IN THE COURT OF APPEAL

ST. VINCENT:

CIVIL APPEAL NO. 6 of 1975

BETWEEN: URSULA ABBOTT - Defendant/appellant

Vs.

O'CORALD OLLIVIERRE
and
ATHNEAL OLLIVIERRE - Plaintiffs/Respondents

Before: The Honourable the Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: E. F. Adams for appellant
C. St. C. Dacon for Respondents

1976, January 19, 20; May, 10

J U D G M E N T

ST. BERNARD. J.A.

This is an appeal against the grant of probate in solemn form of a will dated 26th April, 1960, of the late Harold Llewellyn Ollivierre of Bequia who died on the 19th September, 1970.

The appellant is one of his grandchildren and entitled to inherit in the event of an intestacy. About three days before he died ~~the deceased summoned~~ Canon Adams to his home and gave him instructions for preparing a new will. Canon Adams stated that he discovered there were complications which he could not handle and so refused to make the will.

Sometime after his death the will mentioned above was found among the papers of the deceased and application for a grant of probate was made on the 28th October, 1971.

/The.....

The appellant entered a caveat on the 19th April, 1972, and the prescribed warning to the caveator was issued on 8th May, 1972. On the 13th May, 1972, appearance was entered in the following terms:

> "Mrs. Ursula Abbott of Bequia, the Caveator contends that the Will mentioned in the warning is not a valid will of Harold Llewellyn Ollivierre and that she is an issue of Harold Llewellyn Olliverre who will benefit on intestacy of the estate of the said Harold Llewellyn Ollivierre."

There were several grounds of appeal, two of which only were argued, namely:

(a) The trial judge erred in law when he held that an intention without the institution of positive legal measures to revoke a valid will was not enough, and

(b) As a whole the decision is against the weight of the evidence.

Counsel submitted, in regard to the first ground, that the probated will was not a valid will and that if valid there was an intention on the part of the testator to revoke it and this intention by itself was sufficient. He argued that the prerequisites of a valid will were both form and intention and that neither one by itself was sufficient. He referred the court to Halsbury's Laws of England Vol. 16 3rd edition, at page 172 para 284. He further argued that there was no

evidence that the will was read over to the testator nor was there any evidence before the judge to show that the testamentary intention existed up to the date of death of the testator. He stated that the gifts to the testators children made by him subsequent to the execution of the probated will must be regarded as extrinsic evidence to interpret the intention of the testator. Counsel cited among others the case of In the Goods of Slim (1890) 15 P.D. 156 in support of his argument. This case shows that extrinsic evidence is admissible for the purpose of showing with what intention an ambiguous paper has been executed.

In my view the cases cited do not apply to the facts of the present case. In the instant case when the probated will was made by the testator in 1960 there was no ambiguity on the face of it. It was executed in accordance with the statutory requirements of the Wills Ordinance, Chapter 100 of the Laws of St. Vincent and expressly stated that it was intended to operate after the death of the testator. The trial judge rightly found on the evidence before him that the paper was a valid testamentary documant. Indeed, at the trial, the evidence for the defence supported the validity of the will.

I now turn to the question of intention. I agree that the intention of the testator should be that the instrument must opetate after his death. I do not, however, agree that an intention to revoke a validly made will is by itself sufficient to revoke it. According to sections 15 and 17 of Cap. 100 of the Laws of St. Vincent a validly made will may be revoked in one of three ways, namely:

/(a) By.....

(a) By a subsequent marriage.

(b) By another will duly executed and attested, or

(c) By some writing declaring an intention to revoke it.

In addition to the requirements set out in sections 15 and 17 referred to above section 16 states as follows:

"16. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances."

Since the testator's will of 1960 was a validly made will and since none of the conditions prescribed in the Wills Ordinance for revoking a will was satisfied I agree with the finding of the trial judge that the intention of the testator in this case to revoke was insufficient and hold that his pronouncement for probate in solemn form was correct.

I find no merit in the other ground of appeal argued.

Accordingly I would dismiss the appeal with costs.

I also agree

E.L. St. Bernard
(Justice of Appeal)

I also agree

N. PETERKIN
(Justice of Appeal)

I agree

MAURICE DAVIS
(Chief Justice)