

1940  
 \* May 9, 10.  
 \* Oct. 1.

A. H. CAMERON AND OTHERS.....APPELLANTS;

AND

H. WINCHESTER AND A. J. HASLAM, }  
 ADMINISTRATORS WITH THE WILL }  
 ANNEXED OF THE ESTATE OF LUCY JANE } RESPONDENTS.  
 ROBERSON, DECEASED, AND OTHERS..... }

ON APPEAL FROM THE COURT OF APPEAL IN EQUITY OF  
 PRINCE EDWARD ISLAND

*Administration of Estates—Administration proceedings in Court of Chancery, Prince Edward Island—Order directing final distribution of estate—Question as to overpayment of income, by trustees in course of administration of the estate, to one of the beneficiaries—Adjustment in final distribution in the administration proceedings.*

In the course of administration of the estate of R., deceased, payments of income to his daughter L., for a certain period up to the time of L.'s death in 1934, included income to which, under rights as determined in accordance with the interpretation of R.'s will by this Court in 1937 (*Cameron v. Haszard*, [1937] S.C.R. 354), the appellants were entitled. In administration proceedings in the Court of Chancery of Prince Edward Island, the Master of the Rolls made an order on March 22, 1939, affirmed by the Court of Appeal in Equity, directing the final distribution of R.'s estate, the order taking no notice of the fact of said overpayments of income to L. On appeal to this Court:

*Held:* In directing the final distribution of R.'s estate the Court of Chancery in the administration proceedings was not only entitled but was bound to take into account, in adjusting and settling the amounts for the final distribution between appellants on the one hand and L.'s estate on the other, the overpayments of income that had been made to L.; and according to such adjustment to make allowance to appellants in the distribution, to the extent that there were assets of R.'s estate, available for that purpose, being administered by the Court. (In the issues and circumstances of the case, it was not necessary to decide the question whether overpayments could be

\* PRESENT:—Crocket, Davis, Kerwin, Hudson and Taschereau JJ.

recovered and brought back to R.'s estate in the administration proceedings, nor the question of the right to claim interest on overpayments).

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APPEAL from the judgment of the Court of Appeal in Equity of Prince Edward Island affirming the judgment or order of the Master of the Rolls as to final distribution of the estate of Edward Roberson, deceased.

The said Edward Roberson died in 1883, leaving his widow and three daughters, Georgianna, Hannah and Lucy. His daughter Georgianna died in 1885, ten days after the birth of her only child, who died within two months later, leaving the child's father, Alexander Cameron, as the child's next of kin. Alexander Cameron died in 1921. He had remarried, his second wife had predeceased him, and he left surviving him three sons by his second marriage. These sons, claiming through their father, and also two of them as executors of their father's will, are the present appellants. Of the other members of the family of said Edward Roberson, deceased, his daughter Hannah died in 1907, his widow died in 1909, and his daughter Lucy died in 1934. By a judgment of the Supreme Court of Canada, given on March 19, 1937 (1), certain questions were decided involving the interpretation and effect of certain clauses in the will of said Edward Roberson. It is claimed on behalf of the present appellants that in the course of the administration of the estate of said Edward Roberson there were included in payments of income made to his daughter Lucy, from the time of her mother's death in 1909 to the time of Lucy's death in 1934, income to which, under the rights of the parties as determined in accordance with the subsequent interpretation of Edward Roberson's will by the Supreme Court of Canada as aforesaid, the said Alexander Cameron and, after his death in 1921, his sons (claiming through him) were entitled. The estate is now being administered in the Court of Chancery of Prince Edward Island, and the order now appealed from, made by the Master of the Rolls on March 22, 1939, and affirmed by the Court of Appeal, directed the final distribution of the estate of Edward Roberson and closed it out, the order taking no notice of the fact that Lucy Roberson had received overpayments of income as aforesaid.

(1) *In re Roberson; Cameron v. Haszard*, [1937] S.C.R. 354.

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The material facts and circumstances of the case and questions in issue are sufficiently stated in the reasons for judgment in this Court now reported.

*Donald McKinnon K.C.* and *J. D. Watt* for the appellants.

