

25, 1960

IN THE PRIVY COUNCIL No.9 of 1959.

ON APPEAL FROM THE FEDERAL SUPREME COURT
(BARBADOS)

(APPELLATE JURISDICTION)

(On transfer from the West Indian Court
of Appeal)

IN THE MATTER of the ESTATE OF GERTRUDE
CODMAN GILBERT-CARTER, Deceased

A N D

IN THE MATTER of the ESTATE AND SUCCESSION
DUTIES ACT, 1941.

B E T W E E N :-

THE COMMISSIONER OF ESTATE
AND SUCCESSION DUTIES Appellant

- and -

TREVOR BOWRING Respondent

UNIVERSITY OF LONDON
W.C.1.
- 7 FEB 1961
INSTITUTE OF ADVANCED
LEGAL STUDIES

50938

CASE FOR THE RESPONDENT

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1. This is an appeal from the judgment of the Federal Supreme Court of the West Indies (Sir Eric Hallinan C.J. and Rennie J. Archer J. dissenting) allowing the appeal of the Respondent from the judgment of the Court of Chancery (Sir Allan Collymore V.C.) and ordering that the Appellant be entitled to recover from the Respondent the sum of \$17,386.99 together with interest in accordance with the provisions of the Estate and Succession Duties Act, 1941.

RECORD

2. On the 16th day of June 1936 Gertrude Codman Gilbert-Carter executed

p.8 1 14 to
p.12 1 20

RECORD

a deed of settlement in the Commonwealth of Massachusetts in the United States of America.

p.12 11 1-3

3. Paragraph 8 of the said deed of settlement which was not amended is as follows :

" - - - This Trust is executed in the Commonwealth of Massachusetts and shall be governed by the laws thereof"

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p.12 1 21
to p.21

4. The said deed of settlement was amended by the said Gertrude Codman Gilbert-Carter from time to time between the 16th day of June 1936 and the 31st day of August 1951.

p.6 1 43 to
p. 7 1 4

5. The said Gertrude Codman Gilbert-Carter died in the Commonwealth of Massachusetts in the United States of America on the 12th day of November 1953 leaving a will dated the 15th day of March 1952 by which she appointed the Respondent one of her executors.

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p.2 1 20
to p.3

6. On the 27th day of June 1955 the Commissioner of Estate and Succession Duties of Barbados assessed the Respondent as executor of the will of the said Gertrude Codman Gilbert-Carter as an accountable party to the extent of \$137,723.28.

p.6 1 18 to
p.8 1 10

7. On the 28th day of September, 1955 the Respondent appealed from the said assessment of the Commissioner of Estate and Succession Duties to the Court of Chancery of Barbados.

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p.14 11
22-27

8. At the time of her death paragraph 4 of the said deed of settlement read as follows :-

"The Donor during her lifetime shall have the right at any time or times to amend or revoke this trust, either

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in whole or in part, by an instrument in writing, provided, however, that any such amendment or revocation shall be consented to in writing by the Trustees".

RECORD

9. Sections 20 (1) and 3 (a) of the Barbados Estate and Succession Duties Act, 1941 reads as follows :-

Section 20 (1).

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"The executor of the deceased shall pay the estate duty in respect of all property of which the deceased was competent to dispose at his death, on delivering the estate duty affidavit to the Commissioner, and may pay in like manner the estate duty in respect of any other property passing on such death not under his control, if the persons accountable for the duty in respect thereof request him to make such payment; but an executor shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received."

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Section 3 (a).

3. "For the purposes of this Act -

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(a) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris enable him to dispose of the property, including a tenant in tail whether in possession or not, and the expression "general power" - includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable

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RECORD

by instrument inter vivos or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as a mortgagee"

10. It is not disputed that the said Gertrude Codman Gilbert-Carter was at the time of her death, domiciled in Barbados and that the deed of settlement is governed by the laws of the Commonwealth of Massachusetts. 10

p.113 11
34-38 11. On the 16th day of October 1956 the Court of Chancery (Sir Allan Collymore V.C.) dismissed the Respondent's appeal.

p.113 11
12-18 12. In the course of his judgment, Sir Allan Collymore V.C. said :

