

JERSEY / JUDGMENT

Walker -v- Powell [2017]

JRC 121 (01 August 2017)

[2017] JRC 121

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judgment

the bailiff:

Introduction

1. John Brian Chambers ("the deceased") died on 17 th June, 2013. He was a widower at the time of his death. The First and Second Respondents are his children from a previous marriage. The Third and Fourth Respondents are the children of the First Respondent. The deceased died domiciled in Jersey and left a holograph will dated 1 st May, 2012, which covered part of his estate. 2. The terms of the will are as follows:- "This is the will and testament of movable estate of me John Brian Chambers (formerly of St Valentines, Le Feugerel in the Parish of St Brelade), presently residing at Number 8 Amitié Court, Links Estate, Grouville where I domiciled. 1. I hereby revoke all former wills and testaments, previously made by me. 2. I name and appoint my good friend, Carl Walker (my next door neighbour in Number 7 Amitié Court, Grouville to be leading executor assisted by my daughter Caroline Beverley recently divorced from a Mr Guy Powell. I charge them with settling all my proven debts at the time of my death & to act in a friendly manner to each other. 3. I give and bequeath the rest of my estate, at the time of my death as follows:- All my personal effects to be given to my daughter Caroline in trust until her death, in which case they will be passed to her children. I do not wish my son Christopher to enter my home under any pretext whatever or in fact to receive any benefit at all from the estate. I give and bequeath all my collection of Medals any Jersey related papers to my executor Carl Walker to deal with as far as possible in the manner of my wishes which he well aware of. I give and bequeath my Parish Badges collections to my Grouville archives with a card stated the donor and my service the Parish Honorary Police. I bequeath my car to my daughter to dispose of as she likes." 3. The Representor is the executor of the estate of the deceased, having been granted probate as discussed below. 4. The representation was issued on 15 th November, 2016, and the hearing took place on 15 th and 16 th February, 2017. At the conclusion of the hearing, judgment was reserved. However, closing submissions had not been received in full and the parties were given leave to file such submissions in writing thereafter. The Court has considered these submissions filed and has reached the conclusions set out in this

judgment. The Second Respondent played no significant part in the proceedings. The Third Respondent was present at the hearing but made no submissions other than to associate himself with those made by his mother. Although the Fourth Respondent was served with the proceedings, he has not participated in them. 5. The prayer of the representation substantively sought the approval of the estate accounts prepared to August 2016 and exhibited in an affidavit sworn by the Representor on 11 th November, 2016. That prayer was not formally amended, although accounts to January 2017 were later submitted. The Representor also sought directions that would enable him to make distributions from both the testate estate and the intestate estate, and an order that the Representor should not be liable in damages or otherwise for anything done or omitted to be done by him in the discharge or purported discharge of his duties unless it be proved to the satisfaction of the Royal Court by the person making the allegation that the act or omission was made in bad faith, or with wilful default or gross negligence. The prayer for the representation also sought orders as to costs.

Background

6. The Representor's evidence was that he was a neighbour of and became close friends with the deceased in or about 2010 or 2011, and they would visit each other regularly. The deceased lived in a flat in Grouville which was owned solely by his third wife and, after her death, he benefitted from a life-enjoyment of it. It was during one of those visits, towards the end of 2011, that the deceased asked the Representor to act as his executor. He did so because at that time he was estranged from both the First and Second Respondent, his children. However, he subsequently had something of a rapprochement with his daughter the First Respondent. According to the Representor, the relationship between father and daughter continued to have some uneasy moments however, mostly in his view when she was pressing her father for financial assistance. The last instructions which he gave to the Representor in relation to his medal collection were that the Third and Fourth Respondents should have it. The deceased wanted to discuss the history behind each medal with them. He also asked the Representor to ensure that his stamps were delivered to the Guide Dogs for the Blind Association, and he extracted a promise from the Representor that the Second Respondent would not receive anything from the estate nor even be permitted to enter the property. 7. The Representor considered that the last will and testament of the deceased appointed him as sole executor. He took legal advice which apparently confirmed that position. He applied for and obtained a grant of probate on 3 rd September, 2013. There were some exchanges of email between the Representor and the First Respondent during August 2013 when it is plain that the First Respondent contended that she should be a co-executor. The grant of probate to the Representor alone has clearly been a major bone of contention between the parties, and very possibly is the root cause of the current litigation. Recognising that that was so in advance of the hearing, the Court asked the present Registrar of Probate to set out an account of what had taken place. From that account, it appears the position was this. The First Respondent attended an initial appointment with a

