[2000 JLR 351]

IN THE ESTATE OF VAUTIER (née McBOYLE)

ROYAL COURT (Birt, Deputy Bailiff and Jurats Le Breton and Georgelin): October 12th, 2000

Succession-wills-form-will of movable property to be signed by testator-will erroneously signed by another invalid and cannot be admitted to probate

Succession-wills-rectification-court may rectify will by deleting, substituting or adding words to correct manifest error and fulfil testator's clear intentions-to be used sparingly with extreme caution-applicant to make full and frank disclosure of all material facts

The representor sought a declaration that the will of movable estate of the deceased, erroneously signed by the representor, was valid and that it be admitted to probate.

The representor and his wife (the deceased) drew up two wills of movable estate in similar form. The representor named the deceased as his executrix and bequeathed all of his movable estate to her, or, in the event of her predeceasing him, in equal shares to their children. Her will was in similar terms naming him as executor. By mistake, each signed the other's will. On the wife's death, the representor brought the present representation seeking that either (a) the will of the deceased erroneously signed by him be declared valid and be admitted to probate; or (b) the will of the representor erroneously signed by the deceased be declared valid and any necessary rectification be made in order that it be admitted to probate. The three children of the representor and the deceased confirmed that they had no objection to the rectification.

The representor submitted that (a) Norman authority allowed for an unsigned will to be admitted to probate so long as it had been read by the testator, as had occurred in this case; (b) although rectification in the English courts was restricted to deleting words from a will, this was due to the wording of the Wills Act, which was of no application in Jersey; (c) the Canadian courts had established a wide common law jurisdiction to rectify a will and there was no reason to restrict the court's jurisdiction to follow that of the English courts rather than those of Canada; (d) as there was nothing preventing the court from claiming jurisdiction to rectify the will, the court should claim jurisdiction to make any changes necessary to fulfil the true intention of the testator; and (e) the will should be rectified as the evidence showed the clear intention of the testatrix and it was not in the public interest for this intention to be ignored.

The Attorney General added that, in recent times, the Jersey courts had admitted to probate documents which had not been signed.

Held, ordering rectification of the will signed by the deceased and admitting it to probate:

(1) It was clear that Jersey law had not followed Norman law in relation to the signature of wills by the testator. In order to be valid, a will of movable estate had to be signed by the testator. The will erroneously signed by the representor could not, therefore, be admitted to probate. Although the court had previously admitted to probate documents which had not been signed, this had only occurred when it had expressly found that the testator had signed the original will

in compliance with the formalities required by law but that the original was no longer available and the document before the court was an exact copy of that will (page 356, lines 9–16).

(2) The court had the power to rectify a will whether by deleting, substituting or adding words. Although there was no Jersey authority supporting this view, courts in several countries had asserted a jurisdiction to delete words from a will before accepting it for probate. As there was no justification for drawing a distinction between a deletion and any other change, the court could make any change which would correct a manifest error and make a will accord with the testator's clear intentions. The inability of the English courts to go beyond the power to delete was based upon the wording of the Wills Act, which was of no application in Jersey and there were no Jersey precedents which denied a power of rectification (page 360, line 35 – page 361, line 7).

(3) The Canadian courts had established a common law jurisdiction to rectify a will. The Royal Court had historically exercised a wide inherent jurisdiction in many areas of law and there was no reason to restrict that jurisdiction to following that of the English courts rather than that of the Canadian courts. Conversely, the present case showed the desirability of the wider power (page 361, lines 8–13).

(4) Policy considerations pointed in favour of such a jurisdiction. It was clear that the English judges regarded the common law position as unsatisfactory and statute had now intervened in England to provide a general power of rectification. It was not in the public interest for the court to let the testator's clear intentions be thwarted because of a clerical or other mistake (page 361, lines 14–20).

