

The Law Society of New South Wales

Elder law and Succession Committee

Seminar 14 October 2015 (Panel Discussion)

THE TFM ACT : EARLY DAYS LEADING TO A 99 YEAR CENTENARY

By Justice Geoff Lindsay

INTRODUCTION

- 1 In advertising a seminar, as a panel discussion of the question “100 years of Family Provision – Have we gone too far?”, the Law Society of New South Wales defined the subject matter of the seminar as follows:

“It is 100 years since the *Testator’s Family Maintenance and Guardianship of Infants Act* 1916 was introduced, making provision for disappointed beneficiaries. The original Act was limited in its application.”

Significant changes include:

- the extension of persons for whom provision can be made
- the concept of notional estate making it possible to claw back assets disposed of during one’s lifetime
- the greater complexity of families and estate assets

The questions we ask on the 100 year Centenary are:

- how did we get Family Provision?
- how has Family Provision changed since it started?
- has provision for disappointed beneficiaries gone too far?
- what does Family Provision not achieve?
- should there be an alternative to Family Provision?”

- 2 The present paper offers an introductory insight into the first question (“How did we get Family Provision?”), together with a description of the first judgments under the *Testator’s Family Maintenance and Guardianship of Infants Act* 1916 NSW (“the *TFM Act*”).

THE PASSAGE OF THE TFM ACT, WITH RETROSPECTIVE EFFECT

- 3 The *TFM Act* passed both Houses of the Parliament of New South Wales on 7 September 2016, and received Royal Assent on 18 September 1916; but so much of the Act as authorised the Supreme Court of NSW to make an order for provision out of a deceased estate applied (by virtue of section 3(1) of the Act) to "... any person... dying or having died since the seventh day of October, 1915".
- 4 The operation of the Act was backdated by about a year.
- 5 After two earlier, unsuccessful attempts to enact "family maintenance" legislation (in 1903 and 1907), the Parliament returned to the topic in 1915.
- 6 A Bill was introduced into the legislative council on 7 October 1915, but it was not debated in either House of Parliament until August 2016.
- 7 By that time, the public had been prepared for reform by events that included the death of a prominent bookmaker (Francis James O'Neill) on 28 March 1916, and the death of the proprietor of the populist "Truth" newspaper (John Norton) on 9 April 1916. Each man had disinherited his estranged widow and favoured outsiders over family. These, and rumours of other cases, provided political momentum for legislative reform. A whiff of scandal permeated the atmosphere, calling forth moral imperatives in aid of political action.
- 8 The TFM Bill (including, as a distinct, but related topic, provisions relating to the guardianship of infants) passed through both Houses of Parliament, with revision necessary as a result of bi-cameral negotiations, between 1 August and 7 September 1916.
- 9 The retrospective effect given to the *TFM Act* by section 3(1) was given, expressly, in order to ensure that the Norton estate would be subject to the Act. This is more than an open secret. It was acknowledged in parliamentary debate: *Hansard*, Legislative Council, 31 August 1916, pages 1308-1312.

- 10 For parliamentarians who survived the politically active John Norton, a time for payback had arrived. The same moral imperatives that enabled the legislation to be enacted at all provided political justification for its application to the Norton Estate.

“SECOND READING SPEECHES”

- 11 The purpose and flavour of legislative reform can be discerned from introductory observations made in second reading speeches of government MPs in support of the TFM Bill.
- 12 In the Legislative Assembly the second reading speech of the Attorney General and Minister for Justice, DR Hall, on 3 August 1916, commenced with the following:

“The main object of the bill is to provide that it shall be incumbent upon a testator to charge his estate with an amount sufficient to maintain his wife or children, or in the case of a woman to maintain her husband or children after the death of the testator. The idea that a woman should have an indefeasible right to part of her husband’s property, or that a man should have an indefeasible right to part of his wife’s property is not a new one. It has existed for many years in England, I think from the 13th century when the law of England was that if a man had a wife or children his estate was divided into moieties; with one-half he could do as he liked, and the other half went to the wife and children. If he had a second wife or family the estate was divided into thirds. It is remarkable that in Australia, where the rights of women have developed so rapidly in the matter of property, we have wiped out whatever right a woman has in the estate of her husband. The dower which existed here for many years exists no longer. It was abolished in the year 1890, and today a man may leave the whole of his property, both real and personal, to any stranger to whom he chooses to leave it. The wife may have been with him a partner for 40 or 50 years. She may have assisted him in acquiring whatever wealth he possesses; yet he, dying, may will the property away and leave her dependent on the kindness of friends or the charity of the State. During his lifetime he cannot do that, for it is incumbent on him to maintain his wife. The object of the bill is to secure that after her husband’s death the right of the wife to get sufficient from his estate to maintain her shall continue, and the right of his children shall be equally preserved.

All a man requires in order to leave his property away from those with whom he has spent almost the whole of his life is to have testamentary capacity, and, as lawyers know, a man continues to retain his testamentary capacity long after he has ceased to be a man of affairs – that is, capable of managing his business in a businesslike way. If I read the law aright, the test of testamentary capacity is the power of a man to summon his mind to know what property he has to dispose of, and who are the objects of his bounty. Provided his mind is sufficiently strong to enable him to know these two

things, then he has testamentary capacity. Although he may have been aided by some stimulant to get a grasp of his affairs sufficiently to know that, his will will stand valid in the absence of any other circumstances rendering it invalid. It is not given to every man to go down to old age with all his faculties about him. The decision of a man in the last few days of his life may be different from the decisions he might have given during the previous 40 or 50 years. The mind of a man going into old age becomes weakened, and he becomes subject to the influence of probably the worst members of his family. An old man dying practically of senility finds himself surrounded not by his better children, who would be unwilling to try to exert any influence over him, but by the least worthy members of his family, who will endeavour to ingratiate themselves with him in the last hours of his life. Under those circumstances it may, and very often does, happen that the worthy members of a family are forgotten.

Since this bill has stood on the business-paper and been mentioned in the press, I have received several letters from different people, pointing out their own hard cases, which would have been remedied had a measure of this kind been in existence. I submit this is a truly non-party measure, and I do not propose to occupy much time in discussing it. Perhaps it may interest Hon. members to know that a similar measure has been in existence in New Zealand for many years, and to hear briefly a few of the kind of cases which may arise under such a law. ...

