6 pages.

ROYAL COURT
(Samedi Division) 72.

17th April, 1997.

Before: F.C. Hamon Esq., Deputy Bailiff.

In the matter of the Will of
Raymond Edwin Brown, deceased.

And in the matter of the Representation of Derek Stapleton Brown and Jennifer Cicely Jones (née Brown).

Advocate D. F. Le Quesne for the Representor.
Advocate C.G.P.Lakeman for the Respondent.

THE DEPUTY BAILIFF: This case raises a novel point of law.

Raymond Edwin Brown ("The Testator") made a will on the twenty third January, 1976. He appointed his wife, his son Derek and his daughter Jennifer to be "the Executors and Trustees" of his will and went on to say *"and they and the survivors of them or the other trustees for the time being of this my will are hereinafter called 'my Trustees'"*.

The will gave certain legacies and bequests and devised three properties in England upon trust for sale. The rest and residue of the personal estate and the real estate outwith Jersey was also devised on trust. The will ends with these words:

> *"Finally I leave to my children the admonishment that they shall at all times help one another and their mother in the true spirit of mutual helpfulness and of family unity".*

On 4th February 1976 the testator made a codicil. It is clear that the testator had omitted his personal property situated in the United Kingdom and now moved to cover the omission.

The codicil reads:-

> *"I give and bequeath to the Executors of my said will all my personal property in the United Kingdom UPON TRUST that they shall call in and convert into money such part or parts thereof as do not consist of money with power to postpone such sale, calling in and*

conversion for such a period or periods as my trustees without being liable to account may think proper."

The Testator died on 8th December, 1992, without revoking the will or the codicil.

On 6th April, 1993, having taken no steps in the estate the son and the daughter named in the will swore a document before a Notary Public. It is headed *"In the Estate of Raymond Edwin Brown"*.

It recited how the son and daughter are two of the executors, that the father has died and that they *"are not desirous of undertaking the execution of the said will"*. They finally state in conclusion that they *"hereby renounce the said office of executors and trustees of the said will."*

Both the son and the daughter and the mother wrote to Mr. Le Gresley, their solicitor on 12th August, 1993, to say that they had *"renounced their Executorship"*and asked Mr. Le Gresley to act on their behalf.

Later in the year, on 23rd November, 1993, the mother also produced a solemn declaration and where she, too, renounced the office of Executor and Trustee.

Finally, the Probate Registrar received a power of attorney signed by Peter Raymond Brown, the eldest son of the Testator.

That document is made in England and witnessed on the same day by the same solicitor in Bognor Regis who had witnessed the renunciation of the mother.

This is not altogether surprising as Mr. Le Quesne has deposed that the mother and her son, Peter Raymond Brown, live at the same address in West Sussex.

The power of attorney recites the facts and states that the named executors and trustees have renounced the office of Executors and Trustees. Mr. Barry Pickersgill was appointed as attorney.

Mr. Pickersgill also made oath on 7th December, 1993, exhibiting the will and codicil and stating that the executors nominated by the will have all renounced execution of the will and asking to be appointed attorney of the executor dative. This oath, in due form, was sworn before a Greffier Substitute, stamped and registered.

Mr. Pickersgill, as Attorney of Peter Raymond Brown, the eldest son and therefore principal heir of the testator, entered into a bond of executor dative without sureties and having declared that the net value of the personal estate did not exceed

£150,000 bound himself for his constituent and his heirs in the sum of £300,000.

Probate duly issued on the 7th December in this form:-

*"**BE IT KNOWN** that Raymond Edwin Brown of 7 Holmgate Court, St. Helier in the Island of Jersey died on the eighth day of December 1992 domiciled in Jersey.*

***AND BE IT FURTHER KNOWN** that on the seventh day of December in the year one thousand nine hundred and ninety-three the last will and testament with one codicil (a copy whereof is hereunto annexed) of the said deceased was proved in the Probate Division of the Royal Court of the Island of Jersey and duly registered the usual oath to execute the said will and codicil and well and faithfully to discharge the duties of the office of executor having first been subscribed and sworn as required by law by Barry Keith Pickersgill the specially appointed attorney of Peter Raymond Brown the executor dative of the said will and codicil (Laura Gwendoline Brown nee Stapleton, Derek Stapleton Brown and Jennifer Cicely Jones nee Brown the executors therein named having renounced execution thereof).*

Advocate Le Quesne has argued before me that the will appoints two different forms of office. Three executors whose duties are governed by the Probate Law and three trustees (albeit the same persons) whose duties are governed by the Trusts Law.

I was directed to four articles of the Trusts Jersey Law (1984). Article 7 states that a trust may come into existence by an instrument in writing (including a will or codicil).

Article 12 states that (subject to the terms of the trust) the number of trustees shall not be less than two unless only one trustee was originally appointed.

