THE HIGH COURT

[2012 No. 210 SP]

IN THE MATTER OF THE SUCCESSION ACT 1965

AND

IN THE MATTER OF THE ESTATE OF THOMAS J. McLAUGHLIN (DECEASED)

AND

THE APPLICATION OF KATHLEEN GRADY McLAUGHLIN

PLAINTIFF

JUDGMENT of Ms. Justice Laffoy delivered on the 15th day of April, 2013

The Problem

1. Thomas John McLaughlin (the Deceased) died on 1st February, 2011, at Rhode Island in the United States of America. He was survived by his widow, Kathleen Grady McLaughlin (the Plaintiff), whom he had married on 13th March, 2009, in the USA. On the date of his death, he was the owner of one item of immovable property in this jurisdiction - an apartment in Kinsale, County Cork. The problem which the Court is being asked to address in these proceedings is how that one element of the estate of the Deceased is to be administered, having regard to the factual background which will be outlined later. No grant of probate or administration of the estate of the Deceased has been extracted in the USA because, as has been represented to this Court, the residence of the Deceased in the USA was owned jointly with the Plaintiff and passed to the Plaintiff by right of survivorship.

2. These proceedings have had a chequered procedural history which I consider it is appropriate to outline in some detail.

The History of the Proceedings

3. The proceedings were commenced by special summons which issued on 4th March, 2012. The special summons is brought "on the application of" the Plaintiff and no defendant or respondent is named. It is interesting to note that on the face of the special summons it is stated that the Plaintiff resides at Kinsale, County Cork.

4. The relevant facts as outlined on the special endorsement of claim on the special summons are as follows:

> (a) The Deceased made his last will and testament on 18th January, 2006. In the interests of brevity, I will refer to this document as 'the Will'. The Deceased appointed the Plaintiff and his daughter, Janice Stinchfield, as his executrices.
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> (b) The Deceased married the Plaintiff on 13th March, 2009. He died on 2nd January, 2011, "whilst married to the Plaintiff without having altered or cancelled [the] Will".
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> (c) The Will "by its terms refers to another document being a Declaration of Trust made by *inter alia (sic)* the Deceased which said document, by its terms, describes the Plaintiff as his 'Spouse' (which in relation to the original form of the document is not correct) and 'was amended and/or substituted by the Deceased subsequent to the making of the . . . Will'".
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> (d) Subsequent to the death of the Deceased, it has appeared that the Will was lost and misplaced and cannot be found, despite exhaustive searches and there now exists only a certified copy of the duly executed Will.

5. Arising out of the asserted facts recorded at (c) in para. 4 above, it is pleaded in the special summons "there exists some grounds for contending that the . . . Will was not revoked by the Deceased's subsequent marriage to the Plaintiff".

6. Arising out of the facts pleaded at (d) in para. 4 above, it is pleaded that "there exists some grounds for contending that the . . . Will is capable of being duly proved". It is further stated that up to the date of the special summons "there has existed no contention between the Plaintiff and any other parties whomsoever in relation to the Deceased's estate or the administration thereof, whether in the United States of America or in Ireland".

7. Arising out of the foregoing statements of fact and pleas, the Plaintiff seeks the direction of the court "essentially" as to the following two issues:

> (a) Whether the Deceased's subsequent marriage had the effect of revoking the Will; and, if not,
>
> (b) Then whether the duly certified copy of the executed Will may be admitted to Probate.

8. At the commencement of the special endorsement of claim, the Plaintiff claimed a number of alternative reliefs, the first of which was an order declaring and determining whether a duly certified copy of the Will might properly be admitted to probate, the original having been lost irretrievably. The second relief claimed was an order "construing, declaring and/or determining the effect of the . . . Will, and in particular, whether it was revoked by the . . . Deceased's subsequent marriage". Various other reliefs, some of which, for example, an order proving the Will in solemn form, could not be pursued by way of special summons.

9. The Schedule in the special summons identified the only affidavit intended to be used by the Plaintiff as an affidavit sworn by her.

10. When the special summons came before this Court, there was considerable confusion as to the affidavits filed in the Central Office to ground the special summons. As I understand the position, the following affidavits were filed on 4th March, 2012, namely:

> (a) An affidavit sworn by the Plaintiff on 20th January, 2012; and
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> (b) An affidavit sworn by Joseph M. Klements, an attorney, practising in Massachusetts on 20th January, 2012.