*L. A. Lovett K.C.* and *W. E. Bentley K.C.* for the respondents the administrators with the will annexed of the estate of Lucy Jane Roberson, deceased.

The judgment of *Crocket, Davis, Kerwin and Hudson JJ.* (*Taschereau J.* also adopting the reasons) was delivered by

DAVIS J.—The litigation out of which this appeal arises is the aftermath of the judgment of this Court in *Cameron v. Haszard* (1). In the earlier appeal the proper interpretation of the will of the late Edward Roberson, who died in 1883, was in dispute. The difficulty had arisen out of the fact that one of the testator's surviving daughters died in 1885 leaving her surviving an infant ten days old, who died a few weeks later leaving his father, Alexander Cameron, as his only next of kin. This Court held, following the then recent judgment in the Privy Council in *Browne v. Moody* (2), that the daughter's child had acquired a vested interest in his grandfather's estate.

In the earlier appeal some questions were raised as to the payments of income that had been made over a period of many years on the basis that the grandchild had not acquired a vested interest. "If the parties cannot now agree," we said,

upon an adjustment and settlement of their differences in respect of the impeached payments of income, that part of the bill of complaint should be remitted to the Court of Chancery. The facts in connection with the payments of income from these funds are not at all complete in the record before us but there is sufficient to indicate that there may well have been such an acquiescence on the part of the late Mr. Cameron, the father of the grandchild, who was himself one of the executors of the testator's will, as to preclude those now claiming through him from recovering against the surviving executor income which has been actually paid out by him, though, perhaps, to persons for the time being not strictly entitled to this income upon the construction which we have now put upon the provisions of the will respecting the funds in question. A great many years have elapsed since many of the payments were made, the surviving trustee obviously acted throughout in absolutely good faith,

(1) [1937] S.C.R. 354.

(2) [1936] A.C. 635.

and many matters of fact and questions of law may arise for consideration if the question of the actual payments of income is pressed. The evidence before us is quite insufficient to enable us to deal with the dispute.

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The formal judgment of the Court in this connection was as follows:

And this Court did further order and adjudge that in the event of the parties hereto failing otherwise to adjust and settle the claim of the appellants in respect of the alleged improper disposition of income received from and after the death of the respective life tenants thereof, from the bequests and share of residue which became vested in the said Edward Roberson Cameron, and which are set forth in paragraph two hereof, the said claim be referred back to the Court of Chancery of Prince Edward Island for further disposition.

Edward Roberson Cameron was the name of the grandchild. The parties could not adjust and settle their differences and the matter was proceeded with in the administration proceedings in the Court of Chancery of Prince Edward Island in connection with the grandfather's estate.

What might have been and should have been a very simple proceeding is now to be found in a most confused and confusing record out of which with some difficulty a few simple facts, which appear to have been lost sight of in the mass of evidence and submissions of counsel throughout, stand out boldly.

It is satisfactory to observe that the capital of the estate remains, after the deduction of all proper disbursements, at almost exactly the same figure at which it began in 1883. There is no suggestion of any neglect, much less wrongdoing, in the handling of the estate over a period of more than fifty years. But the fact remains that certain income from the estate was paid out over a period of approximately twenty-five years on a basis quite inconsistent with the rights of the parties as determined for the first time by the judgment of this Court in 1937.

So far as the capital of the estate is concerned, its division presents no difficulty. The whole controversy relates to the payments of income. There are now really only two contestants in relation to that income and they are both before the Court. On the one hand are the Camerons (the appellants), who take through the will of the father of the grandchild. On the other hand are those (respondents) who take under the will of Lucy Roberson, an unmarried daughter of the original testator Edward Roberson, who did not die until 1934. Her mother, the

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widow of the original testator, had died in 1909. The present appeal is concerned solely with the income that came into the estate and was paid out between the date of the death of the testator's widow on November 28th, 1909, and the date of the death of the daughter Lucy on January 13th, 1934. During those years the rate of interest on mortgages was high and the resultant income to the estate substantial. It is not in dispute that the total income during this period was over \$30,000 and that most of this income was paid over to the daughter Lucy without regard to the Camerons. It apparently did not occur to anyone during that period that half of that income should go to those entitled through the grandchild. The father of the grandchild was the latter's sole next of kin and was himself an executor of the original estate. He did not die until July 16th, 1921, and although entitled (though it was not so determined until the judgment of this Court in 1937) to half of this income as the sole next of kin of his child, was a party during his lifetime to handing most of the income over to the testator's daughter Lucy.

