Stephanie Jagger v HM Attorney General

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith OBE, Jurats Christensen, Le Cornu
Judgment Date:	30 August 2022
Neutral Citation:	[2022] JRC 180
Court:	Royal Court

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Text

In the Matter of the Immovable Estate of Vera Jagger Née Waugh

Between
Stephanie Jagger
Representor
and
Her Majesty's Attorney General
Respondent

[2022] JRC 180

Before:

J. A. Clyde-Smith OBE., Commissioner and Jurats Christensen and Le Cornu.

ROYAL COURT

(Samedi)

Estate.

Authorities

Traité du Droit Coutumier de L'Ile de Jersey.

Ex Parte Blampied [1925] 27th June.

Loi (1851) sur les testaments d'immeubles.

Jackson (née Jackson) v Jackson (née Hurst) [1970] JJ 1285.

The Will of Immovable Estate of the late Yvonne Maria Howard [2022] JRC 145.

Pothier, Traité Des Successions, Chapitre III, Section IV.

The Jersey Law of Property.

Probate (Jersey) Law 1998.

Stamp Duties and Fees (Jersey) Law 1998.

Wills and Successions (Jersey) Law 1992.

Advocate G. D. Emmanuel **for the Representor**

Advocate J. P. Rondel **for the Attorney General**

THE COMMISSIONER:

1 The Representor, Andrea Stephanie Jagger (known as “Stephanie Jagger”), applies to the Court to accept her renunciation of the immovable property of her late mother, Vera Jagger née Waugh (“Vera Jagger”), who died on 3 rd February 2021. Vera Jagger's husband, Leonard Jagger, predeceased her.

2 Leonard and Vera Jagger had three children, namely Stephanie Jagger, Nigel Mark Jagger (“Nigel Jagger”) and Amanda Carolyn Jagger (“Amanda Jagger”). Amanda Jagger died on 4 th May 2012, leaving no children surviving her, thus Stephanie Jagger and Nigel Jagger are Vera Jagger's only surviving children.

3 Under the terms of Vera Jagger's last will of immovable estate dated 29 th July 1974 (“the Will”), she left all her immovable estate to Stephanie Jagger and Nigel Jagger in equal shares. Her immovable estate comprised two substantial properties, namely Noirmont Manor and Vau es Fontains, both at Bel Croute Bay, in the parish of St Brelade.

4 On 24 th February 2021, shortly after the death of Vera Jagger, Bedell Cristin, acting for Nigel Jagger, registered the Will before the Royal Court. The application was made in the names of both Nigel Jagger and Stephanie Jagger.

5 On 17 th February 2022, Advocate Zoe Blomfield, acting for and attorney of Stephanie Jagger, informed Ms Donna Withers, Head of Wills and Probate at Bedell Cristin, who acted both for Nigel Jagger and for the executors of the movable estate of Vera Jagger, that Stephanie Jagger wished to renounce her interest in the immovable estate left by Vera Jagger. Nigel Jagger agreed to accept her renunciation, and to compensate her partly out of his interest in the movable estate of Vera Jagger and partly out of trusts established by the late Leonard Jagger.

6 As Stephanie Jagger and Nigel Jagger are the only heirs under intestacy rules of the immovable estate of Vera Jagger, the effect of renunciation would be to make Nigel Jagger the sole heir of Vera Jagger in connection with her immovable estate. There are no other persons than Stephanie Jagger and Nigel Jagger who are interested in the Will.

7 The issue for the Court is whether Stephanie Jagger's inclusion in the application to register the Will, her staying on in Noirmont Manor after the death of her mother and the receipt of compensation from Nigel Jagger constituted an *acte d'héritier* precluding her from renouncing her interest under the Will. A further issue arose as to whether the renunciation would give rise to stamp duty payable on the value of the property being transferred.

Legal principles

8 There was agreement as to the legal principles to be applied in these circumstances, which we would summarise as follows. It is possible for a legatee to renounce a legacy. In his *Traité du Droit Coutumier de L'Ile de Jersey*, Le Gros writes:

> ***"Nul n'est légataire qui ne veut.*** Il est loisible à toute personne de renouncer au legs qui a été fait à son bénéfice" .

This is translated so as to mean:

> ***"No one is a legatee who does not want to be so.*** It is permissible for any person to renounce a legacy that has been made to his or her benefit."

9 In support of this statement, Le Gros cites *Ex Parte Blampied* [1925] 27th June. In that case Mrs Susanne Blampied, the wife of the deceased, was named as the universal legatee of the deceased's immovable estate. At the same time or shortly before the registration of the deceased's will, Mrs Blampied renounced her interest in the estate.