probate officer on 17 th July, 2013, and was provided with a list of the further documentation which would need to be collated in order to proceed with the application. The probate officer considered that the Representor had been appointed as executor and that the First Respondent would assist him in his duties. She contacted both the Assistant Registrar and the then Registrar for a view, because the will was unusual and they too were both of the opinion that the executor nominated unambiguously was the Representor. When the Representor called on the probate officer on 26 th July, he was informed that he would be appointed as sole executor, with the First Respondent to assist him. During that call, the Representor's concerns regarding potential intermeddling in the estate by the First Respondent were mentioned. We will come on to that point later in this judgment. It was apparent, when she was informed that the Representor would be appointed sole executor, that the First Respondent did not agree. In the absence of a confirmation of the Representor that he agreed that the First Respondent should be a co-executor, the Registrar took the view that on an application by the Representor for a grant, that grant should be forthcoming. 8. The gross value of the deceased's intestate estate in the August 2016 accounts is shown at £138,620.95. By reason of uncertainty over the value of the testate estate, we can only estimate the gross value of the whole estate which is probably in the region of £188,000. The liabilities of the estate were £44,245.24. Regrettably, the legal fees incurred by the Representor in the administration of the estate for the period to 5 th August, 2016, including GST were £30,734.56. The extent of those fees has been greatly increased by the conduct of those entitled to the estate, particularly the First Respondent, but they are nonetheless at a level which prompts enquiry by the Representor as executor. In addition, the estate has incurred fees of £4,290 including GST on the *légitime* claim the effects of which are considered below. 9. Estate accounts in respect of the testate and intestate estate of the deceased were signed by the Representor on 17 th May, 2016, and on 25 th May were sent to each of the First and Second Respondents. 10. The First Respondent promptly responded to say that she did not approve the accounts. 11. On 22 nd July, 2016, Messrs Carey Olsen, on behalf of the Representor, wrote to the First and Second Respondents indicating that he would seek guidance from the Royal Court in the event that they were not prepared to accept the draft accounts to May 2016. The Second Respondent has accepted them. The First Respondent continues not to do so. The Representor asserts that the First Respondent has raised a number of concerns about the administration of the estate namely:- (i) She was not permitted to act as executor; (ii) Aspects of the administration of the estate have been "most irregular", "badly managed" and "probably criminal"; (iii) Substantial cash funds have been advanced to the Second Respondent, notwithstanding that her father intended that he receive nothing from her father's estate so far as this could possibly be avoided; and (iv) The First Respondent and her sons remained in desperate need of money, and required an immediate distribution of funds without prejudice to her ability to challenge what Messrs Carey Olsen and/or the Representor had done in both civil and criminal courts. 12. On 18 th November, 2016, the Court adjourned consideration of the Representor's representation until 16 th January, 2017, and ordered that any evidence provided by or on behalf of the First and Second Respondents should be filed and served no later than close of business on 16 th

December, 2016, with any evidence in reply to be filed and served no later than close of business on 9 th January, 2017. On 25 th November, 2016, when ordering service on the Third and Fourth Respondents, the Court ordered that any evidence to be provided by them should be filed and served no later than close of business on 16 th December, 2016. An affidavit of the Representor dated 11 th November, 2016, and an affidavit from Messrs Carey Olsen dated 16 th November, 2016, were filed. An affidavit dated 2 nd February, 2017, was filed by the First Respondent and a further affidavit dated 10 th February, 2017, filed by the Representor. The latter affidavit exhibits revised estate accounts drawn to 16 th January, 2017, ("the January 2017 accounts"). The identity of the executor 13. The language adopted by the deceased is not as clear as it might have been. He names the Representor as his "leading executor" and the Representor is to be "assisted by my daughter". In paragraph 4 however, he describes the Representor as his executor and directs that the collection of medals and Jersey related papers should be distributed in accordance with his wishes, of which the Representor will be aware. 14. Article 6 of the Probate (Jersey) Law 1998 ("the Probate Law") provides in its material parts in this connection:- "(8) Subject to paragraph (13), no grant shall be made by the Judicial Greffier - (a) in any case where there is contention, until the contention is disposed of; or (b) in any case where the Judicial Greffier is required to present a statement under paragraph (9), without the directions of the Inferior Number to so proceed. (9) Subject to paragraph (13), the Judicial Greffier shall present a statement to the Bailiff for the directions of the Inferior Number in any case - (a) where it appears doubtful to the Judicial Greffier whether or not a grant should be made; or (b) where any question arises in relation to an application for a grant. (13) The Judicial Greffier may, without making any enquiries under paragraph (5) and notwithstanding paragraphs (8) and (9), grant probate or administration where all the parties who, in the Judicial Greffier's opinion should be consulted, consent to the making of the grant. ...". 15. Article 9 of the Probate Law provides for caveats:- "9 Caveats (1) Any person having an interest in the movable estate of a deceased person and intending to oppose the making of a grant may lodge a caveat with the Judicial Greffier. (2) A caveat shall be in such form as may be prescribed and may be lodged through an advocate or solicitor or in person. (3) A caveat shall have effect from the day on which it is lodged and remain in effect until whichever is the earlier of - (a) its withdrawal by the caveator; (b) its clearing off pursuant to an order of the Inferior Number; (c) the determination by judgment or order of the Inferior Number of the matter in dispute between the parties; or (d) subject to paragraph (5) of this Article and Article 10(3), the expiry of the period of 6 months beginning on the day it is lodged. (4) Subject to Article 10(4), where a caveat has effect, no grant shall be made in the estate to which it relates." 16. In her letter of 9 th August, 2013, the Registrar of Probate noted that she was permitted to act in non-contentious cases only, and that she could see the potential for conflict in this case in particular because the Second Respondent could bring a légitime claim. She expressed the view that the First Respondent had not been nominated as executor, and it followed that she could not grant probate to her. 17. There were exchanges of emails during August 2013 between the Representor and the First Respondent. The latter was anxious not to be excluded from acting as executor. The Representor took the view that

