

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)
Civil No. 2612**

IN THE MATTER OF THE ESTATE OF GENE MARY POOLE (NÉE BREBAN)

APPLICATION TO REGISTER PHOTOCOPY WILL

Date of hearing: 27 January 2025

Judgment handed down: 22 May 2025

**Before: Fionnuala A Connolly, Judge of the Royal Court
Jurats: Stephen Jones O.B.E and Kay Parnwell**

Counsel for the Applicant: Advocate T.J. Cutts-Watson

Cases, texts & legislation referred to:

Loi Sur les Successions, 1840

The Royal Court (Non-contentious Applications) Rules 1988

The Royal Court (Non-contentious Applications) (Amendment) Rules 1989

Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006

Royal Court (Reform) (Guernsey) Law, 2008

Brunt v Brunt (1873) LR 3 P

Re Estate Waterfall (1995) GLJ (20)

The Estate of Beryl St. Clare Le Marquand (née Henderson) (Guernsey Judgment 15/2018)

Theobald on Wills (18th Ed.)

JUDGMENT

Introduction

1. On 27 January 2025, having heard from Advocate Cutts-Watson, the Court granted the application of Rachel Louise Rhydwen-Jones (“the Applicant”) in her capacity as one of the devisees of the late Gene Mary Poole (née Breban) (“Mrs Poole”) for permission to register a photocopy of the Will of Real Property in the Register of Wills at the Greffe of the Royal Court of Guernsey. The Court reserved the giving of reasons for its decision and they are now contained in this judgment.
2. The procedure followed has been in accordance with the relevant provisions of the Royal Court (Reform) Guernsey Law, 2008 (“the 2008 Law”). After hearing the submissions of Advocate Cutts-Watson, the presiding Judge retired with the Jurats and directed them on the law. The Court then returned to inform the Applicant of the outcome. This judgment contains the unanimous findings of the Jurats.
3. The Court is grateful to Advocate Cutts-Watson for his submissions.

Procedural Background

4. The application was lodged on 19 November 2024. The case was listed before Ordinary Court on 22 November 2024. Having heard from Advocate Cutts-Watson, the Court directed that the substantive hearing would be adjourned to a sitting with Jurats on the first available date after 22 November 2024 and the Court was satisfied that there was no requirement to notify any other person or to convene any other person to the hearing of the application.
5. There were four affidavits before the Court in support of the application. There was an affidavit of the Applicant sworn on 27 September 2024; an affidavit of Mr Mark Anthony Poole (the Applicant’s brother), sworn on 16 October 2024; an affidavit of Ms Maureen Elsie Ogier (née Breban) (Mrs Gene Mary Poole’s sister), sworn on 16 October 2024 and finally an affidavit of Dr Michael Brereton of Queen’s Road Medical Practice, sworn on 8 February 2021. The case proceeded on the basis of uncontested affidavit evidence.
6. The Court had the benefit of a skeleton argument lodged on behalf of the Applicant.
7. Further to Section 14(2) of the 2008 Law, the presiding Judge did not sum up to the Jurats in open Court, but instead retired with the Jurats. This is the reasoned Judgment of the Court as required under Section 16(1) of the 2008 Law. When they retired, the presiding Judge reminded the Jurats of their respective roles. The presiding Judge is the sole judge of questions of law and procedure and the Jurats are the sole judges of questions of fact. The Jurats were directed to take account of all the evidence presented to the Court on behalf of the Applicant and the documents produced to the Court. It was for the Jurats, and not the presiding Judge, to decide what evidence they accepted and what evidence they rejected or of which they are unsure. Although the presiding Judge reminded the Jurats of aspects of the evidence, she directed them that if she appeared to have a view of the evidence, or of the facts, with which they did not agree, the Jurats were to reject her view. The Jurats were directed to take account of the arguments and speeches they had heard, although they were not bound to accept them. The Jurats were further directed that they were entitled to draw inferences, that is to come to common-sense conclusions based on the evidence that they accept, but that they may not speculate about what other evidence there might have been or allow themselves to be drawn into speculation.
8. The presiding Judge directed the Jurats that the standard of proof is the civil standard of the balance of probabilities and that to establish something on the balance of probabilities means to prove that something is more likely so, than not so.

