"For the purposes of this section, the tribunal shall consist of (a) a chairman, being the chairman of the Board of Referees or a person appointed by the Lord Chancellor, for a specified period or in relation to a specified case, to act as chairman of the tribunal in the absence of the chairman of the Board of Referees on account of *illness* or for any other reason, and two or more persons appointed by the Lord Chancellor as having special knowledge of and experience in financial and commercial matters."

It seems to me that the Lords Justices were saying that since the Lord Chancellor was permitted to appoint an acting chairman when one of the members of the tribunal, or rather the chairman, was absent on account of illness or for any other reason, the intention was that illness or other cause should not prevent the tribunal from sitting whether that illness or other cause related to one of the members or the chairman, and that to hold otherwise would be saying that parliament was showing an untenable discrimination between the chairman and the other members. Although I do not fully agree with that interpretation, that interpretation would not affect our legislation, as related earlier because of the absolute wording of our Act. I still hold that all the members of our appointed tribunal must sit or they would not be properly constituted. Nothing in our legislation is mentioned about absence of a member for illness or otherwise.

Finally, and *obiter*, it might be said that if breaches or errors have been committed in the past, whether in the form of an application or in relation to jurisdiction, any change today might create hardship on others. However, LORD CAMPBELL, L.C., in *Roke* v. *Errington* (12) said ((1895), 7 H.L.C. at p. 628):

"It is a case of great hardship on the part of the plaintiff in error, but the High Court and all other Courts must take care that hardship does not produce bad law."

I have to add that I respectfully agree with the learned Chief Justice on the following two points and nearly fully on the third point dealt with by him in his judgment.

(1) The complaint that the respondent Barbara Chin inferentially admitted in evidence that she intended to break the law, rendered her not a fit person to hold a licence (see s. 53(4) of Cap. 346) was a matter to be raised before a court of appeal, and not a matter to be dealt with by *certiorari*, the reason being that if the ruling was a wrong ruling then it could only be corrected on appeal.

(2) That the absence, or the sufficiency, of evidence on a matter before the tribunal, was a matter not for *certiorari* but for hearing by a court of appeal.

(3) That as the appointed Licensing Authority in this case consisted of more than two persons, namely, six at times, and seven at other times, pursuant to s. 54 of the Interpretation Act 1968, if a majority of the members, namely, at least four members had sat to hear the application in this case, then the Licensing Authority would have been properly constituted, subject, in my respectful and humble opinion, to this, that the majority was not from a new or fresh set of appointees, appointed after the expiration of the term of office of a particular Licensing Authority.

Application for order of certiorari *granted.*

IN THE ESTATE OF HENRY McGRATH

[THE SUPREME COURT (Parnell, J.), October 28–30, December 2–4, 1974, February 20, 1975]

Will—Construction—Ascertainment of testator's intention—Home-made will—Meaning of "live and dead stock"—Devise of real estate with power of sale—Proviso attached to devise—Charitable gifts—No residuary clause—Estate not fully disposed of—Wills Law, Cap. 414 *[J.], ss.* 19, 23.

The testator, a devout Roman Catholic, died possessed of personal and real estate. The latter included properties known as "Charlemont", "Ivy", and "Stirling Castle". Situated on Charlemont was a Great House, the testator's home. The testator also owned the house "Endeavour" which he had sold. Glassware and house-hold goods in that house were not included in the sale. He owned a third share in three race horses, and an insurance policy. By his will, the testator bequeathed to D., "all the live and dead stock on Endeavour" and directed that "all the furniture, pictures, china, glassware, and house-hold goods from Endeavour" be removed to Charlemont and be retained "in my personal memory". He devised to D., "my properties Charlemont and Stirling Castle with the live and dead stock thereon and all my investments". By the terms of this devise D. was given the right to "sell in his life time any part of Charlemont or Stirling Castle—should he wish to do so—providing a sufficient acreage of Charlemont remains . . . and after the death of D. I wish Charlemont to pass to the Roman Catholic Church in perpetuity—never to be sold—Stirling Castle if still in the possession of D. to remain in the possession of his wife or family". By a codicil the testator directed that "to safeguard that (D.) be not induced . . . to disregard my wish as it is my most solemn direction that Charlemont be his home, without interference even by the Roman Catholic Church—who are nothing to do with Charlemont until after his death". The testator, by his will, also bequeathed to C. £1,000 and, subject to a condition, a further sum of £2,000 "if this condition is carried through", and, by a codicil, a sum of £10,000 "in appreciation of his services to me". A number of questions, *inter alia*, arose, on an originating summons, as to the true construction of (a) the devise and bequest to D., (b) the devise to the Roman Catholic Church and (c) the bequests to C.

