

IN THE WILL OF WONG FONG

J U D G M E N T

(1) This matter comes before the Court on an application by way of Originating Summons taken out on behalf of the Public Curator to determine certain questions arising under and concerning the construction of the Will dated the 11th December, 1945 of WONG FONG late of Kavieng, New Ireland in the Territory of New Guinea.

Mr White of Counsel had the chief carriage of the matter as representing the Public Curator of Papua and New Guinea, who is administering the Estate under an Order to Administer with the Will dated the 11th December, 1945 annexed.

Mr Cromie of Counsel appeared for LAM KUI YUN the widow.

Mr Kirke of Counsel appeared for the daughters WONG YIT WAH (married) and WONG HO WAH (single but of age).

Mr Quinlivan of Counsel appeared for the son WONG WAI WAH and for the infant son WONG KONG WAH through his Guardian ad litem RICHARD WEBSTER TEBB.

The matter came on for hearing on 5th December, 1952 but was adjourned to allow Counsel to confer with regard to certain aspects of the matter and to enable Mr Quinlivan to file the consent of the proposed Guardian ad litem to act as such. The matter finally came on again for hearing on the 11th May, 1953.

The first question related to whether a gift of real and personal property to LAM KUI YUN the widow and the Testator's sons WONG WAI WAH and WONG KONG WAH

in equal shares vested in interest in them as tenants-in-common for their own use and benefit. The relative words of the Will contain a direction to the Trustees "to pay and divide the same ... equally amongst my said wife and sons share and share alike" (subject to certain conditions for the maintenance of others).

The Testator then gave a further direction, namely, "and I direct that my said sons shall not be entitled to receive their share respectively under this my Will until each shall attain the age of twenty-one years and immediately upon any one of my said sons attaining that age then he shall be entitled to his full share thereunder."

It has been made to appear to the Court that one son, namely, WONG KONG WAH was, at the death of the Testator, an infant and the question arises whether the property vests in interest in him at the death of the Testator, or, in other words, whether the words relating to attaining the age of twenty-one years are words indicating contingency, for if they do, then upon the correct construction no interest vests in him until he attains the required age. (Downes v. Maddrell 41 N.S.W. State Reports 270).

In my view, upon a proper construction of this Will, each share of the sons at the death of the Testator became vested in interest, though in the case of the son under twenty-one years of age at that time postponed as to enjoyment.

Though the Will is silent on the question as to the fund for the maintenance of the son, I think the Trustee has power implied to maintain the infant son out of his share of the Estate.

It appeared upon the matter being argued that the only person concerned in regard to the trust for maintenance and education is one unmarried daughter WONG HO WAH being of the age of about twenty-four.

Counsel has informed me that it has been agreed amongst all the beneficiaries, including the Guardian ad litem on behalf of the infant beneficiary, that WONG HO WAH should be paid out of the Estate a lump sum of One Thousand pounds (£1,000) in full settlement of her contingent interest in the Will.

As she is of age and properly advised, I see no reason why the party should not enter into this arrangement, which makes it unnecessary for me to deal with the matter of setting aside a sum from the Estate to provide for her.

It appeared at the hearing that the question of the Public Curator carrying on the business does not arise as the business seemed to have been sold.

I order that the taxed costs of all parties appearing on the Summons be paid from the Estate.

J.

14/5/53