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[EQUITY]

TAYLOR v. TAYLOR.

1870 July 26. LORD ROMILLY, M.R.

Joint Stock Company - Executors of Deceased Shareholder - Payment of Legacy - Subsequent Winding-up - Liability for Calls.

The executors of a shareholder in a joint stock company, which was a going concern at the time of the testator's death, paid a legacy under his will without providing for any contingent liability in respect of the shares which they retained unsold. The company was subsequently wound up, and the executors were placed on the list of contributories:-
Held, that they were liable to pay the amount of the legacy in satisfaction of calls.

THE question in this case was, whether the executors of a deceased shareholder in the *Leeds Banking Company*, which was wound up after the testator's death and the distribution of his assets, were liable to pay, in satisfaction of calls, a sum which they had already paid to a legatee under the testator's will.

Robert Webster, the testator in the cause, was at the time of his death possessed of twenty shares in the *Leeds Banking Company*. He bequeathed by his will a legacy of £200 to *Elizabeth Taylor*. The testator died in March, 1863, and his debts and the said legacy were paid by the executors without setting aside any sum to answer contingent liabilities, the banking company being then a going concern.

The banking company subsequently stopped payment, and was ordered to be wound up. The shares belonging to the testator had not been disposed of, and the executors were placed on the list of contributories; but the testator's estate was insufficient to pay the calls.

The official liquidator now applied for an order against the executors, making them liable to pay in discharge of calls the sum of £200, which they had already paid to the legatee.

Mr. *Southgate*, Q.C., and Mr. *Kekewich*, for the official liquidator, contended that the executors were not justified in paying the legacy without setting apart a sufficient sum to meet the contingent liability attaching to the shares, and that the payment could

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not be allowed. They referred to *Norman v. Baldry* (1); *Governor of Chelsea Waterworks v. Cowper* (2); and *Knatchbull v. Fearnhead* (3).

Mr. *Jessel*, Q.C., Mr. *G. N. Colt,* and Mr. *Phear*, for the executors:-

The payment of this legacy ought to be allowed. The liability was only contingent, for the bank was a going concern at the time of the testator's death, and an executor cannot be called on to keep his testator's assets for the purpose of paying a contingent debt: *King v. Malcott* (4); *Dean v. Allen* (5); *Dodson v. Sammel* (6); *Wentworth v. Chevill* (7).

Besides, if the Court had been called upon to administer the estate of the testator, with a knowledge of the facts, it would have sanctioned the payment of the legacy. The executors cannot, therefore, be made liable for doing that which, if they had been acting under the direction of the Court, they would have been bound to do.

LORD ROMILLY, M.R., said that this was a similar case to *Knatchbull v. Fearnhead.* The executors had committed a breach of trust in paying the legacy without providing for the liability attaching to the testator's estate at the time of his death in respect of these shares. The amount must be paid to the official liquidator.

Solicitors for the Official Liquidator: Messrs. *Freshfield.*

Solicitors for the Executors: Messrs. *Prior & Bigg,* agents for Mr. *H. Bramley, Sheffield.*

(1) 6 Sim. 621.
(2) 1 Esp. 275.
(3) 3 My. & Cr. 122.
(4) 9 Hare, 692.
(5) 20 Beav. 1.
(6) 1 Dr. & Sm. 575.
(7) 26 L. J. (Ch.) 760.