he had been asked by the deceased to act as executor. He did not wish to act in conjunction with the First Respondent, and the advice received from the then Registrar of Probate was to the effect that the First Respondent was not entitled to a grant. These were the circumstances which ultimately led to the successful application for a grant on rd September, 2013. 18. The First Respondent was aware that the then Registrar intended to proceed in this way. She could have lodged a caveat preventing a grant being issued, but despite the fact that she had apparently taken legal advice at this stage, she did not do so. 19. We think it is unfortunate that the then Registrar proceeded as she did. We recognise that the holograph will does bear the interpretation which the then Registrar applied to it, and that the Representor might have been treated as the sole nominated executor. It was and is apparent that the First Respondent could never be entirely sure what wishes were communicated to the Representor. Ultimately she would be reliant upon the description of the Representor as to what those wishes were. It can be strongly argued therefore that the deceased cannot have intended that the First Respondent should have been appointed as executor. Furthermore, paragraph 2 of the will says that she will assist the executor, but as a matter of language and grammar, one cannot assist the executor if one is in fact the executor. That appears to have been the view adopted by the Registrar of Probate as communicated to the First Respondent on 9 th August, 2013. 20. However, there was a possible contrary interpretation. Paragraph 1 of the will charges both the Representor and the First Respondent with the obligation of settling all proven debts at the time of the deceased's death. That obligation is consistent with the First Respondent being appointed as an executor. Furthermore the language of the First Respondent "assisting" the Representor as executor might also point in the same direction, as does the language charging the two of them to act in a friendly manner towards each other. In the context of a paragraph dealing with the executors, why should they be so charged, if it had not been the intention of the deceased that they should be co-executors? In our view, given these uncertainties, it would have been much better if, recognising the contention as to the identity of the executors, the then Registrar had presented a statement to the Royal Court under Article 6(9) of the Law, so that she might have obtained the directions of the Inferior Number. 21. Be all that as it may, the First Respondent made no application to have the grant revoked. She was incapacitated through illness at the relevant time, but she has had the opportunity since then of bringing such an application should she have wished to do so. The short answer to her objection today is that the Representor has the grant of probate as executor and this gives him the requisite authority. However, we think that it is right to add that, having regard to all the paperwork which we have seen in this case it would have been quite undesirable for the Representor and the First Respondent to be co-executors. Even at the date of the grant, there was some evidence of the First Respondent taking action which was not consistent with the job of an executor by entering the flat occupied by her late father and removing some of his medal collection, although we do not feel it is necessary to determine today whether that should or should not be classed as intermeddling. What we can say is that if we had been asked in September 2013 whether we would have directed a grant be issued both to the Representor and the First Respondent, we think the answer would have been in the

negative, and that a direction would have been given to make a grant to the Representor alone. In any event, it is now almost four years later and there has frankly been far too much water under the bridge to warrant any other conclusion. Although this point has rankled and continues to rankle with the First Respondent, we think she must try to get over it because it is negative and now really quite unhelpful. The executor's duties 22. The obligations of the executor are to execute the will of the deceased. In this case, the Representor took the usual oath to execute the will and well and faithfully to discharge the duties of the office of executor. Unfortunately, the will itself clearly does not cover all the estate of the deceased. There is therefore a partial intestacy insofar as concerns assets not covered by the will. 23. With some hesitation we have reached the conclusion that the grant of probate conferred on the executor the right to gather in all of the estate of the deceased. There is no provision in the will for what should happen to the residuary estate, as it contains directions only in relation to some specific legacies. Nonetheless, it appears to us that it is impossible to contemplate the executor settling all the proven debts at the time of his death without gathering in the estate to enable him to do so. For this reason, we are satisfied that the executor, in executing the will, had the legal power to gather in the estate of the deceased. Reduction of the will 24. As if the matter were not already sufficiently complicated, the will of the deceased was reduced ad legitimum modum by the Second Respondent. The order of the Court was made on 29 th August, 2014, the Court then ordering that the costs of the proceedings should be paid out of the gross personal estate of the deceased. The consequence of that order is that the Second Respondent is entitled, to one half of the intestate estate, and, equally with the First Respondent, to two-thirds of the testate estate. This conclusion arises as a result of the combination of Article 7 of the Wills and Successions (Jersey) Law 1993 and the application of the customary law. It follows that a second substantial ground of complaint which the First Respondent has made against the Representor, namely that he allowed the Second Respondent despite the terms of the will the opportunity to choose items of the deceased in store, not being his personal effects, cannot be substantiated. One issue which does arise though on the present application is the allocation of the costs which have been incurred in relation to the administration of the estate. 25. The Wills and Succession (Jersey) Law 1993 ("the Wills Law") provides where relevant as follows:- "7(2) Subject to the provisions of Article 8, where a person dies testate as to movable estate and is survived by - ... (c) issue but no spouse or civil partner, the issue shall be entitled to claim as légitime two-thirds of the net movable estate. ... Abolition of right of principal heir to demand possession of movable estate The right under customary law of the principal heir to interpose and demand possession of the movable estate from the executor of a deceased person's will on depositing with the executor the full amount of the bequests made under the will, together with the debts and other charges of the administration, is hereby abolished. ... Costs of administration The costs of administration of the movable estate of a deceased person shall be paid out of the gross movable estate unless the deceased person's will provides otherwise." 26. In the instant case, the will contains no provision enabling the executor to pay legal fees out of the estate and the first question which arises is as to whether he was entitled to instruct lawyers at the expense of

