

THE HIGH COURT

000100

1988 No 180 Sp

1988 No 1016 Sp

BETWEEN

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND

PLAINTIFF

AND

MARY KING

DEFENDANT

Judgment of Mr. Justice Costello delivered the 5th day of  
December 1989.

The late Michael King owned a farm in Kerry comprising a little over 60 acres of registered land. He died intestate on the 19th October 1982 and was survived by his wife Mary King and four children, Mrs. King obtained a Grant of Letters of Administration Intestate on 7th February, 1985. The Bank of Ireland, the Plaintiffs in these proceedings, instituted proceedings against her for a debt owed personally by her and on the 16th November, 1987 obtained a judgment for £34,334.42 and costs against her. This was unsatisfied and they subsequently registered it as a judgment mortgage against her interest (namely a one-third share) in her husband's lands. But she as administratrix has taken no steps to vest her one-third interest in herself and this has given rise to the present proceedings. Because the land is not vested in her the Bank cannot take proceedings to realise their judgment mortgage. So they instituted these proceedings claiming an order under Section 52(4) of the Succession Act, 1965 requiring her to assent to the vesting of the lands in herself, or alternatively a limited order for the administration of the estate.

Section 52(4) provides that after the expiration of one year from the death of the owner of land if the personal representative has failed on the request "of the person entitled" to transfer the land "to the person entitled" the Court may order that the transfer be made. Although a wide definition is given to the words "person entitled" by subsection 2 of Section 52 I do not think that they are apt to include a judgment mortgagee of lands to which a judgment mortgagor is entitled on an intestacy

because I do not think that a judgment mortgagee is entitled to have lands vested in him by a personal representative. So I do not think that the section helps the Bank.

But the Court has power to make limited Grants of Administration. Section 27 provides that the High Court has power to revoke any Grant of Administration and, where by reason of any special circumstances it is necessary to do so, it may order that administration be granted to such person as it thinks fit, and may place limitations on the Grant (subsection (4) and (5) of Section 27). This means that the Court has power (as it has had for many years) to make Grants limited to particular purposes. I propose therefore to make an order appointing Mr. Brian A. Walsh administrator for the purpose of assenting to the vesting in Mrs. King of her share in the estate of the late Michael King. A question will arise as to whether the assent should be subject to or free from a charge for the payment of monies which the personal representative of the late Mr. King might be liable to pay (see Section 52(2)). I will therefore order that the new limited administrator should advertise for creditors in one local newspaper circulating the area where Mr. King died and that if no creditor gives notice of a claim the land be vested free from the claims of any creditors or otherwise. If, however, claims are made, then the matter should be re-listed to consider whether the limited administration should be widened. Creditors will be required to give notice of claims within two months of the advertisement. A certificate from the limited administrator should be exhibited in an affidavit sworn by him to the effect that no claims have been made and should be filed in the Central

Office in these proceedings before the assent to the vesting is executed.

Once the assent is executed then proceedings to realise their judgment mortgage could be instituted by the Bank.

*Assent*

*JL*

*5/11/89*