10 Article 14 of the *Loi (1851) sur les testaments d'immeubles* provides that any will of immovables, before being administered, shall be presented to the Court which shall order its registration. It is silent in relation to the regulation or restriction of a renunciation of an interest in immovable property. As such, it may be necessary from time to time for the Court

to exercise its inherent jurisdiction in order that a person is not made a legatee who does not want to be. However, the exercise of such a power is limited. In *Jackson (née Jackson) v Jackson (née Hurst)* [1970] JJ 1285, the Plaintiff instituted proceedings to set aside the will of immovable property. Amongst other things, the Court examined the status of records of the Court and the Public Registry and confirmed that they were ***"actes authentiques"***. In so doing the Court analysed ***"actes authentiques"*** in the context of the *Loi (1851) sur les testaments d'immeubles*:

> ***"From what we have already said it seems clear that Article 14 of the Law of 1851 was designed to make use of the existing machinery for giving title to land.*** The Act of the Court was introduced as the "acte authentique" or "écriture publique" to operate the transfer of title and to create it anew in the legatee. The question which immediately arises, however, must relate to the power of the Court to accept or to reject an application to register a will. The only tenable view, as we comprehend the matter, is that Article 14 of the Law of 1851 calls upon the Court to discharge a ministerial duty and, accordingly, the Court is bound to register any document which purports to be testamentary and which relates to real estate situated in the Island. Any other view would require the Court to pass judgment on persons unheard and on issues untried, which no Court can do."

11 The registration of the Will in this case was, therefore, an administrative act. The Court recently considered its ability to order a renunciation of an interest in a will of immovable estate in the case of *The Will of Immovable Estate of the late Yvonne Maria Howard* [2022] JRC 145. In that case, the testatrix left her immovable estate (Dunbar Cottage) in two equal parts to each of her two sons, Peter and Stephen Howard and their respective spouses leaving 50% to Peter and his wife Judith and 50% to Stephen and his wife Dawn. Dawn predeceased the testatrix, and accordingly, one 50% share in the property passed to Stephen alone. Peter and Judith had separated and Judith had left to live in England, leaving Peter living in the property. Peter and Stephen registered the will, and Judith was not a party to that application. She elected not to renounce any claims until the financial matters between her and Peter were resolved, with Peter stating "From the outset of … negotiations it was envisaged that [Judith] would give up any interest in Dunbar Cottage and we duly came to an agreement whereby she would renounce her interest in my mother's immovable (and movable) estate in exchange for a separate financial payment."

12 In *Howard*, the Court found that there were three issues to determine:

> (i) Had the Representor by her conduct accepted the legacy?
>
> (ii) If not, must she renounce the interest under the will within a certain period of the registration of the same?
>
> (iii) If she has, subject to the order of the Court, successfully disclaimed her interest under the will from when does that take effect?

13 In relation to issue (ii), the Court held that no prescription period is applicable. In so doing, the Court cited page 205 of *Pothier, Traité Des Successions, Chapitre III, Section IV "De la Répudiation des Successions"*:

> ***"On ne peut plus répudier une succession après qu'on l'a acceptée, mais il est toujours temps de la répudier, quelque long temps qui se soit écouté, tant que nous n'avons fait aucun acte d'héritier, ni pris la qualité d'héritier."***

14 This passage was translated in *Howard* to mean the following:

> ***"An estate can no longer be repudiated after it has been accepted but there is always time to repudiate it, no matter how long a time has elapsed, as long as we have not done any acts of an heir nor taken the status of heir"***

15 In relation to issue (iii), the Court held that the same principle applies to immovable estates as it does to movable, i.e. that a legatee who has renounced their interest shall be treated as having died before the deceased person for all purposes relating to the immovable estate of the deceased person. In support of this proposition, the Court stated:

> ***"…28. We were supported in this view by Le Gros who says:***
>
> ***"Conditionnelle elle implique nécessairement que l'héritier ne renoncera pas à la succession.*** S'il y renonce, alors la loi donne un effet rétroactive à sa renonciation .
>
> ***29. In translation, this provides [having considered the principle of le mort saisit le vif] … 'It necessarily implies that the heir will not renounce the succession. If he renounces it, then the law gives retroactive effect to his renunciation.'"***

16 In relation to issue (i) the Court said this at paragraph 13:

> ***"…. The person who accepts the interest under a will cannot thereafter disclaim it. Such an acceptance may occur in a variety of ways. For example, on the facts of this case, it would have occurred if Judith had occupied Dunbar Cottage after the death of the testatrix or had either alone or with Peter and Stephen borrowed against her/their interests, whether or not such borrowing led to the registration of a charge against the property, or indeed dealt with the interest in any way so as to prejudice the rights of third parties. All such circumstances would result in a loss of ability to renounce her interest under the will. Indeed, the Jurats were troubled by the fact that, in this case, Judith had benefited from this interest to her advantage, as she had relied upon the interest during negotiations in her divorce proceedings in order to secure a greater***

financial settlement than otherwise would have been the case. We were concerned that this may have amounted to Judith accepting the legacy, but ultimately we concluded that she had not accepted the same, even though she had benefited indirectly from her promise to renounce."

