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Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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IN THE ESTATE OF JOHN JOHNSTON MOFFATT DECEASED

BETWEEN:

DOROTHY MOFFATT

Plaintiff;

-and-

JOHN LAURENCE MOFFATT

Defendant.

Both as Personal Representatives of John Johnston Moffatt Deceased and Florence Moffatt Deceased

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GIRVAN LJ

[1] This matter comes before the court by way of an originating summons in which the plaintiff Dorothy Moffatt, a beneficiary in the intestacy of her late mother Florence Preston Moffatt ("the widow") asks the court to construe clause 3 of the Will of her late father John Johnston Moffatt ("the testator") who died on 9 March 1994. The testator's Will was made on 29 July 1983 apparently at a time when he was going into hospital.

[2] Probate in respect of his Will was granted on 7 June 1994 to the widow and John Laurence Moffatt, the elder brother of the plaintiff. So far as material the Will provides as follows:

> "2. I appoint my wife Florence Preston Moffatt and my son John Laurence Moffatt to be the executors and trustees of this my Will and I declare that they shall be trustees for all the purposes of the Settled Land Acts.

> 3. I devise my farm of land on to my said wife Florence Preston Moffatt for his life and after her death or if she shall predecease me I devise the same unto my said son John Lawrence Moffatt.
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> 4. The subject as aforesaid and to payment of my just debts, funeral and testamentary expenses I give, devise and bequeath and appoint all the residue of my estate and effects on to my said wife Florence Preston Moffatt in full confidence but without creating any binding trust or obligation that she will on her death ensure that what she has left thereof at her death shall pass to my said son John Lawrence Moffatt.
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> 5. I have not made any provision in this my Will for my daughter Dorothy or my son James Brian as I consider that they are not in need of any provision from me and would not expect such provision."

[3] The testator, both at the time of the making of the Will and at the date of his death was the owner of lands comprised in Folio 21433 County Down. The testator farmed the lands which had been in the Moffatt family for at least two generations. His farming methods appeared to have been very outdated. He possessed no tractor and had limited equipment. He kept some cows on the land. The original farm dwelling, which has been described as a vernacular cottage, ceased to be used in the 1930s when a new farmhouse was constructed in 1933. The testator resided in that farmhouse in connection with his farming activities. It appears that at some stage the widow and the three children of the marriage, the plaintiff, the defendant and Brian, moved to live with the maternal grandmother in a house on the Ormeau Road in Belfast although it appears that they visited the testator at the farm on a regular basis. The testator largely looked after himself at the farmhouse although it appears that the widow would have provided him with some assistance and following his hospitalisation and return home she appears to have moved back to the farmhouse where she looked after the testator. From the plaintiff's evidence it does not appear that she had a close relationship with her father.

[4] The layout of the farm was such that entrance was gained to it down a laneway from the county road. This led to the area where the farmhouse was located beside which the farmyard and agricultural outbuildings were located. The lane then led down to a wooded area and access to the back fields would have been gained down it. The original vernacular cottage was in very close proximity to the more modern farmhouse. There was a pedestrian access which would have enabled a pedestrian to gain access to the old cottage but the old cottage would not have had

any separate vehicular access which could only be gained down the laneway to the farmhouse and farmyard area. That laneway as noted then led on to the wood.

[5] The relevant authorities appear to have ascribed different postal numbers to the old cottage (No 52) and to the main dwelling (No 54). It is clear from the evidence that the old cottage was used as a storage area for hay. At some point a double door was inserted into the back of the cottage and this would have assisted in gaining access to and from the cottage for storage purposes. The evidence points to the conclusion that when the testator made his Will in 1983 that building, whatever its past or potential future use might have been, was used in connection with the farming activities on the farm.

[6] The widow died intestate in October 2007. Her estate accordingly passed to the three children, the plaintiff, the defendant and Brian in equal shares.

[7] It is the plaintiff's case that on the proper construction of the testator's Will the dwellinghouse and the old cottage did not fall within the devise of the testator's farm of land which passed to the defendant but rather fell within the gift of residue which passed to the widow. If the property devolved in that way then the plaintiff would be entitled to a one third interest in those properties.

[8] The plaintiff in para 7 of her grounding affidavit asserted that her mother and father told her that she could have the house. In paragraph 2.32 of her skeleton argument she argued that that the testator and her mother told her that it was to go to her and her brothers. In paragraph 7 of her affidavit she averred that she spent some £2,000 in assisting her mother in making a planning application to renovate the house. The plaintiff in the conclusion to her skeleton argument raises an argument seeking equitable relief apparently as an alternative to her claim that the Will should be construed in the way which she asserts. The originating summons, however, is a construction summons which simply raises a question of construction. Accordingly in the proceedings as presently constituted I propose to deal only with the issue of the proper construction of the Will.

