SUPREME COURT OF QUEENSLAND

CITATION:	*McElligott v Public Trustee of Queensland & Ors* [2013] QSC 314
PARTIES:	**ADRIAN EDWIN McELLIGOTT (as Executor of the Estate of the Late Joyce Alice McElligott)** (applicant) v **PUBLIC TRUSTEE OF QUEENSLAND (as Litigation Guardian for Takarli Joy McElligott and Tarson James McElligott)** (first respondent) and **CHERYL ALICE McELLIGOTT** (second respondent) and **OFFICIAL TRUSTEE IN BANKRUPTCY FOR THE BANKRUPT ESTATE OF LORAIN RONDA McELLIGOTT** (third respondent) and **SHERLENE SANDRA TURNER** (fourth respondent) and **GLORIA JANELL ROBERTS** (fifth respondent) and **ADRIAN EDWIN McELLIGOTT** (sixth respondent)
FILE NO/S:	BS 6651 of 2013
DIVISION:	Trial Division
PROCEEDING:	Originating Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	12 November 2013
DELIVERED AT:	Brisbane
HEARING DATE:	22 August 2013
JUDGE:	Philip McMurdo J
ORDERS:	**It is declared that:** **(a) upon the sale of the property at 186 Collins Road, Ninderry, the grandchildren named in cl 6 of the will of the late Joyce Alice McElligott will have no**

entitlement to any of the proceeds of sale; and

(b) upon the administration of the estate of the late Joyce Alice McElligott, the share of the residuary estate to which Lorain Ronda McElligott, but for her bankruptcy, would be entitled under cl 7 of the will, will be vested in the Official Trustee in Bankruptcy.

CATCHWORDS: SUCCESSION – CONSTRUCTION AND EFFECT OF TESTAMENTARY DISPOSITIONS – WHAT INTEREST PASSES – LICENCE, LIFE INTEREST OR FEE SIMPLE – WHERE RIGHT TO USE RESIDENCE – LICENCE OR LIFE ESTATE – where the estate of the deceased included a freehold property – where the property was given on terms which provided some right or interest in favour of two of her grandchildren – where the property must be sold to pay the debts of the estate – whether the grandchildren were granted an equitable estate or a personal right to occupy the property – whether the grandchildren have any right to the proceeds of the sale of the property

SUCCESSION – CONSTRUCTION AND EFFECT OF TESTAMENTARY DISPOSITIONS – PARTICULAR TESTAMENTARY DISPOSITIONS – DESCRIPTION OF BENEFICIARIES OR PERSONS – OTHER WORDS AND PHRASES – where the will of the deceased provided that if a person "under a legal disability" is entitled to any gift under the will, then the executor should hold on trust the share to which that person is entitled – where one beneficiary is an undischarged bankrupt – whether the bankrupt beneficiary is "under a legal disability"

Binetter v Dunkel (Unreported, Supreme Court of New South Wales, Powell J, 28 May 1993), cited
Commissioner of Stamp Duties (Qld) v Livingston (1964) 112 CLR 12; [1965] UKPCHCA 2, cited
Ex parte Middleton [1983] 1 Qd R 170, cited
Gosden v Dixon (1992) 107 ALR 329, cited
Hatzantonis v Lawrence [2003] NSWSC 914, considered
Official Receiver in Bankruptcy v Schultz (1990) 170 CLR 306; [1990] HCA 45, cited
Re Hillier (1939) 39 SR (NSW) 71, cited
Royal Melbourne Hospital v Equity Trustees Ltd (2007) 18 VR 469; [2007] VSCA 162, applied
Stevens v McGrath and Kane [2004] QSC 138, cited

COUNSEL: S F Downes for the applicant.
G R Dickson for the first respondent.
No appearance for the second respondent.
S G Muller (sol) for the third respondent.
No appearance for the fourth respondent.
The fifth respondent appeared on her behalf.
R T Whiteford for the Public Trustee of Queensland in his

corporate capacity.
L R McElligott appeared on her own behalf.

SOLICITORS: Koolik and Associates Lawyers for the applicant.
Official Solicitor to the Public Trustee for the first respondent.
No appearance for the second respondent.
Rodgers, Barnes & Green Lawyers for the third respondent.
No appearance for the fourth respondent.
The fifth respondent appeared on her own behalf.
Official Solicitor to the Public Trustee of Queensland for the Public Trustee of Queensland in his corporate capacity.
L R McElligott appeared on her own behalf.

