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2000 No 1088
IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

IN THE ESTATE OF OLIVE PATRICK, DECEASED

BETWEEN:

THOMAS MOORE PATRICK AS PERSONAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF OLIVE PATRICK, DECEASED

Plaintiff;

and

RAYMOND DE ZEEUW AS PERSONAL REPRESENTATIVE OF STELLA DE ZEEUW, DECEASED
and
HELEN LENNOX

Defendants.

INTRODUCTION

This application raises an interesting and apparently novel point relating to the administration of an intestate's estate. Put shortly it raises the question whether a person who is doubly related as a cousin of a deceased intestate takes two shares or only share in the estate. It is a point which has come before some courts in other Commonwealth jurisdictions but does not appear to have been decided in this jurisdiction or in England and Wales under the parallel English legislation.

THE FACTUAL BACKGROUND TO THE APPLICATION

Olive Patrick late of Magheracolton, Newtownstewart, County Tyrone, deceased, died intestate on 2 May 1992. Letters of administration were granted by the Londonderry District

Registry to Mabel Moore who died on 1 February 1999 without having completed the administration of the estate. On 8 July 1999 Letters of administration were granted to Thomas Moore Patrick, the present plaintiff. The net value of the estate amounts to the sum of £676,000.

The deceased was the daughter of John Patrick and Bella Patrick (nee Moore). Although they had seven children including the deceased all died without issue and the deceased was the last survivor of the children.

The deceased's father was one of eleven children all of whom predeceased the deceased. Of his siblings three died without issue. The remaining seven siblings left issue and their descendants are thus entitled to a distributive share in the estate of the deceased. On the father's side the following were the uncles and aunts of the deceased, namely William, Mabel, Robert, Elizabeth Margaret, Sarah, Minnie and Rebecca.

The deceased's mother was herself one of nine children. All predeceased the deceased and two died without issue. The remaining six siblings left issue and their descendants are thus entitled to distributive shares in the estate of the deceased. On the mother's side the relevant uncles and aunts comprised William, John, Sarah, May, Annie and Margaret.

One paternal uncle Robert Patrick married a sister of the deceased's mother Margaret Moore. They had five children of whom one survives namely the plaintiff. Their other children predeceased the deceased leaving issue. The second defendant is the daughter of one of the daughters of that marriage. Another daughter of the marriage Mabel married Thomas George Moore who was a son of William Moore one of the maternal uncles. Their children were thus doubly related to the deceased.

THE RELEVANT STATUTORY PROVISIONS

Under Section 11(1) and (2) of the Administration of Estates Act (Northern Ireland) 1955 ("the 1955 Act") it is provided as follows:-

> "(1) If an intestate dies leaving neither spouse nor issue nor parent nor brother nor sister nor issue of any deceased's brother or sister, his estate shall subject the succeeding provisions of this Part, be distributed in equal shares among his next of kin.
> (2) Where any uncle or aunt of the intestate (being brother or sister of a parent of the intestate) who would have been, or been included among, such next of kin if he or she had survived the intestate has predeceased the intestate leaving issue who survive the intestate such issue shall represent that uncle or aunt and shall by such representation take *per stirpes* the share that uncle or aunt would have taken as next of kin if he or she had survived the intestate."

Section 15 of the same Act provides:-

> "Where under any provision of this Act an intestate's estate or any share therein is to be distributed *per stirpes* among, or taken *per stirpes* by, the issue or surviving issue of any person any issue more remote than a child of that person shall take through all degrees, according to their stocks in equal shares if more than one the share which the parent of such issue would have taken if living at the death of the intestate, and no issue of that person shall take if the parent of such issue is living at the death of the intestate and so capable of taking."

THE QUESTION FOR DETERMINATION

In its amended form the Originating Summons raises the following question for determination:-

> "Whether any beneficiary of the estate of Olive Patrick deceased who traces his or her descent from more than one uncle or aunt of Olive Patrick deceased is entitled to participate in each distributive share to which that uncle or aunt would have been entitled had he or she survived the deceased?"

Put at its simplest in the context of the present case are the plaintiff and the second defendant entitled to a share of the estate measured by the fact that they are issue of a paternal uncle (who would have been entitled to one-thirteenth share in the estate if he had survived the

deceased) and also are issue of a maternal aunt (who would have taken another one-thirteenth share of the estate if she had survived), making a total of two-thirteenths of the estate or are they entitled only to share in a one-twelfth share of the estate on the basis that they can claim only once as next of kin of the deceased? Although the mathematics are more complex in the case of the issue of Thomas George Moore and Mabel Moore the same principle arises.