[The bill is very largely based on the New Zealand Act in that part of the bill which refers to providing for maintenance out of the estate of a testator. The provisions in the bill regarding the guardianship of infants very largely follow the English Act.] ...

[Although] there is a fear in certain quarters that the measure will give rise to much litigation, that has not proved to be so in New Zealand. Generally the fact that a man has to provide by law for his dependents is sufficient to make him do so in his will. ...

As a general rule most men do the right thing without any law, and in other cases they will do so when they know there is a law which will add a codicil to their wills if they do the wrong thing. The digest of cases in New Zealand shows that there are never more than three or four reported in a year. I think for the last 11 or 12 years there has been no year in which more than half a dozen cases have been reported... [Hansard Parliamentary Debates, Legislative Assembly, 3 August 1916, pages 578-579]"

- 13 In the Legislative Council JD Fitzgerald's second reading speech (on 30 August 1916) commenced with the following observations:

"This bill deals with two principles – one the right of the testator to disinherit his dependents, the other the right of the guardianship of children. Of course, theoretically, it may seem that it is wrong to deprive any man of the right to devise his property in any direction he likes; but in our law that general testamentary power has been limited from time to time by various statutes. It is known that a number of wills have been made in the State of New South

Wales which have constituted an injustice of such enormity that the general conscience has expressed itself in condemnation of the testamentary vagaries of the persons who have died. I need hardly recall the attention of the House to two notorious cases which have occurred recently. The first is the Norton case, in which the late John Norton disinherited his only son and his wife. The other is a case even worse than that. Although it is *sub judice*, I can refer to the facts [of the O'Neill case] without mentioning the personages. It is a case where a man had left his wife and for some years had lived in concubinage. He disinherited his wife and left his property to his concubines. Those are two cases which have become notorious in this state within the last few months. There are hundreds of such cases. There are a number that constituted such absolute cases of injustice that I am sure they are known to every Hon member of this House, cases where on the ground of justice and equity this House would be justified in passing such legislation as that now proposed. ...

The first part of the Bill [relating to testators family maintenance] proposes to remedy the injustice which occurs in certain special cases in this way: it proposes that where a man or a woman has died leaving a will, and where under that will he or she has neglected to make adequate provision for the proper maintenance of the testator's wife or husband and children, the court in its equitable jurisdiction may be invoked on behalf of the wife, husband, or child and the Equity Court may take all the circumstances into consideration and may make such order as it thinks fit for the maintenance of the dependents out of the estate of the testator. It seems to me that that is establishing a principle of elementary justice. I know that there are some who hold old-fashioned ideas with regard to the absolute right of a person to dispose of his property. That is a matter which can be argued. First of all, I do not think any person has a right to take upon himself the awful responsibility of parentage and all it means unless he is prepared to do a square deal. No child asks to be born, none of us have sought life. We have come here by act of our parents, and the parent is responsible for us, and for our maintenance, if he can afford it. Where a man disinherits his children, cause should be shown before the Equity Court before that injustice is allowed to remain. That is all that is asked so far as that is concerned. The Bill does not say definitely that the court shall apportion a sum, that the court on the mere filing of the application shall make such provision. It simply says the court shall have the equitable right to make provision for the children if it so thinks fit. And, after all, I think we can trust our courts, especially the court in its equitable jurisdiction which deals with the laws connected with the disposition of property, the guardianship of infants, and with wills. We can leave that court with its ripe experience of the particular issues invoked here to do justice in such cases as I have cited. I do not propose to labour that point. However I might mention that similar legislation exists in New Zealand and in several of the Australian States. ...

When a man takes upon himself the responsibility of parentage he takes upon himself all the burdens, and he has no right through caprice, spite, or for any other reason to throw off from his shoulders responsibilities which he willingly accepted when he entered into relations which would make him a parent....

[A] parent has no right to throw off his own shoulders the responsibility which he took upon himself and cast it back upon the State and the community. Take the injustices that are very often done. A rich man brings children into

the world and brings them up in luxury. Everything they wish for they get. Suddenly in his old age, either through the influence of somebody, or offence which he takes at something a child is done, or through some act of disobedience for which a child might be punished in the slight degree, but not punished to the extent of being disinherited, he turns round and deprives that child of the expectation of a share in the father's estate. That is one view. Another view is this: that very often the wife and child have as much to do with the accumulation of property which he wills away as the testator; they are as much responsible for the creation of the family fortune as the man who dies and disinherits them. ...

... I would not ask this House to say as a matter of principle that a man should not do as he likes with his own, although the general principles of the law do not allow him to do it. But in a case like this, where a man dies leaving property and leaving a family, the court has a right to be invoked to say whether that man has done strict justice in connection with the disinheriting of his family....

The Act gives the discretion of making an order for provision, or of refusing an order. Of course, it assumes that cause will have to be shown by those who apply to the Equity Court. The only case I can think of where a man would have the right to disinherit his son or daughter is a case where they might have misbehaved themselves, or might have been grossly disobedient, or where they might in some other way have set themselves against their father. It would require some very serious act of disloyalty, in my opinion, to justify a man in disinheriting his child. I have heard of a case where a son assaulted his father. I have been told that there was an answer for that, which was that the father [John Norton, in fact] had tried to assault the mother. The boy stood by the mother, and told the father that if he struck the mother, he would defend her. I say that in such a case no judge would say that the father was justified in disinheriting. The lad knew the consequences that might occur, for they had been threatened, and yet he stood by his mother in such circumstances. I say that I would be proud to shake such a boy by the hand, and I'm sure that any other Hon member of this House would be proud also....

The legal effect of the decision of the court is to make the decision operate as a codicil to the will. The court, in its discretion, may order the payment of a lump sum, or periodical payments...." [Hansard, Parliamentary Debates, Legislative Council, 20 August 1916, page 1239].

FIRST CASES UNDER THE TFM ACT

- 14 Contrary to popular belief, on one view at least, the Norton case was not the first decided by the Court under the *TFM Act*.
- 15 According to that view, that honour belongs to the second of the two cases expressly cited in Parliament as justification for legislative reform: *In re O'Neill* (1917) 34 WN (NSW) 72.