17 Advocate Emmanuel referred us to the following:

(i) *Pothier* referred to an *acte d'héritier* with reference to the spirit of the act, i.e. was it voluntary? He gave examples of such acts including taking possession of the property, selling it, giving it away and changing the nature of the property (Chapter III, page 147 *Traité des Successions*).

(ii) *Matthews and Nicolle* in their work *The Jersey Law of Property* at paragraph 8.59 state that in Jersey law: "an heir or legatee who accepts the succession/legacy or commits an "acte d'héritier" cannot thereafter repudiate". In the same paragraph, an ***"acte d'héritier"*** is defined as "an action which is only consistent with acceptance of the status of heir."

The evidence

18 There is no dispute as to the affidavit evidence before the Court. Stephanie Jagger is in her mid-seventies and suffers from anxiety. She has no children. She had lived in Noirmont Manor when she was younger and had recently returned there to look after her mother. Although she stayed in Noirmont Manor after her mother's death, she had no intention of staying there long term, nor of owning the property. She had not paid any bills in relation to the property nor receive any income from the property. The rates return and insurance on the property were dealt with by the executors.

19 Her reasons for renouncing were that the properties owned by her mother were large and needed a lot of maintenance. Noirmont Manor, in particular, needed a considerable amount of work to be brought up to standard, and she was not well enough to be able to look after either of these properties. She was pleased, however, that the properties would remain in the family, with the effect of renunciation being that ownership would pass to her brother, Nigel Jagger, and likely to his children. She was not involved in the registration of the Will and she did not give any instructions to Bedell Cristin for the Will to be registered, nor did she give her consent to be a party to the application. Including her in the application was done in error by Bedell Cristin as they have confirmed. She had been greatly distressed by the death of her mother and it took some time for her to be able to grieve and make a firm decision on how she would renounce and reach an agreement with her brother.

20 Ms Withers, of Bedell Cristin, confirmed that Stephanie Jagger was not a client of Bedell Cristin at the time the Will was registered and gave no instructions for the Will to be registered. She said the *demande* should only have cited Nigel Jagger as applying for the registration and the inclusion of Stephanie Jagger was an administrative oversight, for

which she apologised.

21 Nigel Jagger confirmed that he alone instructed Ms Withers of Bedell Cristin, who were his mother's lawyers and the executors, to register the Will in February 2021. He had not spoken to Stephanie Jagger or her attorney Advocate Blomfield about this and was aware that the Will could be registered upon his sole request without any input needed from Stephanie Jagger. His assumption when giving the instruction was that the Will would be registered at his sole request, and that she would be contacted if she wished to be a party. He was aware that Stephanie Jagger was grieving at this time. He was happy to accept her renunciation and that he would retain ownership and keep the properties in the family, as he believes his parents would have wanted. He would be making a payment to her to ensure parity in their inheritance from their parents.

Decision

22 We agree with Advocate Rondel that being party to the registration of the Will would, without more, constitute an *acte d'héritier* disabling Stephanie Jagger from renouncing, but in this case, there was an explanation, which we accept, that she had been included in the application without her knowledge or authority. That had been confirmed both by Ms Withers of Bedell Cristin and Nigel Jagger. Accordingly, Stephanie Jagger took no part in the application to register the Will; it was not a voluntary act on her part. We conclude, therefore, that on the facts of this case her being a party to the application to register the Will was not an *acte d'héritier*.

23 Stephanie Jagger had delayed for about a year before making arrangements with her brother for the renunciation. She had moved to Noirmont Manor in order to care for her mother (effectively as her guest) and had remained there after her mother's death before moving to her current address. The Court was sensitive to her need for time in which to grieve and to make arrangements as to how to renounce her interest. In the time that she had remained on at Noirmont Manor, she had not claimed to be the owner of the property on any forms for insurance or parish rates, had not received any income from the property, had not paid any bills in relation to the property, all of which had been paid by the executor of the movable estate (to be deducted, we understand, from Nigel Jagger's share in the movable estate). She had vacated Noirmont Manor and had never purported to take ownership of the property *de facto* or otherwise. During the period following the death of her mother, she could not, in the view of the Court, be regarded as being in possession of Noirmont Manor.

24 The Attorney General accepted, and we agree, that this delay and her staying on in Noirmont Manor for this period of time was not in the circumstances of this case an *acte d'héritier*. It should not be treated as being an implicit acceptance of the legacy on the part of Stephanie Jagger.