Those affidavits were not on the file in the Central Office when the matter came before this Court. Through the intervention of the Court, I understand that they have now been re-filed.

11. The only affidavit on the Central Office file when the matter came before this Court was an affidavit of Gerard M. DeCelles, an attorney practising in the State of Rhode Island, which was sworn on 6th November, 2012.

12. The Court was informed that when the special summons was returned before the Master, he suggested that the proper course was for the Plaintiff to bring an application in the Probate list on the basis that the matter is a non-contentious probate matter. This was done. When the matter eventually came to this Court, the Court was furnished with copies of the following documents:

> (a) A notice of motion dated 8th June, 2012, returnable in the Probate list on 9th July, 2012 (which I understand bore Record No. 4908 in that list), seeking to have the Will admitted to proof in the terms of the copy;
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> (b) An affidavit sworn by the Plaintiff of 30th May, 2012, and the exhibits referred to in it;
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> (c) An affidavit sworn by Mr. Klements on 30th May, 2012, and the exhibit referred to in it;
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> (d) An affidavit sworn by Leon C. Boghossian III, an attorney in the State of Rhode Island, who was a witness to the Will, which was sworn on 7th June, 2012, and the exhibit referred to in it; and
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> (e) A further affidavit sworn by the Plaintiff on 19th July, 2012, although it is not clear whether that affidavit was ever filed in the Probate office.

13. As I understand the position, the Court (O'Neill J.) declined to grant the relief sought on the Probate motion and adjourned the proceedings generally with liberty to re-enter, on the basis that the special summons proceedings would be prosecuted. The only comment I would make in relation to the evidence in support of the Probate motion is that there was no reference anywhere in the papers to the Declaration of Trust, which is a feature of the proceedings on the special summons.

14. I propose now outlining the factual matters as established by the affidavits grounding the special summons proceedings.

Affidavit of the Plaintiff

15. In her affidavit sworn on 20th January, 2012, the Plaintiff exhibited a copy of the Will. In the Will, the Deceased referred to the Plaintiff as "my beloved friend". He also referred to the Declaration of Trust (the 2006 Declaration of Trust) which was executed on the same day, but prior to the execution of the Will. Having dealt with tangible personal property and joint property, he dealt with the residue of his estate, which he devised to the trustees of the 2006 Declaration of Trust "to be held, administered and distributed upon the same trusts and with the same powers, discretions, exemptions, duties and obligations as are set forth in the 2006 Declaration of Trust . . ." Earlier, in defining the "2006 Declaration of Trust", he had referred to the Declaration of Trust executed prior to the Will "as the same may be from time to time amended".

16. The Plaintiff also exhibited a contract which the deceased and the Plaintiff entered into prior to the deceased making the Will, the effect of which was that the deceased and the Plaintiff had contracted to make mutual wills. She averred that they had performed their obligations under the contract, without elaborating further.

17. The Plaintiff also exhibited a copy of the 2006 Declaration of Trust, to which the Deceased was the sole party, which was executed by the deceased on 18th January, 2006, and was witnessed by Mr. Boghossian. In that document, the Deceased again referred to the Plaintiff as "my beloved friend", not as his "spouse" as is recited in the endorsement on the special summons. Included in the exhibit is an 18-page document headed 'Thomas J. McLaughlin Marital Trust', which was obviously prepared by Mr. Klements' firm. Although the Court's attention was not drawn to this, I note that the "real property in Kinsale, Ireland" is mentioned a number of times in this document. The definitions article of this document includes a statement that the reference in the instrument to "Spouse" means the Plaintiff, and, presumably, this is what gave rise to the reference in the special summons recorded at para. 4(c) above, which I consider is not correct. The execution of this document after the marriage of the Deceased and the Plaintiff was witnessed by a Notary Public on 28th May, 2009.

18. The Plaintiff also exhibited two other documents for "completeness' sake": a 'Durable Power of Attorney' and a 'Durable Power of Attorney for Healthcare' which were executed by the Deceased on 18th January, 2006, and witnessed by Mr. Boghossian, in each of which the Plaintiff was appointed as attorney, in the case of the first document, jointly with Mrs. Stinchfield.

