

In the Supreme Court of Judicature of Jamaica

In Probate and Administration

Suit No. P. 525/1970

In the Estate of Princess Nina Aga Khan
also known as Nina Dyer, also known as
Nina Sheila Dyer late of the Municipality
of Castagnola, Switzerland, gentlewoman,
deceased intestate.

Harvey DaCosta Q.C. and with him, J. Leo-Rhynie for the Royal Bank
Trust Company Ltd., (Applicant for letters of Administration de bonis
non) on behalf of William Stanley Aldrich.

Dr. Kenneth Rattray Q.C. (Senior Asst. Attorney General) and with him,
Shirley Playfair (Crown Counsel) for the Administrator General
(An applicant for letters of Administration).

Winston McCalla (Crown Counsel), for the Attorney General
(intervening on the basis of a claim that the property in Jamaica
of the deceased is bona vacantia).

1971; April 21, 22

Nov., 22, 23, 24, 25, 26,

Dec., 1 and May 1972.

Parnell, J. This is an interesting case which raises important
points with a strong flavouring of Private International Law.

Learned counsel for the Attorney General, did not take any further

part in the proceedings after the second day. The interest of the Attorney General was therefore, watched by Dr. Rattray. Both Mr. DaCosta and Dr. Rattray argued their cases with commendable skill. The preliminary objection raised in the early part of the proceedings touching the jurisdiction of the Court and which was not entertained, was ~~the~~^{with} ability supported by Mr. McCalla before he made his exist.

I shall state briefly what the substance of the contention is. The deceased whom I shall hereafter refer to as "Nina Dyer" or "Nina" was born in England on February 15, 1930. She died in France on July 3, 1965 while being domiciled in Switzerland. Nina died intestate leaving a lot of property. Part of that property is in Jamaica and it consists of personal estate estimated to be of the value of \$1,000 and real estate in the parish of Portland and estimated to be of the value of \$100,000.

Mr. William Stanley Aldrich, an Englishman who is now in his seventy third year claims that Nina was his daughter lawfully begotten with his wife Elsie Edith nee Rogers now deceased and whom he married in London on the 8th June, 1923. Mrs. Aldrich is said to have been a woman without any independent means. Mrs. Aldrich eloped with a wealthy Englishman Stanley Dyer, in or about June, 1929. Mr. Dyer had a wife; he was then about 58 years old but he left his wife to live with Mrs. Aldrich who was then about 22 years of age, and who is described as "very attractive". Mr. Aldrich discovered where his wife was and he used to see her. Sexual intercourse between Mr. Aldrich who was about 29 and his wife did not cease after she had eloped. Nina was born at a nursing home while Mrs. Aldrich

was still living with Mr. Dyer. Her birth was registered on the 7th March, 1930. The father is stated in the birth certificate to be:

"Stanley Hartop Dyer, Ceylon Tea Planter
of 136, Chatsworth Road, N.W.6"

The informant was the said Stanley Hartop Dyer. The name of the mother is stated thus:

"Elsie Dyer formerly Rogers."

If the birth certificate of Nina is to be accepted at its face value, it would mean that Mr. Dyer was giving information to the Registrar of Birth and Deaths that "Elsie Dyer formerly Rogers" was then his lawful wife. But the unchallenged evidence before me is that up to May, 1954 when Mrs. Aldrich died she and Mr. Aldrich had not been divorced. The birth certificate, therefore, is misleading in a material particular. But the giving of this misleading information is understandable. It is a human story which I am unfolding as simply as I can on the backgrounds of an English scene. Certain principles which the Victorian Age had generated on the conduct of the ordinary citizen in England in 1929 - and even as far away as in Jamaica - were still in full force and effect. In due course, I shall go into a few details as I touch certain stages of the play.

Since the death of Nina, the following events are to be noted:

- (1) On the 13th August, 1965, a Court of competent jurisdiction in Switzerland appointed three attorneys-at-law to be administrators of the estate of the deceased Nina.

(2) On a date in October, 1966, the Administrators by Power of Attorney appointed the Royal Bank Trust Company (Jam) Ltd., to be the "true and lawful attorney in Jamaica ----- for the Administrators,"

(3) In the course of time - the date is not clear - the Royal Bank Trust Company applied for letters of Administration. in connection with the property of the deceased to which I have already referred.

(4) On the 5th of April, 1967, letters of Administration of all the estate in Jamaica which by Law devolves on the deceased Nina were granted by the Supreme Court to the applicant (Royal Bank Trust Company) as the Attorney of the Administrators.

"until they shall apply to this Honourable Court for and obtain a grant to them of Letters of Administration in the estate of the said deceased."

(5) In October, 1966, Mr. Aldrich took out proceedings in England with a view to his securing:

(a) A declaration of the validity of his marriage to Nina Dyer's mother and

(b) A declaration of the legitimacy of Nina Dyer.

On the 24th November, 1967, Ormrod, J granted the prayer in (a) above but dismissed that part of the prayer which sought a declaration that Nina was legitimate. The ground of the dismissal is this;

Under the Law, the person seeking the declaration of legitimacy

must be the petitioner himself. But since Nina was dead (she being the proper petitioner if she had been alive), her father could not obtain such a declaration. See Aldrich v. Attorney General, [1968] 2. W.L.R. 413. In the course of his judgment, the learned judge said this:

"I should make it clear, however that if this Court had to decide this issue, i.e. whether Mr. Aldrich was the father of the late Miss Dyer, in proceedings relating to a claim which had to be adjudicated upon in this Court, the court would do so upon such evidence as was available, for example, in a suit by Mr. Aldrich claiming assets in this Country." *ibid* 421. I shall take a note of this robust stand of Ormrod, J.

(6) In a petition dated the 21st/23rd. March 1968, and filed in the Swiss Court, Mr. Aldrich outlined the facts of his case and sought, *inter alia*, a declaration that:

"The estate of the late Nina Dyer devolves upon her legal heirs, or rather on her legitimate father Mr. William Stanley Aldrich."

There were about 14 respondents named in the petition. The respondents did not oppose the action but on the contrary, they accepted its substance.

(7) In a judgment dated 14th November, 1968, a court of competent jurisdiction in Switzerland in which Country Nina was domiciled at the date of her death, declared and pronounced *inter alia*;

"That the estate of the late Nina Sheila Dyer devolves upon her legitimate father William Stanley Aldrich."

The Court also revoked the Letters of Administration

granted on the 13th August, 1965.

For the time being I shall refer to the competency of the Court in so far as it relates to proceedings concerning the property of the deceased dying intestate and who at the date of death was domiciled within the courts jurisdiction.