Factual Background

9. The Applicant is the daughter of the late Mrs Poole. Mrs Poole died on 24 February 2024 at Chateau du Village Private Nursing Home, Fort Road, St Peter Port, Guernsey. The certified cause of Mrs Poole's death, as set out in her death certificate, was frailty and advanced Alzheimer's dementia. Mrs Poole was married to Mr Alister James Poole ("Mr AJ Poole"). Mr AJ Poole died on 2 March 2012.
10. Mrs Poole executed a Will of Realty on 5 February 2009 whereby she left all of her Guernsey real property to her husband, or should he have died before her, to the Applicant and her brother Mark Anthony Poole ("Mr MA Poole") in equal shares between them. Mrs Poole's husband was appointed to be the sole Executor of the Will but should he refuse to act or be incapable, Mr MA Poole and the Applicant were appointed to be the Joint Executors. The Will of Realty confirmed that should either Mr MA Poole or the Applicant have died before her, leaving any children or issue surviving them, their mother's real property should pass to their respective children or remoter issue. The Will of Realty was signed by Mrs Poole on 5 February 2009 in the presence of the Applicant's uncle and aunt, Mr David Ogier ("Mr Ogier") and Mrs Maureen Ogier ("Mrs Ogier"), and was attested to by them in the presence of Mrs Poole and each other.
11. Mrs Poole also executed a Will of Personalty on 14 May 2009 in which she left all of her personal estate assets to her husband, or should he have died before her, left gifts to her grandchildren in the sum of five thousand pounds each and thereafter her residuary personal estate to the Applicant and to Mr MA Poole in equal shares between them, again with their respective children taking their shares should either of them have died before her.
12. In her affidavit, the Applicant avers that to the best of her knowledge, both the Will of Realty and the Will of Personalty were prepared by her mother and her father without the assistance of an Advocate. The Applicant's father was a policeman during his career and latterly, he worked for a local firm of Advocates in Guernsey. The Applicant avers that it is her belief that her mother and father produced the wills themselves based on the experience that her father gained whilst working in the Advocates' offices and that they then kept them with their personal papers once they had been executed.
13. During their lifetimes, on 6 August 1963, Mr and Mrs Poole purchased a house named Highbury at Rue des Crabbes, St Saviour. Following the death of Mr AJ Poole, Mrs Poole became the sole owner of Highbury. To the best of the Applicant's knowledge, Mrs Poole owned no other real property in Guernsey (or elsewhere) in her sole name or jointly with another at the date of her death.
14. Following the death of Mrs Poole, all firms of Advocates in practise in Guernsey were contacted as was the Greffe of the Royal Court of Guernsey to ascertain whether they held any original Wills for Mrs Poole and to confirm whether any other wills had been prepared for Mrs Poole during her lifetime. All responses were negative.
15. The Applicant carried out extensive searches of her mother's personal paperwork. Whereas the original of Mrs Poole's Will of Personalty was located by the Applicant, she was not able to locate the original of the Will of Realty. The Applicant located what she believes to be a copy of her mother's Will of Realty which was found in the same folder as her mother's original Will of Personalty, on similar paper and in similar pen.
16. Mrs Poole's Will of Realty was executed in the presence of Mr Ogier and Mrs Ogier on 5 February 2009. Mr Ogier died on 2 July 2022. The Will of Realty document was reviewed by the Applicant, her Advocates, Mr MA Poole and Mrs Ogier. None are able to say with certainty that they believe it to be Mrs Poole's original Will of Realty.
17. Mrs Poole's mental health slowly diminished over a number of years before her death. In November 2018, she was diagnosed with Alzheimer's dementia. From around the summer of

2019, Mrs Poole required full time care and this was provided by the Applicant and Mr MA Poole along with the assistance of a private care service.

18. On 18 February 2021, Mrs Poole was placed under the Guardianship of the Applicant by the Royal Court of Guernsey with a family council consisting of the Applicants husband, Mr Rob Rhydwen-Jones, Mr MA Poole and Mrs Ogier.
19. At the time of the decision on Guardianship, it was not appreciated by the Applicant that Mrs Poole had the originals of her Will of Realty and Will of Personalty in her sole possession at home with her. She said that during her lifetime and especially after she lost capacity, Mrs Poole had a tendency to have a clear out of her paperwork on a fairly regular basis and she often misplaced things.
20. The Applicant is of the view, having carried out the searches of her personal papers and of all Advocates firms and having discussed the matter with her brother and with Mrs Ogier that it is highly likely that at some time after she lost capacity her mother destroyed her original Will of Realty without knowing or understanding what she was doing. She averred:

“My Mother lost capacity in or around September 2018, and therefore, if she did physically destroy her Will of Realty at that time she did not have the capacity to understand and appreciate the act of that destruction and did not have any intention to revoke her Will of Realty by any such act.”

