



Neutral Citation Number: [2017] EWHC 2887 (Fam)

No Case Number

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
(In open court)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 November 2017

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

In the matter of His Royal Highness the Duke of Windsor (deceased)

No hearing : application dealt with on paper

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment was handed down in open court

Sir James Munby, President of the Family Division :

1. I have before me, as President of the Family Division, an application relating to the will of His Royal Highness the Duke of Windsor, who died on 28 May 1972.
2. Letters of Administration were granted on 27 November 1972. The grant, which is in the public domain, reads as follows:

“In the High Court of Justice

The Principal Registry of the Family Division

BE IT KNOWN that His Royal Highness Prince EDWARD ALBERT CHRISTIAN GEORGE ANDREW PATRICK DAVID Duke of WINDSOR K.G. K.T. K.P. G.C.B. G.C.S.I. G.C.M.G. G.C.I.E. G.C.V.O. G.B.E. I.S.O. M.C. P.C. of 4 Route du Champ d’Entrainement Bois de Boulogne Paris XVI in France who died on the 28th day of May 1972 domiciled in France made and duly executed his last Will and Testament with a codicil thereto

AND BE IT FURTHER KNOWN that at the date hereunder written Letters of Administration with the Will and codicil (~~a copy whereof is hereunto annexed~~) of all the estate which by law devolves to and vests in the personal representative of the deceased were granted by the High Court of Justice at the said Registry to Sir GODFREY WILLIAM ROWLAND MORLEY Knight O.B.E. T.D. of 9 Cheapside in the City of London JACQUES ROSSELLI C.B.E. of 3 Stone Buildings Lincoln’s Inn London WC2 and RONALD EDGAR PLUMMER of 9 Cheapside in the said City

And it is hereby certified that an Inland Revenue affidavit has been delivered wherein it is shown that the gross value of the said estate in ~~the United Kingdom~~ England and Wales (exclusive of what the said deceased may have been possessed of or entitled to as a trustee and not beneficially) amounts to £7845.17 and that the net value of the estate amounts to £7845.17

Dated the 27th day of November 1972

Registrar’s Order dated the 13th day of October 1972

Order on Summons dated the 14th day of November 1972

[Signature] Probate Officer

Extracted by Allen & Overy 9 Cheapside London EC2V 6AD”

It will be noted that the Will and codicil are *not* annexed to the Letters of Administration.

3. The Will (and, I assume, the codicil) were sealed in accordance with the practice in relation to royal wills explained by the then President, Sir Mark Potter P, in *Brown v HM Queen Elizabeth the Queen Mother and others* [2007] EWHC 1607 (Fam), [2007] WTLR 1129, and, on appeal, by Lord Phillips of Worth Matravers CJ, giving the judgment of the Court of Appeal, in *Brown v Executors of the Estate of HM Queen Elizabeth the Queen Mother and others* [2008] EWCA Civ 56, [2008] 1 WLR 2327. The circumstances in which a royal will might be unsealed, and the process by which and the persons by whom such an application might be made, were considered by the Court of Appeal in *Brown*, paras 35-48.
4. The Will (and, I assume, the codicil) are contained in an envelope which I have personally examined. The envelope has been sealed (the wax seals being still intact) and bears the following inscription:

“WILL OF H.R.H. PRINCE EDWARD ALBERT
CHRISTIAN GEORGE ANDREW PATRICK DAVID DUKE
OF WINDSOR

SEALED BY ORDER OF THE PRESIDENT 13 OCT. 72

NOT TO BE OPENED WITHOUT LEAVE OF THE
PRESIDENT

[Signed] D Newton Senior Registrar”

The President in 1972 was Sir George Baker P.

5. I have not opened the envelope. I have not read either the Will or the codicil nor do I have any idea as to their contents.
6. The application before me is made by a letter from Windsor Castle, dated 13 October 2017. The letter is from Oliver Urquhart Irvine, The Librarian and Assistant Keeper of the Queen’s Archives, and is addressed to The Postal Copies and Searches Department at the District Probate Registry at Leeds. It reads as follows:

“We recently ordered the will of the Duke of Windsor (your ref 45483) from the Find A Will search service on gov.uk; however, only the grant to the executors was received. On behalf of the Royal Archives, I would like to formally request a full copy of the will and codicil for research purposes. Although the Royal Archives holds many originals and copies of probate records for past members of the Royal Family, this is a gap in our holdings and therefore in our knowledge.