(8) On the 3rd. November 1969, Mr. Aldrich, by Power of Attorney, appointed the Royal Bank Trust Company (Jam) Ltd. to be his attorney in Jamaica in respect of the property of the deceased Nina Dyer.

It would appear that when the Trust Company applied for Letters of Administration on the instructions of Mr. Aldrich who had to exhibit all relevant documents in support of the application, it was observed that there was evidence which would suggest that Nina was not "lawfully begotten." If she was a bastard, then Mr. Aldrich would not be competent to instruct the Trust Company to act on his behalf; he would not be entitled to share in the estate which the deceased left in Jamaica and in fact the Attorney General, on behalf of the public, could claim the whole property in default of any lawful parent or blood relation pursuant to the Intestates' Estates and Property Charges Law, Cap. 166,

The Administrator General and the Attorney General having been made aware of the position, issues are now joined on this question; Is William Stanley Aldrich the legitimate father of the deceased Nina? If this question in this form is a little too pointed or controversial - the issue can be put into another form; namely, is William Stanley Aldrich entitled to any and what part of the estate of the deceased Nina which she left in Jamaica?

What is before me, therefore, is a notice of motion and in its amended form, it seeks an order as follows:

"That the said William Stanley Aldrich be declared to be entitled to the entire estate of the deceased in Jamaica absolutely and beneficially."

Before I return to an examination of the evidence which was put before me, I should state a few facts relevant at this stage.

These are not in dispute.

- (1) That the deceased Nina Dyer died without any husband or children her surviving;
- (2) That the mother of the deceased died in May, 1954 as a result of car accident,
- (3) That Mr. Stanley Dyer, died in Ceylon on the 11th December, 1945.
- (4) That Mr. Stanley Dyer made a will naming the mother of Nina as the sole beneficiary. No mention is made of his "daughter" Nina Dyer in the will.
- (5) That Mrs. Aldrich left a will in 1954. She left most of her estate, which she inherited from Mr. Dyer, to her daughter Nina who was her only child. Mr. Aldrich is not a beneficiary under the will of his wife.

The first two days of the hearing were spent in discussing a preliminary point raised by Dr. Rattray. In the original notice of motion, Mr. Aldrich sought a declaration that he may be declared the legitimate father of the deceased. Dr. Rattray argued that the court had no jurisdiction to make any such declaration and his reasoning is based on the decision given in England in 1967 in

Aldrich v. Attorney General to which I have already referred. The objection was not sustained and at this stage I should mention something which is of practical importance.

Under the Intestate's Estates and Property Charges Law, Cap. 166, the persons entitled to share in the distribution of the estate of an intestate are clearly set out. One person mentioned is put thus under Section 4 (1) (IV):

"If the intestate leaves no issue but one parent, then subject to ~~the~~ interest of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely."

And the Attorney General, acting on behalf of the public, is allowed to intervene by virtue of Sec. 4 (1)(V1) which states:

"In default of any person taking an absolute interest under the foregoing provisions the residuary estate of the intestate shall belong to the Crown as bona vacantia, and in lieu of any right to escheat."

It seems to me that by the very language of the statute, any person who claims any interest in the estate of an intestate must prove his relationship with the deceased. And if he claims as a parent (father), he is impliedly, if not expressly saying that the deceased was legitimate since under our law - at any rate up to the present time - a father of a bastard dying intestate cannot claim any interest in the estate of the deceased. If the front door is closed to Mr. Aldrich, he may get in through the side door and obtain, whether in his favour or against him, the very substance of his prayer which formed the basis of the argument touching the jurisdiction of the Court. Mr. DaCosta abandoned the frontal assault during the proceedings and sought

leave to amend the notice of motion in the form which is now before me.

I shall now proceed to examine the evidence in more detail. The examination will put in stages. The only evidence in the case concerning the issue raised as to the legitimacy of Nina comes from Mr. Aldrich who came to Jamaica in order that he may be cross-examined on his affidavit. He was subject to a lengthy and careful cross-examination by Dr. Rattray.

(a) Circumstances surrounding the early stages of the liason between Mrs. Aldrich and Mr. Dyer.

After the marriage between Mr. Aldrich and his wife Elsie on the 8th June, 1923, they lived and cohabited continuously until June, 1929. The couple lived in their house called "Kantara" in Caterham, Surrey. Among the neighbours of Mr. & Mrs. Aldrich in Caterham, was a couple Mr. & Mrs. Stanley Dyer. Mr. Dyer aged 58 lived comfortably in a lovely house. He had his tea plantation in Ceylon.

Mr. Aldrich was a working man in 1929. He had to travel in the west of England and in Wales in course of his duties and would be away from home from Monday morning to a Friday evening each week. His young and attractive wife Elsie would be left alone in the house. Mr. Aldrich's standard of living could not be compared with that of Mr. Dyer. What he could not afford to offer his wife, Mr. Dyer could shower it in abundance. It appears that during the periods of the absence of Mr. Aldrich from home, a love affair between Mrs. Aldrich and the wealthy Mr. Dyer had its genesis. And Mr. Aldrich is going to have a shock. On day in June, 1929, he

returned from one of his business trips to an empty house. His attractive wife had eloped with Mr. Dyer. Up to this time, Mrs. Aldrich was a loving and affectionate wife. She and her husband shared the same room and she performed her wifely duties in every particular. But it appears that precautionary measures were being taken by Mr. Aldrich with the co-operation of his wife against having any children. According to Mr. Aldrich they could not afford having a child then. If one were to check on the economic position of the ordinary working man in England, U.S.A. and in Jamaica say during the period 1929 - 1931, one is able to understand fully the evidence of Mr. Aldrich that he and his wife could not afford a child then. The "economic depression" which hit certain countries with its attendant consequences, for example the collapse of "Wall Street" New York, in October, 1929 have not escaped the memory of many to-day who experienced the days of depression.

(b): Mrs. Aldrich is found in a house
her pregnancy is disclosed.

After Mr. Aldrich found that his wife had eloped with Mr. Dyer, he went in search of them. As a result of information received, he found her in a furnished flat at 136 Chatsworth Road, N.W.6, London. Mr. Aldrich persuaded his wife Elsie to return to Surrey. She agreed. For two weeks she lived with her husband during which time sexual intercourse took place. After two weeks, Mrs. Aldrich left the house during the absence of her husband. She returned to the furnished flat which Mr. Dyer had provided. Mr. Aldrich went back to the flat and pleaded with her to return.

