Neutral citation number: [2019] EWHC 1565 (Ch)

Claim No PT-2019-MAN-000001

IN THE HIGH COURT OF JUSTICE

BUSINESS & PROPERTY COURTS IN MANCHESTER

PROPERTY TRUSTS & PROBATE LIST (ChD)

Manchester Civil Justice Centre

1 Bridge Street West

Manchester M60 9DJ

Wednesday 19th June 2019

Before:

His Honour Judge Hodge QC

Sitting as a Judge of the High Court

Between:

(1) Ian Christopher Naylor

(2) Emma Louise Amat

Claimants

- and –

(1) Judith Barlow

(2) Janet Lomax

(3) Beryl Clowes

(4) John Hine

(5) Barbara Hine

Defendants

Trial: 17 & 19 June 2019

Mr Michael O'Sullivan (instructed by **Bowcock & Pursaill**, Stoke-on-Trent) for the **Claimants**

Mr Christopher McNall (instructed by **Nigel Davis**, Ashbourne) for the **First and Second Defendants**

The Third to Fifth Defendants did not appear and were not represented

Approved Judgment

1. This is my considered judgment on the trial of a Part 8 Claim issued in London on 17 July 2018 and transferred to Manchester by Order of Master Clark dated 27 January 2019. It raises two interesting and difficult questions on the law of wills: (1) Where issue succeed to the interest of a parent who predeceased the testator under s.33 of the Wills Act 1837 (as amended), do they take subject to any condition subsequent which would have bound that parent? (2) If so, what is the effect of their failure to fulfil the condition because they were never informed of its terms before the time had passed for them to fulfil the condition and it is by then too late for them to do so?

2. The claimants, Mr Christopher Naylor and Ms Emma Louise Amat (who are practising solicitors and partners in the firm of Bowcock & Pursaill), sue in their capacity as the present trustees of the last Will dated 3 October 1980 of Mr John Thomas Hine (the testator) who died as long ago as 4 January 1992 and whose Will was admitted to probate on 27 April 1995. The claimants are also the present trustees of the last Will (executed contemporaneously with her husband's will) of the testator's widow, Mrs Hilda Muriel Hine, who died on 29 May 1997 and whose will was admitted to probate on 19 February 1998.

3. This litigation concerns the true meaning and effect of a devise contained in clause 3 of the testator's will. The trust fund is now in cash form and the claimants (who adopt a neutral position) wish to know the correct basis upon which it should be distributed. There are two minor subsidiary issues concerning potential deductions in respect of rent and milk quota that should be made from the share of the fourth defendant (John).

4. The testator and his wife had four children: John, Philip, Beryl and Basil. Without intending any disrespect to any of them, I shall refer to the various members of the family by their first names. John and Beryl are still living and they are the fourth and third defendants respectively. Philip sadly, and unexpectedly, predeceased the testator on 27 June 1990 (at the age of 51). He died intestate and letters of administration to his estate were taken out by his widow, Ivy, on 10 August 1990. Philip and Ivy had two children (both now adults), Judith Barlow and Janet Lomax, who are the first and second defendants respectively. Basil survived both his parents but he died on 16 January 2013 leaving his widow, Barbara (who is the fifth defendant), as the sole beneficiary of his estate.

5. Pursuant to a case management order made by DJ Obodai on 19 March 2019, the trial took place before me on Monday 17 June 2019. It took less than a morning and I then adjourned to consider this judgment until this morning (Wednesday 19 June) . The claimants were represented by Mr Michael O'Sullivan (of counsel) and the first and

second defendants were represented by Mr Christopher McNall (also of counsel). The third, fourth and fifth defendants had all filed acknowledgments of service indicating that they did not intend to contest the claim and that they accepted the position adopted by the claimants as to the way in which the testator's estate should be distributed pursuant to clause 3 of the testator's will. Due to their age and poor state of health, none of the third to fifth defendants appeared before me. There was no oral evidence. Instead, the uncontested evidence consists of two witness statements from Mr Naylor (dated 10 July 2018 and 6 June 2019) and a witness statement from the first defendant (dated 27 November 2018), together with their respective exhibits.

