

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Agnes Allardice and another v. Elizabeth Allardice and others, from the Court of Appeal of New Zealand; delivered the 27th July 1911.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD SHAW.

LORD MERSEY.

LORD DE VILLIERS.

LORD ROBSON.

[DELIVERED BY LORD ROBSON.]

This case arises under the New Zealand Protection Act, Part 2 (No. 60 of 1908), which provides that in cases where any person dies leaving a will and without making adequate provision therein for the proper maintenance and support of his wife, husband, or children, the Court may, at its discretion, order that such provision as it thinks fit should be made out of the estate of the testator for such wife, husband, or children.

The Appellants are the executors and trustees of the will of the late James Allardice, the first Appellant, Agnes Allardice, being his widow. The first Respondent, Elizabeth Allardice, was the first wife of the testator, James Allardice, and was divorced from him on her own petition in the year 1905. The remaining Respondents

are the three daughters and two sons of the testator by his first wife, Elizabeth. The testator married his second wife on the 4th February 1906, and five days afterwards made his last will, whereby he left the whole of his estate on trust for the sole benefit of his second wife and her children.

He had begun life as a labourer, but at the time of his death owned property producing a net income of some 600*l.* a year, and estimated to be of a capital value of between 20,000*l.* and 30,000*l.*

So far as his first wife was concerned, a proper maintenance was secured to her for life by the decree in the divorce proceedings. The three daughters had married persons in a humble station of life with very small and precarious incomes, and the two sons were able-bodied men, capable of maintaining themselves in the future as they had done for some years before their father's death.

Under these circumstances, the Trial Judge, Mr. Justice Chapman, was of opinion that the claim put forward by the Respondents wholly failed. An appeal was thereupon made to the Court of Appeal, who decided that the sum of 60*l.* a year should be paid out of the estate of the testator to one daughter and 40*l.* a year to each of the other two daughters during their lives.

Their Lordships see no ground upon which it can be said that the Court of Appeal have not properly exercised the discretion with which they are entrusted. It would serve no useful purpose to go again over the matters of fact so carefully analysed by the learned Judges of the Courts below, or to deal in detail with the circumstances and condition in life of each claimant. These are essentially questions for the discretion of the local Courts who are entrusted with the administration of the Act. They are well acquainted

with all the local conditions as to employment, standard of living, and other matters necessary to be borne in mind in adjudicating on questions of this class, and their Lordships would be slow to advise any interference with the discretion founded upon such knowledge. Nor do they see any reason to differ from the learned Judges of the Court of Appeal in the general view they take as to the proper scope and application of the powers conferred upon them by the Act.

Their Lordships will, therefore, humbly advise His Majesty that this appeal should be dismissed with costs. As regards the Petition for special leave to appeal from the Order of the Court of Appeal imposing certain conditions upon granting leave to appeal, under the circumstances it is unnecessary to advise His Majesty to make any Order. The costs of that Petition will be costs in the Appeal.

In the Privy Council.

AGNES ALLARDICE AND ANOTHER

v.

ELIZABETH ALLARDICE AND OTHERS.

DELIVERED BY LORD ROBSON.

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