- 16 The O'Neill case was the subject of a preliminary finding (made by consent) on 6 October 1916, followed by an inquiry by the Master in Equity and (on 20-21 December 1916) further proceedings before a judge, culminating in publication of the reserved decision of the judge (Mr Justice AH Simpson, Chief Judge in Equity) on 23 February 1917.
- 17 Applications for TFM relief relating to the Norton Estate were first made on 27 October 1916. Simpson CJ in Eq heard proceedings on 17 and 20 November 1916, at the conclusion of which he made orders which, ostensibly, were interim orders in that they were expressed to be made pending further orders of the Court. Final orders appear to have been made under the TFM Act in the Norton Estate, in large part apparently to give effect to a settlement, only in September 1920.
- 18 Nevertheless, it is the Norton case that retains potential to amuse as well as instruct. Norton was one of the "wild men of Sydney" famously written about by Cyril Pearl in his 1958 book of that title.
- 19 As a member of Parliament, John Norton had opposed the enactment of TFM legislation in 1907: Hansard, *Parliamentary Debates*, Legislative Assembly, 5 November 1907, pages 717-720. He was, in principle, in favour of a measure (if ever one could be constructed) designed to help "a good wife against manifest injustice, and to shield her from wrong"; but he was implacably opposed to any measure (such as the TFM Bill then propounded) that handed over to a judge arbitrary powers to dispose of property irrespective of the desire of a testator.
- 20 When the legislation's time came, in 1916, at least some parliamentarians enjoyed the irony of backdating it to capture Norton's estate. Conservative mindsets were horrified, but resigned to the will of the majority.
- 21 JA Browne, who appeared as counsel for Mrs Ada Norton and her son Ezra in their subsequent TFM and related proceedings, was the member of the Legislative Council who, on 31 August 1916, moved that section 3 of the *TFM*

Act operate retrospectively: Hansard, *Parliamentary Debates*, Legislative Council, 31 August 1916, pages 1308-1312.

- 22 With an award of what was perceived to be “interim” relief in 1916, Norton’s widow and son clawed back the bulk of the estate in 1920, at which time “Truth” (under their control) lauded the *TFM Act* as a great humanitarian reform, and as the means by which John Norton’s true testamentary intentions had finally been given effect.

PHASES IN THE DEVELOPMENT OF NSW FAMILY PROVISION LEGISLATION

- 23 In NSW we are accustomed to thinking of the “family provision” jurisdiction of the Supreme Court as having three historical phases, closely identified with three particular forms of legislation:

- (a) the *TFM Act*,
- (b) the *Family Provision Act* 1982 NSW; and
- (c) chapter 3 of the *Succession Act* 2006 NSW.

- 24 We are, but vaguely, aware that the first family provision legislation in Australia was enacted in New Zealand. A precedent may be found in the US state of Maine (Anthony Dickey, *Family Provision After Death* (Law Book Co, Sydney, 1992), page 4, citing J Laufer, “Flexible Restraints on Testamentary Freedom – a Report on Decedents’ Family Maintenance Legislation” (1955) 69 *Harvard Law Review* 277); but the starting point for NSW law is generally taken to be New Zealand.

- 25 The pioneering legislation in that jurisdiction was the *Testator’s Family Maintenance Act*, 1900: R Atherton, “New Zealand’s Testator Family Maintenance Act: The Stouts, the Women’s Movement and Political Compromise” (1990) 7 *Otago Law Review* 202; R.F. Atherton, “‘Family’ and ‘Property’: A History of Testamentary Freedom in New South Wales with Particular Reference to Widows and Children” (PhD thesis, 1993), available on Austlii’s website.

- 26 As a consequence of a finding of the NZ Court of Appeal that a Court had no power, under that Act, to order that a lump sum be paid out of an estate to a claimant (*Plimmer v Plimmer* [1906] NZGazLawRp 135; (1906) 9 GLR 10), the Act was repealed and replaced by the *Testator's Family Maintenance Act* 1906, subsequently included in a consolidating statute, the *Family Protection Act* 1908.
- 27 Similar legislation was enacted by the Australian states in following years: Victoria (1908); Tasmania (1912); Queensland (1914); New South Wales (1916); South Australia (1918); and Western Australia (1920).
- 28 The New South Wales Act adopted a combination of the New Zealand and Victorian statutes.
- 29 Practice books came only slowly to the family provision jurisdiction.
- 30 An annotated version of the *TFM Act* appeared in RE Kemp's *Wills, Probate and Administration* (Law Book Co, Sydney, 2nd ed, 1919), pages 265-285. However, it was not until HH Mason, AC Tuthill and CG Lennard, *The Principles and Practice of Testator's Family Maintenance in Australia and New Zealand* (Law Book Co, Sydney, 1929) that a specialist text appeared.
- 31 That text provided a template for R J Davern Wright's later work, *Testator's Family Maintenance in Australia and New Zealand* (Law Book Co, Sydney), which ran to three editions (respectively published in 1954, 1966 and 1974) in the three decades preceding enactment of the *Family Provision Act* 1982 NSW.

HISTORICAL ORIGINS OF "FAMILY PROVISION" REFORMS

- 32 A full understanding of the origins, and development, of the family provision jurisdiction cannot be had independently of a close examination of diverse social, economic and legal changes that called it into existence and compelled subsequent developments.

- 33 The *TFM Act*, in particular, was preceded by broadly based developments that called into question paternalistic assumptions of the common law, and the common law's historical, constitutional compromise with ecclesiastical authorities in England in management of families (births, deaths and marriages) and in the succession of property.
- 34 As the 19th century progressed, fundamental paradigm shifts occurred, driven in part by a need to accommodate adaptation of English law to settler colonies with different perspectives of their own. On the whole, though, common themes can be seen across jurisdictional divides: eg, the development of a wealthier, industrialised, democratic, post-feudal, secularised society in which families could avail themselves of new divorce laws, and women could take their place relieved of feudal incidents of marriage. By the turn of the century, as the Australian colonies federated, the first stirrings of a welfare state were also a common experience: more was expected of the State than was formerly the case, and the State had developed administrative structures permitting more to be done.
- 35 An exploration of the many crosscurrents on display in these, and subsequent, developments is not within the scope of this paper.

AN OBSERVATION ABOUT THE INTERCONNECTEDNESS OF ADJECTIVAL AND SUBSTANTIVE LAW

- 36 For technicians of the law and devotees of Australian legal history one small, incidental point about procedure, and its influence on the development of substantive law, might be noticed.
- 37 In *O'Neill*, if not also other *TFM* cases over which Justice AH Simpson presided as the Chief Judge in Equity, proceedings proceeded in two or three distinct phases. First, a declaration was made that no adequate provision had been made by the testator, coupled with a reference to the Master in Equity to ascertain facts on the conduct of an inquiry, with directions for service of notice of the proceedings on interested persons. Secondly, an inquiry having been conducted, the Master reported certified facts to the judge. Thirdly, with

the benefit of the Master's certificate, the judge heard submissions about final orders to be made.