19. In support of the statement in the special endorsement of claim that no contention existed between the Plaintiff and other parties in relation to the estate of the Deceased, the Plaintiff exhibited letters from her Irish solicitors to each of the three children of the Deceased, including Mrs. Stinchfield, and enclosing a form of consent to be executed by each, and the form of consent duly executed. In the letter, it was stated that the Plaintiff wished the Deceased's wishes to be honoured and the Will to be admitted to Probate. As regards the property in Kinsale, it was stated that under the Will, that property passes to a Trust and the Plaintiff "gets a life interest and a 40% share in same". In each of the consents, the signatory consented to and supported the application of the Plaintiff "to admit to Irish Probate a true copy of the [Will] . . ." Neither the letter from the Plaintiff's solicitors nor the form of consent took account of the fact that if, under Irish law, the Deceased was found to have died intestate, the Plaintiff would become entitled to two undivided third shares of the property in Kinsale and the three children of the Deceased would become entitled to the remaining one undivided third share equally between them. However, in the affidavit, the Plaintiff averred that she is "more than happy with the 40%" share of the property at Kinsale, which she will receive under the Deceased's Will and that she certainly does not want "a 66.66% share".

20. The affidavit of the Plaintiff also deals with the absence of the original Will, but, notwithstanding that it is addressed in the special summons, I consider that this Court is not concerned with that aspect of the matter; it is a matter for the Probate motion.

21. Although the Deceased is described in the Will as being "late of Warwick, Rhode Island, USA", there is no evidence in the Plaintiff's affidavit or otherwise to show that the Deceased was domiciled, or habitually resident, in Rhode Island, or his nationality, either at the date of the Will, the date of his marriage to the Plaintiff, or the date of his death.

Affidavit of Mr. Klements

22. Mr. Klements has averred that he was instructed by the Deceased prior to his marriage to the plaintiff in or about February 2009 and he advised on and prepared an extensive amendment to the 2006 Declaration of Trust which had previously been made with another law firm, that is to say, Mr. Boghossian's law firm. Mr. Klements has averred as follows:

(a) The Deceased represented to him that the Will was made in contemplation of eventual marriage and its intent was to afford the Plaintiff, a lifelong companion, treatment similar to that of a spouse.

(b) In further contemplation of eventual marriage, the Deceased asked him to amend the 2006 Declaration of Trust, to afford the Deceased, the Plaintiff and the Deceased's heirs favourable treatment that is afforded to married couples under American estate tax laws.

(c) The Deceased asked him to incorporate no significant changes to the disposition provided for in the Will and the 2006 Declaration of Trust, other than the tax provisions, as he was generally satisfied with property disposition contained in those documents and wished to reaffirm them.

(d) When the Deceased "executed the Trust on May 26th, 2009", after his marriage, he reaffirmed his intent that his Will would serve to fund the Trust.

Mr. Klements then went on to explain how the "relevant trust's division and funding provisions are intended to take advantage of US tax laws" and the division of the property into two sub-trusts, known as the Marital Trust and the Family Trust.

23. Mr. Klements also set out the steps he had taken to trace the original of the Will.

Affidavit of Mr. DeCelles
24. The purpose of the affidavit sworn by Mr. DeCelles, who is an Attorney-at-Law practising in the State of Rhode Island and Providence Plantations, USA, was to outline the law of the State of Rhode Island in relation to the impact of a subsequent marriage on a will. Mr. DeCelles has quoted the relevant legislative provision governing the issue of the effect of a testator's subsequent marriage on his prior will (R.I.G.L. (1956) § 33-5-9), which is headed "Revocation of Wills by Marriage" and is as follows:

> "The marriage of a person shall act as a revocation of a will made by him or her previous to the marriage, unless it appears from the will that it was made in contemplation thereof; but if the will exercises a power of appointment and the real and personal property thereby appointed would not, in default of appointment, pass to the persons who would have been entitled to it had it been the property and the estate of the testator or testatrix making the appointment and had he or she died intestate, so much of the will as makes the appointment shall not be revoked by the marriage."

25. Mr. DeCelles has cited three judgments on the interpretation of that provision. The first, a decision of the Rhode Island Supreme Court, which was delivered in 1971, has been overruled by a subsequent decision of the Supreme Court in 1990: *D'Ambra v. Cole* 572 A.2d 268, 270 (R.I. 1990). In that case, the Supreme Court overruled the "express statement" rule laid down in the earlier case, in which it had been held that "entry into a subsequent marriage revokes that will by operation of law absent an express statement within the will that it was executed in contemplation of that particular marriage". Instead, the Supreme Court held:

> "It [the Statute] was not intended in its interpretation to automatically defeat any well defined intent on the part of the testator."