[1] This application raises two questions about the proper construction of the will of the late Mrs J A McElligott, who died on 22 September 2012. The will was made on 3 July 2012.

[2] Mrs McElligott survived her husband. They had five children, all of whom survived her. One is the applicant, who is the sole executor and trustee named in the will. Another is Ms Lorain McElligott, to whom I will refer as "Lorain" (because another of the children has retained the family name).

[3] The major asset of the estate is a freehold property at 186 Collins Road, Ninderry in Queensland. The applicant estimates its worth at $700,000 to $800,000. The other assets total approximately $25,000. There are liabilities of between $350,000 and $400,000. They include various loans from Westpac, totalling more than $250,000, which are secured by registered mortgage over the real property. There is also a liability of approximately $37,000 to the builder which constructed a house upon this property under a contract with Mrs McElligott.

[4] The debts of Mrs McElligott cannot be paid without a sale of the Ninderry property. The purpose of this application is to determine what the applicant should do with the proceeds of such a sale.

[5] On 25 June 2012, which was only about a week prior to the execution of the will, Lorain was made bankrupt. Lorain has two young children; a girl, Takarli Joy aged six years and a boy, Tarson James aged three years. The real property was given under cl 6 of the will on terms which provided some right or interest in favour of these two children. The first of the issues of construction is whether they were given an equitable estate for a term of five years or instead merely a personal right to occupy the Ninderry property for that period. The applicant submits for the second of those alternatives. He is supported by two of his sisters. However, the Public Trustee of Queensland, which has been appointed to represent Takarli and Tarson in this proceeding, argues that they have an estate for five years. That argument is apparently supported by Lorain, who is without legal representation. If the children have an estate for a term of years, then they will have an equitable entitlement to the income from the net proceeds of sale for the balance of that period of five years. If they have but a personal right to occupy the property, they will have no entitlement to any of the proceeds of sale, all of which would then fall into the residuary estate.

[6] I should note at this point that the Public Trustee is a respondent to this application in two capacities. The first, which I have mentioned, is in the representation of Takarli and Tarson. The second is in what was described as the Public Trustee's corporate capacity, which has this explanation. This will was drafted by an employee of the Public Trustee, who was not a lawyer. The Public Trustee concedes that there was at least one drafting error in the relevant clause, and has agreed to meet the costs of this application at least insofar as it results from that error. As it happens, there is no material difference between the respective submissions of the two counsel preparing for the Public Trustee in these different capacities and I shall refer to them together as the Public Trustee's submissions.

[7] The other question of construction involves the effect, if any, of cl 5.02 of the will, which provides that if a person "under a legal disability" is entitled to any gift under the will, then the executor should hold on trust for such person the share to which he or she is entitled. There is a question as to whether Lorain is a person "under a legal disability" as a result of her bankruptcy. Her trustee in bankruptcy argues that she is not under a legal disability so that this clause is of no relevance. Alternatively, he argues that if the clause does apply, so that the executor must hold any funds to which Lorain is entitled under the will on trust for her, still that equitable interest would belong to the estate in bankruptcy.

[8] Clauses 6 and 7 of the will are as follows:

> "**6.** ***Interest in Property***
>
> I GIVE my house and land at 186 COLLINS ROAD NINDERRY QLD together with all my household furniture and household effects (other than motor vehicles) therein at my death ('the property') TO my Trustee ON TRUST to permit my granddaughter TAKARLI JOY MCELLIGOTT and my grandson TARSON JAMES MCELLIGOTT both presently living at the property to have the full use of the property for a period of five years from my death TOGETHER with the full use of my household furniture and household effects as a personal right.
>
> During the period of this interest they are required to:-
>
> (a) keep the property in a state of repair to the satisfaction of my Trustee
>
> (b) insure the part(s) of the property which must (in the sole discretion of my Trustee) be insured against loss or damage or other insurable risk
>
> (c) pay all rates taxes insurance premiums and other periodical outgoings payable on the property.
>
> The income actually produced by the property is to be applied as income under my Will
>
> ON the failure or termination of this life interest my Trustee is to hold the property ON TRUST to form part of the residue of my estate.

