

Judgment 28/2010

**In the matter of the Real Estate of Thomas
Charles Le Normand, deceased – Royal Court
(Civil Action File 1498) – 24th June 2010**

Succession – Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006 – Administrator’s application for directions as to distribution – held that siblings of the half blood are to share equally with siblings of the whole blood as heirs of the deceased, who died without issue and intestate.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

24th day of June, 2010 Richard John Collas, Esquire, Deputy Bailiff; present: Michael John Tanguy, Stephen Murray Jones, Esquires and Margaret Ann Spaargaren, Jurats

**IN THE MATTER OF THE REAL ESTATE OF
THOMAS CHARLES LE NORMAND, DECEASED**

ON THE APPLICATION of Advocate Jason Brian Green of Manor Place, Saint Peter Port, Guernsey ("the Applicant") whose address for service is at Manor Place in the parish of Saint Peter Port, being the Administrator appointed pursuant to an Act of the Royal Court dated the 28th November 2008 of the real estate of the late Thomas Charles Le Normand ("the deceased") who died without issue on the 15th November 1953 intestate as to Guernsey real estate, the Applicant having made application pursuant to the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006 ("the Law") for various orders by application dated the 24th June 2010;

THE COURT, having heard Advocate P.M.A. Palmer for the Applicant, the Applicant in person and Sheila Greenough, one of the heirs of the deceased, MADE the following orders:-

1. Pursuant to section 8 of the Law, authorised payment of all disbursements incurred to date and fees and expenses incurred to date in the course of the administration being legal fees in the sum of £57,893 as at 23 June 2010 together with legal fees incurred on 24 June 2010 in respect of the hearing and its preparation, giving a total of £60,525.00.
2. Pursuant to section 9 (9) of the Law, authorised the distribution to the beneficiaries identified by the Applicant as listed in the Schedule below of the whole of such a share as the Applicant has assessed to be their entitlement of the net proceeds of the sale of the dwelling belonging to the deceased namely 2, Les Monmains, Vale, Guernsey, before the expiration of the six year period prescribed by Section 9 (8) (a) of the Law.

3. Ordered that the siblings of the half blood are to share equally with the siblings of the whole blood as heirs of the late Charles Edward Le Normand who died without issue and intestate, the Court having accepted the Applicant's legal submissions in the skeleton argument attached hereto.
4. Ordered that professional genealogists be instructed to trace the heirs of the late:-
 - 4.1 Henri Augustus Le Normand who was last known of emigrating to Canada;
 - 4.2 Eugene Celestin Le Normand who died in 1930, whereabouts unknown;and that such costs including the legal fees of the Applicant be taken from their respective entitlements from the proceeds of sale.

SCHEDULE

That the proceeds of sale after payment of the Applicant's fees pursuant to 1 above together with all disbursements incurred and Court fees to date be dealt with as follows:-

1. In respect of Eugene Celestin Le Normand deceased:-
 - 1/8 to be held pending results of professional genealogists;
2. In respect of the heirs of Alfred Joseph Augustus Le Normand:-
 - 2.1 1/112 for Nigel Baron Giles Le Normand
 - 2.2 1/112 for Gary John Le Normandsubject to the right of enjoyment of Daphne Le Normand, surviving spouse of Alfred James Le Normand deceased in one half until re-marriage
 - 2.3 1/56 for Catherine Annie Duckworth (née Le Normand)
 - 2.4 1/56 for Eric Louis Hugh Le Normand
 - 2.5 1/56 for Susan Colleen Le Normand, to be held pending her providing a sworn Affidavit and certificates to establish her parentage and connection to James Shepherd Le Normand deceased
 - 2.6 1/56 for Margaret Anne Le Normand (née Guilliard)
 - 2.7 1/56 for Margaret Rose Browning (née Le Normand)
 - 2.8 1/56 for Josephine Lillian May Heyerdahl (née Le Normand)
3. In respect of Henri Augustus Le Normand deceased:-
 - 1/8 to be held pending results of professional genealogists.
4. In respect of the heirs of Alice Augustine Pomeroy (née Le Normand):-
 - 4.1 1/120 for Maurice Roland Pomroy, child of Roland Charles Pomeroy deceased
 - 4.2 1/120 for David Cyril Pomroy, child of Roland Charles Pomeroy deceased

