The Plaintiff in these proceedings had been the Defendant in proceedings in France arising on the question as to whether or not the deceased had died domiciled in France. The Plaintiff in these proceedings defended those proceedings, arguing, as he did strenuously before me, that the deceased's domicile was Ireland.

The Court of first instance in France decided against the Defendant but made no order as to costs in that it directed that no costs would be paid out of the estate to any of the parties. Mr Rowan, the Plaintiff in these proceedings, appealed that order and by a judgment of the Court of Appeal in Versailles on 4th November 1986 his appeal was dismissed. The language used in the judgment is strong. On page 9 of the translation the judgment reads:

"Considering that, by attempting, strictly for his own personal interests, to justify by arguments, which are nothing but mere quibbling, the application of Irish Law or subsidiarily Swiss law to the settlement of his brother's succession, Mr Joseph ROWAN, executor and specific legatee, has acted improperly and caused a clear prejudice to the ROWAN heirs, which prejudice results from the delay brought about in preventing enjoyment of the assets inherited; considering that having regard to the elements

of appraisement available to the Court, it behoves the Court to condemn Mr Joseph ROWAN to pay the aforesaid heirs the sum of Francs 50,000 by way of compensation on this count;"

The order of the court followed this finding.

The decision of the Court of Appeal was that Mr Rowan had acted improperly and caused prejudice to the heirs of the deceased and that he was required to pay damages to them by way of compensation for the loss which they suffered by his improper conduct.

In these proceedings Mr Rowan now asks this Court to hold that he is entitled to be paid out of the Irish assets the costs incurred by him in the Court of first instance in France, the 50,000 Francs which were ordered to be paid by him personally and, as I understand it, he also seeks the costs of the appeal to be paid out of the assets here in Ireland. There is a further question in relation to legal costs incurred in Switzerland to which I will refer in a moment.

The situation is an unusual one and Counsel have been unable to obtain any authority directly in point, but it seems to me that I should consider this application under two different headings. Firstly, it seems to me that I should consider it on the basis of some of the decisions to which Mr McCracken referred me, namely, as to whether liberty would have been granted if the Court had been asked for liberty to defend the French proceedings.

In the light of my own judgment in the previous case and in the light of the facts which were the basis for that judgment, in my view it is extremely unlikely that the Court would have given liberty to Mr Rowan to have defended the French proceedings. The French proceedings were considering whether or not the deceased died domiciled in France. In considering whether or not Mr Rowan should defend those proceedings the Irish Court would, I am quite sure, have gone very carefully into the legal position before allowing the executor to incur costs out of the estate in proceedings which would be determined under French law, and the situation could arise in which the Court might find domicile in Ireland but under French law a decision different to this might well have been arrived at.

From the facts disclosed in the previous proceedings, and had those same facts been disclosed in Irish proceedings, it seems to me very unlikely that the Court would have allowed Mr Rowan to have defended the French proceedings.

For that reason it seems to me that the application in relation to the costs incurred in the French proceedings should not now be allowed.

There is a second basis on which I think I should not allow these costs and that arises from the comity of courts. The French Court had seisin of the proceedings in France. The French Court of first instance made no order in relation to Mr Rowan's costs in the French Court and what Mr Rowan is now seeking to do is, in fact, to get this Court to substitute a view of the costs in the French proceedings which did not accord with the French Court's view.

It would be contrary to the comity of courts that this Irish Court should allow Mr Rowan costs which the French Court, having heard all the evidence and legal aspects of the matter, did not allow.

The question of the appeal is very straightforward indeed. It is not for this Court to decide now whether or not it was wise for Mr Rowan to have appealed in the light of what occurred. The French Court has made very clear its view. It had all the evidence before it and all the documentation in the case and all the arguments which presumably were advanced. Having heard all these matters, the French Court came to the conclusion which I have already quoted. In my view it would be wrong for this Court to take a different view and to hold that in some way Mr Rowan should be indemnified out of the assets for acting wrongly, according to the French Court, in the way he did. It would be wrong to take out of the pockets of the beneficiaries a sum for damages which the French Court have considered Mr Rowan should pay.

I do not think this Court should substitute a view on whom the liability for those costs should fall different to that of the French Court. The same applies to the costs in the Court of Appeal.

The Defendant in the Court of Appeal proceedings in France, Mr Rowan, is liable to pay the costs and I do not think this Court should substitute its view of where liability for those costs should fall for those of the French Court.

I am of the opinion, therefore, that I should answer the questions against Mr Rowan's contentions and so I will answer 'No' to the first question (paragraph 8(a) in the Affidavit, paragraph 1 in the Summons). I will return to question 2 in a moment. I will answer 'No' to question 3. I will answer 'No' to question 4. Question 5 does not arise because I understand the balance is going to be paid to the French administrator. On consent I will order that the surplus assets be handed over to the French Administrator.

As to question 2, this relates to obtaining advice on proceedings in Switzerland, or the advisability of taking proceedings there, and it has not been contested, and I am told that the costs will not exceed £1,000, so I will answer that question in the affirmative.

A. Kenny
Official Stenographer
26th June 1987

approved
JK