> **7.** ***Gift of Residue***
>
> I GIVE -
>
> My residuary estate to my daughter CHERYL ALICE MCELLIGOTT and my daughter LORAIN RONDA MCELLIGOTT and my daughter SHERLENE SANDRA TURNER and my daughter GLORIA JANELL ROBERTS and my son ADRIAN EDWIN MCELLIGOTT to be held equally by such of them as shall survive me but if any gift to any such beneficiary does not take effect THEN any benefit to which that beneficiary would have been entitled is to be taken by their child or children who survive me and if more than one then equally."

It can be seen at once that cl 6 provides considerable scope for legal argument. But two matters are uncontroversial. The first is that although Takarli and Tarson were not in fact living at the property on the date of the will, the statement within cl 6 that they were doing so has no consequence. It is clear that they, amongst Mrs McElligott's grandchildren, were the persons to whom some benefit was given under cl 6. Secondly, it is common ground that the reference to "this life interest" in the last sentence of cl 6 is an error, and that the clause should not be interpreted as conferring a life interest. As I have said, the debate is between an equitable estate for a period of five years and a personal right of occupation.

[9] In the first paragraph of cl 6, there is a reference to something as "a personal right". In the applicant's argument, the term "a personal right" has been used to describe the use of "the property" together with the use of the household furniture and household effects. In the arguments for the Public Trustee, the words "personal right" refer only to the use of the household furniture and effects.

[10] In my view, on the face of cl 6, the words "as a personal right" appear to be used to describe "the full use of my household furniture and household effects" and not also the words "full use of the property for a period of five years from my death". But that does not provide any substantial indication that "the full use of the property" was more than a personal right. It is of course the entirety of cl 6, read in the context of the will as a whole, which must be construed. And the expression "the property" is defined, in the first few lines of cl 6, to be the house and land as well as the household furniture and household effects.

[11] At the commencement of the second paragraph of cl 6, the entitlements of the children are referred to as "this interest". The Public Trustee suggests that this is significant, because an equitable estate, it is said, would be an "interest", but a personal right of occupation could not be so described. Reference was made to these meanings of the term "interest", namely:

> "A legal share in something; all or part of a legal or equitable claim to or a right in property;"[1]
>
> "A share in the ownership of property … any right of ownership in property."[2]

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1 Bryan A Garner (ed), *Black's Law Dictionary* (Thomson/West, 8th ed, 2004) at 828.

2 A Delbridge et al (eds), *The Macquarie Dictionary* (The Macquarie Library, 2nd ed, 1987) at 910.

But according to Butterworths Australian Legal Dictionary, the word "interest" is:

> "a loose term for a property right. All forms of property rights, including legal and equitable rights, security rights, and rights of use or restriction over another's property, are interests."[3]

A right of occupation would therefore be an interest as there defined. In my view, the use of the term "interest", both in the heading to cl 6 and within cl 6, does not have the significance for which the Public Trustee argues.

[12] The principal argument for the Public Trustee focuses upon the words "the full use of the property". The word "full" is emphasised in this argument. It is said that this is more extensive than a right to live on the property.

[13] In several cases, it has been held that a right to "use and occupy" indicates an ownership of the property, because the use of the property would include a right to receive rents.[4] The arguments for the Public Trustee place particular emphasis upon the judgment of Bryson J in *Hatzantonis v Lawrence,*[5] where this observation of Powell J in *Binetter v Dunkel*[6] was endorsed:

> "There appears, over the years, to have developed a rule of construction that, in the absence of a contrary intention, a devise of the 'free use' or the 'use and occupation' of land passes an estate in the land (see, for example, *Rabbeth v Squire* (1854) 19 Beav 170; 4 De G and J 406; *Mannox v Greener* (1872) LR 14 Eq 456; 47 LT 408; *Coward v Larkman* (1888) 60 LT 1; *In re Gibbons; Gibbons v Gibbons* [1920] 1 Ch 372; *In re Johnson; Sawyer v Guthrie* [1955] VicLawRp 34; [1955] VLR 198; *In the Will of Snadden Dec'd* [1962] VicRp 78; [1962] VR 571; cf *Reid v Deane* [1906] VicLawRp 21; [1906] VLR 138; *The Equity Trustees Executors and Agency Co Ltd v Buckhurst* [1907] VicLawRp 49; [1907] VLR 252; *In re Anderson; Halligley v Kirkby* [1920] 1 Ch 175), the estate, prima facie, being limited to the life of the devisee (*Re Coward* (1887) 57 LT 285 (CA); *Coward v Sparkman* (supra) (HL)), whereas a direction to trustees to permit a named person to reside rent free, or an option to reside, is to be construed as a mere personal licence (*May v May* (1881) 44 LT 412; *Stevenson v Myers* (1929) 47 WN 94)."