This time, however, his persuasion did not work. But he was able to persuade her to meet him at "Kantara", Surrey, in London and at a house called "Tarrymore" belonging to Mr. and Mrs. Thomas Blyth, friends and neighbours of Mr. Aldrich in Surrey. On several occasions during this period sexual intercourse took place. And during this trying period it appears that Mr. Aldrich dismissed the decision taken during the earlier period of the marriage that they could not afford a child. I shall quote his own words in paragraph 10 of his Affidavit dated the 25th March, 1971.

"I was so desperately anxious to get my wife back after she left my house that I can remember consciously trying to have a child in the hope that this would induce her to return to me."

When he was cross-examined by Dr. Rattray he reaffirmed his stand.

This is what he said:

"When my wife left me I did feel she would return if we had some tie. I tried to make her pregnant."

In fact Mrs. Aldrich did become pregnant. On an occasion when Mrs. Aldrich met her husband after she had left his house, she informed him she was going to have a child. And both of them assumed that it was their child. Mr. and Mrs. Aldrich continued to meet and have intercourse after Mrs. Aldrich found out that she was pregnant. But Mrs. Aldrich refused to return to her husband after she became pregnant. And the reason is given by Mr. Aldrich in para. 11 of his affidavit.

"I believe my wife did not accede to my request to return to me because Mr. Dyer could offer far more financial security than I could."

Was Mr. Dyer having intercourse with Mrs. Aldrich?

Could he have been the father of the child that Mrs. Aldrich would deliver in due course? During the final address of Mr. DaCosta he put forward a view which I must record at this stage.

"There is not even evidence that Mrs. Aldrich and Mr. Dyer had sexual intercourse."

However, Mr. Aldrich in cross-examination was realistic. He had to face the inescapable conclusion in a factual situation.

Q: "Do you believe the association of Mr. Dyer with your wife was platonic?"

A: "No, I could not believe that. I could not believe she was not in intimate association with Mr. Dyer when she left me."

It would be difficult for one to believe that in the circumstances under which Mrs. Aldrich left her home for the flat provided by Mr. Dyer she would be treated merely as an ornament by him. Mr. Dyer was deserting an elderly wife or at any rate, a wife much older than Mrs. Aldrich and who, from the evidence, did not claim to possess the charm and attraction which the younger woman seemed to have displayed in abundance. To say that Mrs. Aldrich would be intimate only with her young Adonis and that she would hold at bay her aging Romeo is to carry an argument or a suggestion too far.

But, as I shall discuss hereafter, the question is not whether Mr. Dyer could have been the father of the child Mrs. Aldrich did deliver. The question is that even assuming that Mr. Aldrich and Mr. Dyer were having intercourse with Mrs. Aldrich at all material times when she did conceive, has it been shown either on a balance

of probabilities or in the alternative, beyond reasonable doubt that Mr. Aldrich being then the lawful husband, was not in fact the father of the child Nina?

(c): Mrs. Aldrich is delivered:

Birth of Nina is registered:

When Mrs. Aldrich was about to deliver her child she was admitted to a nursing home in Kensington. She left the home provided for her by Mr. Dyer for the nursing home. And she is registered as "Mrs. Dyer". The child was born on February 15, 1930 and it was registered as Nina Sheila Dyer. According to Mr. Aldrich, he used to see his wife - and it is clear that Mr. Dyer was not aware of these meetings - up to February 1930 when she went to the nursing home. However, he did not visit her at the nursing home because she used the ^{name} ~~name~~ of "Mrs. Dyer". In answer to the court Mr. Aldrich said:

"I did not visit her in the nursing home. I made enquiries about her after she had the baby. I sent her flowers at the nursing home."

If I accept this bit of evidence and I do accept it - it would appear that in order not to cause any embarrassment to himself or to his wife, Mr. Aldrich did not visit her during the period of confinement. But he did not forget her. In a tangible way - and to borrow an American saying - "he said it with flowers."

Mrs. Aldrich returned to Mr. Dyer with the infant child. At that stage and to the world at large - and this is indicated on the birth certificate - Mr. and Mrs. Stanley Hartop Dyer had been blessed with the gift of a female child named "Nina" Mr. Dyer paid all the

medical expenses of the confinement. Being anxious to see the child, Mr. Aldrich paid a visit to the house where Mr. Dyer and Mrs. Aldrich were staying. This was a result of a telephone conversation he had with his wife. A dinner party was arranged at Mr. Dyer's house. Mr. Aldrich did not pay the visit empty-handed. He took with him a "modest present" for the baby in the form of either a "teddy bear" or a "fluffy dog". The present is handed over in the presence of Mr. Dyer and Mrs. Aldrich. Mr. Aldrich was permitted - to use his language - "to handle the baby at this family gathering."

The impression I get from this piece of unchallenged evidence is that at this ~~convivial~~ ^{convivial} meeting, there was no re- crimination between Mr. Aldrich and his elderly rival for the comfort and love of Mrs. Aldrich. After all she had presented one of them with a lovely daughter. So the question of who this lucky one was did not arise then for determination. Mr. Aldrich gave the baby another present on a subsequent occasion. This time it was a doll. I shall refer to the occasion in due course. Before I proceed to another stage of the story, I must refer to a bit of evidence which should be mentioned in this setting.

After the baby was born, Mr. Aldrich was still anxious for his wife to return to him with the baby. She refused his request. Finding that the situation was hopeless, he consulted his solicitors with a view to launching divorce proceedings. One Mr. [unclear] a Solicitor's clerk went with Mr. Aldrich to 136, Chatsworth [unclear]. Mrs. Aldrich and the baby are seen. The pleasure which [unclear] showed on seeing her husband is suddenly changed when the purpose [unclear] is [unclear] his mission explained to her. The object was to obtain from [unclear] confession that she had committed adultery."

Tears from Mrs. Aldrich started to flow. Hysterics also put in their appearance. The sobbing wife said "No Billy, you can't do this to our baby." This was understood to mean that since Mrs. Dyer was not prepared to divorce her husband so that he could be free, Mr. Aldrich should not divorce her. If Mr. Dyer should one day abandon her owing to the legal impediment to marry while Mrs. Dyer was alive, she Mrs. Aldrich would still have an opportunity to return to her husband with the child. With this pleading, Mrs. Aldrich did not proceed with the divorce. At no time thereafter did he take any action to obtain damages against his rival whether in a divorce proceeding or in tort in an action for enticement.

d: Mrs. Aldrich goes to Ceylon with Mr. Dyer

Infant child Nina is taken with them.