Held: (i) that the terms of the devise of Charlemont and Stirling Castle to D. were to be interpreted to mean that (a) D. was to take the fee simple in Charlemont, excepting the Great House thereon and a "sufficient acreage" to be determined by D., and the fee simple in Stirling Castle; and (b) a life interest in the Great House with remainder to the Roman Catholic Church;

(ii) that the term "live stock" included those domestic animals on Endeavour, Charlemont, and Stirling Castle, which were kept for any use, including sale; and the term "dead stock" included all personal property which was reasonably connected with the rearing of domestic animals and the upkeep of a farm;

(iii) that it was clear that the intention of the testator was that the three sums bequeathed to C. were to be cumulative, since there was nothing in the will or codicil to indicate that the largest bequest was to be regarded as explanatory.

Originating summons.

Cases referred to:

(1) *Re Minchell's Will Trusts*, [1964] 2 All E.R. 47.

(2) *Vaughan* v. *Marquis of Headfort* (1880), 10 Sim. 639; 69 L.J. Ch. 271; 4 Jur. 649.

(3) *Perrin* v. *Morgan*, [1943] 1 All E.R. 187; [1943] A.C. 399; 112 L.J. Ch. 81; 168 L.T. 177; 59 T.L.R. 134; 87 Sol. Jo. 47.

(4) *Re Jebb, decd.*, [1965] 3 All E.R. 358; [1965] 3 W.L.R. 810; [1966] Ch. 666.

Originating summons seeking answers to questions involving the construction of a will and codicil.

E. George, Q.C., and *H. D. Carberry* for the executor.

Richard Mahfood, Q.C., F. Barrow, W. Frankson, Dr. Edwards, J. Leo Rhynie, Mrs. U. Khan, and *Miss E. Norton* for parties interested under the will.

PARNELL, J.: The executor of the will of the deceased, Henry Wilfred Scott McGarth, Penkeeper, late of Charlemont, Saint Catherine, has taken out an originating summons pursuant to s. 532 of the Civil Procedure Code. The executor seeks the determination of certain questions mentioned in the summons and has cited seven interested parties under the will and codicils. The deceased executed his will on February 14, 1959. Two codicils dated August 20, 1960, and June 22, 1964, respectively, were also executed. It is in the first codicil that the applicant, H.C., is appointed the sole executor. The appointment of the executors named in his "home-made" will was revoked by the testator for reasons which he gave.

The deceased died on October 3, 1965. His will (with codicils) was admitted to probate on April 14, 1966. The inventory of the estate shows that the deceased left a substantial amount of real and personal estate. This originating summons has been taken out on the basis that the testator in his will and codicils has not made his intention clear and that, in particular, some of his dispositions cannot be effectively carried out without the court's assistance. I shall approach the questions raised in the summons with a certain amount of mild trepidation on one side and with a measure of strength and practicality on the other. The testator, in his will, has demonstrated that he was not afraid to take appropriate action—like a camp commandant—when the necessity arose. If I am to sit briefly in one of the testator's easy chairs at Charlemont in considering the questions, then I am required to assume his mantle and wield it as best I can. And at the outset, I shall remember the observations of two outstanding Chancery judges. I am grateful to Mr. Leo Rhynie in reminding me of the first one which is to be found in *Re Minchell's Will Trusts* (1) ([1964] 2 All E.R. at p. 48) *per* SALT, C., as he then was:

> "Now the will is 'home-made' . . . The document itself provides an outstanding example of the toast of the Chancery Bar 'here's to the man who makes his own will'. He plainly did not, like EVE J's testator, brood on the rules of construction in his leisure time."

The second is of a vintage of about 135 years. Though old, it is in my view, still going strong. It is to be found in *Vaughan* v. *Marquis of Headfort* (2), ((1880), 10 Sim. at p. 641) *per* SHADWELL, V.-C.:

> "By the laws of this Country, every testator in disposing of his property, is at liberty to adopt his own nonsense."

And if I am permitted to add a supplementary, then I shall return to *Re Minchell's Will Trusts* (1) *(ibid.*, at p. 49):

> "The basic task of the court is to ascertain against the relevant back-ground and on reading the will as a whole, what was the true intention of the testator, regard being had, of course, to the canons of construction. As KNIGHT BRUCE, L.J., said long ago, 'one testator's nonsense is no guide to another testator's nonsense'."

Over a period of six days, the learned counsel who appear for the interested parties, debated the questions with industry and skill and dismissed—quite rightly—any suggestion that they or any of them could be said to have had in mind any "toast" in memory of the deceased. The court was deluged with authorities and citations. One counsel presented at least thirty references including summations from well-known text books. It will not be out of disrespect if, in this judgment, no reference is made to many of the cases cited. But I have considered the substance raised in all the cases where I find it relevant. And where, in some of the authorities, I found that, like Swiss troops, they fight on both sides, I have gingerly laid them aside and returned to the point from whence I diverted to examine the battle, namely, the fountain of general principles.