(5) In the case of wills, however, the remedy of rectification had to be used sparingly and with extreme caution. However, when the court was satisfied by clear and compelling evidence that a mistake had been made and that the words used did not reflect the testator's intentions, it could grant the discretionary remedy of rectification to alter the wording so as

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to carry out those intentions. As in the case of trusts, any applicant would have to make full and frank disclosure of all material facts (page 361, lines 27–38).

(6) The will signed by the deceased should be rectified so as to accord with her clear intentions. There was no doubt from the evidence that the deceased intended to execute a will appointing her husband as executor and leaving all her assets to him. A will in those terms had been prepared for her signature and she had intended to sign it. The three children of the representor and the deceased had sworn affidavits confirming that they had no objection to the rectification. All the relevant wording in the effective parts of the will would therefore be rectified so that it read as a coherent document (page 361, line 41 – page 362, line 13).

Cases cited:

(1) *Bohachewski Estate, Re* (1967), 60 W.W.R. 635, considered.
(2) *Brander, Re,* [1952] 4 D.L.R. 688, considered.
(3) *Filleul, In re,* 2000 JLR *N*–65, considered.
(4) *Foster, In re,* [1956] NZLR 44, considered.

(5) *Guardian Trust & Executors Co. of New Zealand Ltd.* v. *Inwood*, [1946] NZLR 614, considered.
(6) *Hewett, In re*, 1996 JLR 33, considered.
(7) *Knott Estate, Re* (1959), 27 W.W.R. 382.
(8) *McConagle* v. *Starkey*, [1997] 3 NZLR 635, considered.
(9) *Morris, In re*, [1971] P. 62; [1970] 1 All E.R. 1057, considered.
(10) *Reynette-James, In re*, [1976] 1 W.L.R. 161; [1975] 3 All E.R. 1037; (1975), 119 Sol. Jo. 682, considered.
(11) *Stanley, In re*, Royal Ct., August 14th, 1998, unreported, considered.
(12) *Vibert, In re*, 1987-88 JLR 96, considered.
(13) *Whyte* v. *Pollock* (1882), 7 App. Cas. 400.

Additional cases cited by counsel:
Mansell, In re, 1990 JLR *N*–21.
Russell, In re, 1963 J.J. 259.
Wainwright (née Watson), In re, 1997 JLR *N*–16.

Legislation construed:
Administration of Justice Act 1982 (c.53), s.20(1): The relevant terms of this sub-section are set out at page 358, lines 5–10.

Texts cited:
Basnage, *Commentaires sur la Coûtume de Normandie*, 4th ed., vol. 1, *Des Testamens* (1778).
Le Geyt, *Manuscrits sur la Constitution, les Lois, & les Usages de Jersey*, vol. 1, at 132 (1846).
Le Geyt, *Privilèges, Loix et Coustumes de L'Isle de Jersey*, titre VII, art. 1, at 56 (1953).

Report of the Commissioners appointed to inquire into the Civil, Municipal and Ecclesiastical Laws of the Island of Jersey, together with Minutes of Evidence (Command Papers, First Series, No. 2761), *Report*, Pt. III, at xx (1861).

D.E. Le Cornu for the representor;
M. St.J. O'Connell for the Attorney General as *amicus curiae*.

BIRT, DEPUTY BAILIFF:

Factual background

We have received affidavit evidence from which we are satisfied that the following occurred in this case. In the summer of 1977 Leonard Alwyn Vautier ("Mr. Vautier") and his wife Stella Edna Vautier ("Mrs. Vautier") gave instructions to Advocate D.E. Le Cornu to draw up wills of movable estate. The two wills were in similar form. Mr. Vautier named his wife as his executrix and bequeathed all of his movable estate to her. In the event of her predeceasing him, he bequeathed his movable estate in

equal shares to their children. In her will, Mrs. Vautier appointed her husband as executor and left all her movable estate to him. In default, she left her estate to their children in equal shares.

On September 1st, 1977 Mr. and Mrs. Vautier attended at the office of Advocate Le Cornu for the purpose of executing the wills. Unfortunately, a mistake took place and they executed each other's wills. Thus Mr. Vautier signed the will drafted for his wife and Mrs. Vautier signed the will drafted for her husband. Both wills were duly attested by Advocate Le Cornu and a member of his staff.