On a date during the winter of 1930 - 1931, Mrs. Dyer, Mrs. Aldrich and Nina left England for Ceylon. Mrs. Aldrich returned to England with Nina on a visit in either 1933 or 1934^{probably in 1934.} She used to write her husband while she was in Ceylon and she informed him of her forthcoming visit. She stayed in London at a hotel. Mr. Aldrich met her about twice and sexual intercourse took place between them. Nina who was then about 3½ to 4 years old was presented with a doll by Mr. Aldrich. A Ceylonese nursemaid accompanied Mrs. Aldrich from Ceylon. Nina was left in England to attend boarding school. She was put under the care of Mr. & Mrs. Blyth. When war broke out in 1939, Nina was sent to South Africa to continue her schooling. While Nina lived with the Blyths, Mr. Aldrich was not allowed to visit her as it was thought that it

~~was thought that~~ it was not in her best interest. **But** Mr. Aldrich kept abreast with her progress through reports received from Mr. & Mrs. Blyth.

Mr. Aldrich did not pay for the education of Nina; he did not supply her with any of her needs. Indeed, throughout the childhood of Nina, she accepted Mr. Dyer as her father. As far as Nina was concerned if she was taught the stanza of Margaret Courtney entitled "Be kind" which I shall repeat for the purposes of the record, it did not apply to Mr. Aldrich.

"Be kind to thy father, for when thou wert young,
Who loved thee so fondly as he?
He caught the first accents that fell from thy tongue,
And joined in thy innocent glee."

Perhaps, Mr. Aldrich would reply - and this appears to be his stand-by quoting the words of Launcelot:

"It is a wise father that knows his own child"
(Merchant of Venice, Act 2, Sc.2).

(e): Nina grows to be famous - marriage and death.

Nina is said to have been very attractive and well educated. She was a capable horse-rider. According to Mr. Aldrich, she could have been described as a "Fairy Tale Princess." She was twice married to men of substance and acquired a considerable fortune through her marriages. Her first marriage was to Baron Heinrich Von Thyssen. By this marriage she acquired Swiss citizenship. A decree of divorce having been pronounced in 1956, she married Sadruddin son of Aga Khan in 1957. This marriage also ended in divorce but she retained her Swiss

citizenship. Nina died in France on the 3rd July, 1965
intestate while still retaining her Swiss citizenship and
domicile.

Legal arguments and submissions

The submissions put forward by Mr. DaCosta with his
usual force and clarity ranged over a wide area. Those
propounded by Dr. Rattray were marked with vigour and eloquence.
I hope they will forgive me if I should attempt to reduce to
simplicity and to put in my own words what I understand the
~~contention~~ contention of each of them to be. When the main arguments were
being put forward - and they covered a five day period - I was
regarded as being an English judge sitting in the Strand to decide
the question whether, on the facts, Nina was a legitimate or
illegitimate child. Alternatively, I was required to remit the
facts to England, place them before an English judge and await
his decision on them. This was and is necessary, whatever course
is adopted, since as I have already pointed out the "love affair"
between Mrs. Aldrich and Mr. Dyer; the pregnancy of Mrs. Aldrich
and the birth of Nina all took place in England between 1929 -
1930. None of those facts has any connection with Jamaica.
No Jamaican is involved in the eternal triangle. I believe
that in order to arrive at a satisfactory conclusion on the
facts with the help of the law, will require a feat of mental
gymnastics. Some judges are not very sure about this doctrine
of "remission and transmission" of certain facts to a foreign
court when a case comes up before them with a touch of private
international law. I may be one of them. To ask a judge to

worship at the shrine of renvoi may be as tricky an invitation as when Socrates was asked by a friend to worship at the temple of the sea-god.

Mr. DaCosta's submissions may be summarised as follows:-

- (1) The Swiss Court has declared that Mr. Aldrich is the legitimate father of Nina. This declaration is by a competent Court which was dealing with an administration action touching the assets of a citizen of Switzerland. The declaration, in so far as it touches the status of Nina is binding and should be recognized by the Jamaican Court.
- (2) If the question of the paternity of Nina should be reopened in Jamaica, then one of two presumptions would apply to the facts. They are as follows:
 - (a) When a child is born of a married woman and it is proved that her husband had access to her, it is presumed that that child is legitimate. The presumption may only be rebutted by those who argue to the contrary by proof **beyond** reasonable doubt that the child is illegitimate.
 - (b) The child being presumed to be legitimate those who contest the status must bring proof on a balance of probabilities that the child is illegitimate.
- (3) The only evidence in the case touching the issue of legitimacy is from Mr. Aldrich himself. If his evidence is accepted, then he is bound to succeed. If his evidence is rejected he still must succeed since the Attorney

General has not produced any evidence to prove that Nina was not a legitimate child.

Dr. Rattray's submissions may be thus summarised:

- (1) When Nina was born in England in 1930, Mr. and Mrs. Aldrich were domiciled in England. Nina's domicile of origin was English. A judgment in rem by a competent court binds the world. And a judgment touching the status of a person is a judgment in rem.
- (2) A judgment touching the status of a person may only be internationally recognized if the adjudicating court is that of the country of that persons domicile of origin. Since Nina's status was not declared by an English Court, the Court in Jamaica should not recognize the declaration by the Swiss Court because it was not competent in an international sense to make any such adjudication.
- (3) In any event, the declaration in Switzerland was made in proceedings inter partes. But a judgment in proceedings between private parties only binds those parties and their privies.
- (4) On the facts, there is evidence of a strong and satisfactory nature to rebut the presumption that Nina, having been born during wedlock, was legitimate. The evidence of a strong and satisfactory nature is pointed out as follows:
 - (a) That after Mrs. Aldrich left the home in June 1929, Mr. Aldrich tried to make her pregnant. And if Mrs. Aldrich was pregnant at the time she left her husband in

order that she may find more comfort with Mr. Dyer, it would have been unlikely that Mr. Aldrich was responsible for the pregnancy.

- (b) The subsequent conduct of Mr. Aldrich and Mr. Dyer after Mrs. Aldrich left her husband on the second occasion indicated that it was more likely that Mr. Dyer was the father of the child Mrs. Aldrich was then bearing.
- (c) When Mrs. Aldrich went into the nursing home to be confined, Mr. Aldrich did not visit her there although he displayed ingenuity in meeting her during pregnancy.
- (d) In the nursing home, Mrs. Aldrich was registered as Mrs. Dyer.
- (e) The child Nina was registered as that of Mr. and Mrs. Dyer and Mr. Dyer was the informant when the infant was being registered.
- (f) There was a wholesale neglect of Nina by Mr. Aldrich throughout her life, and this is conduct wholly inconsistent with that of a father.