the estate at all. In the Representation of K J McKinnon

[2010] JLR 508 the respondent brought proceedings in the Royal Court concerning the administration of his mother's estate. The appellant was the executor of the will and the appellant and respondent were brothers. The respondent applied to the Royal Court for orders that the appellant should pay not only his costs of the representation but also that he, the appellant, should be prevented from recovering his costs of representation from the estate, and he was successful in so doing. The Royal Court found that the appellant's peremptory rejection of the respondent's proposals in relation to the administration of the estate had crossed the threshold of proportionate, justifiable and reasonable behaviour. On appeal, the Court of Appeal found that the Royal Court had pitched the test too low. What the Court should have done was to ask itself whether the appellant had reasonably thought that his problems under the Proceeds of Crime Act 2002 prevented him from accessing the respondent's proposals. An executor could not always rely on counsel's advice to exculpate him from a finding of irrational behaviour, but whereas there the appellant was a layman whose knowledge of the Proceeds of Crime Act was necessarily limited to the legal advice received, he could not be said to have acted imprudently. The Court of Appeal went on to hold that as a matter of general principle, an executor was entitled to recover the costs of administration from the estate under Article 15 of the Wills Law. Furthermore, an executor was entitled to payment of his costs of an administrative action out of an estate if they were properly incurred, although he could be deprived of these costs, and ordered to pay the other party's costs personally if his conduct crossed the threshold of reasonably justifiable behaviour. 27. It is clear to us having regard to the abolition of the right of the principal heir under Article 14 of the Wills Law and on the authority of McKinnon that the Representor was entitled to charge the costs of the administration against the gross of the estate in accordance with Article 15 of the Wills Law. That however takes one only so far, because in the instant case, the will was reduced *ad legitimum modum*. That entitlement to a *légitime* enabled the Second Respondent to say that he should contribute to the costs of the administration of the estate only in so far as they were reasonably and properly incurred in collecting in the assets in order to deliver to him his legitimate share of the estate. To the extent that the Representor has incurred costs unnecessarily (as regards that purpose), the costs, even though reasonably and properly incurred, should be charged against the remainder of the estate over which the Second Respondent had no claim. 28. Applying those principles to the facts of the present case, in theory the Representor should charge against the gross of the estate all those legal costs incurred in obtaining a grant of probate, including necessary disbursements such as stamp duty. The Representor is entitled to charge those costs against the gross because the principal heir no longer has a right to take over the administration of the estate, and the costs of probate are therefore necessary costs to ensure the estate is gathered in, the debts settled and the balance available for calculation of the *légitime*. The Representor is also entitled to charge against the gross of the estate all costs reasonably and properly incurred in the bringing and disposal of the *légitime*

proceedings and in the distribution of the estate following the claim to *légitime*, including where necessary the costs of *réalisation* and/or liquidation including the costs of valuation of assets whether specifically bequeathed or not. Costs properly and reasonably incurred in the delivery of the specific bequests to those legatees entitled to them would fall to be paid out of the disposable third. Although the Wills Law removes the right of the principal heir to take over the administration of the estate, the allocation of costs which we have described above is in accordance with the customary law and one cannot construe the removal of the right of the principal heir to administer the estate as affecting the basic principle upon which the costs of administration should be shared. 29. The costs involved in the present Representation are a separate matter. Here the issue arises as to whether the Representor was entitled to bring the proceedings which he has brought in the absence of approval from the First Respondent of the estate accounts. The Second Respondent has agreed the estate accounts and accordingly there is no basis upon which he should properly be charged with any of the costs of the action. Whether these costs have been reasonably incurred for the estate by the Representor is considered below. The estate accounts 30. It does not appear to us that the estate accounts, whether the August 2016 or the January 2017 accounts and which we are asked to approve, have been presented in an entirely helpful way. The traditional approach to preparing estate accounts is in the Court's experience to record the assets belonging to the deceased at the date of death, the income in the estate during the period of administration and the debts which have been discharged. This leaves a final figure for distribution in accordance with the terms of the will. However, it is in some respects understandable that the Representor should find himself in this position. The main difficulty arises because the holograph will of the deceased does not deal with all of the deceased's assets. Although he writes that "I give and bequeath the rest of my estate, at the time of my death as follows ...", he does not in fact dispose of all his assets - he disposes only of his personal effects, his collection of medals and Jersey related papers, his parish badges collections and his car. There is therefore a partial intestacy in relation to the rest of his estate, such as bank accounts and any other assets. It appears that the Representor has treated the grant of probate as authorising him to deal with those other assets beyond the payment of the deceased's debts, because that is what the estate accounts show. The question which then arises is what we should do about that state of affairs. There is no doubt in our judgment that the Representor was acting in good faith. Although the grant of probate did not give him jurisdiction to deal with the assets of the deceased in so far as he died intestate, other than pay the debts of the deceased, we correct that position today, by directing that the grant of probate of 3rd September, 2013, shall be treated also as a grant of letters of administration authorising the Representor to act as administrator of the intestate estate of the deceased. We have not been directly asked by the Representor to make such an order, but it appears to us to arise necessarily out of the application to approve the estate accounts. 31. In order to understand the comment which we have made that the presentation of the accounts does not follow the usual form by setting out the assets at the date of death, it is necessary to set out the areas of difficulty which now exist in relation to those assets:- (i) As the will