The cardinal rule of construction in considering a will is put in clear language

by LORD ROMER in *Perrin* v. *Morgan* (3) ([1943] 1 All E.R. at p. 197):

> "I take it to be a cardinal rule of construction that a will should be so construed as to give effect to the intention being gathered from the language of the will read in the light of the circumstances in which the will was made."

This cardinal rule shall be my companion as I proceed along the way.

CERTAIN GENERAL PARTICULARS WHICH MAY BE GATHERED FROM THE WILL AND AFFIDAVITS FILED IN THE PROCEEDINGS

(1) That the chief beneficiary D.K.L. served the testator for about thirty years up to the time of his death. He was the batman and chauffeur and is affectionately referred to in the will as a "Godson".

(2) That the beneficiary C.C.W. served the testator for about twenty-nine years as an overseer on one of his properties, namely, Charlemont. He is affectionately referred to as a "Godson".

(3) That the testator was a devout Roman Catholic. One room on the property house "Charlemont" was kept by the testator as a private chapel.

(4) That the house on Charlemont property is a large one and was occupied by the testator as his home. The property house was separated from the rest of Charlemont by a fence and wall. The house and the fenced portion occupy about five or six acres. The evidence is that at least for thirty years prior to the death of the testator, "Charlemont House and its immediate environs" were separated from the rest of the property by a fence and wall.

(5) That the testator's real property consists mainly of "Charlemont Pen", "Ivy" and "Stirling Castle". The evidence is overwhelming—indeed there is no dispute on this issue—that the testator always referred to and accepted the term "Charlemont" as referring to both the "Charlemont Pen" and "Ivy" properties. One set of account books was always kept in running "Charlemont". But in the case of "Stirling Castle", it was regarded by him as a separate property and kept as such for administration purposes. A separate set of books of accounts was kept for "Stirling Castle".

(6) That at least for about ten years before the death of the testator, only four persons lived at "Charlemont House", namely, the testator, D.K.L., A.M. (the cook), and A.B. (a household servant).

(7) That D.K.L.—at all material times a married man—kept his matrimonial home at "Mickleton" but he rarely slept there overnight or stayed for any long time. Mrs. D.K.L. and her father lived at the matrimonial home.

(8) That at the time of the testator's death three race horses were owned in equal shares between the testator, D.K.L. and C.C.W. These horses were with the trainers on October 3, 1965, but were ordinarily kept and pastured on one of the properties of the testator.

(9) That the testator was the owner of a property, "Endeavour", which he had contracted to sell, and did sell, to Reynolds Jamaica Mines before his death. Glassware and household goods were in the property house at "Endeavour" but these were not included in the contract of sale.

CERTAIN DISPOSITIONS IN THE WILL AND CODICILS WITH DECLARATION OF INTENTION OR WISH, IF ANY

As I have already pointed out, the tenor of the testator's will indicates that he was not afraid to be frank and decisive. He would call a spade by that name and would refuse to take refuge behind an euphemism. At p. 4 of the certified copy of the will, the testator is eloquent and profuse in his praise of D.K.L. He earnestly requested that D.K.L. and his wife should be buried beside him. Showing faith and assurance like Saint Paul, the testator has indicated that a place in heaven is reserved for him. And he has prayed that D.K.L. and himself "will be together in heaven in the life hereafter". On the background of his

affection for D.K.L. and the encomiums showered for devoted, loyal and faithful service, the testator executed his will with the clear intention that after his death, D.K.L. should live in style and comfort as a kind of retired landed gentleman. How did the testator go about his purpose? After giving D.K.L. certain pecuniary legacies which are not questioned, he provided as follows:

(1) "I give to my Godson D.K.L. all the Live and Dead Stock on Endeavour at the time of my death—this being separate and apart and not included in the Agreement of sale with Reynolds Jamaica Mines of the Property—and I wish him to move to Charlemont all the furniture, pictures, china, glassware and household goods from Endeavour House, as I do not wish any of these to be sold or passed to Reynolds Jamaica Mines — but retain at Charlemont in my personal memory."

The testator then proceeded to confer his bounty, as to real estate, on D.K.L.:

(2) "I give to my Godson D.K.L. my properties Charlemont and Stirling Castle with the live and dead stock thereon and all my investments—requesting my solicitor Senator Douglas Judah C.B.E. to give him every assistance to have all his affairs settled in a clear and correct manner for his comfort and happiness."