In winding up his examination of the facts, Dr. Rattray made certain comments. I shall record some of them. He said among other things:

- (1) "The motive for bringing this action should be considered as an element in assessing the credibility of Aldrich. Where there is a lifetime of total and complete neglect of a child by a father and the claim of paternity is being asserted by the father for the purpose of a claim

touching the assets of that child, the court must necessarily consider this factor in assessing the credibility of the claimant."

(2) "This case is brought on the background in which Mr. Aldrich has already inherited over half million pounds of the estate in Switzerland and through the Swiss Court."

(3) "The assertions of Aldrich that he is the father of Nina are not supported by the external evidence. There is not a tittle of evidence to support that of Aldrich - on the background of his evidence - that he is the father."

Mr. DaCosta in his reply contended that Dr. Rattray's legal argument concerning the competency of the Swiss Court to pronounce on the legitimacy of Nina is ingenious but fallacious, that there has been a confusion between choice of jurisdiction and choice of law. And passing on to the question of motive for asserting paternity, he said this:

"If Mr. Aldrich is the father, then he can assert his paternity and his motive for so doing is irrelevant. This is a complex human problem and Nina's tragedy was that she received no love from anywhere."

I entirely agree with Mr. DaCosta that this is a human problem that I have before me. I regard it as an example of human action in action. There is nothing called perfection in human conduct. For one to go around with a view to discovering some perfection anywhere would be as useless an expedition as if he were trying to find a dodo.

The submissions of Dr. Rattray in relation to the

judgment of the Swiss Court find their base on a proposition which is to be found in the leading text-books on Private International Law and in certain dicta in some decided cases. For example at pages 636 and 637 of Cheshire's Private International Law, 8th Edition, the following statements appear;

"The jurisdictional elements that must exist before a foreign judgment in rem can claim recognition in England are not difficult to specify, but it is first necessary to appreciate the correct meaning of this species of judgment."

The learned author then refers to the words of Evershed, L.J (as he then was) in *Lazarus - Barlow v. Regent Estates Ltd.*

[1942] 2 AER. 118 at p. 122.

"A judgment of a court of competent jurisdiction determining the status of a person or thing (as distinct from the particular interest in it or a party to the litigation); and such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided.

And at p. 637 of the same work the following passage appears.

"A foreign judgment which purports to operate in rem will not attract extra-territorial recognition unless it has been given by a Court internationally competent in this respect."

And with reference to the dicta in the cases which support the proposition that it is the court of a person's origin which is competent to pronounce on his status, that is, his legitimacy, or ^{illegitimacy} or \angle

Dr. Rattray relied on the language of James and Cotton, L. JJ in *Re Goodman's Trusts*, [1881 - 5] All E.R. Rep. 1138.

This is what Cotton, L.J. said at p.1152.

"If, as in my opinion is the case, the question

whether a person is legitimate depends on the law of the place where his parents were domiciled at his birth, that is, by his domicile of origin, I cannot understand on what principle, if he by that law legitimate, he is not legitimate everywhere, and I am of opinion that if a child is legitimate by the law of the country where at the time of his birth its parents were domiciled, the law of England, ~~except~~ in the case of succession to real estate in England, recognises and acts on the status thus declared by the law of the domicile."

And at p. 1154, James L.J. said:

"According to that law as recognised, and that equity as practised in all other civilised communities, the status of a person, his legitimacy or illegitimacy, is to be determined everywhere by the law of the country of his origin - the law under which he was born."

Twenty four years earlier, Kindersley V.C. had spoken in the same vein.

"It appears to me that on the authorities applicable to this question the principle is this, that the legitimacy or illegitimacy of any individual is to be determined by the Law of that country which is the country of his origin. If he is legitimate in his own country then, all other civilized countries, at least all christian countries, recognize him as legitimate everywhere."

In re Don's Estate (1857), 4 Drew. 194, 197.

James and Cotton L. JJ, were in the majority decision in Goodman's Trust which reversed the judgment of Jessel, M.R. In that case, the question of the right of a relative of a testatrix to an interest in a lapsed share under her will arose for consideration. ^{The} testatrix had a brother who left England with the intention of permanently residing in Holland. In Holland a

daughter was born out of wedlock as a result of his association with one Charlotte Smith. After the birth of this child (their fourth), he married Charlotte in Holland. By the marriage this 4th child along with three others born in England were legitimated according to the law of Holland.

The question, therefore, was this:

Could the child born in Holland and legitimated in Holland while her parents were domiciled there, claim under the will of an English aunt as next-of-kin?

The learned Master of the Rolls said "no" and decided the case on the footing that the word "children" in an English will must be construed to mean children "lawfully begotten" unless an intention appeared to the contrary in the will and no such intention did appear. The realities in that case - as in the one before me - must be faced. In Goodman's case the 4th child who was claiming under her aunt's will was born in 1821; her father died in 1832. But the aunt did not die until 1878 about 46 years after.

The aunt died a spinster and at the date of her death, she had neither father nor mother, brother nor sister; but there were two children of a brother who survived her.

James L.J. hinted in the course of his judgment, that it would be an act of "barbarous insularity" if the English Court held that this niece was to be regarded as a bastard in England, when in the country where she was born, she was not.

Suppose Mr. Aldrich had obtained in England or was able to obtain the declaration which he sought "that Nina Dyer was legitimate", could the Attorney General or the Administrator

General maintain the contentious which they have put before me? The answer must be in the negative. If this declaration was obtained, would it have been determined "by the law of that Country which is the country of Nina's origin?" The answer must be in the affirmative.

Is there a difference between a declaration as to legitimacy obtained in a competent English court by applying English Law and a declaration obtained in a competent court of a foreign country by applying the same English Law?

Even if I were not to use the strong language of James L.J. ---- and use an epithet much more mild - I would say that a strange situation would arise if Mr. Aldrich were to be told, and the Court should hold that on the facts it is possible for Nina to be regarded as legitimate for all purposes in Switzerland where she was domiciled at the date of death and of which she was a citizen, but on the same facts and on the same principle, namely, birth during lawful wedlock, in a christian and civilized country - as *Kindersley V.C.*, opined - she is to be regarded as a bastard here, where she left some of her property. And a more strange result is yet to come. The universal rule recognized in Private International Law is that in the case of an intestacy, movable property of the deceased is to be distributed according to the law of the domicile of the intestate at the time of his death. And the law of the domicile at the time of death determines the class of persons to take and the right of representation. See *Lynch v. Paraguay Prov. Govt.* [1861 - 73] All E.R. Rep. 934. According to the Swiss Law, Mr. Aldrich is to take the property of Nina "he being

considered as the legitimate father of the deceased."