However, Bryson J went on to say: "The rule of construction referred to by Powell J, which I would prefer to call a general disposition of courts, is no more than a broad generalisation".[7]

[14] Referring to these authorities, Professor Butt has written:

> "But since context may colour sense, the generalisation must yield to a contrary meaning in appropriate circumstances. And so, depending on

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3 Dr Peter E Nygh and Peter Butt (eds), *Butterworths Australian Legal Dictionary* (Butterworths, 1997) at 612-13.

4 *Re Hillier* (1939) 39 SR (NSW) 71 at 74.

5 [2003] NSWSC 914 at [17].

6 (Unreported, Supreme Court of New South Wales, Powell J, 28 May 1993) at 32. See also: *Ex parte Middleton* [1983] 1 Qd R 170.

7 [2003] NSWSC 914 at [18].

> context, a right to 'use occupy and enjoy' a property may confer only a right of residence and not an estate in the land."[8]

[15] For the last sentence of that passage, Professor Butt cited *Royal Melbourne Hospital v Equity Trustees Ltd*,[9] where one of the reasons for a conclusion that a right to "occupy and enjoy" a house and its grounds was a mere personal right of residence was the nature of the class - namely, children and grandchildren - upon which the right was conferred.[10] In my view, that is a particularly important consideration in the present case. It is difficult to accept that Mrs McElligott intended that these two very young children were to be able to, for example, let the property or part of it or themselves conduct some commercial venture upon or from it. It is certainly apparent that she intended that the two children should be able to live on the property for five years. It is also clear that she intended that Lorain would live there with her children. But importantly, on no interpretation was Lorain given any right in relation to the property. Therefore, an expectation by Mrs McElligott that Lorain would conduct some business on or from the property could not be relevant to the resolution of the present question.

[16] There is the imposition of a requirement that the two grandchildren keep the property in a state of repair, insure the property and pay all relevant rates, taxes and outgoings. That burden is not of a kind which suggests the correctness of the Public Trustee's argument. It could also be apt for someone who was given a mere right of residence.[11]

[17] Importantly, there is the further provision within cl 6 that "the income actually produced by the property is to be applied as income under my will". On its face, that is irreconcilable with the notion that Takarli and Tarson were entitled to let the property or otherwise make an income from it. But the Public Trustee says that the insertion of this sentence is an error. But that appears only from the evidence of the person who prepared this will, to which I will come.

[18] By s 33C of the *Succession Act* 1981 (Qld), evidence, including evidence of the testator's intention, is admissible as an aid in the interpretation of the will if its language is meaningless or ambiguous. It is suggested by at least Mr Whiteford that there was no relevant ambiguity in cl 6. But in my view, its terms are ambiguous, as should already be apparent, and recourse can be had to any relevant evidence.

[19] Some of the evidence which is said to be relevant is an affidavit by Ms L C Blair, who is a close friend of Lorain. The effect of her evidence is that Mrs McElligott had a special affection for Takarli and Tarson and a particular sympathy to Lorain's predicament from her recent bankruptcy. She also refers to a conversation with Mrs McElligott about her plans for the use of the property, significantly by not only Lorain and her family but by some of Mrs McElligott's other children. Her evidence supports what is already evident from cl 6, which is that Mrs McElligott did mean to make some particular provision at least for Takarli and Tarson. But it is inconsistent with an intention that they, and only they, were to derive some income from it for five years after her death.

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8 Peter Butt, *Land Law* (Lawbook Co, 6th ed, 2010) at 147[10 06].

9 (2007) 18 VR 469.

10 *Royal Melbourne Hospital v Equity Trustees Ltd* (2007) 18 VR 469 at 515 [238].

11 See for example *Stevens v McGrath and Kane* [2004] QSC 138 at [78].

[20] There is an affidavit from one of the respondents, Mrs Roberts, another of Mrs McElligott's children. It is to the effect that her mother "would not have given, or meant to give, a greater share of her estate to two of her 12 grandchildren". This evidence does not materially assist with the present question. Clearly, some special provision was made for these two grandchildren.