Mrs. Vautier died on April 14th, 1999, following which the error came to light. As the person whom his wife intended to be the executor of her will, Mr. Vautier now brings a representation before the court. The amended representation asks that the court should:

> "(a) declare that the will dated September 1st, 1977 purporting to be the will of the deceased but erroneously signed by the representor is the valid last will and testament of movable estate of the deceased and order that the same be admitted to probate;
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> (b) alternatively, declare that the will dated September 1st, 1977, purporting to be the will of the representor but erroneously signed by the deceased, is the valid last will and testament of movable estate of the deceased and order such rectification thereof as to enable the will to be admitted to probate in the form intended by the deceased."

In summary, the first will would serve perfectly well as a will for Mrs. Vautier in that it names her husband as executor and bequeaths her estate to him. Unfortunately, it is not signed by her; it is signed by her husband. The second will is signed by Mrs. Vautier and her signature is duly

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attested. Unfortunately, because it was intended for signature by her husband, it is an absurdity. Mrs. Vautier is named as executrix and as sole legatee of all of her movable estate.

The will signed by Mr. Vautier

The first prayer of the amended representation asks that the document signed by Mr. Vautier (but drafted for signature by Mrs. Vautier) be

admitted to probate as the will of Mrs. Vautier. The difficulty is that this document was never signed by Mrs. Vautier. Can a document which has not been signed by the testator be a valid will of movable estate?

Surprisingly, there appears to be no decided case on this point. However, a number of commentators have referred to the issue. Le Geyt, 1 *Manuscrits sur la Constitution, les Lois, & les Usages de Jersey*, at 132 (1846) states:

> "Terrien, Livre VI, Chap. VII, dit qu'il suffit qu'un Testament soit fait verbalement, en la présence de deux témoins; et Masuer, dont Terrien tire tant de choses, avoit dit avant luy 'que par la coustume le legs fait devant deux témoins est bon et valable, sans qu'il y ait aucun Testament précédent ou subséquent, principalement pour choses pieuses.' Il est vrai que dès l'an 1556, on défendit en France la preuve par témoins, pour aucune chose qui excédast la valeur de cent lbs. une fois payer, mais on ne trouve, dit Le Caron, Cod. Henry III, Liv. 5, Tit. IX, n. 5, des arrests que de 1587, 93 et 94 qui comprennant les Testamens dans cette disposition: c'est long-temps depuis Terrien. En cela comme en plusieurs autres choses, le torrent de la nouvelle Coûtume de Normandie prévaut parmi nous. Tout testament y doit estre fait par écrit. Il y a quantité de sentences contre des Testamens noncupatifs, et en effet l'écriture, outre qu'elle peut prévenir beaucoup la corruption des témoins, donne lieu de faire de sages réflexions. Tester '*est pertractare jura sapientum*.' C'est le droit des sages et l'empire des morts, a dit quelqu'un. Cette fonction doit donc estre accompagnée de quelque tranquillité, et l'on doit oster aux légataires les occasions qu'autrement ils pourroyent avoir, de prendre pied sur une parole volante. On ne suit toutefois point la Coûtume de Normandie, dans le choix qu'elle fait de ceux devant qui elle veut qu'on teste. La présence d'un Ecclésiastique n'y est point icy nécessaire, ni celle d'un Notaire ou Tabellion. Il suffit de la signature du Testateur, ou de sa marque, avec le seing de deux témoins. En 1600, le 26e Janvier, il fut ainsi jugé solennellement; voyez ce que j'en dis dans mon petit livre de préjugez."

Le Geyt, *Privilèges, Loix et Coustumes de L'Isle de Jersey*, titre VII (des Testamens), art. 1, at 56 (1953) states:

> "Tout Testament doit estre redigé par escrit, & signé pour le moins de deux tesmoins, non legataires, ni reprochables, avec le seing ou marque du Testateur."