indicates, the assets of the deceased included his personal effects, his collections of medals and Jersey related papers, his collection of parish badges and his car. There is no inventory of personal effects, no inventory of medals and no inventory of parish badges. The estate accounts show that the car has been prepared for sale, and that a commission has been charged in relation to the sale, but there is no indication of sale price, or monies received into the estate in either the August 2016 accounts or the January 2017 accounts. (ii) As a result of the absence of inventories, there is no valuation of the various assets in question. (iii) The First Respondent asserted there were other valuable assets of the estate which did not appear in the estate accounts at all, in particular any stocks and shares held by the deceased, and a stamp collection which he allegedly owned. 32. The August 2016 estate accounts which are drawn to cover both testate and intestate estate do not appear to be satisfactory. They contain no reference to the assets which are the subject of the will, nor do they seem to include the sale price of the deceased's car in the sum of £1,500. We think the First Respondent was entitled to take the view that these accounts should not be approved, albeit her reasons for not approving them were quite different from the reasons we would have for not doing so. That makes the Court's conclusions on the Representation and the question of costs difficult - as T S Eliot ascribed to Thomas Becket in his play 'Murder in the Cathedral' :- "The last temptation is the greatest treason: To do the right deed for the wrong reason" 33. As we indicated earlier, there was no formal amendment to the prayer in the Representation but it is clear that the Representor was urging us to endorse the January 2017 estate accounts. As we will shortly see, there are some comments to be made on those accounts, but in principle we agree that we should approach the claim in this way. It appears to us that two consequences follow in relation to costs however - first, the August 2016 accounts do not justify the taking of proceedings by the Representor because the Court would not have approved them, and accordingly a question arises as to whether the Representor is entitled to have from the estate his costs of and incidental to the proceedings before 11 th January, 2017. Secondly, administration costs must have been incurred and charged to the estate in the preparation of the August 2016 accounts which ought not to have been so charged because they were incorrect. We do not have the information to quantify the amount of costs wrongly charged to the estate. It is a matter which the Representor needs to take up with Carey Olsen so that the appropriate corrections can be made. We return to the question of costs later in this judgment. 34. For convenience, we now proceed on the basis of the January 2017 estate accounts. These reveal that an interim payment was made on account to the Second Respondent in November 2014 in the sum of £25,000 and that there was a debt due by the First Respondent to the estate in the sum of £10,000. There is shown a distributable intestate estate of £94,375.71. This therefore gave a proposed distribution from the intestate estate of £42,187.56 to the First Respondent and £27,187.85 to the Second Respondent. There is an issue surrounding the debt due by the First Respondent to the estate which we now deal with. 35. An IOU was signed by the First Respondent by which she acknowledged her debt to her father in the sum of £10,000. According to Mrs Gill Morgan, the probate administrator at Messrs Carey Olsen, she attended at the deceased's

flat after his death and found the IOU signed by the First Respondent on the deceased's bed. She therefore picked it up and took it into her possession. According to Mrs Powell, her father agreed to waive that loan. She said that he did so orally over lunch one day. There is no other evidence in that respect. Unfortunately, the IOU however was found on the bed of the deceased. He had not torn it up, nor returned the original to her, nor bequeathed the benefit of it to her in his will nor had he marked it as 'paid'. In the circumstances we take the view that the First Respondent has not adequately shown that the debt has been forgiven. It is perhaps surprising to see the debt treated in the distribution account rather than as an asset of the estate in the first instance, but arithmetically it does not seem to us to have any consequence and we take that no further.

36. The estate accounts show bank accounts at the date of death with Lloyds TSB and the Nat West Banks, together with NS&I savings and a Co-Op share account. There is no reference to any stocks or shares of the deceased. According to the Representor, he has accounted for all of the intestate estate assets. The First Respondent contends that that is not so and that there were other shares not mentioned in the estate accounts.