[21] There is an affidavit by Ms S M Handley, who is the Public Trustee's employee who prepared this will. She recalls that Mrs McElligott told her that "she wanted her property held in trust so that it could be passed down through her family for an indefinite period" and that she "did not want the property sold". Mrs McElligott told her that "she was concerned that Lorain may be made bankrupt and she wanted to make sure that Lorain and her children had a place to live". She advised Mrs McElligott that "she could not have a trust without an end date" and there was some discussion about "the possibility of a right to reside or a life interest".

[22] On a subsequent meeting with Mrs McElligott, Ms Handley was told that Mrs McElligott was going to "farm her property with Lorain, and that she thought the property would generate income". She says that Mrs McElligott "was quite clear that she wanted Lorain to have the income from the property and not just a place to live" and that Lorain was to "have the full use of the property". There was no discussion as to what would happen if the property had to be sold.

[23] At this second meeting, Mrs McElligott instructed her that the grandchildren were to have an interest for five years. There was no discussion as to her reason for specifying that period.

[24] The will was made with the assistance (or otherwise) of certain software used within the Public Trustee's office, which inserts certain common clauses upon an instruction such as "life interest". Ms Handley provides an explanation for some of the terms of cl 6. In particular, her evidence shows that the reference to a "life interest" was not meant to confer a life interest upon the grandchildren. What is clear is that their interest was to be for the period of five years from Mrs McElligott's death, as specified earlier in the clause. But Ms Handley says that the sentence which provides for the disposition of the income produced by the property was a consequence of the specification of a "life interest" in the operation of the software. She refers to a note within the Public Trustee's Wills Manual to the effect that for at least some circumstances, such a provision is necessary to avoid the rule in *Howe v Dartmouth*.[12]

[25] Ms Handley says that she advised Mrs McElligott that because the property was mortgaged, a right of residence would not suffice and that it would be necessary for "Lorain and her children to have the full use of the property". That advice was incorrect, because a right of residence could be given over the mortgaged property. But it is said that the fact that this advice was given indicates that Mrs McElligott's intention was to confer an estate rather than a personal right to reside on the property.

[26] Ms Handley's evidence shows why Mrs McElligott saw fit to make some special provision, in relation to this property, in favour of Takarli and Tarson. It was because Lorain was about to become, or had become, bankrupt. Mrs McElligott wanted to provide Lorain and her children with the security of at least being able to

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12 (1802) 32 ER 56.

live on this property during Lorain's bankruptcy. Mrs McElligott also intended that the property might be used for some commercial return, whilst Lorain and her children lived there. She believed that this will, and in particular cl 6, would provide that secure residence and an opportunity for some income to be derived from the property.

[27] But Mrs McElligott does not appear to have formed a more precise intention in certain relevant respects. There is no evidence that she considered what should happen if the property had to be sold, either by her executor or the mortgagee, and whether the grandchildren would have any interest in the proceeds of sale. Nor does it appear that she considered the means by which Lorain could generate some income from the property which could be legitimately attributed to her children.

[28] The relevance then of Ms Handley's evidence is substantially diminished by the fact that there was no discussion with Mrs McElligott about what should happen if the property had to be sold. It is far from clear that Mrs McElligott had even adverted to that possibility.

[29] I am not persuaded that Mrs McElligott did intend to constitute these two grandchildren as the beneficial owners of the property for five years from her death. She intended that the property would be the home of Lorain and her children during this period and as a small rural property, that it might produce some income for the benefit of that family. But it is not established that Mrs McElligott did intend to provide all of the rights, such as a right to let all or part of the property, which the holder of an estate for five years would have. Therefore, the extrinsic evidence in this case does not require the ambiguity to be resolved in favour of the Public Trustee's argument.

[30] I return then to the terms of cl 6. In my view, it is of some significance that the property was left to the executor "on trust to *permit*" the grandchildren to have the full use of the property. That language is more consistent with the grant of a personal right than the creation of an estate in the land. The entitlement of the grandchildren was to derive from a permission given by the executor, rather than by the will containing an express grant of an estate in land.

[31] The notion that these two very young children should be given an estate, for a period of five years of their early lives, so that they could also commercially exploit the land seems quite unrealistic. And the apparent intention was that they would live on the property rather than, for example, have the right to lease it.