Finally, the *Report of the Commissioners appointed to inquire into the Civil, Municipal and Ecclesiastical Laws of the Island of Jersey, together with Minutes of Evidence, Report,* Pt. III, at xx (1861) states:

> "[A] will of personalty must be signed by the testator. Where it is a holograph, it requires no witnesses. Otherwise there must be two witnesses to attest its execution; but it is not necessary (as it is now in England), that they should, in his presence and in the presence of each other, attest his signature."

It is true that Basnage, 1 *Commentaires sur la Coûtume de Normandie*, 4th ed., *Des Testamens* (1778) records art. 412 of the Coûtume as providing that a will which is unsigned can be valid so long as it is read to the testator or read by him. However, it is clear from Le Geyt that Jersey law has not followed the law of Normandy in this respect and the Jersey authorities carry more weight in relation to the law of Jersey than does Basnage. We accordingly hold that, in order to be valid under Jersey law, a will of movable estate must be signed by the testator.

Mr. O'Connell floated the argument that, in recent times, the court has admitted to probate documents which have not been signed. Thus in *In re Stanley* (11), the court ordered the registration in the Public Registry of an unsigned and undated will of immovable property. In *In re Hewett* (6), the court admitted to probate a photocopy of the original signed will of movable property of the testator. In *In re Filleul* (3), the court admitted to probate a file copy of a will of movable estate. However, in all these cases, the court had expressly found that the testator had signed the original will in compliance with the formalities required by law and that the document before the court was an exact copy of the original which had been signed by the testator. It was simply that the original document had been lost.

We think that Mr. O'Connell was right to concede that these cases are of no assistance in the present case where Mrs. Vautier never signed the will (mistakenly signed by her husband) which the first prayer of the representation seeks to have admitted to probate. We are in no doubt that, Mrs. Vautier never having signed a document in the form of this first will, it is not possible for it to be admitted to probate.

The will signed by Mrs. Vautier

As an alternative, the second prayer of the amended representation seeks the admission to probate of the will signed by Mrs. Vautier. This document bears her signature, which is duly attested as required by law. It therefore complies with the formalities for a will. The difficulty is that the document is a legal absurdity. Because it was intended for signature by her husband, the document purports to leave Mrs. Vautier's estate to herself and names her as executrix. It cannot therefore take effect as drafted. The court is asked to rectify this document so as to accord with Mrs. Vautier's intentions. The first question, therefore, is whether the Royal Court has jurisdiction to rectify a will.

Counsel's researches have not disclosed any Jersey authority directly in point. The closest is *In re Vibert* (12). It is true that the report of that case suggests that the representor applied to the court for rectification of the will on the basis that the name of the legatee had been omitted. However, the judgment itself seems to be concerned more with the question of the admissibility of extrinsic evidence as an aid to the interpretation of a will. It is certainly not clear that the court was purporting to establish that the Royal Court did have a power of rectification. What one can say is that there is certainly nothing in that case which points against the court having a power of rectification.

We turn next to consider the law in other jurisdictions. The position under English law is clear. At common law there was no jurisdiction to rectify a will but there was a limited jurisdiction to omit words if it was proved that they had been included through fraud or mistake. This was generally agreed to be a very unsatisfactory state of affairs. Thus in *In re Morris* (9) the court said ([1971] P. at 75):

> "…[T]he law is clear that where there is absence of knowledge and approval (for example, because of mistake, as in this case) the court has no power to rectify by adding words to the instrument. This has been so clearly stated judicially and for so long that it is not open to question in this court and can only be changed by legislation or, possibly, by a higher tribunal. Were it not so the defect in this codicil would be simply and entirely cured by the insertion of the Roman numeral '(iv)' after the numeral 7 in clause 1, thereby giving effect to the testatrix's intentions in their entirety."

Later, the court said (*ibid.*, at 82):

> "One can only say that this is a situation which W.S. Gilbert would have found ripe, but is otherwise unattractive; and perhaps the Lord Chancellor's Committee might find an acceptable improvement."

