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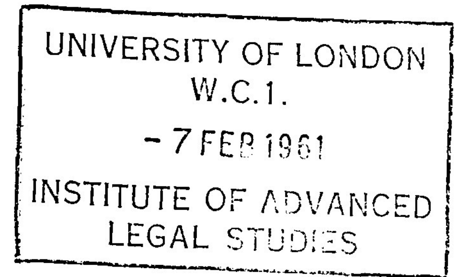
UNIVERSITY OF LONDON
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*In the Privy Council.*

No. 32 of 1959.

# ON APPEAL

## FROM THE SUPREME COURT OF CYPRUS.

**BETWEEN**

ZALIHE VELI and others of Polis (Defendants) Appellants

— and —

SEVIM ISMAEL and othters of Chrysochou (Plaintiffs) Respondents

# CASE FOR THE RESPONDENT.

RECORD

1. This is an appeal pursuant to leave granted by the Supreme Court of Cyprus brought by the above - named appellants against a judgment, of the said Suprme Court. (Zekia and Zannetides J.J.) dated 14th January 1959, allowing the appeal. 31 - 38

2. The appellants are: Zalihe Veli of Polis (Chrysochou) as natural guardian, next friend of her minor children Ismael Nevzat Ismael Effendi and Zahite Nevzat Ismael Effendi children of Nevzat Ismael who died about the year 1953. i.e. before the death of his father Ismael Katri Bey. 3

3. Respondents are:

1. Sevim Ismael, of Chrysochou
2. Katri Ismael, of Chrysochou
3. Mensur Ismael, ofNicosia
4. Emine Ismael of Chrysochou
5. Hanife Husnu, of Chrysochou, children and widow of Ismael Katri Bey, of Chrysochou who died intestate about the year 1954.

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RECORD

4. At the time of his death the said Ismael Katri Bey left movable and immovable property, to which the appellants and the respondents were entitled.

5. On 20th February 1956 the appellants commenced an action against Respondents in the District Court of Paphos claiming;-

(a) That Respondents be ordered to bring into hotchpot whatever they received from their deceased father Ismail Katrti Bey during his life time or that they be excluded from taking any share in the inheritance of the said deceased.

(b) Alternatively a declaration by the Court that they are not entitled to take any share in the estate of the said deceased Ismael Katri.

(c) That defendants (Respondents) be ordered to give an account of the me ne profits and all crops and income derived and enjoyed by them from the estate since the death of the deceased and, 10

3 - 4.

(d) The costs and expenses of the action.

6. By their Statement of Defence the Respondents alleged that Nevzat Ismael, the faher of the minor plaintiffs (appellants) had received from his deceased father Ismael Katri by way of dowry, or marriage portion or by way of advancements:

(a) Two pieces of land about 60 donums in extent worth £1500.
(b) one pair of oxen worth £120-
(c) thirteen ewes worth £65-
(d) one donkey worth £15- 20
(e) one building site in the village worth £60-
(f) wheat of the value of £70-

and counterclaimed that they the plaintiffs (appellants) should be ordered to bring into hotchpot the property their deceased father had received as alleged in the Statement of Defence and the costs of the Counterclaim.

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7. In their Reply and Defence to the Counterclaim the plaintiffs (appellants) joined issue with defedants (Respondents) and denied that the deceased Nevzat Ismael received any property from their father with the exception of two pieces of land and one building site which were a gift and not by way of advancement. They further denied that the defendants (Respondents) were entitled in law to any hotchpot. 30

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8. The action came on for hearing before the District Court of Paphos on the 16th March 1957. On that day the parties agreed before the Court that the father of Plaintiffs (appellants) had received from his father Ismael Katri by of way of advancement or under marriage contract movable and immovable property to the value of £1650- and that the parties further agreed that the only question left for the decision of the Court was whether the plaintiffs (appellants) in claiming their share in the estate of Ismael Katri Bey are bound to bring into account the immovable and

movable property received by their father during his lifetime from their grandfather Ismael Katri Bey or not. RECORD

9. The action came on for hearing again on the 18th April 1958, arguments were heard and the Court reserved their judgment. 7 - 11

10. Judgment was delivered on the 27th June 1958, the court holding that the plaintiffs (appellants) were entitled to succeed to the property of Ismael Katri Bey without bringing into account the movable and immovable property received by their father during his lifetime from their grandfather Ismael Katri Bey. 11 - 14

10 11. Against this judgment of the District Court the Defendants (Respondents) appealed. 15—

12. The appeal was heard on 3rd December 1958. 16 - 31

13. Judgment of the Supreme Court (Zekia and Zannettides) was delivered on the 14th January 1959, allowing the appeal. 31 - 38

14. The Respondents submit that the Supreme Court was right in holding that the appellants (plaintiffs) should bring into account the property received by their father in his lifetime The law applicable to the present case is the Wills and Succession Law Cap. 220 section 51 of which reads: "Any child or other descendants of the deceased who become entitled to succeed to the statutory portion, and to the undisposed portion, if any, shall in reckoning his share bring into account all movable property and immovable property that he has at any time received from the
20 deceased" Section 49 of the Law enacts that if a father dies and leaves children and grandchildren (children of a predeceased child) the grandchildren shall be entitled only to the share which the parent would have taken had he survived the deceased. Then we have to consider what is the share of the deceased parent in this case. Section 51 tells us what that share is. Reading sections 46, 49 and 51 together we submit that there is no room to doubt that the plaintiffs (appellants) are entitled to succeed per stirpes in equal shares to the share of their deceased father. In section 44 reference is made to the predeceased parent being represented by his living descendants, that is to say the principle of representation per stirpes is recognised.

15. The respondents submit that this appeal should be dismissed with costs for the following among other.

**REASONS**

30 (1) Because appellants are entitled only to the share of their deceased father in the estate of his father, and in such share it should be included what their father has received from his father by way of advancement or marriage portion.

(2) Because it would be inequitable that the appellants should be allowed to participate in the distribution of the estate of their grandfather without accounting for what their deceased father has received from their grandfather by way of advancement or marriage portion.

(3) Because the judgment of the Supreme Court is right.

**M. FUAD**

No. 32 of 1959.

*In the Privy Council.*

# ON APPEAL
FROM THE SUPREME COURT OF CYPRUS.

BETWEEN

ZALIHE VELI and others of Polis
(Defendants) Apellants

— and —

SEVIM ISMAEL and others of Chrysochou
(Plaintiffs) Respondents.

## CASE FOR THE RESPONDENT.

BISCHOFF & CO.
[illegible] GREAT WINCHESTER STREET, E.C.2

Solicitors for the Respondents.