[32] I am not persuaded that this will gave the grandchildren anything more than a personal right to live on the property. It follows that upon any sale, they would have no entitlement to any part of the proceeds of sale.

[33] I go then to the second question, which involves the effect of cl 5.02. I have mentioned the alternative arguments for the Official Trustee in Bankruptcy. I am inclined to accept the submission that Lorain's bankruptcy does not represent "a legal disability" so that cl 5.02 has no relevance. But in any case, its operation could mean only that Lorain's share would be not paid to her but held by the executor upon trust for her. In that event, her beneficial interest in that property would still belong to her trustee in bankruptcy.

[34] Section 58 of the *Bankruptcy Act* 1966 (Cth) relevantly provides as follows:

"58 Vesting of property upon bankruptcy - general rule

(1) Subject to this Act, where a debtor becomes a bankrupt:

(a) the property of the bankrupt, not being after-acquired property, vests forthwith in the Official Trustee or, if, at the time when the debtor becomes a bankrupt, a registered trustee becomes the trustee of the estate of the bankrupt by virtue of section 156A, in that registered trustee; and

(b) after-acquired property of the bankrupt vests, as soon as it is acquired by, or devolves on, the bankrupt, in the Official Trustee or, if a registered trustee is the trustee of the estate of the bankrupt, in that registered trustee.

…

(6) In this section, after-acquired property, in relation to a bankrupt, means property that is acquired by, or devolves on, the bankrupt on or after the date of the bankruptcy, being property that is divisible amongst the creditors of the bankrupt."

Section 116 of that Act relevantly provides:

"116 Property divisible among creditors

(1) Subject to this Act:

(a) all property that belonged to, or was vested in, a bankrupt at the commencement of the bankruptcy, or has been acquired or is acquired by him or her, or has devolved or devolves on him or her, after the commencement of the bankruptcy and before his or her discharge; and

(b) the capacity to exercise, and to take proceedings for exercising all such powers in, over or in respect of property as might have been exercised by the bankrupt for his or her own benefit at the commencement of the bankruptcy or at any time after the commencement of the bankruptcy and before his or her discharge;

…

is property divisible amongst the creditors of the bankrupt."

[35] Lorain is one of the persons entitled to share in the residuary estate, under cl 7. They each have an entitlement to have the estate properly and duly administered by the executor.[13] But Lorain's entitlement in that respect, together with fruits of that entitlement after the estate has been administered and there is a residuary estate to be distributed, belongs and will belong to her trustee in bankruptcy.[14] Further, upon her discharge from bankruptcy, her interest as a residuary beneficiary will not revest in her.[15]

[36] Therefore, upon the administration of this estate, whether before or after Lorain's discharge from bankruptcy, Lorain's entitlement to a share of the residuary estate will belong to the Official Trustee in Bankruptcy.

[37] I turn then to the Originating Application. Paragraph 1 seeks a declaration that upon its proper construction, cl 6 of the will provides a right of residence. But as I have said, the true controversy here is as to the application of the proceeds of any sale of the property. Therefore, it will be declared that upon the sale of the property at 186 Collins Road, Ninderry, the grandchildren named in cl 6 of the will of the late Joyce Alice McElligott will have no entitlement to any of the proceeds of sale.

[38] Paragraph 2 asks for a determination of a question as follows:

> "Having regard to clause 5.02 of the Will, and on the premise that Lorain Ronda McElligott is an undischarged bankrupt, is the Executor obliged to retain those funds that would otherwise pass to Lorain Ronda McElligott until such time as her bankruptcy is discharged?"

That question reveals some misunderstanding of the operation of the provisions which I have discussed. The only entitlement of Lorain under this will is to a share of the residuary estate. It will be declared that upon the administration of the estate of the late Joyce Alice McElligott, the share of the residuary estate to which Lorain Ronda McElligott, but for her bankruptcy, would be entitled under cl 7 of the will, will be vested in the Official Trustee in Bankruptcy.

[39] I will hear the parties as to costs.

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13 *Commissioner of Stamp Duties (Qld) v Livingston* (1964) 112 CLR 12.

14 *Official Receiver in Bankruptcy v Schultz* (1990) 170 CLR 306 at 314.

15 *Gosden v Dixon* (1992) 107 ALR 329 at 331.