The Supreme Court went on to conclude that the Statute –

> ". . . creates a statutory presumption of revocation of a will by a subsequent marriage of the testator. The presumption can be rebutted by clear and convincing evidence that the will was made in contemplation of the subsequent marriage."

26. Mr. DeCelles has averred that the decision in the *D'Ambra* case has been consistently followed by the State Courts of Rhode Island since it was handed down over twenty years ago and gave as an example a decision of the Superior Court in *O'Malley v. Estate of Dolan* C.A. KP 94 – 709 (1995 R.I. Super. LEXIS 104) in which it was stated:

> "Indeed, the main thrust behind the Court's interpretation of § 33-5-9 in *D'Ambra* is unabashedly clear; to protect the sanctity of the testator's intent when creating a will and to look to surrounding circumstances to determine whether those circumstances indicate that the testator made the will in contemplation of marriage".

27. Mr. DeCelles has exhibited the three judgments which he has cited and he has set out his professional opinion as follows:-

> "I say and believe and it is my professional opinion that the interpretation of a Rhode Island will, made prior to the subsequent marriage of the relevant testator, is fact intensive, that is, it depends wholly on the deemed intention of said testator, and it is not dependent on the presence of any particular language or form of words in the body of the will. All turns on a common-sense reading of the language thereof, and any relevant surrounding circumstances."

28. Mr. DeCelles has set out the legal position *in vacuo* and has made no attempt to apply it to the factual circumstances averred to by either the Plaintiff or Mr. Klements or the documents exhibited in their affidavits.

The Issues
29. The issue which the Court is required to determine in these proceedings, as distinct from the issue on the Probate motion, must be whether the Deceased died testate and whether the Will was his last will and testament in the circumstances outlined in the special summons and proved. The core element of that issue, on the facts, is whether the Will was revoked by the marriage of the Deceased and the Plaintiff subsequent to the execution of the Will. For the present purposes, I am assuming that the Plaintiff is entitled to seek a determination of that core issue utilising the special summons procedure provided for in the Rules of the Superior Courts 1986.

30. Because of the foreign element involved, as regards the core element of the issue, a preliminary question arises for determination by the Court. That is whether, having regard to the fact that the issue concerns the disposition of immovable property in this jurisdiction, the law of Rhode Island, the law of Ireland or some other law governed whether there was a revocation of the Will by the subsequent marriage. On that point, counsel for the Plaintiff referred the Court to the decision of the High Court of England and Wales *In Estate of Fuld (No. 3)* [1965] All E.R. 776; [1968] P. 675. I have considered the judgment of Scarman J. in that case, and while it is unquestionably persuasive on the issues it addressed, I have not found it to be of particular assistance in addressing the preliminary question here. The effect of that decision is summarised in the following passage (at para. 22 – 20) from Keating on *Probate* (3rd Ed. 2007):

> "Where a foreign will containing foreign elements is brought before the court, any element of a substantive nature would

be determined by reference to the relevant foreign law, and any element of a procedural or evidential character will be determined by the *lex fori*. For instance, any question relating to the testamentary capacity of a testator would be deemed to be a substantive issue, while any question involving the onus of proof or the knowledge and approval by a testator of the contents of his will would be deemed to be a procedural or evidential issue."

31. Counsel for the Plaintiff submitted, without reference to any other authority, that whether the Will was revoked by the subsequent marriage of the Deceased and the Plaintiff falls to be determined in accordance with the law of Rhode Island, and it was for that reason that the affidavit of Mr. DeCelles on the relevant law was put before the Court. In endeavouring to identify the relevant legal principles, I consider it appropriate to take a more expansive approach than merely addressing the preliminary question, because of the other issues which the totality of the proceedings in relation to the Will has raised.

The Law

32. Counsel for the Plaintiff did not refer to the provisions of Part VIII of the Succession Act 1965 (the Act of 1965) which is headed "Conflict of Laws relating to Testamentary Dispositions" and gave effect to the Hague Convention on that topic. Those provisions replaced the provisions of the Wills Act 1861 (Lord Kingsdown's Act), which was repealed. I mention that because in the *Fuld* case, Scarman J. pointed out (at p. 780) that Lord Kingsdown's Act did apply in that case, because the testator there had died before the 1st January, 1963, when a change in the law was introduced in England and Wales.