21. To the best of the Applicant’s knowledge, she and her brother are her mother’s only children and this view is supported by Mr MA Poole and Mrs Ogier. The Applicant’s understanding is that if Mrs Poole were deemed to have died intestate, she and her brother would inherit all her Guernsey real property in any event which would be of the same effect as if her original Will of Realty had been located. She said:

“My aunt, Maureen, has confirmed to me that she believes my Mother would have wanted her Will of Realty to take effect upon her death, would not have deliberately destroyed her Will of Realty, nor would she have had any contrary wishes to those set out in her Will of Realty...”

My uncle, Douglas Frank Breban...to whom our wider family is very close, has also emailed me and set out that, despite living in New Zealand, he has visited Guernsey numerous times over the past 50 years and does not believe that my Mother would have intended for her estate to pass in any way other than what she had set out under her Will of Personalty and Will of Realty.”

22. In an email dated 22 July 2024 (referred to by the Applicant in the quoted extract from her affidavit at paragraph 21 above) addressed to the Applicant, Mr Breban said:

“I have no doubt in my mind Gene wanted everything to pass to Mark and Rachel equally (with token monetary gifts to each of the grandchildren) and for her wishes to be adhered to exactly as she set out in the copies to her Wills.”

23. Mr MA Poole fully supported the application before the Court and he confirmed that he agreed with the sworn affidavits of the Applicant and Mrs Ogier. In his affidavit, he said:

“It is my firm view that it is highly likely that at some time after my Mother lost capacity she destroyed the original of her Will of Realty without really knowing nor understanding what she was doing and without the capacity to understand and appreciate the act of that destruction.”

My Mothers Will of Personalty reflected her intention that her residuary personal estate would pass to myself and Rachel in equal shares and I do not believe that my Mother would have had any intention to revoke her Will of Realty nor do I believe that she would have wanted to die without a will dealing with her property.”

24. In her sworn affidavit, Mrs Ogier said that Mrs Poole executed a Will of Realty on 5 February 2009 in front of her and her husband Mr Ogier. She confirmed that she supported the application and the information detailed in the affidavits of the Applicant and Mr MA Poole.

25. Mrs Ogier said this:

“Sadly, over the course of the last years of her life, and following Alister’s death, Gene’s mental health slowly declined. Gene would put documents to one side or away for later but they would never be seen again. She often placed things in the recycling, forgetting about it completely or not realising what it was....on occasion Gene would read the newspaper several times over or sometimes would simply put the newspaper straight into the recycling before she had read it, without recognising that it was a newspaper.”

26. Mrs Ogier said that she knew from speaking to Mrs Poole before she lost capacity that she always wanted her money, personal possessions and her house to be left to, and shared between Mr MA Poole and the Applicant, after a gift of five thousand pounds (£5000) was made to each of her grandchildren. She stated:

“Having been able to speak with Gene during her last years, and having had the benefit of being a witness to her Will of Realty, I have no doubt that Gene’s intentions were always that her estate would pass to Mark and Rachel in equal shares if Alister had died before her...”

27. Referring to the Will of Realty, Mrs Ogier said:

“Although I cannot say for certain that this document is the original Will of Realty which myself and my late husband, David, signed, I have no hesitation in confirming that, even if Gene had potentially accidentally destroyed the original Will of Realty during her incapacity, as she had with so many other documents, I believe her intentions for her property remained the same until her death and that she would have had no intention to revoke, accidentally or otherwise, her Will of Realty.”

28. Dr Brereton’s affidavit sworn on 8 February 2021 had been lodged in support of the guardianship application for Mrs Poole. In that affidavit, Dr Michael Brereton stated that he had been Mrs Poole’s regular medical attendant since 4 October 2001. He stated:

“I last examined the Patient on 11 January 2021 at The Queens Road Medical Practice, The Grange, St Peter Port.

Following my examination and other tests that have been carried out I noted that the Patient has the following symptoms:

The Patient has an established diagnosis of Alzheimers dementia which has caused a severe impairment of her short term memory such that she cannot remember what she said or what was said to her just several minutes previously.”