- 38 Although subsequent debates about whether chapter 3 of the *Succession Act* 2006 NSW does, or does not, involve a two step process of reasoning have been articulated in terms of statutory construction (*Andrew v Andrew* (2012) 81 NSWLR 656 at 658[6], 663[29] and 679-680[97]), is it possible that standard Equity procedures of the early years of the 20th century informed consideration of the family provision legislation considered in *Singer v Berghouse* (1994) 181 CLR 201 at 208-210 and *Vigolo v Bostin* (2005) 221 CLR 191?

SUMMARY OF ANNEXURES

- ANNEXURE : 1 REPORTS OF THE O'NEILL CASE
- A The Daily Telegraph, 7 October 1916
- B The Sydney Morning Herald, 21 December 1916
- C In re O'Neill (1917) 34 WN (NSW) 72
- ANNEXURE : 2 REPORTS OF THE NORTON CASE (1916)
- A The Sydney Morning Herald, 18 November 1916
- B The Sydney Morning Herald, 21 November 1916
- ANNEXURE : 3 REPORTS OF THE NORTON CASE (1920)
- A Extract from Cyril Pearl, "*Wild Men of Sydney*" (1958)
- B The Sydney Morning Herald, 31 August 1920
- C Truth, WA, 18 September 1920

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<http://trove.nla.gov.au/work/9439218?selectedversion=NBD1636128>
 - b. NSW Law Reform Commission, *Report on the Testator's Family Maintenance and Guardianship of Infants Act 1916*, Report 28 (1977)
http://www.lawreform.justice.nsw.gov.au/Documents/report_28.pdf

SIGNIFICANT JUDGMENTS

8. Significant appellate judgments include:

- a. *Allardice v Allardice* [1911] A.C. 730
- b. *In re Allen (deceased) Allen v Manchester* (1922) NZLR 218 at 220
- c. *Bosch v Perpetual Trustee Co* [1938] A.C. 463 at 478
- d. *Coates v National Trustees Executors and Agency Co Ltd* (1956) 95 CLR 494
- e. *Pontifical Society v Scales* (1962) 107 CLR 9
- f. *Easterbrook v Young* (1977) 136 CLR 308
- g. *Goodman v Windeyer* (1980) 144 CLR 490
- h. *White v Baron* (1980) 144 CLR 431
- i. *Singer v Berghouse* (1994) 181 CLR 201
- j. *Barns v Barns* (2003) 214 CLR 169
- k. *Vigolo v Bostin* (2005) 221 CLR 191

14 October 2015

GCL

The TFM Act: Early days leading to a 99 year Centenary

ANNEXURE 1A

(Extract from “The Daily Telegraph”, 7 October 1916, page 19A)

A BOOKMAKER’S ESTATE

PROVISION FOR MAINTENANCE

The first application under the *Testators’ Family Maintenance and Guardianship of Infants’ Act*, recently passed by the state Legislature was made to the Chief Judge in Equity (Mr Justice Simpson) yesterday, on behalf of Julia O’Neill, widow of Francis James O’Neill, bookmaker, of Summer Hill, who died in Lewisham Hospital on March 28 last. The application, which was made under section 3 of the Act, was for an order that adequate provision for the proper maintenance of the applicant should be made out of the estate of the deceased; and for an order specifying the amount and nature of the provision.

Section 3 of the Act provides that if any testator who had died since October 7, 1915, had disposed of his or her property, in such a manner that the widow, husband, or child of such person were left without adequate provision for their proper maintenance, education or advancement in life, the Court might, at its discretion, and taking into consideration all the circumstances of the case, order that certain provision be made out of the estate for the wife, husband or child. Subsection 3 of the section provides that in making the order the Court might, if it thought fit, direct payment of a lump sum, or periodical, or other payments.

By his will the testator left the rents of certain properties to two women during their lives, legacies to an illegitimate child, and his sister Theresa, and the residue of the estate to his legitimate daughter, Dorothy, and the children of one of his sisters. No provision of any kind was made to his wife or his illegitimate son, Eric.

The applicant stated in her affidavit that probate of the will of her late husband was granted to the Permanent Trustee Company, the executors named in the will, as a result of a suit in which she opposed the granting of probate on the ground that when the document was executed the testator was not of sound mind, memory and understanding. She had lived apart from her husband for four years prior to his decease, for the reason of his misconduct with certain women. The estate was sworn at £20,713 0s 10 pence. She had been informed by the trustees that the rents of the properties in Lackey Street, Summer Hill, amounted to £6.10s a week, that of properties at Enmore to £11.10s a week; and of properties in Newtown to £4 4/- a week. If the testator’s late residence, “Aloha”, at Summer Hill, were let furnished it should bring £5 a week. After leaving her husband, she furnished certain flats at Manly, but if the Court saw fit to make her an allowance out of the estate for her maintenance, she would discontinue the carrying on of the flats.

Mr HH Mason (instructed by Messrs John Williamson and Sons) appeared for the applicant; and Mr Hammond (instructed by Mr Morgan J O'Neill) represented the trustees of the estate, who submitted that the beneficiaries under the will should be made parties to the application.

By consent, his Honor made a decree declaring that no adequate provision had been made by the testator for the proper maintenance of his widow, with a reference to the Master to ascertain the net value and net income of the estate of the deceased, an inquiry as to the means, if any, of the widow, and an order that a copy of the decree be served on all beneficiaries under the will.

ANNEXURE 1B

(Extract from “The Sydney Morning Herald”, 21 December 1916, page 4)

IN EQUITY

(Before the Chief Judge, Mr Justice Simpson)

TESTATOR’S FAMILY MAINTENANCE...

FRANCIS O’NEILL’S WILL

Widow’s application for maintenance

Mr HH Mason, instructed by Messrs John Williamson and Sons, appeared for Julia O’Neill; Mr JH Hammond, instructed by Mr Morgan O’Neill, for the Permanent Trustee Company Ltd. Mr WA Parker and Mr DS Edwards, instructed by Mr JI Burfitt, for Mary Linda Elizabeth Griffiths and Alice Coyne; and Mr RH Long-Innes KC and Mr LS Abrahams, instructed by Mr Walter Lynton, for Dorothy Frances May O’Neill. The affidavits of Julia O’Neill, of Summer Hill, stated that she was the widow of Francis James O’Neill, Bookmaker, and an applicant for maintenance out of his estate, under the provisions of the *Testator’s Family Maintenance Act*. The deponent stated that the estate of her late husband, who was a bookmaker, was of the value of upwards of £20,000 pounds. No provision was made in his will for his wife.

