# Geoffrey George Crill v Inawa Marion Paviour-Smith

| | |
|---|---|
| **Jurisdiction:** | Jersey |
| **Judge:** | Nutting J.A., Vaughan J.A. |
| **Judgment Date:** | 26 July 2000 |
| **Neutral Citation:** | [2000] JRC 147 |
| **Reported In:** | [2000] JRC 147 |
| **Court:** | Royal Court |
| **Date:** | 26 July 2000 |



**Text**

[2000] JRC 147

Court of Appeal.

Before:

R.C. Southwell, **Esq., Q.C., President;** Sir John Nutting, **Q.C., and;** D.A.J. Vaughan, **Esq., Q.C**.

In re Estate Father Arthur Hyne Amy

Between
Geoffrey George Crill
Representor
and
Inawa Marion Paviour-Smith
First Respondent

and

Maria Ilda Silva
Percy Née Joao
Second Respondent

and

La Société Jersiaise
Third Respondent

and

La Société Guernsiaise
Fourth Respondent

and

The National Trust For Jersey
Fifth Respondent

and

The National Trust for Guernsey
Sixth Respondent

and

Jill Kathleen Lee née Watson
Seventh Respondent

and

Margaret Poingdexter née Amy
Eighth Respondent

and

Geraldine Vivian Tomlin née Yates
Ninth Respondent

and

The Master for the time being of Pembroke College, University of Oxford
Tenth Respondent

**Advocate** A.D. Robinson **for the seventh to tenth respondents/APPELLANTS;**

**Advocate** J. Martin **for the Representor/RESPONDENT;**

**Advocate** R.A. Falle **for the first to sixth Respondents/RESPONDENTS**.

**Authorities.**

Basnage: Commentaire sur la Coûtume de Normandie (4 th Ed'n; 1778), Tome II (des testamens), pages 221–223.

Dalloz: Jurisprudence Générale, Répertoire, Tome XVI, paragraphs 4239 and 4240.

Pothier: Traité des testaments et Donations Testamentaires (1822 edition) Tome XVII, section X, page 369 at paragraph 150.

Merlin: Répertoire de Jurisprudence (4 th edition: 1813), Tome VII, section IV legs pp. 317 and 327

*Lindon v Robin* (1912) 227 Ex 358.

*In re Lewis' Wills Trust* (1937) Ch. 118

**Appeal by the seventh, eighth, ninth and tenth Respondents from the Judgment of the Royal Court of 4 th April, 2000, whereby it was adjudged that the cash consideration in respect of the Deceased's shares in the Guernsey Press Company, Ltd. formed part of the specific bequest of the said shares in favour of the first to sixth Respondents, inclusive**.

**JUDGMENT.**

**THE PRESIDENT:**

1 This is an appeal from a judgment dated 4 th April 2000 of the Royal Court (the Deputy Bailiff, Mr. MC St J. Birt, sitting alone) determining an issue in relation to the last will dated 2 nd June 1998 of Father Arthur Hyne Amy, who died on 17 th January 1999.

2 The relevant facts were not in dispute and I gratefully take the account of them from the Deputy Bailiff's judgment, with slight adaptation.

3 Father Amy in his last will appointed Mr. Geoffrey Crill and Mrs. Carole Canavan as executors. After various specific and pecuniary legacies, he provided as follows:-

> *"I give and bequeath unto my trustees all my holding of Preference and Ordinary shares in Guernsey Press Company Limited to hold the same in trust and to pay the income and dividends in respect thereof unto the said Inawa Marion Paviour-Smith and the said Maria Ilda Silva Percy (née Joao) jointly and for the survivor of them in equal shares for each of their lifetimes and thereafter to hold the same for the benefit of La Société Jersiaise, La Société Guernsiaise, The*

*National Trust for Jersey, and The National Trust for Guernsey, to be divided between them in equal shares absolutely*.

*And I declare that if at my death the said shares shall by virtue of any amalgamation, reconstruction or arrangement of capital of the said company Guernsey Press Company Limited or sale of the company's business be represented by a different capital holding whether in the said company or any other company which at my death I am entitled or possess then the said bequest of shares shall take effect as if it had been a bequest of capital holdings which result from such amalgamation, reconstruction or rearrangement of capital or sale"*.