37. The Court has found the Representor to have been a sincere and genuine witness who felt that he owed the deceased a responsibility to deal with the estate. Had there been stocks or shares, one would have expected to see a record of dividends in the deceased's bank accounts but the Representor found no trace of any. We also find that notwithstanding the efforts of the First Respondent to establish that there must have been some trust settled by the deceased, we find no evidence of that either. In her written submissions after the end of the hearing, the First Respondent asserted that the matter had proceeded to trial without appropriate discovery having taken place, and without full sight of the estate records so as to enable the Respondents to formulate their case. We have considered this and in some respects take the view that it might have been better if the action had been placed on the pending list in the first instance, with an answer filed and discovery taking place in the usual way. However, that was not the approach which was taken at the outset, and given the costs which have already been incurred, it would be wrong to go back on that approach at this late stage. In any event, accepting as we do that the Representor gave genuine and sincere evidence, we do not ourselves think that discovery would have made the slightest difference to the outcome.

38. The First Respondent also contended that there was jewellery of the deceased which has not been reflected in the estate accounts. The comments which we have made above apply. There is no sign of jewellery as an asset, and that is no doubt because the Representor found none on entry to the deceased's flat with Ms Morgan when he sought to take possession of the movable estate of the deceased.

39. Subject to what is set out in paragraph 40 below, we do not find that the distribution statement in relation to the intestate estate can be criticised. It is true that there is no sign of a dividend from the Cooperative share account, and that there is no sign of interest payable on the liquid balances in the bank accounts; but as against that, interest rates are so marginal as to be non-existent, and we find the absence of interest for the years in question to be unsurprising and certainly do not consider that further enquiry should be made into the matter given the costs already incurred. We have already said that we think

that the level of costs is a matter which the executor was required to consider in the context of the value of this estate. We assume he has done so and that up until these proceedings he has challenged the lawyers appropriately. There is no evidence that he has not and indeed the Representor said in his evidence that he had queried bills and that some had been reduced. 40. The last item which we refer to in this context is the used stamps of the deceased. The estate accounts show these as forming part of the testate estate, but we think they form part of the intestate estate. We do not regard a stamp collection as falling within the definition of 'personal effects', which has a very limited meaning in our view. The expression refers to those items of the deceased which were personal to him - his clothes, photographs, letters and such like. The stamp collection apparently is very extensive indeed. In his affidavit, the Representor described the collection as consisting of a very large number of low or negligible value stamps, which he had shown to a Mr Norman Wood, a local collector, who said the collection was valueless, and that given the sheer number of stamps, a formal valuation would be costly. The Representor deposed that he went to the offices of Messrs Stanley Gibbons where he was informed that they did not conduct valuations for individual stamp collectors. Again he was told that they had a negligible value. The Representor has dealt with the stamp collection by giving them to Guide Dogs for the Blind, which he said was in accord with the wishes of the deceased. While we think that was entirely appropriate, he has been told by that charity that the stamps will be returned if the Court so orders. We do not accept the contention of the First Respondent that a valuation should have been obtained given the evidence which the Representor has given to us which we accept. However, in the light of the charity's response, and the First Respondent's assertions, we consider the stamp collection should be returned to her. The Second Respondent is theoretically entitled to one half of that collection but we treat such claims in similar fashion to items in the testate estate as set out in paragraph 43 below. 41. We now turn to the accounts for the testate estate. One of the difficulties which arises here is that this estate is entirely illiquid, and yet one third is due to be accounted for to each of the First and Second Respondents, with the remaining third being dealt with under the will. That theoretically required the specific legacies to be valued (in order to calculate the amount due to the First and Second Respondents) and either in part realised or a contribution made, whether from the intestate estate or one or more beneficiaries to enable the accounting to take place. That did not happen. We return to this at paragraph 43 below. 42. The furniture and household effects (which do not fall into the definition of 'personal effects') are shown at a value of £200; and there are assorted coins given a value of £50, together with a 40 piece dinner service given the same value. The deceased was a collector of various bits and pieces, and in his estate there was also to be found some Occupation material which the Representor wished to hand to the Jersey Archive. It was said to have an approximate value of £1,650. Finally, there were the medals and pin badges and Honorary Police memorabilia. The latter badges and memorabilia were valued by Mr Norman Wood at approximately £1,200. The medals are more difficult to deal with because the collection originally comprised some 197 medals, of which approximately 100 were removed from the deceased's flat after