33. In any event, in Part VIII of the Act of 1965, the expression "testamentary dispositions" is defined as meaning any will or other testamentary instrument or act. Subsection (1) of s. 102 provides:-

> "A testamentary disposition shall be valid as regards form if its form complies with the internal law –
>
> (a) of the place where the testator made it, or
>
> (b) of a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
>
> (c) of a place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
>
> (d) of the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
>
> (e) so far as immovables are concerned, of the place where they are situated."

As is pointed out in Spierin on *The Succession Act and Related Legislation A Commentary* (3rd Ed.), s. 102 governs formal validity only, and has nothing to say on "essential validity", which relates to whether a testamentary disposition while validly executed may be invalid due to lack of capacity or undue influence. While I have quoted that provision, I am satisfied that it is not of relevance in relation to the preliminary question.

34. Subsection (2) of s. 102 provides as follows:-

> "Without prejudice to subsection (1), a testamentary disposition revoking an earlier testamentary disposition shall also be valid as regards form if it complies with any one of the laws according to the terms of which, under that subsection, the testamentary disposition that has been revoked was valid."

Again, while I have quoted that provision, on its face it is not of relevance, because the Court is not concerned with whether the Will was validly revoked by a subsequent testamentary disposition. Apropos of subs. (2) of s. 102, it is stated in Keating (*op. cit*.) at para. 4 – 21 that the effect of subs. (2) is that, if a will is executed in accordance with any of the ways set out in subs. (1), and that will is later revoked in accordance with the law governing the formal validity of the will, the revocation will be valid, adding that it appears that the law governing the formal validity of a will also governs its revocation. However, the subsection specifically applies to revocation by a later "testamentary disposition".

35. Counsel for the plaintiff did not refer either to s. 85(1) of the Act of 1965 which provides:-

> "A will shall be revoked by the subsequent marriage of the testator, except a will made in contemplation of that marriage, whether so expressed in the will or not."

Spierin states (at p. 248) that the general rule laid down in subs. (1) is that a will is automatically revoked by the subsequent marriage of the testator and goes on to state:-

> "There is but one exception to the general rule: a will made in contemplation of *a particular* marriage is not revoked by that marriage. There is no need for the will to state that it is made in contemplation of the particular marriage, so that extrinsic evidence must be admissible to establish whether the terms of the exception are met (*e.g*. evidence of a solicitor/financial adviser – it would be important that a careful contemporaneous attendance note be taken)."

36. While counsel for the Plaintiff has not relied on s. 85, I have alluded to it for the purpose of observing on its application in conjunction with the application of the parallel provision of the law of Rhode Island, which is quoted at para.24 above. It does seem to me that whether a will executed in this jurisdiction or in Rhode Island complies with the statutory requirement to avoid revocation in the event of a subsequent marriage of the testator in both jurisdictions involves ascertaining the testator's intention as to a particular marriage when he made the will, by resorting to extrinsic evidence if necessary.

37. The Court has not been referred by counsel to any authority in this jurisdiction which resolves the preliminary question whether the issue as to the revocation of a will by a subsequent marriage is for determination in accordance with the law of the testator's domicile, as distinct from the *lex situs*, where the will disposes of immovable property in this jurisdiction. In general, the Court has not had adequate submissions on the difficult issue which the Court has identified for determination.

38. On the basis of my own research, the most up to date statement of the law which I have found is in Volume 2 of Dicey, Morris and Collins on *The Conflicts of Laws* (14th Ed., 2006) at p. 1263 where Rule 150 is set out as follows:

> "Subject to the Exception hereinafter mentioned, the question whether a will has been revoked depends on the law of the testator's domicile at the date of the alleged act of revocation."

The "Exception" is not of relevance to the issue the Court is concerned with. However, the editors make the following observations in relation to Rule 150 in a footnote on the same page (fn. 80) in which they state:

> "This Rule applies to the revocation of wills of movables and immovables. However, except in the case of revocation by subsequent marriage (discussed below), there is no authority regarding immovables and it is possible that the *lex situs* may apply in the case of revocation by burning, tearing or destroying the will."

As regards revocation by subsequent marriage, the editors state (at p. 1265) that the same rule applies to movable and immovables, because of the decision in *Re Martin* [1900] P. 211. In that case, the Court of Appeal held that revocation of a will by subsequent marriage is to be characterised as a question of the matrimonial, rather than testamentary, law. Whether that characterisation applied in this jurisdiction post-1922 and, if it did, its impact having regard to the changes in the law since 1922 is uncharted territory.