- 4.3 1/120 for Martin Brian Pomroy, child of Roland Charles Pomeroy deceased
 - 4.4 1/80 for Robert James Pomroy, child of Albert Cecil Pomroy deceased
 - 4.5 1/80 for Keith Pomroy, child of Albert Cecil Pomroy deceased
 - 4.6 1/40 for Michael Pomroy, child of Alfred Norman Pomroy deceased
 - 4.7 1/120 for Phyllida Turner (née Pomeroy), child of Harold James Pomeroy deceased
 - 4.8 1/120 for Colin Pomeroy, child of Harold James Pomeroy deceased
 - 4.9 1/120 for Linda Dunne (née Pomeroy), child of Harold James Pomeroy deceased
 - 4.10 1/120 for Derek Roland Griffin, child of Barbara Mary Griffin (née Pomroy) deceased
 - 4.11 1/120 for Cheryl Diane Lowe (née Griffin), child of Barbara Mary Griffin (née Pomroy) deceased
 - 4.12 1/120 for Graham Griffin, child of Barbara Mary Griffin (née Pomroy) deceased
5. In respect of the heirs of Charles Ulric Le Normand:-
- 5.1 1/64 for the heirs of Charles Edward Le Normand deceased being his siblings of the whole and half blood and their descendants to be added to the payments below in this clause 5 according to their entitlements
 - 5.2 1/576 for Marilyn Torode, child of Doris Louisa Torode (née Le Normand) deceased
 - 5.3 1/576 Margaret Nancy Swann (née Torode), child of Doris Louisa Torode (née Le Normand) deceased
 - 5.4 1/576 for Terence Charles Torode, child of Doris Louisa Torode (née Le Normand) deceased
 - 5.5 1/576 for Anthony Torode, child of Doris Louisa Torode (née Le Normand) deceased
 - 5.6 1/576 for Christopher Torode, child of Doris Louisa Torode (née Le Normand) deceased
 - 5.7 1/576 for Christine Frawley (née Torode), child of Doris Louisa Torode (née Le Normand) deceased
 - 5.8 1/576 for Kevin Torode, child of Doris Louisa Torode (née Le Normand) deceased
 - 5.9 1/576 for Teresa Wilde (née Torode), child of Doris Louisa Torode (née Le Normand) deceased
 - 5.10 1/576 for Joseph Torode, child of Doris Louisa Torode (née Le Normand) deceased
 - 5.11 1/64 for Eugene Celestin Le Normand
 - 5.12 1/64 for David Le Normand, child of Reginald Helier Le Normand deceased
 - 5.13 1/128 for Susan Yvonne Pauline Le Marquand (née Le Normand), child of Harold Ulric Le Normand deceased
 - 5.14 1/128 for Robert David Le Normand, child of Harold Ulric Le Normand deceased
 - 5.15 1/64 for Rosemary Hall (née Le Normand)

5.16 1/64 for Sheila May Greenough (née Le Normand)

5.17 1/64 for Yvonne Mary Jones (née Le Normand)

6. In respect of Louis Edouard Le Normand deceased:-
1/8 to be held pending further enquiries and until further order.

7. In respect of Emma Maria Alvina Anton (née Le Normand) deceased:-
1/8 for Luc Roberts, great great grandson in accordance with her last Will dated 1 March 2003.

8. In respect of Francois Joseph Le Normand:-
1/8 for Sheila Winifred Lillian Marsh (née Le Normand), child of Francois Joseph Le Normand deceased.