In so far as the movable property of the deceased in Jamaica is concerned, therefore, that is \$1,000, Mr. Aldrich must be admitted to claim his interest he being the legitimate father of Nina and the judgment of the Swiss court may be recognized to that extent. But in so far as the immovable property i.e. real estate to the extent of \$100,000 is concerned, Mr. Aldrich may not be regarded as the legitimate father and any such part of the Swiss judgment which says he is, should be ignored.

If an argument is put forward which would lead to such strange results then something must be wrong somewhere. I shall show in due course where the fault in the argument of Dr. Rattray is to be found. A judgment of a court of a foreign country has no direct operation in Jamaica but it may be enforced here by action at common law or under some statute. See for example, the elaborate provisions of the Judgments (Foreign Reciprocal Enforcement) Law, Cap. 184. After the foreign judgment has been registered, it may be set aside at the instance of the party against whom it is to be enforced, if he can show, among other things,

"That the courts of the country of the original court had no jurisdiction in the circumstances of the case."
See Sec. 6 (1) (ii) of the Law, (Cap. 184).

All the passages in Cheshire and in other text books relied on by Dr. Rattray are dealing with a situation where a foreign judgment registered in England is sought to be enforced by action. But in this case, Mr. Aldrich is not seeking by action to enforce any foreign judgment against anyone. He is merely

seeking a declaration on the facts which he has presented and as a step in the proceeding he refers to the Swiss declaration already made in his favour. And I entirely agree with Mr. DaCosta in his view that the cases have not decided that the only court which is competent to pronounce on the legitimacy of a person is the court of the country of his origin. The facts in this case, show that the submission of Dr. Rattray in this respect could not be accepted.

Mr. Aldrich made an attempt to get a declaration from the English court but he was faced with a legal technicality and so he could not succeed. Mr. Aldrich then took the facts of his case to a court in Switzerland. Nina was^a citizen of Switzerland albeit a citizen by marriage and she died with her domicile of choice there. A competent court, according to Swiss Law, pronounced on her legitimacy. Mr. Aldrich now comes before a court in Jamaica. Is he to be told that he should go back to England to get his declaration as to the legitimacy of Nina? He went to that court already. Is the rule in Private International Law so strict that on these special facts, the claimant is to be told that the judgment obtained in Switzerland has no relevance here? I do not think so. And I adopt, with respect, the words of Donovan, L.J. in *Gray v. Formosa*, [1962] 3 WLR. 1246 at p. 1253.

"But these rules of private international law are made for men and women - not the other way round - and a nice tidy logical perfection can never be achieved. Certainly, elementary considerations of decency and justice ought not to be sacrificed in the attempt to achieve it. If the courts here have, as I think they have, a residual discretion in these matters, they can be

trusted to do whatever the justice of a particular case may require, if that is at all possible."

Without spending too much time on this aspect of the matter, I shall refer briefly to the method which the learned judge in Switzerland followed in considering the petition of Mr. Aldrich. (An authenticated copy of a true and faithful translation in English of the original judgment delivered in the Italian language, is at pages 45 - 57 of the judge's bundle).

The learned judge proceeded as follows, in so far as is relevant.

1. He referred to the relevant Swiss Code which gave him jurisdiction "to pronounce on the succession which is in the issue."
2. That no fewer than eighteen interested persons (including the petitioner Aldrich) had made themselves known.
3. "That, however, the judge being under the obligation to see to it that the succession be correctly devolved, it is necessary to examine whether the Petitioner is the right party to the action, that is to say whether he can be considered as the legitimate father of the deceased."
4. The judge then referred to "some perplexity" i.e. to the fact that the deceased was registered in the English Civil Register with the surname Dyer and that the English Judge had expressed his own lack of jurisdiction to declare "this petitioner to be the legitimate father of the deceased." He was of course referring to Ormrod, J.
- 5 (a) Touching on the law, the learned judge referred to Article 8 of the Federal Law to the effect that the civil status

of persons resident and domiciled - the legitimate descent is subject to the legislation and jurisdiction of the place of origin.

"This latter, in fact, being that of the father."

(b) He then cited authority to support this proposition:

"The Swiss Judge called upon to decide in a succession has case/jurisdiction to decide also on the preliminary question concerning the legitimate descent of the deceased by the application of the national law of the father."

(c) He then referred to the fact that a valid marriage between Mr. Aldrich and his wife had been proved.

(d) He next examined the circumstances when Mrs. Elsie Aldrich (nee Rogers) abandoned the Petitioner in 1929 "in order to cohabit with a certain Stanley Dyer and remaining with ^{him} until his death which occurred in 1945."

6. The learned judge carefully applied the English Law; i.e. presumption of legitimacy and cited the latin maxim "pater est quem nuptiae demonstrant." (he is the father whom the marriage shows). He held that "the presumption was not destroyed by the results of the case."

7. Lastly he mentioned that other legitimate heirs, according to Swiss law, supported the prayer of the Petitioner. He accordingly granted the declaration.

With respect, it seems to me that the reasoning of the learned judge is impeccable. His logical steps, which he outlined

before he came to his conclusion are admirable; the legal principles which he applied to the facts are, in my view, very sound. Indeed, he applied the very rule which Dr. Rattray contends is applicable, namely, the law of the country of origin of a person determines his legitimacy or illegitimacy. And when it comes to the facts, the learned judge placed himself briefly on the English Bench, he applied the English presumption of legitimacy, he then made his decision and "returned" to Switzerland with a declaration in favour of Mr. Aldrich.

Mr. DaCosta has argued that since the decision of the Swiss Court is a judgment in rem affecting Nina's status and given by a competent court of the country in which she was domiciled at the time of her death, that decision is binding on all the world. And he has relied on *Salvesen v. Austrian Property Administrator*, [1927] All E.R. Rep. 78; [1927] A.C. 641. In that case, S, a British subject and domiciled in Scotland went through a form of marriage in France with an Austrian subject. The parties then settled in Germany where they lived as man and wife. The Austrian husband served in the Austrian Army while S lived in Switzerland. Later both S and the husband resumed living in Germany for about 4 years. At the end of this period, the Administrator of Austrian Property claimed the movable property of S in Scotland on the ground that she became an Austrian national by her marriage in France. The claim was based on the Treaty of Peace (Austria) Order 1920. S resisted the claim on the ground that her marriage in France was null and void because certain formalities required by French Law were not observed before the marriage took place. A

court in Germany declared the marriage null and void. The question for determination was whether the decree of the German court was binding on the Scottish Court, so as to prevent the Administrator from arguing that the French marriage was valid. The Judge of first instance decided the question in favour of S. On appeal, by a majority, his judgment was reversed and the case was taken to the House of Lords. The House of Lords unanimously reversed the decision of the Appeal Court (First Division) and restored that of the first instance judge. I understand the rationale of the decision to be this:

For the purpose of pronouncing upon the status of parties as well as for the purpose of affecting that status, once a competent court of the domicile of the parties has made a pronouncement thereon, the decision is binding and an English Court will not review that decision. And once it is shown that no substantial injustice, according to the English notions, has been committed, the foreign judgment will be recognized. It is true that in Salvesen's case, the court was dealing with the validity of a marriage.