[9] In Heron v. Ulster Bank [1974] NI 44 Lowry LCJ helpfully set out the procedure to be followed in a case of construction such as this.

> "1. Read the immediately relevant portion of the Will as a piece of English and decide, if possible, what it means.
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> 2. Look at the other material parts of the Will and see whether they tend to confirm if the apparently plain meaning of the immediately relevant portion or whether they suggest the need for modification in order to make harmonious sense of the whole or,

> alternatively, whether an ambiguity in the immediately relevant portion can be resolved.
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> 3. If ambiguity persists have regard to the scheme of the Will and consider what the testator was trying to do.
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> 4. One may at this stage have resort to rules of construction, where applicable, and aids, such as the presumption of early vesting and the presumption against intestacy and in favour of equality.
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> 5. Then see whether any rule of law prevents a particular interpretation being adopted.
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> 6. Finally, and I suggest, not until the disputed passage has been exhaustively studied, one get help from the opinions of other courts or judges on similar words, rarely as binding precedents since it had been well said that "no Will has a twin brother" . . . but more often as examples (sometimes of the highest authority) of how judicial minds nurtured in the same discipline have interpreted words in similar contexts."

[10] The only qualification which I respectfully suggest might usefully be made to that approach is that where a term or phrase has been the subject of a clear judicial determination, if that term is used subsequently by a professional draftsman, it is both likely that he would have intended the term to have the same meaning and would have advised the testator accordingly.

[11] Mr McBrien reminded the court of the armchair principle of construction. He argued that the lands were handed down over at least two generations; that the farm was always treated as a working unit; and that splitting the land was impractical and would have been seen to be such by the testator who could be presumed not to have intended an impractical outcome. He called the attention of the court to statutory presumption to be found in the Wills and Administration Proceedings (Northern Ireland) Order 1994 that land includes buildings (which is also presumed in the statutory context under the Interpretation Act (Northern Ireland) 1954). He called the court's attention to Williams on Wills (9th Edition) at paragraph 64.26 which indicates that a gift of land will include a house on it and the principle that a gift of land carries everything on it (O'Connor v. O'Connor [1870] IR 4 Eq 483.)

[12] O'Connor v. O'Connor contains a very clear statement that where a gift of the residue of a farm was given to a beneficiary the farmhouse passed as part of the gift.

This was because "the word farm carries everything in it and belonging to it". It can be reasonably assumed that this well established principle would be known to the draftsman of the Will and made clear to the testator.

[13] There are, moreover, common sense and practical reasons why it is most unlikely that the testator would have intended the agricultural lands on the farm and the farmhouse and old cottage to devolve on separate titles. This land was always treated as a single unit. A farmhouse is part of the working farm, the farmer living in the farmhouse so as to be able to farm the land and run it as a unit. The testator clearly lived in the farmhouse as a farmhouse, however else the rest of the family treated it. The old cottage was, as we have noted, used as an agricultural store and hence for farm purposes. The logic of the plaintiff's case would have resulted in the widow being entitled to hive off the farmhouse and/or the old cottage from the rest of the farm but without any clear provisions being made by the testator as to how the boundary should be drawn, how access should be enjoyed as between the houses and the working farm or how the farmyard and outbuildings would be differentiated on the title from the house buildings. The fact that no thought was given to such practical questions combined with the usual understanding that a farm includes the farmhouse points inexorably to the conclusion that the testator never contemplated a separation of the dwellinghouse and cottage from the rest of the land.

[14] The plaintiff laid great weight on the fact that the testator devised "his farm of land" rather than his farm, the addition of the words "of land" pointing, on her submission, to the conclusion that he had only in mind the physical agricultural land. However the addition of the words "of land" does not detract in any way from the fact that it was his farm that he was intending to deal with. All farms comprise land. The words of land do not qualify or restrict the devise of what was within the definition of farm. Had he used the words "farming land" or "farmed land" or indeed "farmland" different arguments may well have arisen. They are not, however, relevant in the present context.

[15] In the result the court declares that the devise under clause 3 includes both the agricultural land on Folio 41233 County Down and the existing and former dwellinghouses on the said Folio.

[16] I shall hear the parties on the question of costs.