M A TOSTEVIN
Her Majesty's Deputy Greffier

[PMAP]

24 June 2010

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

In the matter of Thomas Charles Le Normand (deceased)

SKELETON ARGUMENT

Introduction

1. Collas Day Advocates were initially instructed in 1981 to act in the administration of the estate of Thomas Charles Le Normand (the "Deceased") who died on 15 November 1953 without issue and intestate as to Guernsey real estate. His wife, Florence Violet Le Normand (formerly Collins, née Ferbrache), who survived him, died on 27 December 2003.
2. On 28 November 2008, Advocate Jason Brian Green was appointed as the Administrator of the Deceased's Guernsey real estate pursuant to section 4(3)(c) of the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law 2006.
3. The Deceased's Guernsey real estate was sold on 11 August 2009 for the sum of One hundred and sixty thousand pounds (£160,000.00) plus a further sum of Thirty eight pounds (£38.00) for the apportionment of rates and taxes. From the proceeds of sale of the Deceased's real estate, all expenses incurred due to the sale of the same and all disbursements incurred by Collas Day to date have been paid. The remaining funds are being held by Collas Day pending distribution between the Deceased's beneficiaries.
4. There is a distinction under Guernsey law between Real Property classed as a,

"propres" (i.e. property inherited by the deceased by operation of law or acquired by way of retrait lignager) and that classed as an, "acquêt" (i.e. property acquired during the deceased's lifetime by way of purchase, saisie, gift, bequest or any means other than intestacy or retrait lignager).

5. One of the Deceased's heirs was Charles Edward Le Normand ("Charles"). He died in 1991 intestate as to Guernsey Real Property with no issue. His widow died in 2006. Charles died leaving three siblings of the whole blood, issue of a predeceased fourth sibling of the whole blood and three siblings of the half blood. The three siblings of the half blood share the same father as Charles.
6. On 7 May 2010, Advocate Jason Brian Green therefore made an application to the Royal Court of Guernsey (Ordinary Division) requesting directions in relation to the distribution of the net proceeds of sale between Charles's beneficiaries, and inter alia as to whether or not siblings of the half blood are entitled to share equally with siblings of the whole blood in a collateral succession of a "propre" which is relevant vis à vis Charles.

The Law

7. In Thomas Le Marchant's, *"Remarques et Animadversions, sur L'Approbations des Lois et Coustumier de Normandie"*, (published in 1826, although written in the mid 17th century) (Tome Premier, pages 180-181) (see tab D, pages 244 - 245), it indicates that where heirs were of an equal relationship but were of different genders, succession would be dependent on gender so, for example, a brother on a mother's side would succeed over his half sister or even full sister however, where the heirs were of the same degree of relationship and were of the same sex, such inheritance would be shared equally.
8. Le Marchant goes on to state that, in relation to the mother's side, only heirs of equal rank in their relationship to the mother (i.e. those of the whole blood) would inherit equally from their mother;

"où il y a parité de degré et identité de sexe ès héritiers, et inégalité ès costés de l'acquéreur par lesquels ils luy attouchent, et que la ditte inégalité soit seulement du costé le moins noble tellement que les héritiers luy attouchent tous esgallement du costé du père... la ditte inégalité ne sera point considérée, et partiront les dits héritiers le conquest esgallement..."

9. However, in relation to the father's side, all heirs, whether there was an inequality in

their relationship to their father or not (i.e. whether they were of the whole blood or the half blood) would inherit to the exclusion of any half blood heirs through the mother's line;

"...mais si la ditte inégalité procède du côté le plus noble, et que les dits parents attouchants tous esgallement à l'acquéreur du côté de sa mère, il y en ait quelques-uns d'eux qui luy attouchent en mesme prochaineté du côté de son père, cette inégalité donnera la succession de l'acquest a ceux qui attouchent à l'acquéreur de tous les deux côtés, tant de son père que de sa mère, et ses parents du côté de sa mère seulement n'y auront rien..."

10. The inference therefore appears to be that, where there were relatives of the half blood through the father they would share equally with relatives of the whole blood of the father, however, if there were relatives of the half blood through the mother the estate would bypass such relatives and pass entirely to those of the whole blood.
11. Laurent Carey's, *"Essai sur les Institutions, Lois et Coutumes de L'île de Guernesey"*, (published in 1889, although written no later than 1769) (pages 156-159) (see tab D, pages 246 - 248) appears to mirror the inferences noted under Thomas Le Marchant's commentary upon L'Approbation des Lois, however Laurent Carey also appears to indicate that under the nouvelle coutume the brothers of the half blood ("uterine", i.e. having the same mother but a different father) would succeed equally with brothers of the whole blood and sisters of the half blood would succeed equally with sisters of the whole blood;