When the matter was before the Court on October 6 last his Honor declared that Francis James O’Neill had made no adequate provision for the proper maintenance of his widow, the present applicant. An order was then made referring the matter to the Master in Equity to ascertain the net value of the estate and the net income; also the means of the applicant.

The Master’s report was before the Court yesterday. It stated that the gross income of the estate was £1,380, and the net income £829.

Mr Mason, in opening the case, said that the applicant did not ask for a lump sum, but for a weekly allowance of, say, £8.

The case stands part heard.

ANNEXURE 1C

(Being a reproduction of *In Re O'Neill* (1917) 34 WN (NSW) 72)

CJ in Eq, Dec 20, 21, 1916; Feb 23, 1917.

In Re O'NEILL.

TESTATOR'S FAMILY MAINTENANCE.

Provision for widow – Adjustment of burden between beneficiaries –

Testator's Family Maintenance and Guardianship of Infants Act (No. 41 of 1916). – A testator, the net value of whose estate was approximately £16,000, made no provision by his will for his widow, who had been living apart from him owing to his improper relations with certain women who were beneficiaries under the will. The widow was without means of support, and the Court ordered the sum of £8 per week to be paid to her during her lifetime, and directed that the burden of the provision made for the widow should be borne by all the beneficiaries rateably.

MOTION

This was an application by Julia O'Neill, the widow of the late Francis James O'Neill deceased, for an order under the Testators Family Maintenance and Guardianship of Infants Act (No. 41 of 1916) that provision be made for her maintenance out of the estate of the deceased. The deceased died on the 28th day of March, 1916, leaving him surviving his widow, the applicant, and one child, Dorothy O'Neill, of the age of 12 years. For some time prior to his decease the applicant had been living apart from the deceased owing to the deceased living in adultery with certain women. During this period the deceased allowed the applicant to collect for her own use the rents of a property known as "Sterling Villas" which brought in £218 per annum. The deceased himself paid for the repairs and other outgoings in connection with this property. The will of the deceased contained no provision in favour of the applicant and on the 6th October, 1916, an order was made declaring that no proper provision had been made by the will of the deceased for the maintenance of the applicant, and the reference was directed to the Master in Equity to inquire into the value of the estate of the deceased, the income derivable therefrom, and the means (if any) of the applicant. In pursuance of this order the Master in Equity certified that the applicant was without means or property with the exception of two vacant allotments of land purchased for the sum of £40, and certain furniture of the value of £100. The applicant was indebted to her solicitors in the sum of £120 for certain legal costs. The net value of the estate of the deceased was certified to be £16,727. In addition, the deceased shortly before his death acquired a leasehold property at Manly. The lease was for a term of 99 years at an annual rental of £100 per annum, the lessee paying rates and taxes which amounted to £34 per annum. The land was vacant and the master in equity in his certificate stated that the evidence before him did not enable him to fix the rental value more precisely than by stating that it could probably be sub-let on building lease for not less than £30 per annum, and not more than £60

per annum, the sub lessee paying rates and taxes, and that in the circumstances the property had no value as an asset in the estate of the deceased, but, on the contrary, carried an estimated liability of an annual sum of between forty and seventy pounds or thereabouts when sub-let, and until sub-let or disposed of, one hundred and thirty-four pounds per annum. The annual income from the estate without taking the Manly leasehold into consideration was £1,380 gross and £829 net. The deductions made to ascertain the net income included municipal rates and taxes, water and sewerage rates, cost of insurance, Federal land tax, State and Federal income tax and the estimated cost of repairs.

HH Mason for the applicant. The fact that the testator in his lifetime allowed my client only £4.4s. per week, does not limit her proper allowance to that amount.

JH Hammond, for the trustee of the will.

Innes, KC and *LS Abrahams*, for Dorothy O'Neill, the daughter of the testator. Whatever provision is made in this case for the widow should be borne by the testator's mistresses and not rateably by the beneficiaries.

DS Edwards, for certain beneficiaries under the will, contends that any allowance made for Mrs O'Neill should be borne rateably.

AH SIMPSON, CJ in Eq. In considering the question of the amount to be allowed to Mrs O'Neill, all the circumstances must be taken into consideration, and I do not think the amount asked for by counsel for the applicant, viz, £8 per week excessive. I accordingly allow that amount as from the date of the testator's death. I do not think a case has been made out for throwing the whole of the burden of this provision in favour of Mrs O'Neill on certain beneficiaries only and I order that the beneficiaries bear the burden rateably in proportion to the value of their interests under the will of the deceased.

Solicitors : *John Williamson & Sons; Morgan J O'Neill; Walter Linton; JI Burfitt.*

The TFM Act: Early days leading to a 99 year Centenary

ANNEXURE 2A

(Extract from “The Sydney Morning Herald”, 18 November 1916, page 9)

IN EQUITY

(Before the Chief Judge, Mr Justice Simpson)...

TESTATOR’S FAMILY MAINTENANCE

Mrs Ada Norton’s application

Mr R Windeyer and Mr JA Browne, instructed by Messrs WA Windeyer and Williams, appeared for Ada Norton, widow of John Norton, newspaper proprietor, for an order on her behalf under the *Testator’s Family Maintenance and Guardianship of Infants Act* of 1916. The application was opposed by Mr Loxton KC, and Mr JM Sanders, instructed by Mr PM Sanders, on behalf of John Norton’s trustees, Eva McClintock, William John M’Grath, Mary Josephine M’Grath, and Irvine Perel.

The application was for adequate provision for the maintenance, education and advancement of the applicant, specifying:- (a) The nature and amount of such provisions; (b) the part of the estate out of which such provision should be raised or paid; (c) the manner in which the burden of such provision as between the person entitled to the estate should be borne.

The affidavit of Ada Norton, of the 27th ult., stated that she was married at St James’s Church, Sydney, on April 29, 1897; that the valuation of testator’s estate for probate in New South Wales, £65,000, was much below the true market value; that testator had brought up Ezra Norton, and always spoke of him as his son and prospective heir. The deponent further stated that her late husband had made no provision by settlement or otherwise for the maintenance, education or advancement of Ezra Norton. Deponent considered that ample provision should be made for Ezra Norton’s needs.