In *In re Reynette-James* (10), 33 words were inadvertently omitted from the will of the testator with the effect that a gift of capital to the testator's son failed. Being unable to rectify the error by inserting the words, the court adopted the remedy of omitting further words containing an ultimate gift of capital to the son's wife and children, resulting in a partial intestacy. Templeman, J. said the following ([1975] 3 All E.R. at 1041):

> "Any document other than a will could be rectified by inserting the words which the secretary omitted, but in this respect the court is enslaved by the Wills Act 1837. Words may be struck out but no fresh words may be inserted…"

He added further (*ibid.*, at 1043):

> "The result is not satisfactory but will perhaps encourage a further study of the recommendations which have been made from time to time that rectification of a will should be allowed on the same terms as rectification of other instruments, with perhaps the added

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> safeguard of written contemporaneous evidence supporting the claim to rectification."

The position in England was dealt with by the introduction of the Administration of Justice Act 1982, s.20(1) of which provides:

> "If a court is satisfied that a will is so expressed that it fails to carry out the testator's intentions, in consequence-
>
> (*a*) of a clerical error; or
>
> (*b*) of a failure to understand his instructions,
>
> it may order that the will shall be rectified so as to carry out his intentions."

In England, therefore, the court now has power to rectify a will whether by deleting words or altering the terms of the will, in order to carry out the testator's intentions where there has been a mistake.

The court was also referred to a number of cases in New Zealand and Canada. The first was *Guardian, Trust, & Executors Co. of New Zealand,*

Ltd. v. *Inwood* (5). That case concerned two sisters who intended to make similar wills but mistakenly signed the one intended for signature by the other. The sister named Jane died and the operative part of the will which she had signed (being intended for signature by her sister) left the estate to "my sister, Jane." The court held that there was a well-established rule that words or clauses that had been introduced without the knowledge or approval of the testator could be deleted. It therefore granted probate but ordered the deletion of the word "Jane" so the gift was made simply to "my sister." The deceased had only one sister. The court did not consider the question of altering a will in any other way (*e.g.* substitution or addition).

The next case in time is *Re Brander* (2), a case before the Supreme Court of British Columbia. The facts were almost identical to those in the present case, in that a husband and wife mistakenly signed each other's wills. After the death of the husband, the wife sought to prove the will signed by the husband (originally intended for the wife) and requested the court to rectify the will by deleting the name of the husband as executor and beneficiary and substituting the name of the wife in each case. Wilson, J., having recited the facts, said simply ([1952] 4 D.L.R. at 688):

> "Any difficulty I might have in grappling with this matter is solved by the judgment in *Guardian, Trust & Executors Co.* v. *Inwood*, [1946] N.Z.L.R. 614, where the Court of Appeal for New Zealand was confronted with an almost identical problem and solved it by granting the relief here asked for."

He then went on to quote extensively from the decision in the *Guardian Trust* case (5) and ordered that the will be admitted to probate with the alterations mentioned. It has to be said that Wilson, J. appears to have drawn rather more from the *Guardian Trust* case than was in fact decided. In particular *Guardian Trust* followed the principles accepted in England where the court could delete wording. It was no authority for the

proposition that the will could be rectified by altering wording in any other way (*e.g.* substitution). Nevertheless, that is what was done in *Re Brander* (2).

Brander was followed in two subsequent cases, namely *Re Knott Estate* (7) (a case in the Alberta District Court) and *Re Bohachewski*

Estate (1) (a case in the Surrogate Court of Saskatchewan). In neither case were any reasons given other than that the court felt able to follow *Brander*. However, Mr. O'Connell drew our attention to a comment by Maher, J. in *Bohachewski* when he said (60 W.W.R. at 636):

> "An examination of *The Wills Act* fortunately reveals no provision that prohibits me from following the decisions of the learned judges of the courts of British Columbia and Alberta and correcting the will and admitting it to probate in the form obviously intended by the testator."