Relevant Legal Principles

29. The relevant legal principles for the purpose of this application are set out below.

Formal validity of a will

30. Section 21(1) of the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006 provides for the requirements for the formal validity of a Will as follows:

“No will or codicil shall be valid unless (a) it is in writing and signed by the testator or by some other person in his presence and by his direction, (b) it appears that the testator intended by his signature to give effect to the will, (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and (d) each witness either (i) attests and signs the will, or (ii) acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness), but no form of attestation is necessary.”

31. Section 3-006 of Theobald on Wills (18th Ed.) states that writing:

“is construed, unless the contrary intention appears, as including references to typing, printing, lithography, photography, and other modes of representing or reproducing words in a visible form”.

Registration of a will of Real Property in Guernsey

32. Pursuant to Section 19 of the Loi Sur les Successions, 1840, following the death of a testator, any one or more of the heirs shall obtain permission from the Royal Court to register a Will of Real Property in the Greffe records, which permission will be granted upon evidence of the demise of the testator and without prejudice to the rights of others:

“après le décès du testateur, les légataires ou l’un d’iceux devront obtenir permission de la Cour Royale de faire enregistrer le testament sur le livre des contrats, laquelle permission leur sera accordée après preuve dudit décès, sans préjudice aux droits d’autrui.”

33. An application to register a Will of Real Property would usually be brought before the Court by way of a non-contentious application in accordance with The Royal Court (Non-contentious Applications) Rules 1988, as amended by the Royal Court (Non-Contentious Application) (Amendment) Rules 1989. The present case calls for findings of fact by Jurats and as such a non-contentious application was not appropriate.

Registration of a Photocopy Will

34. Where an original will has been lost or misplaced, a photocopy of a Will of Realty can be registered in its stead. In *The Estate of Beryl St. Clare Le Marquand (née Henderson)* (Guernsey Judgment 15/2018), the leading Guernsey authority on this subject matter, Deputy Bailiff McMahon (as he was then known) considered and approved an application to register a photocopy of a Will of Realty. The Court stated (paragraph 14):

“In the absence of any reported case in Guernsey dealing with the issue raised in this case, the Deputy Bailiff directed the Jurats on the principles that he was satisfied apply. They are derived from the position in England and Wales. Those principles have already been adopted as consistent with the law of Jersey and there is no reason why they should not also be adopted as reflecting the legal position in Guernsey”

Rebuttable Presumption where a will was last in the possession of a testator but missing at their death

35. In *The Estate of Beryl St. Clare Le Marquand (née Henderson)* the Court summarised and approved the relevant principles of application derived from case-law in England and Wales and in Jersey as follows:

“17. The position in Jersey is most clearly set out in Jersey Society for the Prevention of Cruelty to Animals v Rees 2001 JLR 506 (at para. 17):

*“There is clear authority for the proposition that the court can order the registration of a photocopy (see *In re Hewett* 1996 JLR 33) or even a file copy (see *In re Filleul* 2000 JLR N-65) of a will of immovable property if satisfied that the copy is a true copy of the original will which had been executed with proper observance of all the required formalities.”*

However, where a will has gone missing whilst in the hands of the testator (or testatrix) English law had acknowledged that a presumption exists that it must have been destroyed, albeit that such a presumption is capable of being rebutted. The position, as summarized in the headnote of Sugden v Lord St Leonards (1876) 1 PD 154, [1874-80] All ER Rep 21, was set out at page 510:

“Where a will which was kept in the custody of the testator has been lost the presumption arises that the testator destroyed the will animo revocandi, but that presumption, although presumptio juris, is not presumptio de jure, and may be rebutted by evidence, written or oral, of the facts. The presumption will be more or less strong according to the character of the custody which the testator had over the will.”

*18. The position is further dealt with in the leading practitioners’ works, reference to which the Jurats were directed might be helpful when assessing the evidence. In *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (at para. 14-29), it is stated:*

“Where a will, or codicil, is last traced into the testator’s possession and is not forthcoming at his death after all reasonable search and inquiry, the presumption arises that he has destroyed it with the intention of revocation (animo revocandi). The burden of proving, in these circumstances, that the will was not destroyed animo revocandi is upon the party propounding its contents.