The estate of Edward Roberson is now being administered in the Court of Chancery in Prince Edward Island and the order appealed from, made by the Master of the Rolls and affirmed by the Court of Appeal for Prince Edward Island, directs the final distribution of the estate and closes it out. But the order takes no notice of the fact that the daughter Lucy received most of the income from the time of her mother's death in 1909 down to the time of her own death in 1934, although those claiming from time to time through the grandchild, Cameron, were entitled to one-half of it. That strikes one at once as something that is wrong where a court of equity is administering an estate and determining the final distribution of it. The issue, we are afraid, became beclouded by many different contentions and arguments. It was said that the Court had no jurisdiction in the administration proceedings to do other than deal with the assets that were still in the estate and to that extent under the control of the Court. It was said that if the Camerons wanted to get back the overpayments from Lucy's estate, some other separate and independent proceedings would have to be

taken outside the administration proceedings. In any event, all sorts of defences were raised on behalf of Lucy's estate, such as the acquiescence of Mr. Cameron during his lifetime (he being both an executor and a beneficiary of the original estate), the statute of limitations and the law relating to payments made under a mistake of law as distinct from payments made under a mistake of fact. Without passing upon the question whether or not the overpayments could be recovered and brought back to the original estate in the administration proceedings (no such issue was formulated on behalf of the Camerons in these proceedings), it is plain that in directing the final distribution of the estate the Court of Chancery in the administration proceedings was not only entitled but was bound to take into account in adjusting and settling the amounts for the final distribution between the two groups of beneficiaries (the Camerons on the one hand and the Lucy Roberson's estate on the other) the overpayments that had been made to Lucy Roberson during her lifetime. *Bullock v. Downes* (1); *Dibbs v. Goren* (2); *In re Robinson, McLaren v. Public Trustee* (3). When it comes to the final distribution of the estate it does not matter whether overpayments were made out of income or out of capital. In the estate that is now being administered by the Court of Chancery certain securities and moneys remain to be distributed and if one beneficiary has already received \$13,000 to \$16,000 more than she was entitled to (the exact amount it is unnecessary for us to determine), an evening up can and should readily be made. There is not enough in the estate to completely adjust the differences, but, to the extent that there are available assets being administered by the Court, those adjustments ought to be made. The amount not being sufficient to cover the principal of the overpayments, the question of the right to claim interest on the overpayments does not arise as a practical matter. The overpayments, without taking interest into account, amounted to between \$13,000 and \$16,000, and the amount to which Lucy's estate was held entitled by the order appealed from on the basis of a distribution of the capital of the estate without regard to the

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(1) (1860) 9 H.L.C. 1.

(2) (1849) 11 Beav. 483.

(3) [1911] 1 Ch. 502.

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overpayments of income but including her share of income received since December, 1938, is far short of the amount of the overpayments received by Lucy during her lifetime.

The appeal is allowed and the orders of the Master of the Rolls and of the Court of Appeal in Equity, Prince Edward Island, are varied so as to direct that the remaining assets of the Edward Roberson estate shall be transferred or paid over to the three named Camerons in equal shares, after payment thereof of the costs, expenses and compensation referred to in the order of the Master of the Rolls. The appellants shall have their costs in the Court of Appeal and in this Court against the respondents, the Administrators with the will annexed of Lucy Jane Roberson, deceased.

TASCHEREAU J.—For the reasons given by my brother Davis, I would allow this appeal.

*Appeal allowed with costs.*

Solicitor for the appellants: *A. A. McLean.*

Solicitor for the respondents the administrators with the will annexed of the estate of Lucy Jane Roberson, deceased: *W. E. Bentley.*

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