For convenience, I will refer to the second paragraph of the bequest as "the saving provision", and to these legatees, who were the First to Sixth Respondents, as "the specific legatees". They are now Respondents in the appeal. The First and Second Respondents also received as further specific bequests (1) £50,000 and (2) certain personal effects and the ordinary shares in The Le Riche Group respectively.

4 Father Amy bequeathed the residue of his estate in equal shares to his niece, Jill Kathleen Lee, his niece by marriage, Margaret Poindexter, Geraldine Vivian Tomlin and the Master for the time being of Pembroke College University of Oxford in equal shares absolutely. These persons were the Seventh to Tenth Respondents, and are now the Appellants. I will refer to them as "the residuary legatees".

5 There had apparently been an offer some years previously from Guiton Group Limited ("Guiton") to buy the shares in Guernsey Press Company Limited ("Guernsey Press") but this had been rejected. On 9 th December 1998, Guiton made a further offer which was recommended for acceptance by the directors of Guernsey Press. Two alternative offers were put by Guiton to the shareholders of Guernsey Press. The first alternative was an offer of 0.5 of a Guiton share and 226p in cash for each Guernsey Press Ordinary Share; the second alternative was a cash offer of 301p for each Guernsey Press Ordinary Share. The offer therefore valued each Guiton share at £1.50. In either case, Guiton would also pay 10p in cash for each Preference Share in Guernsey Press.

6 Father Amy accepted the first of these alternative offers. As holder of 500,000 ordinary shares and some Preference shares in Guernsey Press he therefore become entitled to 250,000 Guiton shares and £1,130,000 in cash. The share certificate for the Guiton shares and a cheque drawn on Guiton for this sum were despatched to Father Amy on about 14 th January 1999. Father Amy died on 17 th January 1999. Found amongst his belongings were the uncashed cheque in the sum of £1,130,000 and the share certificate for 250,000 Guiton shares.

7 Apart from these assets, Father Amy's estate consisted of some £27,020 in bank accounts, the shares in The Le Riche Group (the subject of a specific bequest to one of the specific

legatees) valued at £26,673 and investments in three mutual funds valued at £99,661. The aggregate estate was therefore valued at £1,658,354, of which the proceeds from the Guernsey Press shares (in cash and Guiton shares) formed some 90%.

8 On 13 th September 1999, Mr Crill, as one of the executors, presented a representation seeking the directions of the Royal Court as to whether the cash consideration in respect of the Guernsey Press shares passed pursuant to the bequest of the Guernsey Press shares, read with the saving provision, or whether there had been an ademption, so that the cash fell into residue.

9 Mr Crill did not ask for directions in relation to the 250,000 Guiton shares as all parties are agreed that these passed to the specific legatees pursuant to the bequest when read with the saving provision. Advocate Falle appeared here and below for the specific legatees, Advocate Robinson for the residuary legatees, and Advocate Martin for Mr Crill.

10 The issue falling for decision by the Royal Court (and for this court on appeal) depends on the Jersey common law doctrine of ademption, and is (1) whether the bequest to the specific legatees has been adeemed as a result of the substitution, before Father Amy's death, of 250,000 Guiton shares and £1,130,000 in the form of an uncashed cheque, for the shares in Guernsey Press previously held by Father Amy, or (2) whether ademption was prevented by the effect of the saving provision in the will.

11 I emphasise that the answer to this question depends on the Jersey common law doctrine of ademption, because in the Royal Court and in the Deputy Bailiff's judgment much reference has been made to the English Law doctrine of ademption. Examination of the authorities before the Royal Court and before this court shows to me that Jersey Law and English Law are in a number of respects different. Accordingly in this branch of the law primary regard must be had to the sources of Jersey law, together with the relevant French sources as to Norman Law in the period before the Codes Napoléon, when the Norman customary law still prevailed in Normandy.

12 The most obvious examples of ademption of specific bequests of property occur when the property being a moveable is destroyed or permanently lost, or irrevocably disposed of by the testator before death. The doctrine of ademption is more difficult to apply in the case of intangible property such as shares in companies, particularly when (as here) shares in one company are replaced by shares in another company, or in whole or in part by money. Even in the absence of a saving provision (such as the one to be construed in this case) the replacement of one form of share by another may not necessarily result in ademption under Jersey law.