In reply to Mrs Norton’s affidavit, an affidavit dated the 9th inst. by Harold James McClintock was filed. Deponent stated that he was the manager of “Truth” newspaper, and secretary for the trustees of the late John Norton’s estate. He had custody of all papers in the estate. Ezra Norton did not respond to his father’s efforts to train him as a journalist. There was no agreement between the trustees and the Stamp Commissioner as to the net value of the estate. Testator’s property in Russell-Street, Melbourne, was bought by him for £18,000; it is now valued at £13,500, and a balance was owing on the property of £15,000. The statement that testator’s income was £11,000 was largely in excess of the actual amount. Testator’s New South Wales estate was valued at: Realty £27,615, freehold £27,000; total, £54,615. There was a mortgage of £5,835. The value of the personal property is £18,907.

Other properties, the deponent stated, were: Victoria, £17,695, liabilities £16,679; Queensland, £47,500 pounds, liabilities £26,970; New Zealand, £14,721, liabilities £964; Western Australia, £4,455, liabilities £506. John Norton was proprietor of six newspapers.

To this testator's widow replied, on affidavit of the 13th inst. She stated that John Norton never tried to train his son, Ezra Norton, as a journalist. It was a fact that the son when about 16 years old was reading with a coach, and he had a room prepared for him in "Truth" office, and that he used to accompany his father to the office. It was not true that Ezra Norton's conduct had destroyed discipline among the office employees. The only occasion when Ezra threatened John Norton with violence or assaulted him was at St Helena, when trouble arose between deponent and testator concerning Eva Pannett (now Mrs McClintock). When John Norton was about to assault deponent Ezra told his father that he would never allow him to assault his mother. On another occasion, when the divorce petition was served on Norton, the latter cruelly assaulted deponent. Ezra then came to his mother's assistance, and knocked his father down. Norton then gave his son into custody, but subsequently withdrew the charge. It was a fact that Eva Pannett was invited by deponent to visit Australia, but this was done by John Norton's written directions, deponent believing Eva Pannett to be Norton's niece.

Two applications under the Act were before the Court – Mrs Norton's and Ezra Norton's. The former case was taken first. After affidavits had been read the case was argued at length by Counsel. Mr R Windeyer applied for an interim order to be made, to give Mrs Norton £2,000 down for present purposes, and an allowance of £25 a week until the total income was arrived at. The application was supported by Mr Browne, and opposed by Mr Loxton KC on behalf of the trustees. The latter counsel objected to the payment of a lump sum down, but was not opposed to the payment to Mrs Norton of a weekly allowance, not exceeding £15 a week, from the date of John Norton's death horizontal – April 9 last.

His Honor adjourned the hearing till Monday next [20 November 2016]. Mrs Norton in the meantime to make an affidavit stating her estimated expenses per week, and the amount that she considered adequate for the maintenance of herself and her son, Ezra.

ANNEXURE 2B

(Extract from "The Sydney Morning Herald", 21 November 1916, page 4)

IN EQUITY

(Before the Chief Judge, Mr Justice Simpson)

TESTATOR'S FAMILY MAINTENANCE

MRS ADA NORTON'S APPLICATION

The hearing of the application of Ada Norton, under the *Testator's Family Maintenance and Guardianship and [sic] Infants' Act* of 1916, was resumed [on 20 November 1916, part-heard]. After argument by counsel, his Honor made the following order:- Mrs Norton to receive from the late John Norton's estate the sum of £1,308, and a weekly payment of £25, from the date of her application, October 27, 1916, until the further order of the Court. His Honor also directed that the Master in Equity should make an inquiry as to the value of the whole of the assets of the testator's estate at the time of his death on April 9 last.

Mr R Windeyer and Mr JA Browne, instructed by Messrs. WA Windeyer and Williams, appeared for the applicant; and Mr Loxton KC and Mr JM Sanders, instructed by Mr PM Sanders, for the respondents, Eva McClintock (formerly Pannett), William John M'Grath, Mary Josephine M'Grath, and Irvine Perel, trustees and executors of the late John Norton's estate.

EZRA NORTON'S APPLICATION

This was an application by Ezra Norton, an infant, by his next friend, Ada Norton, for provision for his education, maintenance and advancement under the *Testator's Family Maintenance and Guardianship and [sic] Infants' Act*. Mr R Windeyer and Mr JA Browne, instructed by Messrs WA Windeyer and Williams, appeared for the applicant; and Mr Loxton KC, and Mr JM Sanders, instructed by Mr PM Sanders, for the respondents, who are the trustees of the late John Norton's estate.

Ada Norton, in her affidavit of the 27th ult., stated that the applicant Ezra Norton, was the son of deponent and of the late John Norton. The latter, in his will of June 15 last, had left most of his estate to his daughter, Joan, and nothing to his son, Ezra. The value of his New South Wales estate, stated that £65,000, was, deponent was informed, much below its true market value. Ezra Norton will be 21 years of age on April 18, 1918. His father was very much attached to his son, and proud of him until the latter took his mother's part when she was assaulted by Norton. This led to estrangement. Norton brought up his son to luxury, and always spoke of him as likely to succeed him in the conduct of his newspaper business. It had been planned that Ezra Norton was to enter an English University and travel a good deal.

Harold James McClintock, in his affidavit of the 9th inst., stated that he was manager of "Truth" Newspaper office, and secretary of the late John Norton's estate. Previous to Norton's death, he had a conversation with him, in which the latter said that his

son, Ezra, had shown no aptitude as a journalist. He had caused trouble in the office; had assaulted his father, and had behaved so offensively that his father had made no provision for him in his will.

Ezra Norton, the applicant, filed an affidavit on the 11th inst., denying that his father had tried to train him as a journalist. When he was about 15 years old his father had him coached and given an insight into commercial bookkeeping. He had taken his mother's part when she was violently assaulted in "Truth" office by his father.

Mr R Windeyer, in support of the application, stated that Mrs Norton only wanted a sufficient sum for the present to maintain and educate Ezra Norton. It was intended to give the latter a scientific grounding in stock management and general agriculture.

By consent, his Honor decided to allow Mrs Norton £3 a week for the maintenance and education of the son, from the 27th ult., until the further order of the Court.