*“The presumption,” said Parke B, in *Welch v Phillips*, “is founded on good sense; for it is highly reasonable to suppose that an instrument of so much importance would be carefully preserved by a person of ordinary caution in some place of safety, and would not be lost or stolen; and if, on the death of the maker, it is not found in his usual repositories, or else where he resides, it is in a high degree probable that the deceased himself has purposely destroyed it.” It cannot be presumed that the destruction has taken place without his knowledge or authority, for that would be to presume a crime.”*

*Para. 14-31 covers the rebuttal of this presumption. However, in *Theobald on Wills* (18th ed.), the same principles are helpfully summarised more briefly:*

“A will or codicil last known to be in the testator’s possession but which cannot be found at his death is presumed to have been destroyed by the testator with the intention of revoking it. The strength of the presumption varies according to the security of the testator’s custody of the will – the safer the security, the stronger is the presumption. The presumption may be rebutted by evidence of non-revocation, such as evidence that the will was destroyed by enemy action or accident, or evidence showing the testator’s continuing goodwill towards the beneficiaries and his intention to adhere to the will. On the other hand the presumption may be supported by evidence showing, for instance, the testator’s intention not to adhere to the will. The court decides on the balance of probabilities, having regard to all the evidence, whether the testator destroyed the will

with the intention of revoking it; the party propounding the will is not bound to establish an explanation as to why the will was missing at death.”

19. *On the basis that the English law principles are sensible, and they have already been adopted in Jersey, the Deputy Bailiff directed the Jurats that they reflect Guernsey law as well...”*

Capacity to revoke a will

36. On a person’s capacity to revoke a will, in *Brunt v Brunt* (1873) LR 3 P, Sir J Hannen of the English Court of Probate and Divorce held that if a testator lacks testamentary capacity when he destroys a will, he cannot have a valid intention to revoke, and the will is not revoked. Sir J Hannen held:

“The evidence satisfied me that the testator was in an unsound state of mind when he tore up the will; he was suffering from delirium and therefore not capable of exercising any judgment in the matter.”

37. Section 7-053 of *Theobald on Wills* states, with reference to *Re Sabatini* (1969) 114 S.J. 35, that:

“the mental capacity required to revoke a will in such circumstances is the same as that required to make a will.”

38. These principles relating to capacity have been held to apply in the Bailiwick of Guernsey. In *Re Estate Waterfall* (1995) GLJ (20), the Court confirmed that a testator must have the same mental capacity when destroying his will as when he made it. The Court also held that the burden is on the person propounding the will to establish a lack of capacity (and therefore a failure of revocation) and that the existence of an act of guardianship alone would not be considered conclusive proof of incapacity.

The Submissions

39. Advocate Cutts-Watson submitted at the outset that the presumption of revocation had been engaged in this case because the question as to whether the original Will of Realty was last in the possession of Mrs Poole is unknown. There is no evidence before the Court that Mrs Poole was holding the original Will of Realty before it was disposed of. The presumption, however, is not a strong one and it can clearly and very properly be rebutted on consideration of the surrounding circumstances.
40. Advocate Cutts-Watson drew the Court’s attention to three points. The first point is that there was evidence of Mrs Poole’s continuing goodwill to her children. The photocopy of the Will of Realty provides that all Realty situate in Guernsey would, upon Mrs Poole’s death, pass to her husband if alive and, if not, equally to her two children. It was submitted that there is sworn evidence before the Court from various members of Mrs Poole’s family that it was in their firm belief that Mrs Poole would have wanted her Will of Realty to take effect as it is written in the copy will. The Court should take significant comfort from the fact that Mrs Poole’s Will of Personalty – the original of which has been located – is prepared in extremely similar terms to the copy Will of Realty, save for the provision of some cash sums to her grandchildren. Furthermore, in Advocate Cutts-Watson’s submission, it is significant to note that both the Applicant and Mr MA Poole were consciously and expressly chosen by Mrs Poole as executors of Mrs Poole’s Will of Personalty. The position of an executor is a trustworthy position of significance and it speaks to Mrs Poole’s views of her children. Mrs Poole’s trust in her children as executors existed up to her last years of life.