his death by the First Respondent. The value of the 97 medals was put by Mr Wood in August 2013 at £28,000. It is unclear what the value of the medals removed by the First Respondent might be - she has been asked by the Representor to produce them to him on a number of occasions but she has failed to do so. 43. Under the will of the deceased the Parish badges were to go to the Grouville archives and the medals were to go as directed by the deceased, namely given to his grandsons, the Third and Fourth Respondents. Theoretically these values need to be aggregated in order that the Second Respondent should have one third of them. However the August 2016 accounts do not make any such provision, and the Second Respondent has accepted those accounts. We have carried forward that acceptance through to the January 2017 accounts because we think it is fair to do so. We think it is likely that he has realised that the costs of valuations and inventories, which would be charged against the gross estate, make any challenge on his part of dubious value. Furthermore, in her evidence before us, the First Respondent asserted that she was not interested in receiving these assets other than for her sons. The First Respondent accepted that she has the medals which she removed from the flat after her father's death, and we say that without making any allegation or finding of dishonesty on her part. The executor has a right to retain the medals currently in his possession in the event that there are some estate costs outstanding - to which we will come shortly - entitled to realise those medals still in his possession in order to discharge those outstanding costs and to recover from the First Respondent the deceased's medals in her possession for the same purpose. Subject to that right, we direct that the medals and badges should be delivered in accordance with the terms of the Will regardless of the reduction of the Will *ad legitimum modum*. 44. We hope there will not be any such outstanding fees and that a suitable accommodation between the Representor and Messrs Carey Olsen will be found to achieve that as it would be undesirable that the deceased's grandsons do not in fact get the bequest which the deceased had in mind for them, only because the estate has proved so problematic for those concerned. Nonetheless, if it should be necessary, the First Respondent will have to produce all the medals in her possession in order that they can be valued by the Representor. In reaching a view on this last point, we hope the Representor will take account of this conclusion we have also reached. We think the treatment of the First Respondent was unfortunate, particularly in not opening a dialogue with her in relation to the estate. For a number of reasons, the First Respondent may not have been the easiest person with whom to deal, but one would expect an executor and therefore the lawyers on his behalf to deal politely and cooperatively with the main beneficiaries. We recognise that the First Respondent was sometimes very difficult and belligerent, but we think that the standard of care offered to her in the administration of the estate was not as good as it could have been. This is perhaps exemplified by the handling of the funeral expenses - flowers for the deceased which were paid for by the First Respondent were not reimbursed because they were said not to be a funeral expense, and yet the estate accounts show a gravestone chosen sometime after the funeral at the expense of the estate, which is said to contain no wording to the First Respondent as his daughter. Assuming this to be so, and it has not

been denied, that was insensitive to say the least. It appears to be the case unknown to the First Respondent, that the Representor or his lawyers also permitted the Second Respondent to have a choice of the deceased's personal effects (which the First Respondent did not want) from storage despite the instruction in the Will that he should have nothing; and that the First Respondent frequently did not receive a response to her communications. It seems clear that her relationship with the Representor and his lawyers deteriorated at an early stage and while she was undoubtedly difficult to deal with, the fault does not lie entirely on her side. 45. In the light of this judgment, there may well be some adjustments to be made to the estate accounts, and possibly the ultimate distributions will depend to some extent on the calculation of costs. We say more about that below. If there is any further dispute in relation to the costs figure in the estate accounts, there is liberty to apply and the Court will invite the Judicial Greffier to tax the costs on an indemnity basis, in order to assess a proper charge to the estate giving such directions as to the principles to be applied as then seem proper after having argument. What we can say at this stage is that notwithstanding that much of the work undertaken by Messrs Carey Olsen may only have been necessary as a result of the First Respondent's conduct, particularly in removing some of the deceased's medals and not returning them, we share the opinion expressed by Advocate Frankel, then acting for the Second Respondent, that there are some jobs - and this is one of them - where lawyers must simply accept that things have not gone well for whatever reason and make very significant compromises on the charge out rates and overall fees which other cases might command. 46. Finally the Representor claims an order that he should not be liable in damages for anything done or omitted to be done by him in the discharge or purported discharge of his duties, unless it is proved that the act or omission was made in bad faith or with wilful default or gross negligence. We do not think this is necessary. It is true that the First Respondent has indicated an intention to bring proceedings against the executor in the future. However, it will clearly not be possible for her to bring proceedings in respect of matters which have already been adjudicated upon in this Court and it follows that she would have to have some new material to raise in order to do so. Her attack on the Representor - which has covered wide ground and has been wholly unjustified in the context of any attacks on his integrity - seem to us to make it unlikely that there is much scope for proceedings to be brought alleging defaults on his part which have not already been alleged and dealt with. In those circumstances we think it is unlikely to be necessary that there should be any indemnity given, but the open-ended nature of that indemnity seems to us to be inappropriate and accordingly we decline that relief. 47. We are left with the representation in which the Representor claims for formal approval of the estate accounts. No other accounts are sought to be produced, and the Second Respondent has not challenged the prayer in any way. However, the estate accounts do not, on the face of them, set out a proper statement of settlement given our comments at paragraphs 31 to 45 above and in particular do not allocate the costs of administration in the way they should have been allocated, pursuant to this judgment and we cannot at present approve them. 48. We will hear from the parties as to the costs of the present proceedings. Postscript 49.

On 11 th July, 2017, the Bailiff's Private Secretary sent a draft of this judgment to Messrs Carey Olsen acting for the Representor, to the First Respondent and, regrettably in error to previous counsel for the Second Respondent. The correct identity of counsel for the Second Respondent was entered on 13 th July and a revised judgment sent out to the same parties then. Although the Third Respondent was in court at the hearing date, he did not address us other than to associate himself with his mother's

submissions.