6. Mr Hine was the sole freehold owner of the family farm, Brown Edge Farm, Bradnop, near Leek, in the County of Stafford. At about the same time as the testator and his wife were executing their wills, the solicitors who had drafted them (Bowcock & Pursaill) were also engaged in drafting a partnership agreement between the testator, his wife, and two of their adult sons (John and Philip) and a yearly tenancy of the farm in favour of the partnership. Although clearly drafted in 1980, the tenancy agreement was only executed on 3 February 1981 and the partnership agreement on 4 February 1981. Both documents were expressed to take effect from 1 April 1980. The partnership agreement provided that it should not automatically determine on the death of any of the four partners; and it contained provision, in the event of their deaths, for the parents' respective shares in the farming partnership to accrue equally to their two sons free of all payment and, in the case of the death of either of the two sons, for his share in the partnership assets to accrue to the surviving partners at their value in the books of the partnership (as certified by the partnership accountant). When Philip died, his partnership account was in debit and he owed money to the partnership so that nothing fell to be paid to his estate in respect of his partnership share.

7. Mrs Hine's will provided for the whole of her estate to pass to her husband if he should survive her for one month and, failing that, for the whole of her estate to pass to her trustees upon the usual trusts for sale and conversion and (after payment of her debts, funeral and testamentary expenses) for the residue to be divided equally between her surviving children, with an express substitutionary clause in favour of the issue of any deceased child. In the event, therefore, when Mrs Hine eventually passed away in 1997, her estate passed as to one equal fourth share to each of Beryl, John and Basil and as to the remaining fourth share to Judith and Janet in equal shares.

8. The testator's will was rather more complicated. By clause 3 he devised his interest in the farm to his wife, and his two sons John and Philip as tenants in common as to one third each, but subject to the proviso that:

> "… the gift to my said sons hereinbefore contained is conditional upon each of them paying within a period of nine months from the date of my death to each of my daughter Beryl Eunice Clowes and my son Basil Hine the sum of £15,000 so that each son shall pay a total of £30,000 and in the event of either of my said sons failing to satisfy the condition imposed upon such gift to that son then I devise the interest in Brown Edge Farm aforesaid which such son would have taken had he satisfied the condition subject to any agricultural tenancy to which

> the said farm may be subject at my death equally between my said daughter Beryl Eunice Clowes and my said son Basil Hine as tenants in common"

Clause 4 of the will gave the residue of the testators' estate to his wife if (as in the event happened) she should survive him by one month. Had she not done so, the residue of the testator's estate would have fallen to be divided equally between Beryl and Basil. Unlike his wife's will, the testator's will contained no express substitutionary clause.

9. The testator's son John did not satisfy the condition in clause 3 of the testator's will and it is not in dispute that his interest therefore passed to Beryl and to Basil. Having predeceased the testator, Philip was unable to satisfy the condition. His two children did not satisfy the condition either; but it is clear from the evidence that they were not invited to do so nor were they even aware of the existence of the condition. The time for satisfying the condition passed on 4 October 1992. On 23 January 1992 solicitors, Challinors & Shaw, acting for Philip's widow, Ivy, had written to Bowcock & Pursaill (acting for the testator's estate) stating that they had been "asked by the children of Philip Hine whether they have any interest in their grandfather's estate"; but there is no evidence that there was ever any response to this inquiry. Bowcock & Pursaill did write to Challinors & Shaw on 5 July 1993 enclosing a copy of the testator's will. On 31 October 1994 Bowcock & Pursaill wrote to Challinors & Shaw (apparently in their capacity as Ivy's solicitors) setting out their view that "the gift of the share in the farm to Philip Hine under Clause 3 of the Will of his father is personal and lapses", and seeking their confirmation of the position. On 30 March 1995 Challinors & Shaw wrote confirming their agreement that the gift of the share in the farm to Philip under clause 3 of the testator's will "has lapsed". The unchallenged evidence of the first and second defendants is that even though they were then adults, they had no knowledge of the terms of the testator's will and no idea that this correspondence had been passing between the two firms of solicitors acting for the testator's estate and for their mother. Mr McNall points out that there was a delay in obtaining a grant of probate to the testator's estate (until 27 April 1995) so that it was not available to the public until then, some 2 ½ years after the time for satisfying the condition had passed.

