

COURT OF APPEAL

GOTTERSON JA

**Appeal No 2101 of 2017
SC No 1025 of 2017**

PUBLIC TRUSTEE OF QUEENSLAND

Respondent/Applicant

v

DANIEL FREDERICK OLIVER

Appellant/Respondent

BRISBANE

WEDNESDAY, 26 APRIL 2017

JUDGMENT

GOTTERSON JA: On 1 March this year, the respondent to this application, Daniel Frederick Oliver, filed a notice of appeal against an order made by a judge of the trial division on 9 February 2017. That order struck out an application filed by Mr Oliver on 3 February 2017 in which he sought, by way of relief, orders that the Public Trustee of Queensland, who is the applicant in the current application, be removed as administrator of the estate of Steele William Oliver (“the deceased”) and that Mr Oliver’s wife be appointed trustee of the estate.

The deceased had suffered an incapacity and the Public Trustee had been his financial administrator since 27 May 2006. He died intestate on 18 November 2014. On 18 November 2016, a judge of the trial division granted Letters of Administration to the Public Trustee to

administer the deceased's estate in intestacy. The deceased was survived by three siblings, including Mr Daniel Oliver. They are the only persons to have become entitled individually to share in the deceased's estate on his death and, to that end, to have each acquired a right to due administration of the estate.

Mr Daniel Oliver has, at all material times since 25 July 2012, been a bankrupt. Consistently with the decision of the Court of Appeal of Western Australia in *Macchia v The Public Trustee*,¹ upon the deceased's death, Mr Daniel Oliver's right to due administration of the intestate estate vested exclusively in his trustee in bankruptcy, Mr David Hambleton. Mr Hambleton has not consented either to the application made at first instance or the institution of this appeal.

Insofar as his application ventilated a grievance that the Public Trustee has mismanaged the deceased's assets or estate before or after his death, any right to redress that Mr Daniel Oliver might otherwise have had, would reside with his trustee in bankruptcy. Clearly it would not be property preserved to him by the operation of s 116(2)(g) of the *Bankruptcy Act* 1966 (Cth) as the learned primary judge correctly held and the Public Trustee here submits.

Mr Daniel Oliver himself has no vested right to due administration of the estate or otherwise to relief against the Public Trustee. He therefore had no standing to bring an application of the kind that he has brought. That has been the established law in Queensland since Griffith CJ declared it to be so in *Re French*.² For the same reason, he has no standing to institute this appeal. The notice of appeal must therefore be struck out.

Mr Daniel Oliver must pay the Public Trustee's costs of the appeal and this application. In my view, the other beneficiaries ought not to have their respective shares of this very small estate diminished in the event that the costs ordered today are not paid. They should be borne by

¹ [2008] WASCA 241; (2008) 251 ALR 385 at [44], [45], [48].

² [1903] QWN 45. See also *Williams v Williams* [2004] QSC 269; [2005] 1 Qd R 105 at [17], [18].

Mr Daniel Oliver's share of the estate and on an indemnity basis. Accordingly, I make the following orders:

1. The Notice of Appeal filed on 1 May 2017 be struck out.
2. The appellant pay the respondent's costs of the appeal and of this application.
3. To the extent that the respondent's costs of the appeal and of this application on the indemnity basis are not recovered by the respondent pursuant to the order in paragraph 2 hereof, the respondent is entitled to deduct the same:
 - (a) from share of the estate of Steele William Oliver, deceased, of the appellant which os vested in his Trustee in Bankruptcy, and
 - (b) to the extent that that share is insufficient, from the other assets of the said estate.