The question in the application before this court concerns the worshippers at one of several mosques which minister to the spiritual needs of the Muslims, who are a small minority in this town.

5 The matter, in one word, is purely parochial. Even if there had been affidavits in support of this motion, which, as I have said, there were not, it is difficult to see how it could be brought within r.2 (*b*) of the Order in Council. For this reason the application must be dismissed with costs.

10 **McDONNELL, Ag. C.J.** and **PRIOR, Ag. J.** concurred.

Application dismissed.

15

IN THE ESTATE OF LE FEVRE, R. LE FEVRE v. WILLIAMS and T.F. LE FEVRE

Supreme Court (Butler-Lloyd, Ag. C.J.): January 9th, 1925

20 [1] **Land Law — life interests — right to reside — bequest to widow of right to reside in particular house for life or until remarriage not equivalent to life interest:** When a will confers upon a beneficiary the right to reside in a particular house he does not become entitled to the equivalent of a life estate in the property and may not let it while residing elsewhere; as long as he remains in residence, however, he is entitled to unrestricted use of 25 the property and may sub-let part of it and receive the rents (page 118, lines 5—29).

[2] **Land Law — occupational rights — right to reside in particular house for life or until remarriage not equivalent to life interest:** See [1] above.

30 [3] **Succession — wills — construction — bequest to widow of right to reside in particular house for life or until remarriage not equivalent to life interest — beneficiary has unrestricted use of premises and may sub-let part, only while in residence:** See [1] above.

The plaintiff, a beneficiary under her deceased husband's will, 35 took out an originating summons against the defendants as executors and trustees of the will, to determine the effect of a certain clause in it.

The clause in question stated that the trustees should permit the plaintiff to reside in the deceased's house during her life or 40 for as long as she remained his widow.

The plaintiff wished to let the house and brought the present proceedings to determine whether she had the right to do so. She contended that the right to reside conferred by the will was equivalent to a life interest in the property and that she could therefore let it without interference from the defendants, whether or not she continued to live there.

In reply the defendants contended that the plaintiff had no right to let any part of the premises or receive rents, and that although she had a right to reside in the house, they were entitled to restrict her to the use of only part of it.

The court held that so long as the plaintiff remained in residence she should have unrestricted use of the house and might sub-let any part that was not required for her own use.

Cases referred to:

(1) *In re Anderson*, [1920] 1 Ch. 175; [1918—19] All E.R. Rep. 975.

(2) *May v. May* (1881), 44 L.T. 412, applied.

BUTLER-LLOYD, Ag. C.J.:

This matter comes before the court on an originating summons taken out by Mrs. Rosamund Le Fevre widow of Augustus Emmanuel Le Fevre, who died on June 23rd, 1917, against Julia Henrietta Williams and Theodore Francis Le Fevre, the executors and trustees of her late husband's will, to determine the effect of a clause in the will which reads as follows:

> "It is my wish and I hereby declare that my trustees as well as my said son shall permit my wife Rosamund Le Fevre to reside in my dwelling house at Sackville Street in Freetown aforesaid for and during the term of her natural life or for as long as she remains my widow."

The questions I am specifically asked to decide are:

(i) Whether according to the true construction of the said devise the plaintiff (the widow of the testator) alone is entitled to the whole of the said dwelling house and alone to enjoy the rents and profits thereof during the term of her natural life or for as long as she remains the widow of the testator.

(ii) Whether the said executors and trustees and the son Victor Emmanuel Augustus Le Fevre or any of them are or is entitled during the term of the plaintiff's natural life or widowhood to the said dwelling house beneficially or only upon trust, and if upon trust, upon trust for whom?

On behalf of the plaintiff it was argued that the devise made her a tenant for life and it is quite possible that had the Settled Land Acts been in force here this would have been the case, but as they are not, the law which was in force prior to those Acts must alone be looked to. The present case seems to me exactly similar to *May* v. *May* (2) where it was decided that a right to reside was not equivalent to a life estate and did not include a right to let the premises in question while residing elsewhere. The judgment in this case was quoted with approval in the case of *In re Anderson* (1) and I have no difficulty in deciding that a bare permission to reside does not give the plaintiff in this case a life estate in the dwelling house in question.

On the other hand her right to reside on the premises is clear and I cannot agree with defendants' contention that she must restrict herself to any particular portion of the dwelling house. In my view as long as she is actually in residence there the trustees' interest is in abeyance and they cannot interfere should she decide to sub-let a portion of the premises. I know of no English decision on the question of the sub-division of a dwelling house but it seems to me that to accept this contention of the defendants would make the position of the person who has a right to reside an almost impossible one as he would have no control over the persons to whom the rest of the property were let.

The questions set above must therefore be answered as follows:

(i) So long as she remains the testator's widow the plaintiff is entitled to reside in the dwelling house in Sackville Street referred to in the testator's will and, should she so desire while actually residing there herself, to sub-let any portion of the house she does not require for her own use.

(ii) Neither the executor nor the son are beneficially entitled to the dwelling house during the widowhood of Mrs. Le Fevre and so long as she continues to reside therein. Until her death, re-marriage or ceasing to reside there the executors hold the house upon trust to permit her to so reside and after such event will hold it upon trust for the son Victor Ernest Emmanuel Le Fevre.

The only remaining question is how the costs of this summons are to be borne; it seems to me that as the plaintiff has in the main succeeded in the contention she set up, and as the executors have, on their own admission, received rents to which in accordance with the views expressed above they were not entitled, the costs

should be borne by the estate of the deceased.

Judgment for the plaintiff.

JOHNSON v. THOMAS and OTHERS
JOHNSON v. CROWN and OTHERS

Supreme Court (Butler-Lloyd, Ag. C.J.): February 17th, 1925

[1] **Land Law — joint tenancy — creation — devise to A and her lawful children, their heirs and assigns forever — if A had child or children at date of will, A and children take absolutely in joint tenancy unless contrary intention indicated in will:** When a testator devises property "to *A* and her lawful children, their heirs and assigns forever," the general rule is that if *A* had a child or children at the date of the will, the words "and her lawful children" will *prima facie* be taken as words of purchase and *A* and her child or children will take absolutely in joint tenancy, but this rule may be disregarded when it would defeat the testator's intention as collected from the rest of the will: (page 121, lines 9—11; lines 27—39).

[2] **Succession — wills — construction — devise to A and her lawful children, their heirs and assigns forever — if A had child or children at date of will, A and children take absolutely in joint tenancy unless contrary intention indicated in will:** See [1] above.

[3] **Succession — wills — construction — devise to "all the children of A" means prima facie children in existence at testator's death — children born later included only if gift not to take effect in possession at death:** A devise or bequest to "all the children of *A*" means *prima facie* the children in existence at the testator's death and it is only when the gift to children is not to take effect in possession at the death that it can open to let in children born after the death and before the possession (page 122, lines 13—15; page 122, line 28—page 123, line 8).

The plaintiff brought two actions against the defendants claiming the partition and sale of certain properties devised under separate clauses of her grandfather's will.

The defendants in the action *Johnson* v. *Thomas* were the plaintiff's mother, Mrs. Thomas, with her other children who were alive at the date of the testator's death, and in the action *Johnson* v. *Crown* the defendants were the same with the exception of Mrs. Thomas. The two cases were argued together.

The defendant Mrs. Thomas was a daughter of the testator and already had children at the date when he made his will. Under cl. 8 of the will property consisting of a house and land was devised to