Article 14(2) states that a person who has not accepted and is not deemed to have accepted appointment as a trustee may disclaim such appointment within a reasonable period of time after becoming aware of it by notice in writing to the settlor or to the trustees and Article 15 states a trustee not being a sole trustee may resign his office by notice in writing delivered to his co-trustees provided that a resignation "which would result in there being no trustee of fewer than the number of trustees required under Article 12 shall have no effect".

It does seem to me axiomatic that no one can have the onerous duties of trusteeship thrust upon him which is why Article 14(2) allows a trustee to disclaim within a reasonable time.

There is no ambiguity patent or latent: the will is plain. The testator intended to set up a will trust. As Le Gros in his work "Traité du Droit Coûtumier de l'Ile de Jersey" (Jersey, 1943) at p.124 states in the first paragraph of his chapter "Du Testament": *"... ces dispositions devant prendre effet après sa mort".*

It took twelve months for probate to issue. The named son and daughter renounced on 6th April (four months after the testator's death), the widow renounced on 23rd November (almost twelve months after the testator's death). I know nothing of the background to this matter but Article 14(3) clearly envisages cases of difficulty where the Court can intervene.

According to Matthews & Sowden: "The Jersey Law of Trusts", (3rd Ed'n) under English law, where a person validly disclaims trusteeship, he acquires no title to the trust property (Re Birchall (1889) 40 Ch 436) which is deemed never to have vested in him. The learned authors submit that the rule would apply in Jersey. That must be so. (see para 5.48). There is, of course, now no provision for a trustee to have to ensure that trust property is vested in him. (See Article 3 of the Trusts (Amendment)(Jersey) Law 1989. There might have been a real difficulty if the three executors and trustees had validly renounced and no one had taken their place. A trust however cannot fail for want of a trustee if it is validly constituted. In my view, the trust in the case of the will became valid when the will was admitted to probate and when probate issued under seal on 7th December, 1993. There is, in my view, no doubt that the executor dative took on not only the burden of executor but also the duty as sole trustee. It would, in my view, be unnecessarily burdensome to argue that there is now a sole executor and three separate trustees of the will, because the executors did not intend to resign qua trustees or failed to do so in due form. I do not have an affidavit from any of the originally named trustees explaining why they used words which to me are clear and sensible.

Advocate Le Quesne argues that the resignation of trustees requires a specific act quite separate from the formalities of renouncing probate. I find it difficult to see what else the trustees could have done. In Underhill & & Hayton's Law Relating to Trusts and Trustees (15th Ed'n), at page 439, it is stated: ***"Where the office of executor is clothed with certain trusts (or where the executor is also nominated the trustee of real estate under a will) he is construed to have accepted the office of trustee if he takes out probate to the will".*** The authority for that is the case of In Re Sharman's Will Trusts (1942) Ch 311 where Bennet J said at 316:

> ***"If there be acts which could only be done by him as trustee there is an end of the matter. He must be said to have accepted the office. Probate of the will alone may be sufficient and that appears from a statement in a number of text books."***

His Lordship then goes on to cite examples. In my view the expressions of renunciation used by all three persons named as trustees, the fact that probate has issued in due form to Peter Raymond Brown leaves me in no doubt that he is now the sole trustee and there is no conflict with the Trusts Law because no other trustees were effectively assumed into office at any time.

However there may be a problem. I am not certain whether under the laws of England a sole trustee can give a receipt for realty there. It may be necessary for a further application to be made in due course if that assumption is correct. I am not prepared to appoint another trustee *sur le champ* even though there is a passing reference to it in Mr. Lakeman's Answer. There is clearly much in dispute between the parties that has not yet seen the light of day. I have no idea what is meant by the respondents when they say in the last paragraph of their Answer:-

> *"The respondents will further aver that the present Representation has been brought before the Court out of a desire by the Representors to influence, whether directly or indirectly, thereby the proceedings bought [sic] by Mr. Brown and Mrs. Barley against the Representors in respect of the Deceased's Will and Estate; and not because they have any real and/or legitimate concerns arising out of the matters contained in their Representation"*

The appointment of a further trustee (if one is necessary) is for another day. One must assume that the English Solicitor who advised the widow and Mr. Peter Raymond Brown had these matters in the forefront of his mind. I do not wish to presume without further argument.

Authorities

Trusts (Jersey) Law, 1984.

Le Gros: Traité du Droit Coûtumier de l'Ile de Jersey (Jersey, 1943): p.124.

Matthews & Sowden: "The Jersey Law of Trusts (3rd Ed'n): pp.67-71.

re Birchall (1889) 40 Ch. 436.

Underhill and Hayton" Law relating to Trusts (15th Ed'n): p.439.

In re Sharman's Will Trusts (1942) Ch.311.