He says that this is consistent with the general approach of the Royal Court and should lead the court to find that there is nothing to prohibit the court from granting the relief sought in the present case.

In the meantime, the case of *In re Foster* (4) had been decided in New Zealand. This was another case of a husband and wife mistakenly executing each other's will. On this occasion the court refused to order rectification on the grounds that deleting certain words as requested would render the clause nugatory. Furthermore, it was not satisfied that the testator intended the document to which he put his signature to operate as his will. The court distinguished *Guardian Trust* (5).

In *McConagle* v. *Starkey* (8) a husband and wife again mistakenly executed each other's will. The court preferred the approach of *Guardian Trust* to *Foster*. Holland, J. summarized the position as follows ([1997] 3 NZLR at 639):

> "It follows that in my view the ratio decidendi of *Guardian Trust* is that where a document has been duly executed in accordance with the Wills Act 1837 (UK) and the testator intends to execute a document as his last will, and the document actually executed can with the deletion of a word or words give true effect to the testator's testamentary intentions then probate may be granted of such document with the appropriate deletions.
>
> The question that arises in this case, as it did in *Foster*, is whether that principle can be extended so as to include alterations or whether the possible ambiguity that would arise from merely deleting words without substitution of alternates would result in the testator's intentions not being carried out…
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> Counsel have only been able to refer to Canadian decisions by way of assistance. There appears to be nothing in the reported cases in the United Kingdom or Australia to assist.

The British Columbia Province Supreme Court in *Re Brander* [1952] 4 DLR 688 in an ex parte application for probate of a will

executed by a husband but drawn for execution by his wife found assistance from *Guardian Trust* in granting probate of the document by deleting the word 'John' (the name of the testator) in the clauses appointing the executor and sole beneficiary and substituting the word 'Margaret' (the testator's widow). The Canadian judge quoted extensively from the judgment in *Guardian Trust* but does not appear to have referred to any other authority. With respect he may have taken more from *Guardian Trust* than was actually decided but I agree with the conclusion he reached in the case before him. His decision was, of course, prior to the decision of the Full Court in *Foster*.

Re Brander was followed in Alberta in *Re Knott Estate* (1959) 27 WWR 382 and in Saskatchewan in *Re Bohachewski Estate* (1967) 60 WWR 635.

It is unnecessary for me to go as far as the Canadian decisions referred to but I acknowledge that the need to delete the guardian provision, the obvious inappropriateness of the word 'he' for the word 'she' in the provision for the survival of the beneficiary and the clear error in the gift over provision of describing Mrs. Starkey's children as being his, and his son as being the son of Mrs. Starkey, this case goes a lot further than did [*sic*] the Court of Appeal decided in *Guardian Trust.*"

The court's approval of *Re Brander* was *obiter* because it was able to proceed merely by deleting certain words from the will without the need for substituting any new words.

To summarize, the common law of England recognized a power in the court to delete words from a will which were included by mistake but did not allow for power in the court to rectify by altering or adding to the wording of the will. The law of New Zealand has recognized a similar power to delete. It has not yet recognized a power to rectify by other alterations although, in the case of *McConagle*, the court indicated that it was supportive of such an approach. In Canada, the courts have exercised a power to rectify a will by altering the wording but the initial decision could be said to be based on a misunderstanding of *Guardian Trust*. We

have not been referred to any Norman or French authority.

We hold that the court does have the power to rectify a will whether by deleting or altering (*e.g.* by substituting or adding) words. Our reasons for so holding can be summarized as follows:

(a) It is clear that courts in several countries have asserted a jurisdiction to delete words from a will before accepting it for probate. Once a court has power to make any "change" to a will, we see no reason or justification for drawing a distinction between a deletion and any other change. If the court can make one type of change (a deletion) so as to correct a manifest error and make the will accord with the testator's clear intentions, why should it not be able to make another type of change (*e.g.* a substitution or addition) to achieve exactly the same result?