As far as I know, the notions of justice and convenience as observed by the English Courts in the field of Private International Law, accord with our own. If, therefore, a competent foreign court having given a fair hearing to all interested parties *and* having applied the correct principles of Law - as is shown in this case, pronounces on the legitimacy of one of its citizens, such a pronouncement will be recognized here. And it matters not that the declaration touches a preliminary issue in the case or is one of several issues which the foreign court

had to determine. And even if I am wrong in so holding, that would not be the end of the matter. Despite the conclusion of the Swiss Judge on the facts, I shall embark on an examination of them on my own. Mr. Aldrich is bound to succeed if the facts on which he relies are accepted. In the alternative even if the facts are not accepted in their entirety, he is still entitled to succeed if the Attorney General is unable to produce evidence or to point out in the evidence before me such facts of a strong, distinct and satisfactory nature which point, at least on a balance of probabilities, that Nina was a bastard; i.e. was the daughter of the wife of the claimant Mr. Aldrich by Mr. Dyer.

Since the facts before me have not been challenged, the intervening parties, namely the Attorney General and the Administrator General must be taken to have accepted their truth. Their stand can be put in the form of a short dialogue between the Attorney General and Mr. Aldrich.

A.G. "Mr. A, is that all?"

Mr. A: "Yes, and do you have any evidence to show that what I have said is not true?"

A.G: No - I have none but your case does not show that Nina was your daughter?

Mr. A: "Why not? It is a human story you know and you must remember that my wife and I used to see each other even after she left me."

There is a presumption which operates in favour of Mr. Aldrich when the facts are being examined. And it may be stated in this form ; there is a presumption of legitimacy arising

from the birth of a child during wedlock where it is shown that wife and husband had opportunity of access to each other during the period in which a child could be begotten and born in the course of nature and where it has not been proved that the husband was impotent. To put it in another form; If a married man has access to his wife at all material times and he is not impotent, then it is presumed that if she becomes pregnant he is responsible and is the father of any child she may deliver. Any person who wishes to repel the presumption can only succeed if he produces evidence of a satisfactory nature to persuade the tribunal which has to decide the issue, that sexual intercourse did not take place at any time when by such intercourse the husband could, according to the laws of nature, be the father of the child. And this presumption operates in the interest of morals and of an orderly society.

The potency of Mr. Aldrich at the relevant time is not in issue. During the cross-examination, he told Dr. Rattray that he fathered a daughter Sally Ann who was born on the 6th November, 1936. Nina was then 6 years old and Mrs. Aldrich was then living in Ceylon. The mother of Sally Ann is now the second Mrs. Aldrich.

I do not think it is necessary to examine all the authorities which deal with the presumption of legitimacy. When Mrs. Morris the wife of a surgeon ran away with a male servant and subsequently gave birth to a male child while living in "Undisguised adultery" with him, the question arose for decision some years after, whether her son was legitimate. Special facts

proved in that cause persuaded the House of Lords to say that the son was not legitimate see Morris v. Davies [1835 - 42] All E.R. Rep. 270.

Some of the special facts which I have detected in the case are as follows:

- (1) Mrs. Morris and her husband separated in 1788 and she went to live with W.A. a male servant;
- (2) In 1793, five years after, she was delivered of a male child;
- (3) W.A. took the child to his parents who brought him up under the surname of W.A.
- (4) The birth of the child was carefully concealed by Mrs. Morris and she denied to her husband that any child had been born to her. She took an "oath" to substantiate her denial.
- (5) Between 1792 and 1793, Mr. and Mrs. Morris were living about 15 miles apart and evidence was given, which the jury discredited, that twice during the year 1792, Mr. and Mrs. Morris were seen together dining on one occasion and being found in the same house on another.

It is clear, therefore, that since the evidence of the access of the husband to the wife was discredited, there was no sufficient material in the case on which the presumption could operate. The conduct of both parties Mrs. Morris and W.A. was consistent with the view that the child born in 1793 was not lawfully begotten.

In another case, a wife left her husband in May, 1951 and returned in June 1951. Three days after, she again left him. In December 1951, the husband presented a petition for divorce on the ground that his wife had committed adultery with one H. at whose house the wife went to live in June 1951. The wife gave birth to a child on December 22, 1951, and the husband said it was not his because although he and his wife slept in the same bed until they parted in May - June 1951, he did not have any sexual intercourse with his wife and that he in fact had no intercourse with his wife after January 29, 1951. The learned judge who tried the issue expressed sympathy with the husband and said he would have decided the issue of paternity in the husband's favour but for the presumption of legitimacy which, on the facts, was not displaced. The disappointed husband was caught by the rule that if wife and husband sleep together or have access to each other during all material time then sexual intercourse is presumed to have taken place. And if the wife is found to be pregnant thereafter he is presumed to be the father of the child the wife is bearing. See Cotton v. Cotton, [1954] 2 AER. 105. The claimant Aldrich filed his proceedings in March 1971. On the basis that I am notionally in the Strand in England - sitting on a comfortable chair - in considering the facts, I will have to note that there has been a change in the law dealing ^{with} the presumption of legitimacy. This change came effective on January 1, 1970. The Family Law Reform Act, 1969, sec. 26 provides as follows:

"Any presumption of law as to the legitimacy or illegitimacy of any person may in any civil proceedings be rebutted by evidence which shows that it is more probable than not that that person is illegitimate or legitimate, as the case may be, and it shall not be necessary to prove that fact beyond reasonable doubt in order to rebut the presumption."

Mr. Aldrich, who during cross-examination displayed signs of resilience, physical strength and preparedness which are remarkable for a septuagenarian, gave this answer to Dr. Rattray.

Q: "In the light of the birth certificate, death certificate, family certificate, support of the child by Dyer, your wife going to live with Dyer from 1929 and their living together until Dyer's death in 1945, do you still maintain that Nina was your child?"

A: "Yes."