10. The principal issue for the court to determine is whether the gift to Philip failed completely, so that the share formed part of residue and passed to the testator's widow under clause 4 of the testator's will, or whether it failed only because the condition which attached to it was not satisfied, so that Philip's share passed to Beryl and Basil under the terms of clause 3 of the testator's will. In 2017 the claimants sought the opinion of Chancery counsel in London (Mr Joseph Goldsmith) who concluded that s.33 of the Wills Act 1837 (as amended) applied to the gift in clause 3 so that Judith and Janet took their father's interest "albeit subject to the condition subsequent, which was not satisfied" with the consequence that that interest passed to Beryl and Basil under the terms of clause 3. On that view, the position is as set out in a diagram which appears at page 40 of Exhibit ICN1 to Mr Naylor's first witness statement: Initially Beryl, Basil and Mrs Hine each took a four-twelfth share in the farm. On Mrs Hine's death, Beryl, Basil and John each acquired one of her four-twelfth shares, and her final one-twelfth share passed equally to Judith and to Janet as Philip's issue. The third to fifth defendants accept Mr Goldsmith's opinion but it is disputed by the first and second defendants. On

their behalf Mr McNall accepts that Judith and Janet succeeded to their late father's four-twelfth's share in the farm by virtue of s.33; but he contends (1) that the share vested in them free from the condition subsequent in clause 3 of the will, alternatively (2) that they were relieved from compliance with the condition because it was impossible for them to comply because they did not know about it. On either basis, Judith and Janet would each have inherited a two-twelfths share in the farm from the testator (to the detriment of Beryl and Basil); and they would each have acquired a further one-twenty-fourth share in the farm from their grandmother upon her death as Philip's issue.

11. Mr O'Sullivan and Mr McNall both accept that s.33 applies to the gift to Philip so as to prevent the gift to him in clause 3 of the will from lapsing even although he pre-deceased the testator. I agree.

12. In the form in which it existed at the date of the testator's death (as substituted by the Administration of Justice Act 1982) s.33 provided (so far as material):

> "**33.— Gifts to children or other issue who leave issue living at the testator's death shall not lapse.**
>
> (1) Where—
>
> (a) a will contains a devise or bequest to a child or remoter descendant of the testator; and
>
> (b) the intended beneficiary dies before the testator, leaving issue; and
>
> (c) issue of the intended beneficiary are living at the testator's death,
>
> then, unless a contrary intention appears by the will, the devise or bequest shall take effect as a devise or bequest to the issue living at the testator's death.
>
> …
>
> (3) Issue shall take under this section through all degrees, according to their stock, in equal shares if more than one, any gift or share which their parent would have taken and so that no issue shall take whose parent is living at the testator's death and so capable of taking."

13. Section 33 was recently considered by Mr Timothy Fancourt QC (sitting as a Deputy Judge of the Chancery Division) in *Hives v Machin* [2017] EWHC 1414 (Ch). At para 25 the deputy judge pointed out that there was no requirement that a contrary intention should be expressed in particular terms or that there should be any reference to the section. Nor was it necessary to demonstrate that a conscious decision had been taken to exclude the effect of the section. What appeared to be necessary was:

> "… language of the will to show that the devise or bequest in question should not take effect, in the specified circumstances, as a devise or bequest to the living issue of the deceased beneficiary. Thus, an express provision for a different substitution (or none) in the event of death would seem to be sufficient. But the mere fact that the will would otherwise have a different effect will not suffice, as that is merely the trigger for the application of section 33."

Later (at paragraph 27) the deputy judge said that the question was not simply: what does the gift in the will mean? It was: does the will show an intention that s.33 should not have effect? I respectfully agree with the deputy judge. I would also emphasise that the contrary intention must appear by the will, and not by reference to some extrinsic factor or consideration. Thus, the fact that the contemporaneous will of the testator's wife contained an express substitution provision whereas the will of the testator did not is not a relevant factor. In the present case, I agree with both counsel that the testator's will does not show a contrary intention and that the gift to Philip took effect as a gift to his two children, Judith and Janet.

14. Both counsel are also in agreement that the condition contained in clause 3 of the testator's will was a condition subsequent rather than a condition precedent. Again, I agree. The decision of the Court of Appeal in *Re Greenwood* [1903] 1 Ch 749 is clear authority for the proposition that if a condition attached to a testamentary gift is capable of being construed either as a condition precedent or a condition subsequent, the court will prefer the latter construction.