"des frères uterins, c'est-à-dire de ceux qui sont provenus de divers pères, mais d'une même mère, l'ancienne Coutume ne dit que peu, seulement son commentateur, Terrien, doubterait que les frères de père et mère seraient préférés à ceux qui ne le sont que de mère, et que ceux qui sont utérins, ou de mère partageassent avec les frères de père seulement"

(of half blood brothers, that is to say those who have different fathers, but the same mother, the Ancienne Coutume does not say much, however its commentator, Terrien, is in no doubt that whole blood brothers (from both father and mother) would be preferred to those who are only from the mother's side, and those who are uterine, would share only with half brothers on the father's side)

and;

"je suivrais ladite opinion de Terrien, comme étant la plus conforme au droit civil et à l'équité naturelle, quoique, par la nouvelle Coutume de Normandie, le frère utérin succède également avec le frère de père et de mère, et que la soeur utérine succède également avec les soeurs de père et de mère..."

*(I follow Terrien's view, as conforming closest to the civil law and natural equity, although through the new Coutume de Normandie, **the half blood brother would succeed equally with the whole blood brother, and the half blood sister would succeed equally with her whole blood sisters**).*

12. Under Article 11 of the Loi sur les Successions of 1840, ("Loi sur les Successions") (see *tab D*, pages 249 - 256) it is stated that in a collateral succession to propres;

"les mâles ni leurs descendants n'excluront pas les femelles ni leurs descendants; mais les parents des deux sexes, dans la ligne de qui l'héritage descend, partageront l'héritage par souches dans les mêmes proportions qu'en ligne directe"

(neither males nor their descendants shall exclude females or their descendants, but the parents of the two sexes, in the line in which the property descends, shall share the property equally in the same proportions as the property would be shared in successions in the direct line).

13. Under Article 12 of the Loi sur les Successions of 1840, which was amended in 1889, it is stated that in a collateral succession to meubles, acquets and conquests;

"les mâles ou leurs descendants, n'excluront pas les femelles ou leurs descendants en parité de degré, mais les plus proches parents du décédé, en parité de degré, tant mâles que femelles, partageront dans les mêmes proportions que des biens de la même nature (soit meuble soit héritage) seraient partagés en ligne directe"

(neither males nor their descendants shall exclude females nor their descendants in parity of degree, but the nearest of kin to the deceased, in parity of degree, both males and females, shall share the property in the same proportions as property of this nature, whether personal or real, would be shared in successions in the direct line);

and;

"il y aura représentation de degré quand les descendants d'un frère ou d'une

soeur d'un décédé viendront à la succession avec ses autres frères ou soeurs, et non autrement, dans lequel cas les dits descendants subdiviseront entr'eux de la même manière la part de la succession qui serait échue à leur ascendant, s'il eut été vivant"

(representation of degree shall be allowed when descendants of a brother or sister of a deceased shall come to the succession with his other brothers and sisters, and not otherwise, in which case the said descendants shall sub-divide among themselves, in the same manner, that portion of the succession which would have fallen to their ascendant, had he or she been alive).

14. Articles 11 and 12 of the Loi sur les Successions state that neither males nor their descendants shall exclude females or their descendants in parity of degree and make it clear that in the case of a collateral succession, the closest relatives to the deceased, in either paternal or maternal line, in parity of degree shall share property in the same proportions as for a succession in a direct line.

Submissions

15. Thomas Le Marchant notes a distinction in the treatment of whole bloods and half bloods in the maternal line however infers that no such distinction was apparent in the paternal line.
16. Laurent Carey notes that, under the new Coûtume de Normandie, (which we believe to be a reference to the Coûtume Réformée, compiled in or around 1585), whole bloods and half bloods would share equally and there was no distinction between males and females.
17. It is the nature of customary law to evolve through custom and usage over time. Indeed it was noted in the case of, "*Morton v Paint*" (Court of Appeal 1996) (see tab D, pages 261 - 285) (page 56, paragraph A) that;

"the coûtume and common law of Guernsey has always developed by judicial decision, supplemented by statutes passed by the States of Guernsey and approved by the Privy Council";

and further (at page 58, paragraph F) that;

" it is right for [the] Court to continue to develop the common law... in a way which is consonant with the needs of the Guernsey community".