CLAIM FOR GOODS

Norton versus McClintock and others

This was a suit in which Ada Norton, of Carr-Street, Coogee, widow of the late John Norton, claimed certain goods from Eva McClintock, William John M'Grath, Mary Josephine M'Grath, and Irvine Pevell, executors and trustees of the testator's estate. On July 29 last Mr Justice Harvey granted an injunction restraining the defendants from including the goods in question in the auction sale at St Helena, Maroubra, of Norton's furniture, etc. The defendants then agreed to withdraw the goods from sale, pending the hearing. Yesterday Mrs Norton gave evidence in support of her claim, and counsel addressed the Court.

His Honor referred the matter to the Master in Equity to enquire which of the goods claimed by Mrs Norton were her property. The list of goods to be delivered to the executors within 14 days, and to include the sale catalogue lots Nos 5, 18, 21, 45, 48, and 48A. Mr R Windeyer and Mr Jordan, instructed by Messrs WA Windeyer and Williams, appeared for the plaintiff, and Mr Loxton KC, and Mr JM Sanders, instructed by PM Sanders, for the defendants.

ANNEXURE 3A

(Extract from Cyril Pearl, "Wild Men of Sydney" (London, 1958),
"Appendix I", page 245

When Norton died in 1916, he disinherited his wife and son and left the entire estate, valued at £100,000, with an annual net income of £15,000, to his daughter, less an annuity of a few hundred pounds to his "neice", Eva Pannett. But Mrs Norton succeeded in having the *Testator's Family Maintenance Act*, which had not passed the Upper House when Norton died, dated back to operate from the time it was introduced into the House, before his death. As a result, she was awarded a third share of the net income for life. She then bought out Eva Pannett's interest for £8000, and, in 1920, the Equity Court rewrote the will so that, while Mrs Norton's third share of the income continued, the rest of the estate was divided equally between Norton's son and daughter. Affidavits filed at this hearing gave the value of the estate at £191,000, and the income at £26,500. The circulation of "Truth" had risen from 147,000 at the time of Norton's' death to 280,000.

ANNEXURE 3B

(Extract from “The Sydney Morning Herald”, 31 August 1920, page 5)

IN EQUITY

(Before Mr Justice Harvey)...

LATE JOHN NORTON'S ESTATE

Application by the Trustees

This was an originating summons arising out of the administration of the estate of the late John Norton, newspaper proprietor, the plaintiffs being Irvine Perel, William Archibald Windeyer, Herman Faul, Ezra Norton, and Ada Norton-Culhan, formerly Ada Norton, widow of the deceased, and the defendants, Joan Norton, infant daughter of the deceased, and Eva McClintock. Plaintiffs asked, among other things, for the decision of the Court as to whether the trustees were authorised by the will of the testator to carry on the newspaper business, carried on by John Norton at the time of his death until the defendant, Joan Norton, attained the age of 21 years; and whether the trustees were authorised by the will to mortgage any of the assets of the estate for the purpose of paying off the indebtedness of the estate to the Australian Bank of Commerce Limited, and for carrying on the newspaper business. The trustees also asked for an order authorising them to purchase, on behalf of the estate, the interest of the defendant, Eva McClintock, in terms of an agreement dated July 6 last, and to pay Eva McClintock out of the estate the money payable to her under the agreement. An affidavit in support of the application, stated that the newspaper business was very successful despite the loss of the personality of John Norton, the circulation of the paper having increased from 147,000 to 277,000, and the income having increased from £15,600 - £26,100 last year, while the value of the estate, which, for probate purposes, was sworn at £106,000, had increased to £191,000. Mr Maughan KC, and Mr JA Browne (instructed by Messrs Windeyer, Faul, Williams and Osborne) appeared for the plaintiffs; and Mr Langer Owen, KC, and Mr FAA Russell (instructed by Dr JL Sly) represented the defendants. His Honor held that the trustees were authorised by the will to carry on the newspaper business for such period as they, in their discretion, thought fit; and that they were entitled to mortgage the whole of the assets for the purpose of paying off the existing liability to the Australian Bank of Commerce, and to raise on the assets of the newspaper business such further sums as might be required to carry on that business.

ANNEXURE 3C

(Extract from “Truth”, Western Australia, 18 September 1920, page 2)

THE “TRUTH” TRUST

Reconstructed and Reconstituted

John Norton’s Will and the TFM Act

Applications to the Judge in Equity

A TRIUMPH FOR MODERN HUMANITARIAN LEGISLATION

As is well-known (having been disclosed closely following the death of Mr John Norton, the proprietor of “Truth”), conduct of the business and administration of the Norton estate was vested in trustees, the majority of whom were residents of Brisbane. Quite recently, however, circumstances (mainly the necessity of most of the trustees being residents of Sydney, and the growth of “Truth’s” business, due to the ever-increasing popularity of “Truth” newspapers in all the States of the Commonwealth and New Zealand), brought about the

RECONSTRUCTION OF THE TRUST,

which subsequently received the ratification of the Judge in Equity. The trustees of the estate of the late John Norton are Messrs WA Windeyer, H Faul, Ezra Norton, and the Hon Irvine Perel MLC of Brisbane. Mr Perel being one of the original trustees appointed under the will of the late John Norton.

Having received the ratification of the reconstruction, or rather reconstitution of the trust, and having a due regard to the extensive and widely spread nature of the business of the estate, the next step of the trustees was to approach his Honor, Mr Justice Harvey, sitting in Equity jurisdiction, and seek a decision, by way of originating summons, as to whether the newly appointed trustees were authorised by the will of the testator to carry on the newspaper business; and to mortgage any of the assets for carrying on the newspaper business. Further, an order was sought authorising the trustees to purchase, on behalf on the estate, the interest under the will of the testator of Eva McClintock, formerly a trustee of the estate, and to pay her, in terms of an agreement dated July 6 last, out of the estate the money payable to her under such agreement.

An affidavit read in support of the application disclosed, among other things that notwithstanding the loss to the newspapers of the powerful personality of the late Mr John Norton, the business of the estate had assumed big proportions, while the popularity of the newspapers published was ever increasing. It was shown that the combined circulation of the “Truth” papers had, within a very short space, leaped from 147,000 copies to 277,000.

THE TRUSTEES WERE AUTHORISED

to carry on the business of the newspapers as they thought fit, and that they had the powers generally which they sought.