15. The next issue is whether the substituted devisees, Judith and Janet, became subject to the condition in clause 3 and stand in the shoes of their late father. In *Ling v Ling* [2002] WTLR 553 Etherton J expressed the view (at paragraph 33) that a substituted beneficiary under s.33 was subject to the same contingency (in that case, attaining the age of 21) as his parent (who predeceased the testator) would have been. He based this view on the wording of s.33(3), observing:

> "Section 33(2) operates by way of including issue of the deceased child in the class, and limiting, by subsection (3), their interest to the gift or share which their parent would have taken. The issue within the class must satisfy the contingencies determining the date of distribution, as much as any other member of the class."

16. Mr McNall points out that *Ling v Ling* was the case of a class gift under s.33(2) rather than an individual gift under s.33(1); but I cannot see that this should make any difference to the proper approach to the operation of s.33(3). Mr McNall also points out that *Ling v Ling* concerned a contingent gift rather than a gift subject to a condition subsequent. Again, I cannot see that this should make any difference to the operation of s.33(3) in principle. The reality is that where a testator clearly intends a gift to be subject to a condition subsequent, and statute intervenes so as to save the gift and pass it to the beneficiary's issue so as to avoid the effect of the doctrine of lapse in the event of the named beneficiary predeceasing the testator, there is every reason for Parliament to have provided that the substituted gift should be subject to precisely the same conditions as that subject to which the deceased father or mother would have taken. That seems to me to be the clear rationale and effect of s.33(3). It would be an excessive, intrusive and unwarranted interference with the principle of testamentary freedom and autonomy for the court to construe s.33 so to permit the issue of the deceased beneficiary of a testamentary gift to take free from any condition that attached to that gift in the hands of their deceased parent. The testator never intended either of the two sons named in clause 3 of his will to take their one-third share in the farm free from the obligation to make

payment to their other two siblings. As Mr O'Sullivan submitted, if one applies the words of s.33 in the present case, it is difficult to see why any conditions attached to the gift to Philip should not also apply to a substituted beneficiary. It would seem odd for Judith and Janet to take the gift shorn of the condition. In my judgment, the substituted beneficiaries step into the shoes of the original deceased beneficiary for all purposes.

17. Mr McNall's alternative submission (founded upon a statement at the end of para 34.8 of *Williams on Wills*,10th edn) is that Judith and Janet should be excused from their non-performance of the condition subsequent because they did not know about it until it was too late for them to comply with it and it was therefore impossible for them to comply with the condition. Impossibility here is said to be 'in the nature of things'. Nothing is more natural than linear time. The simple failure of communication of the condition by the executors and trustees to Philip's issue meant that compliance with the condition was impossible in that sense. Therefore, Mr McNall submits, the condition did not then (and does not now) take effect at all.

18. Mr McNall relied upon several authorities where a gift was held to take effect notwithstanding non-compliance with a condition subsequent where compliance was practically impossible. The first was *Re Greenwood* (previously cited) where the beneficiary died before he was required to comply with the condition and was therefore excused from performance by the act of God. The next authority was *Re Berens* [1926] Ch 596 where performance of the condition was "impossible of fulfilment" because the arms in question had already been granted to another and it was therefore held not to be binding on the beneficiary. A third authority was *Re Jones* [1947] 2 All ER 716 where Roxburgh J held that a gift over had failed to take effect despite non-compliance with a condition subsequent requiring a village hall to be completed within a certain period of time because assets had not been saleable due to war conditions, making it impossible to build the hall. In my judgment, the principle applied in that case was that identified at page 718: that unless he has said so "in words plain beyond peradventure", a testator should not be taken to intend to allow the omission of trustees to do what he has told them to do to prejudice one beneficiary in favour of another. That principle has no application to the present case because the will trustees were never directed to inform the beneficiaries of clause 3 of the will of the terms of the condition. The final authority was the decision of HHJ Colyer QC (sitting as a Judge of the Chancery Division) in *Watson v The National Children's Home Co*, unrep., 9 October 1995. That case merely decided that where a condition is spent (because the subject-matter of the condition - in that case, a dog - no longer exists), the gift takes effect free from the condition. That principle has no application to the present case either.