And at p. 4 of the will, the testator has made the gift of the real estate, very clear. He stated:

(3) "I wish it clearly understood that D.K.L. may sell in his lifetime any part of Charlemont—or the Property, or part of Stirling Castle—should he so wish to do—providing a sufficient acreage of Charlemont remains, in order to retain the Tradition of the McGrath family, and nature as a Roman Catholic Sanctuary so very necessary in the deplorable transformation of the neighbourhood with the doubtful advantage of the Aluminum Jamaica factory—which can produce advancement—or Evil—most likely the latter."

That D.K.L. should live in "Charlemont House" for the rest of his life is the solemn wish of the testator. In his will and first codicil, the intention is as clear as a sunny day. The will states:

"It is my most particular and very special wish that my Godson D.K.L. and his wife Madeline—with any of his family he may wish—shall live in Charlemont House in absolute possession, and without disturbance of any kind, relative to my subsequent references to the Roman Catholic Church hereinafter mentioned, for his lifetime. I wish Charlemont to be his home, and it is my most solemn wish that he must not enter into any agreement of any sort to alter my wishes in this respect—even should he desire to do so for any reason."

In the first codicil, the testator repeated his wish that:

"My executor and solicitor protect my Godson D.K.L. that no one can interfere in any way with my sacred wish that Charlemont be his Home throughout his life and he live undisturbed with his wife Madeline, and whomever else he may wish to be with them, other than any member of my family, as I do clearly wish none of my relatives to live there."

The interest of the Roman Catholic Church is put thus in the will:

(4) "And after the death of D.K.L., I wish Charlemont House and whatever Property may remain, to pass to the Roman Catholic Church in Perpetuity —never to be sold—Stirling Castle and House and Property, if still in the possession of D.K.L., to remain the Possession of his wife or family."

In the codicil of August 20, 1960, the testator reverted to the interest of the Roman Catholic Church. He had earlier referred to his wish that "Charlemont House" be the home of D.K.L. "throughout his life". The testator continued:

"and to safeguard that he be not induced by any possibility whatever to disregard my wish as it is my most solemn direction that Charlemont be his

home, without interference even by the Roman Catholic Church—who are nothing to do with Charlemont until after his death."

SUBMISSIONS TOUCHING THE DISPOSITIONS TO D.K.L.; MADELINE AND THE ROMAN CATHOLIC CHURCH

Provision is made under s. 23 of the Wills Act (formerly Cap. 414) as follows:

"Where any real estate shall be devised to any person without any words of limitation such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will."

And in HALSBURY'S LAWS OF ENGLAND, (3rd Edn.), Vol. 39, para. 1611, it is stated as follows:

"It is, however, a settled rule of construction that a clear gift is not cut down by anything subsequent in the will which does not with reasonable certainty indicate the intention of the testator."

On the background of the statutory provision under the Wills Act and of the principle stated above, submissions were made by Mr. Carberry, Mr. Leo Rhynie, Mrs. Khan and Mr. Mahfood with a succinct review by Mr. George. Some of the submissions are lengthy and the points raised with their fine distinctions have been noted and examined.

One of the arguments of Mr. Carberry is that there is an absolute gift to D.K.L. of Stirling Castle and Charlemont property excluding the Great House and an indeterminate quantity of land and as to the Great House and that amount of land not determined, D.K.L. is to take a life interest with remainder to the Roman Catholic Church. To the same effect is the contention of Mr. Leo Rhynie with the reservation that if "Charlemont Property" is to be regarded as "one unit" or "one property" including the Great House, then the whole would go to D.K.L. and the interest of the Roman Catholic Church would fail. In a most ingenious argument marked with eloquence and wit, Mrs. Khan contended as follows:

(1) The Roman Catholic Church—which is now a legal entity by virtue of Act 15/1970—is to get Charlemont House and "a sufficient acreage"—which is to be measured by D.K.L.—subject to the life interest of D.K.L.;

(2) That what remains of Charlemont property which is not disposed of by D.K.L. is to pass to the Church after his death:

(3) That on the death of D.K.L., "Madeline and family" are to have successive life interests in Stirling Castle and thereafter the Church is to get the property;

(4) The testator had to give D.K.L. the means to live in style and to keep up the property. The power of sale, therefore, conferred in the will is for D.K.L. to use the proceeds of sale as capital money which would follow the realty. In other words, Charlemont and Stirling Castle must be regarded as settled land.

Mrs. Khan cited several authorities some of which were relied on by Mr. Carberry and Mr. Leo Rhynie. In particular, an article by Dr. J. H. C. Morris in 82 L.Q.R. 196 with the interesting heading "Palm-tree justice in the Court of Appeal" was cited to show what she calls the "current judicial trend" in interpreting wills. The view of LORD DENNING in *Re Jebb* (4) does not find favour with Dr. Morris. This is what the Master of Rolls has to say ([1965] 3 W.L.R. at p. 814):

"In construing this will, we have to look at it as the testator did, sitting in his armchair, with all the circumstances known to him at the time. Then we have to ask ourselves: "What did he intend?" We ought not to answer this question by reference to any technical rules of law. These technical rules of law have only too often led the courts astray in the construction of wills. Eschewing technical rules, we look to see simply what the testator intended."

