

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

BETWEEN

MICHAEL BURNS, Administrator of the ESTATE of DOMINIC BURNS, deceased, and the said MICHAEL BURNS (Plaintiffs) - - - - - Appellants

AND

10 MABEL BURNS, Administratrix of the ESTATE of JAMES FRANCIS BURNS, deceased, and the said MABEL BURNS (Defendants) - - - - - Respondents.

Case for the Respondents.

1. This is an appeal from the judgment of the Court of Appeal for British Columbia, dated the 11th day of January, A.D. 1938, dismissing an appeal from the Judgment of Mr. Justice Robertson, dated the 26th day of May, A.D. 1937.

RECORD.

p. 110.

p. 105.

20 2. The appeal concerns the claim of the Appellants to set aside the re-sealing in British Columbia of Letters of Administration granted the Respondent in Calgary, in the Province of Alberta, as Administratrix of the Estate of James Francis Burns, who died intestate in the City of Calgary in the Province of Alberta on the 31st day of December, A.D. 1935.

3. The Respondent obtained Letters of Administration and the re-sealing thereof on the ground that she was the lawful widow of the said James Francis Burns, deceased.

4. The Appellants sought to set aside the re-sealing of the said Administration on two grounds :

First : That the Respondent had never been lawfully married to the said James Francis Burns, as prior to such marriage she had married one Melvin Stuart Huggins.

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RESPONDENT'S CASE.

Secondly : and in the alternative, the Appellants relied on Section 127 (1) of the Administration Act as amended by Section 4 of Chapter 2 of the Statutes of British Columbia 1925, which provides as follows :—

“ If a wife has left her husband and is living in adultery at the time of his death, she shall take no part of her husband’s estate.”

p. 101.

5. Mr. Justice Robertson dismissed the action. He held :

p. 101,
ll. 34-35.

First : That the Respondent was not married to Huggins ;

p. 104, l. 15
to l. 28.

Second : That the Respondent was not living in adultery at the time of the death of her husband.

6. The Court of Appeal dismissed the Appellants’ appeal, the only Reasons for Judgment being those of Mr. Justice Sloan, who adopted the finding of the Trial Judge.

p. 109.

7. The Respondents submit that the appeal should be dismissed for the following, amongst other

REASONS.

- (1) THE Appellants did not attempt to prove that the Respondent was the wife of Huggins.
- (2) The Appellants did not call any evidence to prove, or from which a proper inference could be drawn, that the Respondent had left the deceased.
- (3) The Appellants did not call any evidence to prove, or from which an inference could be drawn, that the Respondent was living in adultery at the time of the death of her husband.
- (4) BECAUSE two Courts have concurrently found on the facts.
- (5) BECAUSE the Judgments below in the Respondents’ favour are right and should be affirmed.

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W. B. FARRIS.

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the said MICHAEL BURNS (Plaintiffs)**
Appellants

AND

**MABEL BURNS, Administratrix of the
Estate of James Francis Burns, deceased,
and the said MABEL BURNS
(Defendants) - - - Respondents.**

Case for the Respondents

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