

2481

NOT
RECOMMENDED

IN THE ESTATE of THOMAS CYRIL
BURKE

BETWEEN JOHN FRANCIS BURKE

First Plaintiff

A N D JOHN FRANCIS BURKE

Second Plaintiff

A N D JOHN FRANCIS BURKE

Defendant

Hearing: 7th November 1990

Counsel: N.R.W. Davidson for Plaintiffs and Defendant
A.C. Hughes-Johnson for Beneficiaries on
intestacy
W.G.G.A. Young for Residuary Beneficiaries

MINUTE OF WILLIAMSON J.

Mr Hughes Johnson, who represented the beneficiaries on intestacy at the hearing of these proceedings, advised me that he had reached the conclusion that an appeal was justified but that he had some doubts concerning his own position. He said that, if it were necessary, he would seek an extension of his appointment as Counsel in order to cover an appeal to the Court of Appeal. He frankly indicated that a number of those whom he was acting as Counsel for did not wish to proceed with any appeal although some did.

As Counsel for the beneficiaries named in the will, Mr Young indicated that he would wish to oppose any extension of the appointment of Counsel for the purposes of appeal on the

basis that since the persons entitled on an intestacy were sui juris and not unanimous in desiring an appeal, then those who wished to appeal should be joined specifically as parties with the possible liability for costs of any appeal. While he accepted that, in the overall context of the case, costs may be ordered to be paid by the estate, he submitted that this Court should neither encourage nor discourage any appeal from its judgment.

Since the indications by Counsel had been on an informal basis, I advised Counsel that at this stage I favoured the views expressed by Mr Young. I suggested that if Mr Hughes Johnson wished to pursue the matter then he should make a formal application which should be accompanied by detailed information by way of affidavit setting out the positions of the persons who would be entitled to the estate on an intestacy as to part or whole.

I drew Counsel's attention to an erroneous word appearing on page 7 of the judgment. At line 10 the word shown as "impressive" should be "imprecise". They said they had not been aware of this error but accepted that that was obviously the word intended.

A handwritten signature in black ink, appearing to be "J. V. Williams J.", written in a cursive style.