When Mr. Mahfood made his submissions, I detected an inclination on his part to agree with the strictures of Dr. Morris in his "Palm-tree justice" article. Mr. Mahfood has urged—what I call with respect—a hard-line approach. In his general comments he stated that the will under review is not that of a humble peasant but that of a wealthy property owner and that if such at person should elect to write his own will instead of consulting an attorney, he has no one to blame but himself if he fails to achieve his objective. The simple answer to this view is that the wills made by lawyers are not always perfect. Appreciating this fact in a certain will which a lawyer made for himself, he directed that if any

"question either of fact or law or equity should arise the matter should be decided by the executor from whom the beneficiaries are much more likely to receive justice than from an appeal to the Courts."

See (1936), 80 Sol. Jo. 343.

The truth is that any man or every man is free to be his own draftsman of his will, to talk his own nonsense where necessary, to supply his own dictionary as to the meaning of his words and to dispose of his property as he thinks fit. And the approach of a judge in interpreting the will is the same whether it is that of the village labourer or that of the wealthy land owner for whom the labourer worked.

Mr. Mahfood submitted, in substance, that the words "a sufficient acreage of Charlemont in order to retain the tradition of the McGarth family and nature as a Roman Catholic Sanctuary" are uncertain and cannot be determined in accordance with any accepted principle. But since this uncertainty touches part of the Charlemont property, the testator would be granting two devises in fee simple in the same property, one to D.K.L. and another to the Church, and each being uncertain, the whole is void for uncertainty.

Mr. Mahfood does not agree with Mrs. Khan's suggestion that both the Charlemont property and Stirling Castle must be treated as settled land. In his contribution, Mr. George sounded a note of caution. He urged that "Palm-tree justice" should not be administered nor should well known authorities which are relied on in the interpretation of wills, be thrown to the wind. While awarding Mrs. Khan full marks "for the ingenious and logical arguments of a fertile mind", he rejected her suggestion that D.K.L. has power to sell the property only for the purpose of satisfying the bequests in the will. He suggested that the court could find that D.K.L. has been given a life interest in the whole of Charlemont with the question of any "uncertainty" being postponed until after D.K.L.'s death. With regard to Stirling Castle he claims that the uncertainty is not as great.

In the midst of all these interesting and persuasive contentions, the duty of the court is to travel warily and to remember that in many instances, referring to authorities as an aid in construing a particular will is an exercise aimed at courting confusion and doubt. In this regard, I adopt with respect, the words of LORD DENNING in *Re Jebb* (4), and reject the suggestion that in this approach, "palm-tree justice" would be the result. If ss. 19 and 23 of the Wills Act are to be followed—and it is my duty to obey them—then the surrounding circumstances prevailing "immediately before the death of the testator" and his intention as gathered from the testamentary instruments, together must constitute my pole-star. In such a state of affairs, I am puzzled to know how any particular decision based on its own facts can be a safe guide particularly where the testator himself has thrown light along the way that the court is required to travel.

On a true construction of the will, I hold that the testator intended that with the exception of Charlemont House—"with a certain amount of acreage" (a term I shall revert to in due course), Charlemont Property and Stirling Castle should go to D.K.L. absolutely. This means that the wish of the testator "that Stirling Castle House and Property, if still in the possession of D.K.L. to remain the

possession of his wife—or family" is only a pious hope which he did not convert into a direction so as to cut down the absolute gift to a life interest.

Stirling Castle is a property of about 608 acres. For his "gratitude and appreciation" of the "loving fidelity to my grandson D.K.L. in her exemplary life as his wife", the testator in his first codicil bequeathed Madeline $2,000 in addition to the $500 he bequeathed her in his will. Power is given to D.K.L. to dispose of any or the whole of the real property devised. The wife can only claim an interest in Stirling Castle either on the basis that D.K.L. has only a life interest with power to sell a portion for his benefit; or on the basis that D.K.L. has an absolute gift subject to a trust in her favour.

It is impossible, in the face of this will, to interpret it in such a manner so as to allow any claim to Stirling Castle by Madeline or "her family". In so holding, the ingenious argument of Mrs. Khan that the Roman Catholic Church has a fee simple *in futuro* in Stirling Castle expectant upon the death of the last member of "Madeline's family" must go overboard.