18. This view was further emphasised in the case of, *"In the matter of X, an Incapable"* (Royal Court, 8 May 2008) (see tab D, pages 286 - 300) in which it was held that;

"it is always possible for [the Court] to develop the customary law to meet, "changing social conditions".

19. It is therefore reasonable to assume that, between the 16th century, in which there was a distinction between males and females, and the 18th century, in which it was noted that the new Coûtume de Normandie made no distinction between males and females, whole or half bloods, the customary law of Guernsey had evolved and developed in such a way as to remove any such distinction which may have previously existed.
20. In 1840, approximately 70 years after Laurent Carey's observations, the Loi sur les Successions was introduced into Guernsey law. In addition to the likelihood that the customary law position would have developed since that noted by Terrien, at this time, legislation was largely enacted to codify the customary law.
21. The Loi sur les Successions makes no reference to any distinction between the rights of siblings of the whole blood and half bloods to inherit. Further, if the purpose of the Loi sur les Successions was to codify the existing customary law, if any distinction had existed at that time then such a distinction would have been expressly provided for within the legislation.
22. In addition, it is clear from Articles 11 and 12 of the Loi sur les Successions that, when dealing with collateral successions, reference is only made to, *"parity of degree"*.
23. "Parity", as defined by the Collins English Dictionary, means, *"equality"*, or *"close or exact equivalence"*. Peter Jeremie, in his work, *"An Essay on the Laws of Real Property in Guernsey, and Commentary on the present Laws of Inheritance and Wills,"* (1841) (page 38) (see tab D, pages 301 - 302), describes degrees as;

"the number of generations there is between the person reckoned from and him concerning whom reference is made; - thus the son is ONE degree removed from the father, TWO degrees from the grandfather... and so on...".

24. Peter Jeremie notes at page 43 of his aforementioned work, (see tab D, pages 303 - 304) in respect of Article 11 of the Loi sur les Successions, that;

"As far as regards the mode of division by branches, no change is introduced into the modern law; but there is a great and very just one in reference to the admission of females in each branch to divide with the males a proportion of their

*parent's inheritance. **Formerly in collateral successions no female was allowed in parity of degree to inherit with males**".*

25. The inference can therefore be made that formerly in collateral successions males were allowed to inherit in parity of degree and, as the main intention of the introduction of the Loi sur Successions appears to have been to abolish discrimination between the rights of males and females to inherit, it is therefore arguable that the distinction in the wording of Articles 11 and 12 of the Loi sur les Successions (Article 11 make no reference to "parity of degree" and Article 12 making express reference to the same) is due to the fact that the concept of "parity of degree" was previously established and therefore required no express reference under Article 11.
26. It therefore seems reasonable to surmise that the phrase, "parity of degree", means equality in generations of those who are to inherit and that it was the intention of the Loi sur les Successions that there would be no distinction between males and females and the inheritance rights of whole bloods and half bloods.
27. The learned Advocate Peter Collas questioned whether or not there was such a distinction in 1987. A memo he wrote to the then Advocate John Langlois seems to support our view that it could be argued that any distinction between whole and half bloods may have been removed with the introduction, in 1840, of the Loi sur les Successions, in his opinion largely given to the uncertainty of the Coûtume (*see tab D, page 305*).
28. We would bring the Court's attention to the fact that in paragraph 28 of a letter to the Chief Minister of the Policy Council from Deputy M Lowe, on behalf of the Inheritance Law Review Committee, dated 5 November 2009, (*see tab D, pages 306 - 323*) discussing intestate inheritance to Guernsey real property it is stated that;

"it is proposed that Guernsey should adopt in all cases the rule that siblings of the "half blood" will rank equally with siblings of the "whole blood".

Having discussed this issue with the Law Officers of the Crown responsible for the drafting of this letter, they have informed us that this phrase was not made as a commentary upon the existing legal position and that it was made, for the avoidance of doubt, to indicate that there should be no distinction made between whole and half bloods in such a succession.

Conclusion

29. It is therefore our submission that no distinction between whole bloods and half bloods would remain in a collateral succession after the 1840 Loi sur les Successions.

Advocate P M A Palmer