"I can find no standard of duty expressed or implied in the trust instrument and I think that in these circumstances the trustees owed a duty to the settlor to give consent to any revocation or amendment made by her and had no other duty provided they acted in good faith and from proper motives." 20

pp.114-116 13. On the 18th day of January 1957 the Respondent appealed from the decision of the Court of Chancery to the West Indian Court of Appeal whose functions were taken over by the Federal Supreme Court of the West Indies on the 17th day of February 1958. 30

p.117 14. On the 18th day of July 1958 the Federal Supreme Court of the West Indies ordered that the Appeal be allowed and the Appellant be entitled to recover from the Respondent the sum of \$17,386.99 together with interest in accordance with the provisions of the Estate and Succession Duties Act, 1941. And that the Respondent be entitled to costs on the 40

higher scale both in the Federal Supreme Court and in the Court of Chancery of Barbados.

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10 15. A majority of the Federal Supreme Court (Sir Eric Hallinan C.J. and Rennie J.) held that the Vice Chancellor of Barbados had misdirected himself on the law of Massachusetts and that there was no evidence to support his finding of the law of Massachusetts.

p.123 11
23-28
p.127 1 26
to p.128
1 2

20 16. A majority of the Federal Supreme Court (Sir Eric Hallinan C.J. and Rennie J.) held that the Trustees had a wide discretion in giving or withholding their consent to any amendment or revocation of the deed of settlement by the Settlor; that the Courts of Massachusetts would not control that discretion exercised honestly and from proper motives and that such discretion in the trustees constituted a fetter on the Settlor's right or power and therefore that she was not competent to dispose of the trust property as she thought fit.

p.124 11 32-
40 p.128 11
35-46

30 17. In his dissenting judgment Archer J. felt himself unable to say with any confidence that the law of Massachusetts on the point could be ascertained but assuming that it could there was, in his view, evidence upon which the Vice-Chancellor of Barbados could have found that it was as he stated it to be.

p.136 11
37-47

18. In his dissenting judgment Archer J. said :

p.144 11
34-42

40 "The appellant does not, of course, say that no estate duty is payable by anybody on the trust fund but he is concerned to pay estate duty at the lowest possible rate, and, in this connection it is difficult to see why the respondent did not

RECORD

rest his case on the passing of the trust fund and on the appellant's liability to pay at the higher rate of duty to the extent of the assets in his hands".

19. On behalf of the Respondent it will be contended that the judgment of the Federal Supreme Court of the West Indies is right and should be upheld for the following and other

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REASONS

1. (a) Because the law of Massachusetts applicable is that the Trustees of the Settlement had a wide discretion in giving or withholding their consent to any amendment, or revocation proposed by the Settlor and the Courts of Massachusetts would not control the Trustees in the exercise of their discretion if they acted honestly and from proper motives.

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(b) Such a discretion in the Trustees constituted a fetter or restraint upon the settlor's right to amend or revoke the trust as a result of which she was not competent to dispose of the trust property as she thought fit within the meaning of Section 3 (a) of the Estate and Succession Duties Act, 1941.

2. Because no issue either of the passing of the trust fund or the rate of duty arises in this case - as stated by Archer J. The sole issue is whether Gertrude Codman Gilbert-Carter at her death was competent to dispose of the property comprised in the trust fund as she thought fit, for if she were, the Respondent would be liable to pay estate duty in respect of such property to the extent of the assets which he has received as executor.

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3. And upon the grounds stated in the judgments of Chief Justice Sir Eric Hallinan

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7.

and Mr. Justice Rennie in the Federal
Supreme Court of the West Indies.

RECORD

J.S.B. DEAR

No. 9 of 1959

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ON APPEAL FROM THE FEDERAL
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IN THE MATTER of the ESTATE
OF GERTRUDE CODMAN GILBERT-
CARTER, Deceased

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IN THE MATTER of the ESTATE
AND SUCCESSION DUTIES ACT,
1941.

BETWEEN :-

THE COMMISSIONER OF ESTATE
AND SUCCESSION DUTIES

Petitioner

- and -

TREVOR BOWRING

Respondent

CASE FOR THE RESPONDENT

DURRANT COOPER & HAMBLING,
70/71, Gracechurch Street,
LONDON, E.C. 3.