19. Mr McNall also submits that there never was any refusal or neglect to comply with the condition. He relies upon the decision of Romer J in *Re Quintin Dick* [1926] Ch 992 where it was held that a beneficiary who had never heard of the existence or the terms of a will could not be said to have either "refused" or "neglected" to comply with a clause requiring him to take the name and arms of the testator within a specified time because there had been no conscious act of volition on his part. However, the gift over in clause 3 of this testator's will takes effect in the event of either of the testator's two sons "failing to satisfy the condition" and not "refusing or neglecting" to do so. I accept Mr O'Sullivan's submission that the decision in that case turned upon the precise

wording of the condition in the relevant will. At p 1000 Romer J expressly distinguished between the wording of the will that was before him and the use of the words "fail" or "failing", pointing out that

> "…the word 'fail' would without any doubt include every omission, whether the question of taking the name and arms presented itself to the mind of the beneficiary or not".

At p 1002 Romer J expressly distinguished the authority of *Astley v Earl of Essex* (1874) LR 18 Eq 290 (cited and relied upon by Mr O'Sullivan) on the basis that there the beneficiary had undoubtedly "failed" to comply with a name and arms clause within the prescribed time (thereby forfeiting his estate) even though he had known nothing about his rights under the will until it was too late, and that it had not been necessary for the judge in that case (Sir George Jessel MR) to decide whether he had also "neglected" to comply with the condition.

20. In my judgment, *Re Quintin Dick* does not assist the first and second defendants because it is clearly (and materially) distinguishable on the wording of the relevant will condition. I accept Mr O'Sullivan's submission that *Astley v Earl of Essex* is indeed authority for the proposition for which it is cited at para 34.24 of *Williams on Wills* that "ignorance of the condition is no excuse for not fulfilling it". I do not accept Mr McNall's submission that that case has no application in the present context because it was a case concerning a contingent remainder. The words of Sir George Jessel MR at p 297 are quite general:

> "The principle is, that a person who takes by gift under a will cannot plead want of knowledge of the contents of the will as an excuse for not complying with its provisions"

Similarly, the decision of Sir John Wickens V-C in *Re Hodges' Legacy* (1873) LR 16 Eq 92 is authority for the further proposition (recorded in the same paragraph of *Williams on Wills*) that "a legatee is not entitled to notice of the condition, unless the terms of the condition expressly provide that an interested party is to give him notice thereof". That was a particularly harsh case because the beneficiary there had failed to execute a release in time because he had been serving in the army in India at the time of the Mutiny in 1857. If any lessons are to be learned from the present case, it is that the draftsman of a will incorporating a condition along the lines of clause 3 should consider expressly making the time for compliance run only from the time of notification of the condition to the relevant beneficiary.

21. In the light of the foregoing authorities, I find it impossible to accept the submissions of Mr McNall. In my judgment, the law distinguishes between the situation where a beneficiary fails to fulfil a condition (otherwise capable of fulfilment) simply because he does not know about it in sufficient time to do so and the different situation where it is physically impossible for him to fulfil the condition, as where the College of Heralds will not award him the stipulated arms or an animal charity cannot look after the testator's dog because he was no longer in possession of any dog at the time of his death. The law does so because in the latter situation, neither the testator nor the beneficiary has any control over whether or not the condition can be fulfilled whilst in the former situation it had been within the testator's power to make fulfilment of the condition

contingent upon it having been notified to the beneficiary in sufficient time to enable him to fulfil the condition (as by requiring it to be performed only within a specified period of time after it has been notified to the beneficiary). In making this distinction, the law is seeking to draw what it considers to be an appropriate compromise between the competing interests of the primary beneficiary and those who would take in default of fulfilment of the condition. The law also draws a distinction between the *refusal* to fulfil a condition, or *neglecting* to do so, and a **failure** to do so. It does so as a matter of the true construction of the relevant condition and in order to promote the free expression of testamentary wishes and testamentary autonomy. I should emphasise to the unsuccessful first and second defendants that the failure of their case is not simply due to a slavish adherence to nineteenth century case-law precedents but to what I consider to be a principled application of the common-sense principles which they encapsulate.

22. I therefore hold that ignorance of a condition does not make it incapable or impossible of fulfilment in the sense in which that expression has been used in the authorities that Mr McNall has relied upon. The condition subsequent was not complied with; and the gift over takes effect. As Mr McNall was constrained to accept, in answer to a question from the Bench at the end of his oral argument, had Philip survived his father but not complied with the condition within nine months from the date of his death because he was ignorant of the condition, then, on Mr McNall's argument, there would be no defeasance and the gift should take effect. But that would run counter to the clearly expressed testamentary wishes of the testator. He never intended the gift to either of his sons of a one-third share in the farm to take effect unless they complied with the condition; and compliance was to take place within nine months from the date of the testator's death, and not within nine months (or any other period of time) from notification of the condition. Acceptance of Mr McNall's submissions would, in my judgment, involve the court in re-writing the will; and would have disappointed the legitimate expectations of Beryl and Basil.