On June 11, 1970, an instrument was executed between D.K.L. and the Roman Catholic Archbishop of Kingston, a corporation sole, in which part of Charlemont Property (inclusive of the property house) consisting of about 198 acres was conveyed to the Archbishop (on behalf of the Roman Catholic Church) subject to a life interest in favour of D.K.L. The instrument was executed by the parties in which the relevant terms of the will are recited.

The will is so worded that it is open for one to say—and I so hold—that the testator, relying on the long and close relationship between himself and D.K.L., conferred on D.K.L. the right to decide what is:

"a sufficient acreage of Charlemont in order to retain the tradition of the McGarth family, and nature as a Roman Catholic Santuary."

I hold that a valid charitable gift has been made to the Roman Catholic Church to take effect after the death of D.K.L. and that the reason for the gift, namely, the Church, in advancing its religion in and around the area of the bauxite operations, will fight any "evil" which the operations may introduce, is clearly discernible in the will. And even if no express or implied power of determining what is a "sufficient acreage" was not conferred on D.K.L., I would not be prepared to hold that the gift to the Church failed for uncertainty. For years, the deceased kept his private chapel in the Great-House which was surrounded by a wall and fence on a plot of about five to six acres of land. I would construe the will—if it were necessary—to mean this: that in the power of sale granted to D.K.L. over Charlemont Property, the Great-House and its environs as known to him for the period of thirty years should remain as it is, that is to say: the acreage around the house should not be reduced.

GIFT OF LIVE AND DEAD STOCK

The testator, bequeathed "all the live and dead stock on Endeavour at the time of my death" to D.K.L. He also bequeathed "the live and dead stock" on Charlemont and Stirling Castle to D.K.L. To D.K.L., the testator bequeathed "all my investments".

Relying on BURROWS WORDS AND PHRASES, Vol. 3, p. 266, Mr. Carberry submitted that "live and dead stock" refers to animals and things having a casual connection with the use, care and protection of the animals in a rural community. He argued that things like linen, furniture, plates and glassware would not pass.

Mr. Leo Rhynie would be prepared to give the term a more extended meaning. Even the wall picture in Mr. Rhynie's view, would pass. I agree with Mr. Carberry. Domestic animals kept on a farm or on a property for any use, including sale and profit, would be covered under the term "livestock". The term "dead

stock" refers to all personal property which could reasonably be connected with the rearing of domestic animals and the upkeep of the farm.

The plough, the axe, machete, tractor and the water hose are instruments necessary for the farm. The rope, chain, grain and pig feed would also be included. Matters like the family album, glassware, the bed-spread and the vacuum cleaner have nothing whatever to do with "livestock" and would not be caught under that term. In particular, I hold as follows:

(1) Motor cars and guns pass under the term "deadstock". It is necessary for the upkeep, protection and running of real properties of the extent owned by the testator that things like motor cars, guns and tractors be owned by the land owner.

(2) All books of account concerning the operation of the properties and any other book which touches and concerns the operation of a farm, for example, a book which guides a farmer how to rear pigs, would pass under "deadstock".

(3) Furniture, pictures, china, glassware and household goods which were to be removed from "Endeavour" to "Charlemont" at the death of the testator would not pass under "deadstock" except where under "household goods" things like "farm implements", in the light of what I have adverted to, can be found. I will take notice that in Jamaica the term "household goods" is sometimes loosely used. So long as the "things" are kept within the house or in a room attached to the house, some call them "household goods".

At the time of the death of the deceased, there were three race horses, namely, "Gratitude", "Full Dress" and "Courageous" in which the deceased owned a third of the share. The other shares were owned by D.K.L. and C.C.W. The deceased could only bequeath what interest he had in the horses. In my judgment, his interest must be ascertained by way of a notional conversion of the value of the three horses with a third going to his estate. This being so, the testator's interest would not pass under the term "livestock" and should be regarded as indisposed of.

With regard to the term "investments" Mr. Carberry argued that the "Bank Account" and the "Insurance Policy" of the testator would not pass to D.K.L. I detect an initial hurdle in the submissions of counsel on this point. When the court inquired about the inventory which was filed for the purpose of obtaining probate, a copy was produced and tendered. Having examined the inventory, I accept the submission of Mr. Carberry and hold that "investments" as mentioned by the testator refer only to the money on mortgage; the debenture stock and the stock units as disclosed in the inventory filed by the executor. One of the legacies left for D.K.L. is:

"a sum of one thousand pounds to be an immediate payment from my life insurance policy, with the Confederation Life Association upon my death."

I can find nothing in the will to indicate that the testator intended to pass the whole of the proceeds of the insurance policy to D.K.L.; he may have had it in his mind in view of his wholesale benevolent attitude towards his loyal "godson". But I cannot find sufficient words to carry all the proceeds to D.K.L. I accept the submission of Mr. Mahfood that there is no residuary clause in the testamentary instruments. The result is that the bank account and the remainder of the proceeds of the insurance policy have not been disposed of.