Nonetheless the draft judgment should have been sent both to him and to the Fourth Respondent, who did not appear before us and that was corrected when their email addresses were provided to the Court subsequently. The time for commenting on the terms of the draft judgment was informally extended, but as of 25 th July, 2017, no comments had been received from either the Third or the Fourth Respondents. We have proceeded therefore without the benefit of that contribution. 50. A number of comments have been received from the First Respondent which we now address. Some of the First Respondent's comments relate to the merits of the case. As was indicated by the Bailiff's Private Secretary, the draft judgment was not circulated for the purposes of getting further submissions on the merits. It was pointed out that the primary purpose of supplying the draft was to enable the parties to consider the judgment and decide what consequential orders, if any, they would seek. The second purpose was to enable the advocates (or the parties as the First Respondent was unrepresented) to submit suggestions to the Court as to factual errors, wrong references and minor corrections of that kind. 51. We have reviewed the First Respondent's criticisms of the draft judgment, and we find that they do not fall into the category of comment which was invited on the circulation of the draft, and accordingly we have not taken them into account. 52. However there is one matter which we feel we need to mention. In her email of 14 th July, 2017, at 17:45, the First Respondent indicates that she believes Jurat Olsen to have been a friend of her brother, the Second Respondent. This issue has not been raised previously and we do not fully understand why it should have been raised now. We have taken no account of it because Jurat Olsen, whether he is or is not a friend of the Second Respondent, has not sat on this case and has had no part to play in the case, and the Jurats who have sat on the case have not discussed it with him. 53. Advocate Kistler raised a number of points in relation to the draft judgment which was submitted. Some of the detailed points have been noted and amendments made, but there are two areas of principle which we now address. 54. The draft judgment referred at paragraph 9 to the evidence that estate accounts were prepared to May 2016. These were sent to both the First and the Second Respondents, (but not it appears the Third and Fourth Respondents), and were agreed by the Second Respondent but not by the First Respondent who emailed promptly to say she did not approve them. There appears to have been some desultory correspondence in the intervening months to August 2016 when fresh accounts were drawn, which updated the Carey Olsen charges which the Representor had incurred. The comments which are set out at paragraphs 30 - 32 above appear to us to be accurate, but they do not reflect the fact that the earlier draft accounts in May 2016 had been prepared and we now wish to say something about them. Those (May) accounts do properly

include reference to the testate estate and they do include the sale price of the deceased's car in the sum of £1,500 albeit that is wrongly credited to the intestate estate. However, there is no proper distribution account in respect of the testate estate, any more than there is such a distribution account in the January 2017 accounts. The particular criticisms set out at paragraph 31 relating to the absence of any inventory of assets or valuations remain valid. Furthermore, it may well be true, as Advocate Kistler has submitted, that because the First Respondent did not approve the estate accounts to May 2016, it follows that she would not have approved the accounts to August 2016. It may be that there is correspondence which reveals that the August 2016 accounts were actually sent to her, although that does not appear to be in the bundle of papers put before the Court. 55. In his submissions of the draft judgment, Advocate Kistler drew the conclusion that it was wrong for the Court to indicate, as we had at paragraph 33, that the Representor should not have his costs of and incidental to the proceedings before 11 th January, 2017, out of the estate. We have considered that. Advocate Kistler's comments have also required us however to review the costs which have been actually charged, a matter on which we touched briefly at paragraph 8 above. Having reviewed the various time ledgers of Messrs Carey Olsen in relation to this estate, we note that fifteen different fee earners have charged time at different times during the period of administration. The Court recognises that the larger legal firms in the Island specialise, and that those concerned with the administration of an estate will not be the same as those concerned with litigation. Nonetheless, to have so many fee earners engaged in what is a relatively small estate raises serious questions about the overall charges. Furthermore, the hourly fee rates, in relation to an estate of this kind, are high, varying from a minimum of £200 per hour to a maximum of £575 per hour; and fee earners appear to have charged time for attending the same meetings, sometimes only with each other. We recognise that the firm has discounted the total time charges by up to 25%. Nonetheless, the total which has been charged is such that we do not think it would have been *prima facie* unreasonable for the First Respondent to have refused to approve both the May 2016 accounts and/or the subsequent accounts. However, we recognise that we have not heard from the parties on the question of the costs of and incidental to these proceedings prior to 11 th January, 2017, and accordingly that has been reflected in an amendment to paragraph 33 of the draft judgment and we will hear argument on it in the usual way. In addition, the question of the costs of administration will need further discussion between the Representor and his lawyers, and ultimately agreement from the beneficiaries of the estate, or a taxation certificate (on an indemnity basis, having regard to reasonableness and proportionality) from the Judicial Greffier as directed at paragraph 45 above. 56. The other matter on which Advocate Kistler made submissions relates to the comments which are to be found at paragraph 44. In this paragraph, the Court has found that it considered the treatment of the First Respondent to have been unfortunate. In this earlier draft, it was suggested that the fault might lie with Messrs Carey Olsen. On considering Advocate Kistler's submissions, we agree that we should not attribute the fault as between the Representor and his lawyers. We have not seen the whole of the estate file, as is obvious from the material which has been produced to us. In those circumstances we do not seek to attribute such fault as there is between the Representor and his lawyers. That is really a matter for the Representor to discuss with Messrs Carey Olsen, particularly in the context of our conclusion in relation to paragraph 45.

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