

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of John McNeil (now deceased) and Others v. Monroe, from the Supreme Court of Newfoundland; delivered the 14th May 1904.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD LINDLEY.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

The action which has given rise to this Appeal was brought by the Respondent James Harvey Monroe, to recover certain fully paid shares in the Colonial Cordage Company, Limited, as having been specifically bequeathed to him by the will of his brother, Moses Monroe.

The bequest was in the following terms:—" I  
" give and bequeath to my brother James Harvey  
" Monroe all the shares I may possess at the  
" time of my demise in the Colonial Cordage  
" Company, Limited, on condition that he do to  
" the satisfaction of the other executors and  
" of my wife Jessie Gordon Monroe (born  
" McMurdo) relieve my executors and my estate  
" of and from any and all liability for or on  
" account of any security upon or under which  
" I am or may be or become in any way liable  
" for or on account of the said Company to my  
" brother John Monroe."

The testator died on the 19th of May 1895. His will was made on the 16th of July 1887. It

was confirmed by a codicil dated the day before his death by which the first three Appellants were appointed executors in lieu of those named in the will.

With the exception of a policy of insurance for \$10,000 and some personal effects the whole of the testator's estate at the date of his will and at the date of his death was embarked in the business of a general merchant carried on under the style or firm of "M. Monroe." The business originally belonged to the testator. In 1883 he took the Appellant Robert K. Bishop into partnership. On the 16th of July 1887, the day of the date of the will, the testator and Bishop entered into articles of partnership for 10 years. The testator was to be credited with four shares and Bishop with one share in the partnership stock. In the event of the death or retirement of either partner before the expiration of the partnership term all the property of the partnership was to become the sole property of the testator or his personal representatives on payment out of the value of Bishop's share. Part of the partnership assets consisted of 130 shares, fully paid, in the Colonial Cordage Company which were standing in the testator's name at the date of his will and at the date of his death. These 130 shares were the subject-matter of the Plaintiff's claim, as presented to the Court at the hearing of the action.

In the latter part of 1894 there was a commercial panic in Newfoundland. The leading banks stopped payment and property of every kind was greatly depreciated. The firm of M. Monroe, though its assets were still worth more than twenty shillings in the pound, was unable to meet its current engagements. So the partners executed an assignment to the Appellant Alfred G. Smith in trust for their

creditors, and the creditors shortly afterwards agreed to accept payment by instalments spread over a considerable period, the business of the firm being carried on by the partners as before. After the testator's death the business was continued by Bishop, and the liabilities of the firm to the creditors were duly met as they matured. Bishop associated with himself in the business the Appellant Walter S. Monroe who was a nephew of the testator; and the two other executors, McNeil and Pitts, and the Appellant Jessie Gordon Monroe, the residuary legatee under the will, assigned to Bishop and Walter S. Monroe all the partnership assets, ignoring altogether the Plaintiff's claim under the bequest in his favour.

When the Plaintiff brought this action to enforce his claim it was resisted on various grounds, but ultimately a reference was made to the Master who was directed to take the usual accounts of the testator's estate and of the dealings between the partners in the firm of M. Monroe, and to inquire particularly as to the shares which were the subject-matter of the action. The accounts were duly taken and the Master reported that the estate was sufficient "to leave the shares in question available for the bequest to the Plaintiff."

A further enquiry was afterwards directed in reference to the condition attached to the bequest. The Master reported that the Plaintiff had, to the satisfaction of the executors of the late Moses Monroe and of his widow Jessie Gordon Monroe, relieved the said executors and the estate of the said Moses Monroe of and from any and all liability for or on account of any security upon or under which the said Moses Monroe was or became in any way liable for or on account of the Colonial Cordage Company to his brother the late John Monroe.

On the 15th of March 1902 the Plaintiff moved that the two Reports of the Master be confirmed and applied for judgment. The learned Counsel for the Defendants consented to the confirmation of both Reports, and thereupon judgment was given for the Plaintiff for the 130 shares with costs.

From this judgment the present Appeal is brought. It is not easy to discover any ground for the Appeal. The judgment was a matter of course, founded as it was on the Master's Reports which were confirmed by consent. It was indeed suggested by the learned Counsel for the Appellants that the testator was not possessed of any shares in the Colonial Cordage Company at the time of his death because he had not complete dominion over the only shares he had in the Company. But these 130 shares were standing in his name and they belonged to him absolutely subject only to his partnership obligations to Bishop and to the rights of creditors under the assignment to Smith and the subsequent arrangement. When once all partnership obligations were satisfied or the executors were in a position to satisfy them, and the claims of the creditors were completely discharged, the shares became available for the bequest in favour of the Plaintiff.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed.

The Appellants will pay the costs of the Appeal.

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