39. The lack of clarity in relation to the relevant principles in this jurisdiction is highlighted by the following passage from Binchy's *Irish Conflicts of Law* (1988) (at p. 448):

> "Under Irish law a will is revoked by the subsequent marriage of the testator, except where the will is made in contemplation of that marriage. This is not the position in some other jurisdictions. The divergence of approach can give rise to difficulties, as, for example, where, in the case of a will disposing of immoveable property, the testator's *lex domicilii* at the time of the marriage differs from the *lex situs* of the property at the time of his death.
>
> A question of characterisation arises: are we dealing with a rule of testamentary, or of matrimonial, law? The commentators generally favour the latter view, which has the support of some judicial authority. Thus, the *lex domicilii* at the time of marriage would be determinative. But there is much to be said for the opposite view that the rule relates more to testamentary law."

40. In view of the fact that the applicable legal principles have not been adequately explored in the course of the proceedings before this Court, the approach I propose adopting is to address the position advanced on behalf of the Plaintiff, namely, that the issue as to revocation is governed by the law of the domicile of the testator, which it is asserted was the State of Rhode Island, at the relevant time, which has not been identified but which I assume to be the date of the subsequent marriage. I also propose addressing the application of s. 85 of the Act of 1965, lest the *lex situs* applies.

Conclusions

41. If counsel for the Plaintiff is correct that whether the Will was revoked by the marriage of the Deceased to the Plaintiff is to be determined in accordance with the law of Rhode Island, because that is where the Deceased was at the relevant time domiciled, the first problem one encounters is that there is no evidence before the court that the Deceased was, in fact, domiciled in Rhode Island either at the date of the Will, the date of his marriage to the Plaintiff, or the date of his death. Even if that problem could be overcome, and I think it is probable that it could by the Plaintiff filing a further affidavit or affidavits addressing the domicile of the testator, there remains the problem of applying the provision of the law of Rhode Island quoted at para.24 above to the Will in the context of the evidence of the circumstances in which the Deceased made the Will, including the evidence of Mr. Klements referred to at (a) in para. 22 above, which is merely hearsay evidence and, more importantly, in the context of the words of the Will itself and of the 2006 Declaration of Trust which preceded it, but was made on the same day, and the other documents executed on the same day. I think it is impossible to infer from the evidence, including the contents of those documents, that the Will was made in contemplation of the marriage of the Deceased to the Plaintiff. There is no clear and convincing evidence that the Will was made by the Deceased in contemplation of marriage to the Plaintiff, which took place more than three years after the Will was executed, such as would rebut the statutory presumption which exists in Rhode Island law. In particular, given the complexity of the dispositive and administrative provision made by the Deceased in the five documents executed by him on 18th January, 2006, with the benefit of legal advice, it does not seem reasonable to infer that the Will was made in contemplation of his marriage to the Plaintiff, when at the time the Deceased described the Plaintiff as his "beloved friend", without giving any hint in the language used that he was contemplating marrying the Plaintiff.

42. On the basis of the same reasoning, if the *lex situs* applies to the question as to whether the Will, insofar as it purported to dispose of immovable property in this jurisdiction, is governed by s. 85 of the Act of 1965, it is impossible to conclude that the Will was made in the contemplation of the marriage of the Deceased to the Plaintiff.

43. Having regard to the manner in which the matter came before the Court, the state of the evidence, the fact that there was no *legitimus contradictor* before this Court, and the fact that the legal principles applicable to the very difficult legal issue raised before this Court are by no means clear, I consider that it would not be appropriate to give a definitive determination as to whether the Deceased's subsequent marriage had the effect of revoking the Will. Accordingly, the finding I consider it appropriate to make is that the Plaintiff has not established that the Will, as regards the immovable property in this jurisdiction, was not revoked by the subsequent marriage of the Deceased and the Plaintiff. While appreciating that such a finding does not pave the way for an application by the Plaintiff for a grant of letters of administration intestate in this jurisdiction, so that the problem identified at the outset remains, the approach adopted has been influenced by the fact that what the children of the Deceased supported and consented to on these special summons proceedings was that the Will be admitted to probate in this jurisdiction, not a finding which would, in effect, mean that the premises in Kinsale would pass on intestacy, which outcome would be disadvantageous to the Deceased's children.