The "personal effects" of the testator at Charlemont House in so far as they were necessary for the running of the house, for example, the house-broom, polisher, plates, spoons, glassware and linen, (other than the family silver, the desk of the testator's mother and letter case bequeathed to D.S.M.) all pass as a "unit" attached to the house for the enjoyment of D.K.L.'s life interest in the house and thereafter (fair wear and tear excepted), the remainder with the house will go to the Roman Catholic Church. The clear intention of the testator is that

at his death, Charlemont House as found with its "fittings" and "utensils" (except what he has specifically bequeathed to his brother in the second codicil) should remain in the house for the enjoyment of those whom he directed would live in it. And these "fittings" and "utensils" are to be supplemented by those from Endeavour House.

The second "godson" of the testator, C.C.W., is not as fortunate. The sum of £1,000 is bequeathed to C.C.W. on a certain "condition". When carefully examined, the condition or proviso may be put as follows:

C.C.W. is required to assist D.K.L. for a period of one year, or if D.K.L. should agree, for a shorter period, in D.K.L. identifying, understanding and becoming conversant with the affairs of the testator touching the properties, documents and accounts and his investments. A further sum of £2,000 is bequeathed to C.C.W.:

"If this condition be carried through to the satisfaction of D.K.L."

In the second codicil, the testator has provided as follows:

"I bequest to C.W. the sum of Ten Thousand Pounds in appreciation of his services to me, and my gratitude for his kindness and consideration to me, in spite of at times my quarrels and disagreement—which were however temporary and purely impersonal."

One of the questions raised in the summons is whether the gift of £10.000 is in addition to or in substitution for the two gifts above mentioned.

Mr. Frankson in his usual forceful and concise manner, submitted that the legacies are of different amounts and the reasons assigned for the bequests are separate and distinct. He argued that C.C.W. is entitled to £13.000 since there is no evidence that the obligations requisite for taking the whole sum have not been discharged. On the other hand, Mr. Carberry argued that by the omission of the testator to say that the large legacy in the codicil was in addition to those in the will, the implication would be that it was intended to be in substitution for and not in addition to, the two legacies. The general rule is that:

"Legacies of equal, less, or greater amount, given by different instruments, as by will and codicil, to the same person, are *prima facie* cumulative". See THEOBALD ON WILLS (12th Edn.), p. 155.

As overseer of Charlemont, C.C.W. was in a position to know more about the affairs of that property than D.K.L. who was a mere batman and chauffeur. And the reasons assigned for the "conditional legacies" in the will, indicate that the testator was well aware that without the aid and assistance of his godson C.C.W., the favourite godson D.K.L. would not have been in a position to understand properly the nature and extent of all the business affairs which he the testator owned and operated. The two legacies in the will are to be regarded as what one may call "an incentive reward" to C.C.W. for sharing his detailed knowledge with D.K.L. But with only £3.000 to his credit for nearly a quarter of a century years of service, the junior godson would still be far behind D.K.L. in the distribution of the testator's liberality towards those who were near and dear to him. The testator, who appeared to have had his will under constant review—and this is clear from the number of changes he made in his codicils—put his final seal in respect of the total bounty C.C.W. should receive by his providing an additional sum for the very clear reasons which are mentioned.

The result is that C.C.W. is entitled to claim the total sum of £13.000 because there is nothing to indicate that the larger bequest can be looked upon as explanatory of the two prior legacies.

In the first codicil, the testator clearly indicated that he wished to provide for the poor and needy in and around Ewarton and Mount Rosser. It was a common practice when I was a boy that the big land owner would provide for the distribu-

tion of a parcel to the old and needy at the approach of Christmas. The main recipients would be the retired labourers on his estate and the poor people who lived near to his large property. A fatted calf would be slaughtered and a piece of beef would form a prominent portion of the contents in the parcel which each person would receive. The provision in the will shows that this custom which I have known for over forty years, has not been forgotten by all the wealthy land owners in the country.

The codicil provides as follows:

"I wish a permanent charge on Charlemont Property to be effected for provision of an annual Christmas Dole or Treat for the Poor of Ewarton and Mount Rosser neighbourhood of Sixty Pounds—in the same way as the charge of Ten Pounds under my father's will for the poor of Spanish Town."

In the second codicil, the testator reviewed this provision and provided as follows:

"the amount of Sixty Pounds I have said as the figure for the bequest as my gift to the poor of Ewarton at Christmas, is incorrect, as I revoke this as a mistake. The beef given for persons is, around Ewarton from Charlemont Property, the cash amount for groceries is changeable, in accord with the numbers—usually £12 to £15 and I wish this be Fifteen Pounds annually—I wish my Executor and Trustee to have this understood."