I shall refer to an example of the operation of the standard of proof beyond reasonable doubt and on a balance of probabilities. The facts of the case are these:

In 1937 Mr and Mrs. W were married. A child was born in 1939. Mr. W joined the armed forces during the war and between disembarkation leave in June 1945 and March 1946, he spent several week-end leaves with Mrs. W. Mrs. W gave birth to a child on December 11, 1946 and Mr. W denied the paternity. While Mr. W was ^{war} on service, a man named B became a lodger at the house of Mrs. W. and a love affair started between B and Mrs. W. When the husband was discharged from the forces, he found B living at the house as a lodger. In 1947, trouble started between W and his wife. They separated. Before the separation B came in one

evening to find Mr. W being quite affectionate to Mrs. W. and B was annoyed. B used words to suggest that the child born in December 1946 was his and not that of Mr. W. The next day Mrs. W in the presence of Mr W and B told the husband.

"Yes, and this child on my lap is not yours either."

In 1950, Mr. W obtained a divorce on the ground of the wife's adultery with B but shortly after the decree, Mrs. W took out a summons claiming maintenance for herself and the child V born in 1946. The husband contested the application. Mr. W swore that between June 1945 and March 5, 1946 he had intercourse with his wife but he used contraceptive. On this issue, the learned trial judge (Barnard J) would have decided in favour of the husband if he had to apply the standard of proof on a balance of probabilities. But as the law then stood, by applying the standard of proof beyond all reasonable doubt, he decided in favour of the wife. See *Watson v Watson* [1954] P.48.

The effect of the decision was to hold that the child was legitimate in the face of the unchallenged evidence that at all material times, B was having intercourse with Mrs. W while he was a lodger at the house.

My task therefore, is to decide whether on a balance of probabilities, the facts show that Nina was not legitimate. And my answer is given without any hesitation. To put it at its lowest, I am satisfied that on a balance of probabilities it has not been shown that Nina was a bastard. It means, therefore, that the presumption of legitimacy has not been repelled

she must be, therefore, as is the position in Switzerland, be held to have been legitimate.

What has been related to me is the same old story. A wealthy man allures a young and attractive wife of a younger man who is unable to give her the comfort and luxury for which she yearns. But during the initial stages of the romance and for a reasonable time thereafter she still showers love and affection on her husband while he is prepared to put up with the situation. They meet secretly and she behaves just as if nothing has happened. She still reclines in the husband's arms and submits readily to his advances. During these periods the young husband puts out everything, physically or otherwise in order to bring her back into his fold. But the allurements of a better life elsewhere where the older man has established himself from the immediate reach of his wife is too much. The young wife stays away and eventually follows her wealthy lover to another part of the globe. In every move and so as to keep inquisitive tongues silent and to add an air of respectability and acceptance to the association - she and her elderly lover pose as man and wife and she produces the baby of her real husband as the product of the union between herself and her lover. But that ^{the} baby is not that of her lover, is a secret kept between herself and her real husband. Mrs. Aldrich may not have displayed the initial obstinacy and craft of a Penelope nor the constancy and fidelity of a Calpurnia. But within her breast she still had that tender passion for her husband and she nursed this feeling even after she left England for Ceylon. She informed her

husband of her forthcoming visit to England in 1934 and entertained him in the style and fashion of a wife when they met at her hotel in London. It is said that women have more heart and more imagination than men.

The evidence is clear that Mr. Aldrich did not support his daughter, he did not pay for anything necessary for her upbringing. Another man may have reacted to the situation differently but it does not follow that because A would not have behaved as B under the same circumstances, A's story cannot be believed and that no credit should be given for what he has disclosed and for the motive which appeared to have influenced his conduct. There is an old English proverb which states:

"We may give advice, but we cannot give conduct."

Whether the facts in this case lend support to the truth of that proverb, I am not at present, prepared to express an opinion.

Mr. Aldrich is entitled to the declaration which he seeks.

Private International Law has its perplexities. What the court of one country may accept or recognize on a given set of facts may have a different result in the court of another country. Serious attempts have been made, particularly since the end of World War 2, to have some unification in certain areas where a conflict had previously existed.

In the world of to-day where there is so much movement of people from one country to another, any attempt to have as much unification as possible in the rules of Private International Law should be encouraged. Jamaica should be in the vanguard of those countries seeking some order, agreement and lessening of

conflict in the field of Private International Law. I shall now summarise the reasons which make me conclude that the claimant is entitled to the declaration in the amended notice of motion.

They are as follows:

- (1) Nina was declared to be legitimate by a competent Court in Switzerland of which she was a Citizen and where she was domiciled when she died on July 3, 1965.
- (2) The learned judge in Switzerland applied the law of her domicile of origin i.e. English law, in examining the facts and before he declared that she was legitimate. The judgment should, therefore, be recognized here.
- (3) It would be unwise for a court in Jamaica by its decision to say, in effect, that in the circumstances, Nina may be regarded as legitimate in Switzerland but a bastard here.
- (4) It would be unwise for the court to say in effect that in so far as the movable portion of the property in Jamaica of the deceased is concerned she may be regarded as legitimate and to this extent the Swiss declaration is good but in so far as the immovable property i.e. the real estate is concerned, she is to be regarded as a bastard and to this extent the Swiss declaration is bad.

(5) On the facts, the presumption of legitimacy of Nina attaches itself. If this presumption is to be repelled by proof beyond reasonable doubt, I hold that the Attorney General and the Administrator General have failed in their attempt to do so. On the other hand, if their attempt would meet with success if I apply the standard of proof on "balance of probabilities", again I find that they have failed.

(6) I have already made the point in (4) above but I should, with respect record and adopt the words of Lord Brougham in *Birchwhistle v. Vardill*, (1835) 2 CL. & Fin 571 at p. 595, 6 ER 1170.

"That a man may be a bastard in one country and legitimate in another seems of itself a strong position to affirm; but more staggering is it when, it is followed up ^{by} this other, that in one and the same country he is to be regarded as a bastard when he comes into one court to claim an estate in land, and legitimate when he resorts to another to obtain personal succession."

(7) Private International Law is not the same in all countries. Several attempts have been made over the past 25 years to unify certain rules. Jamaica should do nothing unreasonably to cause a conflict in an attempt to solve conflicts.

This case, as I have said earlier, has raised some interesting points in the field of Private International Law.

A visitor to our shores is interested to know what our law is if he should own real and personal estate here and should subsequently

return to his country or to the country of his domicile where he is regarded as of legitimate extraction. What would the court in Jamaica decide in relation to his property here if he should die abroad intestate or if he should die partly testate and partly intestate? I hope, with the help of the able arguments of Mr. DaCosta and Dr. Rattray, some light has been given where uncertainty or darkness existed before.

The Attorney General and the Administrator General are entitled to their costs out of the estate and I order accordingly.

U.N. PARNELL
(Puisne Judge)