41. Second, it was submitted that there is no evidence before the Court of contrary intention on the part of Mrs Poole. There is no record of a later or alternative will having been made. There is no evidence that Mrs Poole intended to revoke the contents of her Will of Realty. It was submitted that the valid revocation of the will would provide for the same outcome as if the original will had been found, that is to say that Mrs Poole's real property would have been inherited by her children equally. It was further submitted that it is unclear to what end Mrs Poole would have destroyed an original will but retained a copy of it in the same folder as the original Will of Personalty. It was submitted that doing so, in the absence of making an alternative will, indicates that there was no intention to revoke the original Will of Realty.
42. Third, it was contended that there is evidence of the decline in Mrs Poole's health in her later years and the practical impact that that had on her day-to-date record-keeping and the frequency with which papers and items in her home were misplaced by her. Advocate Cutts-Watson urged that the Court conclude, taking the case in the round, that it is more likely the case on the balance of probabilities is that it is not that Mrs Poole destroyed her will and intended to revoke it but that in her later years, she misplaced it or threw it out without any intention of revoking its contents. On that basis, Advocate Cutts-Watson urged the Court to grant the application as sought.
43. On the subject of Mrs Poole's capacity, it was submitted that it is not clear to the Applicant as to precisely when Mrs Poole may have accidentally destroyed the original Will of Realty. It was contended that pre-2018, any destruction of the original Will of Realty would have been entirely accidental. Mrs Poole having appeared to the Applicant to have lost capacity in or around 2018, and having been placed under Guardianship by Order of the Royal Court of Guernsey from February 2021, it is questionable whether Mrs Poole would have had the necessary capacity and therefore intention to revoke her Will by physical destruction or otherwise if this occurred in more recent years. However, Advocate Cutts-Watson underlined to the Court that the Applicant's opinion that her mother appeared to have lost capacity in or around 2018 is not a medically qualified one and that further, the existence of Guardianship is not of itself conclusive proof of incapacity.
44. It was submitted on behalf of the Applicant that on the balance of probabilities it is more likely than not that Mrs Poole did not intend to revoke her Will of Realty and the Court was urged to exercise its discretion to grant the relief sought, namely that the photocopy Will of Realty be registered in the stead of the original which cannot be located.
45. Advocate Cutts-Watson submitted that the Will of Realty appears to comply with all of the necessary formalities and it appeared to have been properly witnessed by two witnesses at the same time. In his submission, there is no reason to suspect that the original was not validly executed.
46. In light of the above submissions, Advocate Cutts-Watson submitted that on the balance of probabilities it is more likely than not that Mrs Poole did not intend to revoke her Will of Realty and urged that the Court exercise its discretion to grant the relief sought, namely that the photocopy Will of Realty be registered in the stead of the original which cannot be located.

Discussion

47. The presiding Judge directed the Jurats on their respective functions and the standard and burden of proof and directed the Jurats on the relevant legal principles of application in the present case as set out at paragraphs 30 - 38 above.
48. The first issue for the Jurats to consider was whether it is more likely than not on the balance of probabilities that there was an intention to revoke the Will of Realty and the contents of the Will of Realty. The presiding Judge accepted that as the question of whether the original Will

of Realty was last in the possession of Mrs Poole is unknown and as there is no evidence that Mrs Poole was holding the original Will of Realty before it was disposed of, the presumption of revocation is engaged in this case.