There is little assistance in the textbooks on the issue raised. In Mellows on The Law of Succession 4th Edition at 162-163 the text poses the question whether in the case of an intestate dying leaving two cousins one the issue of a maternal aunt and a paternal uncle and one the issue of a maternal aunt and a non relative the doubly related cousin takes one share or a double share. That textbook points out that there is no English authority but that there are Commonwealth authorities to the effect that the doubly related cousin could not take more than one share.

THE COMMONWEALTH AUTHORITIES

In the Ontario case of Re: Adams [1903] 600 LR 697 an intestate died leaving as his next of kin cousins. One was the blood niece of both his mother and father. The court held that under the provisions of the relevant statute the estate was to be distributed equally among collateral relatives in the same degree of kinship. Meredith J pointed out that under the relevant statue that "they take in their own right and not by way of representation". The Canadian legislation clearly differed from the 1955 statute in this jurisdiction which does make clear that the issue of uncles and aunts take by reference to the principle of representation.

In Troop v Robinson [1911] 45 NSR 145 the plaintiff claimed to be entitled to a double share of the estate of the deceased on the ground that she was a double cousin her father being a brother of her mother and her mother a sister of the deceased. The Nova Scotian court rejected her claim to a double share under Nova Scotian law pointing out that

under that law the qualification as to the person taking by representation had no bearing on the enquiry.

> "The qualification as to persons taking by representation has no bearing on the enquiry. It is only a device by which the general rule of fore computation may be varied. It is restricted to the case of brothers' and sisters' children. Such children would be one degree further removed from the deceased than the brothers and sisters of the deceased but as a qualification of the general rule they would take by representation the share that would have taken by their deceased parent if living unless the brothers and sisters were all deceased. There are no children of any brothers and sisters of the deceased in this case and the provision therefore has therefore no application."

In the South Australian case of Re: Cullen, Deceased [1976] 14 SASR 456 Zelling J had to consider the case of a bachelor who died intestate leaving as next of kin first cousins who survived him. The intestate's father's sister had married the intestate mother's brother and three of their children survived the intestate. Analysing the Statute of Distribution 1670, being the then relevant statutory provision in South Australia, the court held that the three children did not take a double share by reason of their inheritance on both sides of the family but took equally per capita with the other first cousins of the intestate. The court pointed out that the Statute of Distributions expressly provided that there should be no representation admitted among collaterals after the brothers' and sisters' children and the claimants in that case were a remoter degree of kin. In Re: Morrison [1945] VLR 123 the Victorian Court had to consider the question of whether a widow who was also the cousin of the deceased intestate was entitled both to her widow's share and a share as next of kin. The court concluded that she was entitled, the court holding that where a person stands in two distinct relationships to the intestate she was entitled to share appropriately in respect of each of those relationships.

CONCLUSIONS

The Commonwealth authorities of Re: Adams, Troop v Robinson and Re: Cullen all make clear that the court was carrying out an exercise of interpreting the relevant applicable statutes of distribution. The courts in those cases stressed the absence of any provision for the determination of the shares of the claimants to an intestate's estate by reference to the principle of representation. Re: Morrison makes clear that if the relevant statute does give rise to separate relationships to the intestate a beneficiary is entitled to the share appropriate to each of the relationships.

In the present case the 1955 Act is tolerably clear and explicit in providing for a distribution among the issue of uncles and aunts on the basis of representation per stirpes. The Commonwealth decisions on analysis do not support the argument that a cousin's share may only be calculated by reference to one parent where the parents are brother and sister respectively of one of the deceased's parents.

The logic of the statutory provisions compels the conclusion that where there are children or remoter issue of a paternal uncle and a maternal aunt the shares of the issue fall to be calculated by reference to the two separate stirpes represented by the deceased's uncle and deceased's aunt.

The way in which an estate should be distributed on intestacy is a matter of legislative policy and it is a question of determining the meaning of the relevant statutory provision. There is nothing more fair or more logical in allowing a double cousin to receive a single share or a double share. Indeed one can see the possibility of intrinsic illogicality in concluding that a double cousin should only receive a share calculated by reference to one parent. If the surviving next of kin of a deceased comprised a cousin (being the issue of a paternal uncle and a maternal aunt), the maternal aunt herself and the issue of a predeceased maternal aunt and a non relative uncle the maternal aunt would share in the intestacy of the deceased if she survived the intestate. If the maternal aunt died the day after the deceased's

death her share would devolve in accordance with her will or intestacy. If on the other hand she had died very shortly before the deceased why should her child, the cousin, be deprived of the share that the aunt would have received if she had survived the deceased by a day?

In the result I answer the question posed in the Originating Summons in the affirmative. I appoint the first defendant to represent all the next of kin of the deceased who would stand to benefit from a greater share in the event of a negative answer to the question posed in the amended Originating Summons.

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J U D G M E N T O F

GIRVAN J