The Royal Archives is seeking to ascertain the identity of the current rights holder to the papers of Edward, Duke of Windsor whose copyright will not expire until 2042. As the law currently stands any literary works which were unpublished

before 1 August 1989 remain in copyright for 70 after the death of the creator [Copyright Designs and Patents Act 1988]. The term “literary work” covers work, other than a dramatic or musical work, which is written, spoken or sung; it does not solely refer to works of literature but may also include letters, song lyrics, databases and computer programs to name a few examples. Copyright can exist independent of the ownership of a document and descends with the residue of the creator’s estate unless otherwise assigned. As such many other organisations hold papers created by the Duke of Windsor but do not hold the copyright and are likely to approach us for advice. Similarly, we have previously been approached by researchers seeking permission to publish letters by the Duke of Windsor but have been unable to advise whether copyright is held by Her Majesty The Queen. With a copy of the will and codicil, we will be able to determine the identity of his residual beneficiary and begin the process of identifying the current copyright holder.

Of course, if you do not believe that you are the right department to grant this request, I should be equally grateful if you could inform me of this, or alternatively put me in touch with the relevant body.

If you would like any further information on this matter, please do not hesitate to contact me. I look forward to hearing from you in due course.”

The letter was appropriately passed to me as President of the Family Division.

7. So far as I am aware, no particular form of application is specified for use in a case such as this and, as I observed in *Re Benmusa (No 3)* [2017] EWHC 966 (Fam), para 3, referring to Tristram and Coote’s *Probate Practice*, ed 31, paras 25.234 and 25.265, an application of this kind is, *rara avis*, one that can be made without payment of any court fee. Accordingly, and in the particular circumstances, I am prepared to consider the application without requiring either the issue of any formal application or the filing of formal evidence. The basis upon which the application is made appears clearly enough from Mr Irvine’s letter.
8. The application does not, as I read it, invite me to reverse the order made by Sir George Baker P on 13 October 1972 so that the will and codicil are open to inspection by the general public. All it seeks is a direction authorising the disclosure to Mr Irvine, in his capacity as The Librarian and Assistant Keeper of the Queen’s Archives, of copies of the will and codicil. (For the distinction between these two processes see the judgment of the Court of Appeal in *Brown*, para 44.) There is, therefore, in my judgment, no need to invite the intervention of the Attorney General.
9. Mr Irvine identifies two reasons in justification of the application. First, the desire of the Queen’s Archives to fill a gap in its holdings. Second, the practical need for the Queen’s Archives to identify those who currently hold the copyright in literary works

created by the Duke of Windsor. Each of these two reasons is compelling. Either alone would, in my judgment, quite plainly justify the disclosure which is sought. It would be absurd to deny to the Royal Archives copies of the will and codicil of one who was born a Royal Prince, died a Royal Duke and was in his time His Majesty the King.

10. I shall accordingly order that:

- i) The seals on the envelope are to be broken.
- ii) One copy is to be made of the contents of the envelope, that copy to be delivered to Mr Irvine in his capacity as The Librarian and Assistant Keeper of the Queen's Archives.
- iii) The contents of the envelope are then to be re-sealed in an envelope bearing the following inscription:

“WILL OF H.R.H. PRINCE EDWARD ALBERT
CHRISTIAN GEORGE ANDREW PATRICK DAVID DUKE
OF WINDSOR

SEALED BY ORDER OF THE PRESIDENT 13 OCT. 72

NOT TO BE OPENED WITHOUT LEAVE OF THE
PRESIDENT

[Signed] D Newton Senior Registrar

BY ORDER OF THE PRESIDENT 15 November 2017
OPENED to permit the contents to be copied and the copies to be delivered to Oliver Urquhart Irvine in his capacity as The Librarian and Assistant Keeper of the Queen's Archives AND THEN RE-SEALED

NOT TO BE OPENED WITHOUT LEAVE OF THE
PRESIDENT

[Sir James Munby P]”