A valid charitable trust for the relief of poverty has been created. And what I understand the testator to be saying is this: at Christmas time, my property Charlemont used to provide a cow for slaughter, so that the beef could be distributed among the poor in and around Ewarton. Some "grocery" used to accompany the beef and the estimate of £60 for "groceries" was made. The figure of "sixty" is revoked and "twelve to fifteen" is substituted.

I find, therefore, that a valid charitable trust has been created and chargeable on Charlemont Property. The trust is in the nature of providing beef for the Christmas treat of the poor and in addition the provision of "groceries" to the total value of between $24 to $30.

Without directing how this should be done, I would suggest that the executor and D.K.L. should work out a scheme in consultation with R.C.B., if necessary. D.K.L. and C.C.W. are fully conversant with the way the testator used to operate his charitable bounty. In the absence of an agreed scheme then a further application could be made to the court in this regard. The price of a cow to meet the beef distribution as at October 3, 1965, together with a further sum not exceeding $30 as on that date could be used as a yard stick in estimating a monetary charge if this must be done. I have already indicated that I am only putting forward some indicaion as to how this portion of the testator's declared intention could be carried out.

SUMMARY OF MATTERS DISCUSSED

(1) Under the will, D.K.L. is to receive the fee simple in the properties Charlemont (excepting the Great-House and "a sufficient acreage" as explained herein), together with Stirling Castle.

(2) Neither Madeline or her family can claim any interest whatever in any of the properties aforesaid;

(3) D.K.L. has a life interest in Charlemont House with the remainder to the Roman Catholic Church, in the light of the judgment;

(4) "Ivy" forms part of the Charlemont Property and although it has a separate registered title it forms part of the designation "Charlemont".

(5) The term "live and dead stock" carries the meaning as outlined herein;

(6) The interest of the testator in the race horses, did not pass under the term "livestock";

(7) The interest of the testator in his bank account and in the residue of his life insurance have not been disposed of. The interests in (6) and (7) are to be treated as if there was an intestacy.

(8) A valid charitable trust chargeable on "Charlemont" has been created in the light of the judgment herein;

(9) The beneficiary C.C.W. is entitled to the pecuniary legacy in the codicil together with his legacies in the will.

I declare accordingly in terms of the summary above.

I must record my appreciation for the help I have received from all the counsel engaged in the arguments. Their elucidation and industry made my task comparatively easy.

I award costs of the proceedings, to be paid out of the estate, to the parties herein with certificate for two counsel in respect of the executor and two for the next of kin E.L.H. and A.M.

Originating summons.

ASTON KANE v. MINISTER OF HOME AFFAIRS AND JUSTICE

[COURT OF APPEAL (Edun, Hercules and Zacca, JJ.A.), February 26, 1975]

Certiorari—*Revocation of firearms licence—Delay in applying for order of certiorari*—***Discretion.***

Natural Justice—Revocation of firearms licence—Appeal against order of revocation—Appellant not given opportunity to be heard at hearing of appeal.

The appellant's firearms licence was revoked by the appropriate authority and he appealed to the respondent against the order revoking his licence. By letter dated July 24, 1972, he was informed that the respondent had not allowed his appeal. He had not been given an opportunity to be heard at the hearing of his appeal before the respondent. It was not until February 13, 1973, however, that the appellant filed a summons for extension of time within which to apply for an order of *certiorari*. This application was supported by affidavits in which the appellant sought to explain the delay in applying for the order on the ground of his inability to procure the services of counsel of his choice. The summons was heard by the Chief Justice who, finding no merit in the application, dismissed the summons.

On appeal it was argued, *inter alia*, that even if the Chief Justice did not accept the appellant's explanation for his delay in applying for leave for an order of *certiorari* it was the fact that the appellant had been denied an opportunity to be heard at the hearing of his appeal and there had been, therefore, a breach of the rules of natural justice in respect of which the appellant was entitled to redress.

Held: that the failure of the respondent to give the appellant an opportunity to be heard at the hearing of his appeal against the order for revocation of his licence was, in the particular circumstances, a breach of the rules of natural justice; as, however, *certiorari* was a discretionary remedy, the appellant had, by his inexcusable delay, shown himself disentitled to redress.

Appeal dismissed.

Cases referred to:

(1) *Russell* v. *Duke of Norfolk*, [1949] 1 All E.R. 109; 65 T.L.R. 225; 93 Sol. Jo. 132.

(2) *Pett* v. *Greyhound Racing Association, Ltd.*, [1968] 2 All E.R. 545; [1969] 1 Q.B. 125; [1968] 2 W.L.R. 1471; 112 Sol. Jo. 463, C.A.