25 In the initial view of Advocate Rondel, the fact that compensation was to be paid by Nigel Jagger to Stephanie Jagger gave rise to an added layer of complexity. If the source of the payment was simply to be made from the movable estate of Vera Jagger and the purpose of renunciation was to act as a balancing exercise between the only heirs at law, then this should on balance he said be permitted. However, here the movable estate is not the sole source of funds in relation to the payment, and therefore the proposal is not simply to determine which legatee shall benefit from the immovable estate of Vera Jagger and which from the movable estate, depending on personal circumstances and choice, but rather the proposal also includes an external source of funds which shall be paid to Stephanie Jagger in exchange for her renunciation of her interest. He said the Court needed to better understand how the compensation was to be paid from the movable estate and from family trusts.

26 That information was provided to the Court by Nigel Jagger and without going into the detail of how those payments were to be made, he explained that the family wealth had all derived from his late father, Leonard Jagger, and he made the point that the arrangements between him and his sister resulted in fairness between them in the overall inheritance from both their parents.

27 In *Howard*, the Court concluded that for Judith to benefit indirectly through the financial settlement between her and Peter was not an *acte d'héritier* but the distinction between a direct and indirect benefit is a difficult one to make in the context of a renunciation. The evidence of Peter was that Judith had exchanged her renunciation for a separate financial payment, and that in substance is the position here; Stephanie Jagger is renouncing her interest in exchange for a financial payment by Nigel Jagger.

28 It is also difficult to see whether there is any valid distinction between an adjustment as between the interests of Nigel Jagger and Stephanie Jagger in the movable and immovable estates of their mother and one of them compensating the other from sources outside those estates. In the case of a movable estate the heirs are able to vary the dispositions made to them pursuant to Article 25 of the Probate (Jersey) Law 1998. There is no such flexibility in relation to wills of immovable estate, but in the experience of the Court, the ability of one heir to renounce under a will of immovable estate is very often accompanied by some kind of financial adjustment between the heirs outwith that estate.

29 If such adjustments are to be deemed capable of constituting an *acte d'héritier*, then full disclosure of any underlying arrangements between heirs will be necessary in all applications to renounce. The Court will then be faced with the difficulty of determining at what point some value passing to a renouncing heir crosses the threshold into an *acte d'héritier*.

30 In the end, and after discussion, Advocate Rondel agreed that value is not relevant. The Court is concerned only with the immovable estate. The question is whether the renouncing heir has voluntarily done anything in relation to that immovable estate that is indicative of

an acceptance of that estate. The fact that the renouncing heir, who has committed no such acts of acceptance, receives compensation from other heirs for renouncing is in our view irrelevant.

31 We therefore conclude that the receipt of compensation by Stephanie Jagger for renouncing her interest in her mother's immovable estate is not an *acte d'héritier*.

Stamp duty

32 Advocate Rondel agreed with the submissions of Advocate Emmanuel that the renunciation and compensatory payment do not give rise to stamp duty payable on the value of the property renounced.

33 Item 46(B) of Schedule 1 to the Stamp Duties and Fees (Jersey) Law 1998 provides that:

> ***"where the will devises all the immovable property of the testator to those persons to whom the property would have passed on an intestacy, and in the same shares, the only fee payable shall be specified in paragraph 2(a) …"***

Paragraph 2(a) specifies a registration fee of £90 ("the Registration Fee"). This is as opposed to Property Value Based Stamp Duty.

34 Item 46(B) is clear that those who are the heirs at law can take immovable property pursuant to the relevant will if the ownership share that they receive from the will matches their position at the heirs under intestacy.

35 In the Report of the Draft Law, the concession at item 46(B) of the 1998 Law (item 53 of the Draft Law) is explained as a proviso to deal with the situation created by the Wills and Successions (Jersey) Law 1992, where a parent, who wanted to leave their immovable property in equal shares to their children did not need to make a will. This left gaps in the chain of title to properties in the Public Registry and so the concession was added to encourage the registration of wills which will plug those gaps.

36 Stephanie Jagger having renounced her interest is treated as having died before her mother for all purposes relating to the immovable estate and accordingly the Will devises all the immovable property of Vera Jagger to those persons to whom the property would have passed on an intestacy, namely Nigel Jagger, who will be the sole devisee under the Will and the sole heir on intestacy. Accordingly, the only fee payable is the Registration Fee.

Conclusion

37 In the circumstances, the court accepts Stephanie Jagger's application to disclaim and renounce her interest in any and all immovable property to which she may be entitled under the Will and as an heir of her mother pursuant to intestacy rules and orders that the renunciation be recorded in the Public Registry. The Court further confirms that the Registration Fee paid when the Will was registered is the only stamp duty payable.