13 Whether in such cases there is ademption depends on the determination of what the testator's intention was, a determination which is to be made primarily by interpretation of the express wording of the will, interpreted as a whole, and in the light of the material

surrounding circumstances. Material surrounding circumstances in relation to a will are determined in a similar manner as in relation to a contract. In the case of a contract the court is required to place itself in the position and with the mutual knowledge of the contracting parties at the date of the contract. In the case of a will the court is required to place itself in the position and with the knowledge of the testator at the date of the will.

14 In the present case the material surrounding circumstances are limited to those I have already stated, and no question of any further extrinsic evidence arises. It was for this reason that we rejected an application on behalf of the Respondents to adduce documentary evidence in relation to the rejected offer for the Guernsey Press shares.

15 Where the property the subject of a specific bequest is disposed of by the testator before death, that is under Jersey law prima facie evidence of the testator's intention to revoke the bequest, and in the absence of material evidence to the contrary or an appropriate saving provision, the bequest is to be treated as adeemed. This is clear from Basnage: Commentaire sur la Coûtume de Normandie (4 th Ed'n; 1778), Tome II (des testamens), pages 221–223 (the relevant passages are cited by the Deputy Bailiff in paragraphs 18–20 and 39 of his judgment). Support can also be drawn from Dalloz: Jurisprudence Générale, Répertoire, Tome XVI, paragraphs 4239 and 4240, Pothier: Traité des testaments et Donations Testamentaires (1822 edition) Tome XVII, section X, page 369 at paragraph 150, and Merlin: Répertoire de Jurisprudence (4 th edition: 1813), Tome VII, section IV legs pp. 317 and 327 (cited in paragraphs 22, 37 and 38 respectively of the Deputy Bailiff's judgment).

16 If on the other hand the property the subject of a specific bequest, though disposed of by the testator before death, was so disposed of in return for other property, that may enable the court to conclude that the testator did not intend to revoke the bequest, but rather to substitute the other property which has come into the testator's possession as the subject of the specific bequest, provided always that the substituted property remains in the testator's possession at death. Whether this is the case depends on ascertainment of the testator's intention in the manner I have described.

17 An illustration of this is to be found in the only reported Jersey case on ademption which Counsel were able to find, *Lindon v Robin* (1912) 227 Ex. 358. I take the description of this case from paragraphs 24 and 25 of the Deputy Bailiff's judgment. The facts of *Lindon v Robin* were that the testatrix, at the date of her will, owned shares in The London and County Bank Limited. She also owned shares in another bank called The London and Westminster Bank Limited. She made certain specific bequests of shares in both of these companies. After she had made her will, the two banks amalgamated. A completely new company was incorporated called London County and Westminster Bank Limited, which was to carry on the merged business of the two old companies. Shares in the new company were offered to shareholders in exchange for their shares in the two old companies at the rate of four new shares for every share in the London and County Bank Limited and two and one seventh new shares for every share in the London and Westminster Bank Limited.

Accordingly, at her death, the testatrix owned only shares in the London County and Westminster Bank Limited, which company was not mentioned in her will and did not exist at the date of her will.

18 The residuary legatees brought an action contending that the specific legacies of the shares in the two old banks had been adeemed. The specific legatees contended that the court must give effect to the testator's intention; that the shares in the new company represented the shares in the two old companies and that they should therefore give effect to the specific legacies. In those days, the court did not give reasons. The Act of the court merely records that it accepted the contentions of the specific legatees and accordingly the legacies were not adeemed.

19 I agree with the Deputy Bailiff that if *Lindon v Robin* had been decided under English Law the contentions of the specific legatees in that case would have failed. To that extent, at least, the law of Jersey and the law of England and Wales are different.

20 I turn next to the question which has to be decided in the present case. This turns, as I have indicated, on the true interpretation of the wording of the will. I again adopt what the Deputy Bailiff (in paragraph 44), on the basis of the commentators already cited, stated as being the correct approach to interpretation. The Court's primary duty is to construe the will so as to give effect to the testator's intention. That primary duty is emphasised strongly in the Norman and French texts. That intention is, however, to be ascertained from the wording of the will together with any evidence of surrounding circumstances and other evidence properly admissible. In construing the will, the Court is not to use an unduly narrow grammatical approach. It should adopt a generous and benevolent approach (see Pothier above at paragraph 150). But where the will so construed is plain and unambiguous, the Court must give effect to it. It is not entitled to re-write the will merely because it strongly suspects that the testator did not mean what he plainly said. Where there is ambiguity, the Court should adopt that interpretation which best gives effect to the testator's intention as ascertained from the terms of the will and the surrounding circumstances (including any extrinsic evidence admissible)