(b) The inability of the English courts to go beyond the power to delete seems to have been based upon the wording of the Wills Act and upon precedents established by the courts many years ago. The *dicta* from some of the cases suggests that, given a free hand, the courts, in more recent times, would have striven to find a power of rectification. The Wills Act is of no application in Jersey and there are no precedents in Jersey which deny a power of rectification.

(c) The Canadian courts have established a common law jurisdiction to rectify a will. This court has historically exercised a wide inherent jurisdiction in many areas of law and we see no reason to restrict our jurisdiction to that of the English courts rather than that of the Canadian courts. On the contrary, the present case shows the desirability of the wider power.

(d) Policy considerations point in favour of such a jurisdiction. It is clear that the English judges regarded the common law position as unsatisfactory and statute has now intervened in England to achieve the same result as would be achieved by the court accepting a general power of rectification. It does not seem to us to be in the public interest for the court to have to stand idly by and let the testator's clear intentions be thwarted because of a clerical or other mistake.

(e) We support the approach of Maher, J. in *Bohachewski* (1) when he asked whether there was anything which prohibited him from rectifying the will by altering it. We find there is nothing which prohibits us from

holding that the court has jurisdiction to grant rectification. On the contrary, for the reasons which we have summarized above, we think that there are strong grounds for holding that the court has such a power.

In the case of wills, the remedy of rectification is one which must be used sparingly and with extreme caution. The testator is no longer present to tell the court what he intended. The parties before the court may have reasons of their own for seeking to "change" the wording used by the testator. The court must, therefore, be very careful before altering the words used by the testator. However, where it is satisfied by clear and compelling evidence that a mistake has been made and that the words used do not reflect the testator's intentions, the court may grant the discretionary remedy of rectification so as to alter the wording (whether by deletion, substitution or addition) so as to carry out those intentions. As in the case of trusts, any applicant will have to make full and frank disclosure of all material facts.

Exercise of discretion

We have no doubt from the evidence in this case that Mrs. Vautier intended to execute a will appointing her husband as executor and leaving all her assets to him. A will in those terms had been prepared for her signature and she was willing to sign such a will. She intended to sign it. Unfortunately, by mistake, she signed the wrong will. The three children

of Mr. and Mrs. Vautier have sworn affidavits confirming that they have no objection to the rectification. Indeed, it was because of the fact that Mr. Vautier and the children were all agreed on the desirability of rectification that we asked the Attorney General to provide counsel as *amicus curiae* in order that all relevant points on whether such jurisdiction existed could be put before the court. We are grateful to Mr. O'Connell for his assistance.

We have no doubt that the will signed by Mrs. Vautier should be rectified so as to accord with her clear intentions. We accept that there may be no strict need to rectify the introduction to the will or the attestation clause as they are not the effective parts of the will (see *Whyte* v. *Pollock* (13)), but we think it preferable to rectify all the relevant wording so that the will as rectified reads as a coherent document.

We therefore order the rectification of the will signed by Mrs. Vautier by the making of the following alterations:

(a) on line 2, substitute the words "STELLA EDNA" for the words "LEONARD ALWYN" and insert "*née* McBoyle" after "VAUTIER";

(b) on lines 10 and 11, substitute the words "husband LEONARD ALWYN VAUTIER" for the words "wife STELLA EDNA VAUTIER *née* McBoyle";

(c) on line 11, substitute the word "executor" for the word "executrix";

(d) on line 12, substitute the word "him" for the word "her";

(e) on line 16, substitute the word "executor" for the word "executrix";

(f) on lines 20 and 21, substitute the words "husband the said LEONARD ALWYN VAUTIER" for the words "wife the said STELLA EDNA VAUTIER, *née* McBoyle";

(g) on lines 22 and 23, substitute the words "husband LEONARD ALWYN VAUTIER" for the words "wife STELLA EDNA VAUTIER *née* McBoyle";

(h) in the attestation clause change the word "testator" to "testatrix" and substitute "her" for "his" wherever it occurs.

We order that the will as so rectified may be admitted to probate.

Order accordingly.