is some reason why I should interpose the words "each of"—no proper reason has been adduced for my doing so and I can see none myself—these words can in my view in their particular context mean only one thing and that is "after they have all died." In other clauses the testator has been careful enough to mention some of his grandchildren by their respective names, and I hold that the implication of the words "after them," taken in conjunction with the words "to them" to which I have already referred, is that the testator intended that the premises at Liverpool Street should go to the widow and the three children named as their joint property, holding as joint tenants, and after them, or in other words after the death of the last survivor amongst them, to any then surviving legitimate children borne of the three children named.

As I look at the will as a whole, I think it is clear that the words "for ever" are and were intended to be purely words of limitation, and I so hold.

The last of the testator's children to die was Sarah Augusta Florence May who died in 1949, and as at her death the only surviving legitimate grandchildren concerned were Clarisa and Claude Joseph May it follows that the answer as to whether the defendant or the girl Tungi May are entitled to share in the premises mentioned in the disputed clause must be in the negative.

Order accordingly.

IN RE O'REILLY (DECEASED), WILLIAMS *v.* McCORMACK

SUPREME COURT (Kingsley, J.): September 8th, 1950
(Civil Case No. 260/50)

[1] **Succession—executors and administrators—number of executors—grant of probate limited to four executors in respect of same property—any other executors can take up powers only when vacancies occur:** Since O.LII, r.3 of the Supreme Court Rules, 1947 provides that where the Rules are silent on a particular matter, English procedure, practice and forms in force on January 1st, 1946 shall apply in Sierra Leone, the absence of a provision in the Rules with regard to the number of executors to whom probate can be granted means that the number prescribed in s.160 of the Supreme Court of Judicature (Consolidation) Act, 1925 is applicable; and therefore the number of executors to whom probate can be granted is limited to four persons in respect of the same property, any remaining executors that have been appointed being able to take up their powers only as vacancies occur among those acting under the grant (page 61, lines 4–16).

[2] **Succession—executors and administrators—number of executors—grant of probate limited to four executors in respect of same property—"property" includes whole of testator's estate:** While s.160 of the Supreme Court of Judicature (Consolidation) Act, 1925 provides that probate may not be granted to more than four persons in respect of the same property, the word "property" is deemed to include the whole of the testator's estate (page 61, lines 11–13).

[3] **Succession—probate and letters of administration—resealing—original grant of probate by Gold Coast court must be resealed—fresh grant of probate will not be made in respect of property in Sierra Leone under same will:** There cannot be two original grants of probate of the same will; and therefore although a grant of probate by the Supreme Court of the Gold Coast has no immediate legal effect in Sierra Leone, the Sierra Leone courts will not make a fresh grant of probate in respect of property in Sierra Leone under the same will but, under s.3 of the Probates (British and Colonial) Recognition Ordinance (*cap.* 182), will give effect to the original grant by re-sealing it (page 60, line 35—page 61, line 4; page 61, lines 25–37).

[4] **Succession—probate and letters of administration—resealing—resealing applies to realty as well as to personalty:** While Schedule A to the Probates (British and Colonial) Recognition Rules (*cap.* 182) apparently limits the resealing of a grant of probate to wills of personalty, the effect of the Stamp Duty (No. 2) Order in Council, 1931 is to make the rules as to resealing equally applicable to realty (page 61, line 39—page 62, line 12).

The applicant sought a grant of probate in solemn form.

The testator died leaving a will which named seven executors, five of whom were granted probate by the Supreme Court of the Gold Coast. Power was reserved to the remaining two, one of whom was the present applicant, to apply for a similar grant. As the applicant's interest was in the testator's property in Sierra Leone, he applied to the Supreme Court of Sierra Leone. He contended that since the Supreme Court of the Gold Coast was a court of foreign jurisdiction and the applicant's interest was in the testator's property in Sierra Leone, a Gold Coast probate was of no effect, and therefore this was an application for a fresh grant of probate with no question of resealing arising; and in any event, under Schedule A to the Probates (British and Colonial) Recognition Rules (*cap.* 182), the requirement of resealing applied only to personalty and not to realty.

Case referred to:

(1) *In re Holland,* [1936] 3 All E.R. 13; (1936), 155 L.T. 417, applied.

Legislation construed:

Probates (British and Colonial) Recognition Ordinance (Laws of Sierra Leone, 1946, *cap.* 182), s.3:

"Where a Court of Probate in the United Kingdom, or in any of the King's Dominions, has granted Probate or Letters of Administration in respect of the estate of a deceased person, the Probate of [*sic*] Letters of Administration so granted may, on being produced to, and a copy thereof deposited with, the Supreme Court, be sealed with the seal of the Court, and thereupon shall be of the like force and effect, and have the same operation in the Colony and Protectorate as if granted by the Supreme Court."

s.4: The relevant terms of this section are set out at page 62, lines 9–11.

Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. V, c.49), s.160:

"(1) Probate or administration shall not be granted to more than four persons in respect of the same property . . . ."