23. Although the first and second defendants have made no formal counterclaim for relief against forfeiture, I also accept that the case of *Simpson v Vickers* (1807) 14 Ves Jnr 341, 33 ER 552, a decision of Sir William Grant MR, is authority for the proposition at para 34.25 of *Williams on Wills* that there is no power to grant relief against forfeiture under a condition subsequent where there is a gift over to someone other than the person who would take by operation of law.

24. I therefore hold that the substituted gift of the testator's one-third share in the farm to Judith and Janet failed and that that share passed in default to Beryl and to Basil.

25. I turn to the subsidiary issues, upon which I have heard no adversary argument. First, the rent. The fourth defendant, John, continued to occupy Brown Edge Farm after the date of his mother's death in May 1997 as the sole surviving partner. He failed to pay any rent to his landlords and a notice to quit was served upon him in December 2002. John made a small payment in 2003. This unsatisfactory position dragged on for many years in order to avoid escalating tensions within the family. The history is dealt with in the witness statements. Eventually, John voluntarily vacated Brown Edge Farm in 2015 and it was sold and converted into cash. The claimants consider that the outstanding rental debt owed by John should be deducted from his share of the estates of his parents, together with interest if applicable. I agree with this pragmatic approach. Section 19 of

the Limitation Act 1980 provides that no action shall be brought to recover arrears of rent, or damages in respect of arrears of rent, after the expiration of six years from the date on which the arrears became due. This section applies even where the lease was made under seal: see s.8(2) of 1980 Act. Mesne profits are covered by the six years' period for tort claims in s.2. However, Mr O' Sullivan points out that limitation bars the remedy and not the right. John has said in his acknowledgement of service that he does not contest the claim; and the claimants are holding his share of the proceeds of sale of the farm and are in a position to deduct the debt owed by him as a part of an accounting process. Limitation should not therefore be a relevant consideration: see *Halsbury's Laws*, 5th edn (2016) Vol 68 (Title: Limitation) at para 942.

26. Finally, the milk quota. The milk quota for the farm appears to have been 472,245 litres, which was allocated equally between the testator, as freehold owner, and the partnership, as tenant under the agricultural holdings tenancy. 75,000 litres were sold in January 1997 for £50,669.85 at a time when the testator's widow and John were both partners. The proceeds were used to reduce the partnership overdraft at the bank. Thus, the partnership benefited at the expense of the testator's estate. As one of the partners, the testator's widow would have been jointly and severally liable for the debt owed to the bank, and any reduction in the debt would have been partly for her benefit. A further 54,000 litres of quota were sold for £26,149.00 in 1997/8 and this too was used to reduce the overdraft at the bank. On the evidence, it is unclear whether this sale occurred before or after the death of the testator's widow on 29 May 1997. If it was after this date, then John, as the surviving member, would have been entitled to his late mother's share in the partnership for no payment and so he would have been entitled to the former partnership's share of the milk quota. If all of the proceeds of £26,149.00 were used to reduce the bank overdraft, then John would have benefited at the expense of the testator's estate.

27. The question arises as to whether the milk quota that was owned by the testator's estate, as freehold owner, passed to his widow under the gift of residue contained in clause 4 of the will or passed under the gift in clause 3 of the testator's will on the basis that the quota was attached to the land. This issue falls to be determined as at the date of the testator's death on 4 January 1992. The nature of milk quota was considered by the Court of Appeal in *Harries v Barclays Bank* [1997] 2 E.G.L.R. 15. That case (which concerned a mortgage) suggests that milk quota generally attaches to and runs with the land. In the Northern Irish case of *Crossley v Armour* [2008] NICh 4 Deeny J held that the right to a single farm payment was carried by a gift of farmland in a will and did not pass into residue. On the authority of these cases, I hold that the right of the testator's estate to its half share in the farm's milk quota passed to Beryl, to Basil and to the testator's widow under the gift in clause 3 of the will. It will be for the claimants, in consultation with the beneficiaries, to take a pragmatic view as to the prospects of recovering any sums by which one of the family members, notably John, has benefitted at the expense of the others.

28. I invite counsel to agree a form of order to give effect to this judgment.