49. The Jurats gave consideration to the question as to whether there was evidence of Mrs Poole's continuing goodwill towards the beneficiaries and her intentions to adhere to the Will. They were satisfied that the photocopy of the Will of Realty provides that all Realty situate in Guernsey would upon Mrs Poole's death pass to her husband if alive, and if not equally to her two children. The Jurats accepted the sworn evidence of the Applicant, her brother and Mrs Ogier that the wishes as set out in the photocopy of the Will of Realty are precisely what Mrs Poole would have wanted. They accepted Mrs Ogier's sworn evidence that she had no doubt that Mrs Poole's intentions were always that her estate would pass to Mr MA Poole and the Applicant in equal shares if her husband had died before her. They also accepted Mrs Ogier's evidence that, from her conversations with Mr and Mrs Poole over the years, the Applicant and Mr MA Poole would have the house to inherit between them and that Mrs Poole's view on this did not change after her husband's death. Similarly, the Jurats accepted the evidence referred to and exhibited by the Applicant in her sworn affidavit of the view of Mrs Poole's brother, Mr Douglas Frank Breban, namely that he had no doubt that Mrs Poole wanted for her wishes to be adhered to exactly as she set out in the copies of the Wills.
50. The Jurats found that the contents of Mrs Poole's Will of Personalty are instructive in assessing her intentions. They were satisfied that the Will of Realty was prepared in very similar terms to the original Will of Personalty with the exception save for the provision of some cash sums to her grandchildren. They accepted as correct that it was significant that both the Applicant and Mr MA Poole had been chosen by Mrs Poole as the executors of her Will of Personalty, an important position of trust, and that this trust in her children to act as her executors existed up to the last years of her life. The Jurats were therefore satisfied that there was clear evidence of Mrs Poole's continuing goodwill towards the beneficiaries and her intention to adhere to the Will.
51. The Jurats then gave consideration to the question as to whether there was evidence that Mrs Poole intended to revoke the contents of her Will of Realty. The Jurats accepted the Applicant's sworn evidence, supported by that of Mr MA Poole, that following her mother's death, all firms of Advocates practising in Guernsey and the Greffe of the Royal Court of Guernsey were contacted to ascertain whether they held any original Wills for her and to confirm whether any other Wills had been prepared for her mother during her lifetime and that the responses were all in the negative. The Jurats accepted that there was no evidence before the Court that Mrs Poole either made or intended to make any other Will of Realty to stand in its stead. They accepted Mrs Ogier's evidence of her belief that Mrs Poole's "*intentions for her property remained the same until her death and that she would have had no intention to revoke, accidentally or otherwise, her Will of Realty.*" Furthermore, the Jurats accepted that the valid revocation of the Will would provide for the same outcome as if the original Will had been found, that is to say that Mrs Poole's real property would have been inherited by her children equally. The Jurats were therefore satisfied that there was no evidence before the Court that Mrs Poole intended to revoke the contents of her Will of Realty.
52. The consistent evidence of the Applicant, her brother and Mrs Ogier of the decline in Mrs Poole's health in her later years and the practical impact that this had on her day-to-day record keeping was accepted by the Jurats. In the Jurats' consideration, it had been properly acknowledged on behalf of the Applicant that there is a lack of clarity as to when Mrs Poole may have accidentally destroyed the original Will of Realty. They accepted that the evidence showed that Mrs Poole often misplaced items during paperwork clear-outs. They accepted Mrs Ogier's evidence that:

“Sadly over the course of the last years of her life, and following Alister’s death, Gene’s mental health slowly declined. Gene would put documents to one side or away for later but they would never be seen again. She often placed things in the recycling, forgetting about it completely or not realising what it was...”

The Jurats were satisfied on the balance of probabilities that any destruction of Mrs Poole’s Will of Realty would have been accidental or without intent. They were satisfied that taking the case in the round, it is more likely the case on the balance of probabilities that Mrs Poole had not destroyed her will and did not intend to revoke it but rather that in her later years, she misplaced it or threw it out without any intention of revoking its contents.

53. The Jurats acknowledged that the view of the Applicant, supported by her brother, was that her mother had lost capacity in or around 2018. They also acknowledged the existence of Guardianship in respect of Mrs Poole. They considered that it had been fairly and properly acknowledged by Advocate Cutts-Watson that the Applicant’s opinion that her mother lost capacity around 2018 is not a medically qualified one. The Jurats were unable to reach a conclusion on incapacity in the present case because, as it had been candidly accepted by Advocate Cutts-Watson, there was a lack of independent medical evidence to support a finding that Mrs Poole had lost capacity. Had Mrs Poole lacked capacity at the point in time of the destruction of the Will of Realty, in their consideration, Mrs Poole would not have had the necessary intention to revoke her will by physical destruction or otherwise.
54. On the basis of the findings of the Jurats on the surrounding circumstances as set out above, the presumption of revocation had been rebutted in this case.
55. On the first issue, for the reasons set out above, the Jurats concluded that it is more likely than not on the balance of probabilities that there was no intention to revoke the Will of Realty and the contents of the Will of Realty.
56. The second issue was whether all of the necessary formalities for the execution of a valid will had been carried out. The Jurats carefully examined the content of the Will of Realty which was signed by Mrs Poole on 5 February 2009 in the presence of Mr and Mrs Ogier and was attested to by them in the presence of Mrs Poole and each other. They accepted the sworn evidence of Mrs Ogier, that Mrs Poole executed a Will of Real Property on 5 February 2009 in front of both her and her husband. They were satisfied on the balance of probabilities that all of the necessary formalities for the execution of a valid will had been carried out. They accepted as correct the Applicant’s submission that there is no reason in this case to suspect that the original Will of Realty was not validly executed.

Conclusion

57. Accordingly, in light of the findings of the Jurats and the conclusions set out above, the Court granted the application for permission to register a photocopy of Mrs Poole’s Will of Realty in the Register of Wills at the Greffe of the Royal Court of Guernsey.