The above application was made on Monday week, and on the following Wednesday, another application, an application, by way of a momentous character, probably establishing a remarkable precedent, was made before the same judge. This application practically amounted to the trustees seeking the permission and the guidance of the Judge in Equity in the matter of revising the last will and testament of the late John Norton and bringing it into conformity with the wishes expressed and implied by the deceased in earlier wills, and with his known intentions. Incidentally the court was asked to give a very wide and liberal interpretation to the *Testators' Family Maintenance Act* as applied to the widow and children (Ezra and Joan) of the late John Norton.

Reverting to the position as it existed in New South Wales at the time of Mr John Norton's death, it will be recognised that so far as the disposition of the property or estate of the deceased person was concerned, the law in that State was primitive, and certainly not in keeping with the great advances made in neighbouring States and in the Dominion of New Zealand. As a matter of fact, the *Testators' Family Maintenance Act* of New Zealand forms part of what is called the sane and humanitarian legislation passed during the regime of that great dominion statesman, Richard John Seddon, and the object of all sublime of the conceivers of this legislation was to obviate as far as possible the expensive and extensive litigation which too often was necessary when the terms of highly complicated and

LEGALLY UNSATISFACTORY WILLS were concerned.

Strangely enough, just about the time of the death of John Norton, there were a number of cases where testators had made unsatisfactory, though, under the law, legal, wills, the interpretation of which promised costly litigation. The Holman Government, which was then in power, very wisely decided to introduce legislation dealing with these matters, and the *Testators' Family Maintenance Act* became law, and afforded great relief to a number of persons. One remarkable feature of this legislative enactment was that it was made retrospective, and by virtue of the date of the commencement of its operation it covered the will and last testament of John Norton, who had left his widow and son unprovided for.

The chief virtue of the *Testators' Family Maintenance Act* is that it was intended to remedy what might well be called the defects or lack of provision for dependence of a deceased person, and taking advantage of this humanitarian Act of Parliament, Mrs Ada Norton now Mrs Norton-Culhane, successfully applied for relief, and was very liberally provided for. Provision of a temporary character was made for Ezra Norton then a minor, leave being reserved to apply at a later stage, after the son had attained his majority, when the court intimated that ample provision would be made to him.

The application, therefore, was more or less in pursuance of earlier proceedings at which provision had been made for the widow, and the intimation given that at a later stage an application could be made with every likelihood of being entertained of clearly defining

THE POSITION OF EZRA NORTON,

now a young man of undoubted business talent, literary ability, shrewd and capable in every respect of achieving a name for himself and of fulfilling what his father so fondly expected of him.

Mr Justice Harvey was practically asked to reverse John Norton's will and make it conform with the spirit or intention of the *Testators' Family Maintenance Act*, and accordingly his Honor decided to ratify or give legal sanction to their carrying out by the trustees of the agreement entered into on July 6 last, whereby Eva McClintock covenanted to dispose of her legal interest under the will of the testator. The court further ordained that the provision made for Mrs Norton should

CONTINUE DURING HER LIFETIME

So far as the children of the deceased are concerned the court decreed that, subject to the said provision for the widow the whole estate be held on the following trusts: (a) one-half thereof for Ezra absolutely; (b) as to the other half for Ezra for life, subject to Joan attaining absolute interest at 20 and if Ezra dies unmarried before Joan is 21, upon trust for Joan for life, with remainder to her children or remoter issue, as she shall appoint by deed or will and in default of appointment for such children or remoter issue equally, such issue to take *per stirpes*. As to the other moiety (c) upon trust for Joan for life, with the remainder to her children or remoter issue, as she shall appoint by deed or will, and default of such appointment, to her children equally or remoter issue *per stirpes*, and if Joan dies without leaving issue surviving, then upon trust for Ezra, also that after September 1, 1921, Ezra to be entitled to be advanced on account of his share up to £20,000 unless the trustees prove to the satisfaction of the Master in Equity that the management of the estate will be unduly hampered by advancing the sum asked for by him, in which event he shall be entitled to be advanced such lesser sum as the Master in Equity should certify can be advanced without unduly hampering the business.

In addition, the trustees to have power to advance Ezra up to one moiety of any share absolutely vested in him.

Other legal powers were conferred upon the trustees which of course concern only the strict administration of the estate, and are of no interest to the ordinary member of the community.

It will thus be seen that the provisions of what where it operates is regarded as

A MOST BENEFICIAL MEASURE

has been given in New South Wales, the latest British community to remodel its law concerning the disposition of an estate of a deceased person, a wide, just and liberal

interpretation which is in keeping with the spirit of the age. The real intention of legislation of this kind is of a manifold nature, and easily recognisable. It provides safeguards and gives assurances which up till a few years ago did not exist in New South Wales. Furthermore, it is a prevention against litigation of a costly and vexatious and often lengthy nature, too often exposing to ridicule the frailties and weaknesses of human nature. One effect of the nature of the un-prolonged and expeditious legal proceedings necessitated in securing the court's sanction to the trustees' proposal is that the estate of the late John Norton is now vested in his family, the natural successors to an estate which was founded by the energy and indefatigable efforts of a really remarkable man, whose monument is to be found in the people's newspaper, "Truth".

In applications such as those which were made it was necessary to disclose many details connected with the administration of the estate. That, however, "Truth" has prospered, that the memory of John Norton still survives the deceased publicist, is proved by the fact that the "Truth" business is of a character necessitating the application of sound and modern commercial methods, that the business is still growing, and that "Truth" is today what its proprietor intended, a powerful factor in the moulding of

A GREAT AUSTRALIAN NATION

The following bar was engaged in the proceedings:

Mr David Maughan KC and Mr JA Browne (instructed by Messrs Windeyer, Faul, Williams, and Osborne) appeared for the trustees. Mr Langer Owen KC and Mr FA Russell (instructed by Mr JD Sly) represented Joan Norton; while Mr Kelly (instructed by Messrs Shipway and Berne) represented Mrs Eva McClintock.

In the proceedings concerning the will of John Norton and the *TFM Act* Mr JA Browne (instructed by Messrs Windeyer, Faul, Williams and Osborne) appeared for the trustees of the estate of the late John Norton; Mr David Maughan KC and Mr Murray Prior (instructed by the same) for Ezra Norton; Mr Langer KC and Mr FA Russell (instructed by Mr JD Sly) for Joan Norton; and Mr Kelly (of Messrs Shipway and Berne for Mrs Eva McClintock.