Cole for the applicant.
The respondent appeared in person.

KINGSLEY, J.:

This is an application by Emanuel Okoni Williams for a grant of probate in respect of the will of the late Ezekiel Festus O'Reilly. The will is dated January 3rd, 1944, and strange to relate, as though he had so to speak nothing else to do in this world, the testator the very next day passed to the Great Beyond, doubtless to the indescribable grief and sorrow of the seven executors of the will.

On February 28th, 1944, five of these executors were granted probate of the will by the Supreme Court of the Gold Coast, power being reserved to the remaining two executors to apply for a like grant. Of these two executors one is the applicant in this case, and he is interested primarily, I am told, in the testator's estate at No. 19 Liverpool Street, Freetown, which comprises a house and land.

Mr. Cole for the applicant has submitted that this is an application for a fresh grant of probate, and that no question of resealing arises, as is suggested by the Registrar. I do not accept this submission, but even if it were correct I do not see how it could avail the applicant. An original grant of probate has already been made to five executors. The fact that it was made by the Supreme Court of the Gold Coast does not make it any the less an original

grant; and of course it is elementary to say that there cannot be two original grants of probate of the same will. Five executors having already been granted probate, it is difficult to see how this court can make any further grant. Our own Supreme Court Rules make no provision regarding the number of executors to whom probate can be granted. We are therefore by our O. LII, r.3 thrown back on the English practice in force on January 1st, 1946, and that is laid down in s.160 of the Supreme Court of Judicature (Consolidation) Act, 1925, which provides that probate may not be granted to more than four persons in regard to the same estate. The word actually used in the section is "property" but in *In re Holland* (1) it was held that the word "property" included the whole of a testator's estate. The corollary to this of course is that where probate has been granted to four executors, any remaining executors can take up their powers only as vacancies occur among the acting executors. No vacancy among the acting executors having been notified to this court, I fail to see therefore how this court can at present make any further grant, even if it had itself made the original grant. The Gold Coast apparently has no limitation on the number of executors to whom probate may be granted.

Mr. Cole further submitted that the Supreme Court of the Gold Coast is a court of foreign jurisdiction, and said: "My client wishes to deal with the testator's property in Sierra Leone. A Gold Coast probate can have no effect here. Therefore I must ask for a fresh grant." The proposition that a Gold Coast probate has no effect in Sierra Leone is correct, but that he must ask for a fresh grant is quite wrong. Indeed it is because a Gold Coast probate *per se* cannot affect property in Sierra Leone that the Probates (British and Colonial) Recognition Ordinance (*cap.* 182) was enacted. The position in this application is in my view clearly and completely covered by s.3 of that Ordinance which, applied to this case, in effect says that the Supreme Court of the Gold Coast having granted probate in respect of the estate of the late Ezekiel Festus O'Reilly, in order to make that grant effective as regards any estate left by the deceased in Sierra Leone the grant must be sealed with the seal of the Supreme Court of Sierra Leone; and I hold that that is what must be done in this case. The applicant will of course have first to exercise the power reserved to him under the original grant.

Mr. Cole made one further submission with which I think I ought to deal. He referred me to the Probates (British and Colonial) Recognition Rules (*cap.* 182) and the form in Schedule A

thereof, and he suggested that it was clear that the question of resealing applied only to personalty. I reject this submission and I do so for this reason. These Rules were enacted in 1915 when stamp duty on probate was payable only in respect of personalty. Indeed it was not until 1931, by the Stamp Duty (No. 2) Order in Council of that year, that it became payable in respect of realty as well. As s.4 of the Probates (British and Colonial) Recognition Ordinance provides that before sealing a probate the court must be satisfied that "Probate duty has been paid in respect of so much (if any) of the estate as is liable to Probate duty in the Colony and Protectorate," and as realty was not liable at the time to any duty, it is clear why the sole mention in the Rules is of personalty.

The application for probate in this case in my view was rightly refused, and I uphold the Registrar's decision. The Registrar must have his taxed costs.

Application dismissed.

WRAY *v.* COMMISSIONER OF POLICE

SUPREME COURT (Beoku-Betts, Ag.C.J.): October 9th, 1950
(Cr. App. No. 29/50)

[1] **Liquor—offences—keeping open licensed premises during prohibited hours—elements of offence—intoxicating liquor must be available to outsiders during prohibited hours:** In order to constitute the offence of keeping open licensed premises for the sale of intoxicating liquor during prohibited hours there must be a keeping open of the premises to enable people to come in from outside to procure intoxicating liquor, or to get it supplied to them when outside (page 63, lines 19–30).

The appellant was charged in a police magistrate's court with keeping licensed premises open after closing hours contrary to s.26(2) of the Liquor Licence Ordinance (*cap.* 121).

Several persons were found in the appellant's licensed premises during the hours of closing. No evidence was led to show whether the drinks being consumed by such persons were intoxicating or not. The appellant was convicted, and appealed to the Supreme Court on the ground that the offence charged could not be constituted unless it was established that intoxicating liquor was available during prohibited hours.