21 The conclusion reached by the Deputy Bailiff as to the interpretation of Father Amy's will was in my judgment correct. I will state my own conclusions mostly in my own words:

> (1) The specific bequest is of “all my holding of Preference and Ordinary Shares in Guernsey Press Company Limited”. In my judgment, even in the absence of any saving provision, it might be possible to construe the testator's intention as including, for example, shares in another company substituted (eg. on a takeover) for the Guernsey Press shares; *Lindon v Robin* is some authority for that proposition. But it is not necessary so to decide.
>
> (2) The saving provision begins with an “if” clause, which becomes relevant if the Guernsey Press shares come to be “represented by a different capital holding whether in the said company or another company”. At first sight what is

contemplated by these words seems to be a straight replacement of the Guernsey Press shares by other shares in Guernsey Press or shares in another company.

(3) Mr Robinson argued that, unless “all my holding” in Guernsey Press came to be represented by replacement shares, the “if” clause would not be effective. Mr Falle in his written contentions (we did not call on him to make any oral submissions) argued that the “if” clause becomes effective even where only part of the consideration is shares in another company, as has happened here.

(4) Both arguments can, in my judgment, readily be presented. The meaning of the “if” clause is not clear, and has to be found by looking at the totality of the will and of the specific bequest provisions. I will return to this in a moment.

(5) Assuming that the “if” clause is effective, then the saving provision provides for the specific bequest to take effect “as if it had been a bequest of capital holdings which result from” the substitution. Here what were substituted were some shares in Guiton plus a large sum of money in the form of an uncashed cheque. The Guiton shares plainly are a “capital holding”. Equally in my judgment the money in the form of the cheque is capable of being a “capital holding”. That could also be the case if the money had been deposited in a bank deposit account (by way of comparison see *In Re Lewis' Will Trusts* (1937) Ch.118). It would not be the case if the money had been placed in a current account for the use of the testator before death, at least in the ordinary event.

(6) I return then to the “if” clause. In deciding on its correct interpretation it is necessary to consider what was the testator's intention. At this point I find it helpful to quote the text of paragraph 54 of the Deputy Bailiff's judgment which so well encapsulates the conclusion which is in my judgment the right one:-

“What help can I gain as to the testator's intention from the surrounding circumstances? The Guernsey Press shares represented some 90% of Father Amy's estate. The cash element of the proceeds represents just over two-thirds of the estate. Even if Father Amy did not, at the date of his will, know the exact value of the Guernsey Press shares he must have known that they constituted the vast majority in value of this estate. It follows that by his will he intended to leave the vast majority of his estate to his executors as trustees upon trust to pay the income to Mrs Paviour-Smith and Mrs Percy for their lives and thereafter for the four charities. He was not to know that there would be a take-over offer and must therefore be taken to have intended that this large asset should go for the benefit of the specific legatees. However, he clearly envisaged the possibility of a sale, as he put in the saving provision. What possible reason could there be for his intending any share element of the offer to go to the specific legatees but any cash element to go to the residuary legatees. He had no foreknowledge of what the terms of any offer might be. There might have been any degree of variation in the allocation between cash and shares. If Mr Robinson's contention is right, the split of this substantial asset between the specific and residuary

legatees would be wholly outside Father Amy's control and depend entirely on the nature of any offer which a purchaser might make. It is hard to attribute such an intention to Father Amy. There is no reason to think anything other than that Father Amy intended the whole value attributable to the Guernsey Press shares to pass to the specific legatees."

(7) In the light of those considerations I have no doubt that the correct interpretation of the will is that this specific bequest was not adeemed, and remains operative. The specific legatees, not the residuary legatees, are entitled to the sum of £1,130,000, as well as the Guiton shares as to which there is no dispute.

22 For these reasons (as well as those so well expressed by the Deputy Bailiff) in my judgment this appeal fails and should be dismissed.

23 Finally, I wish to pay a well-deserved tribute to Advocate Robinson's clear arguments, both written and oral, and to the written arguments of Advocate Falle presented, as always, with careful scholarship.

Nutting J.A. I agree and have nothing to add.

Vaughan J.A. I, too, agree and have nothing to add.