PARTIES:	In re ESTATE of the late CHARLES WILLIAM TAPP
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	118 of 1992
DELIVERED:	5 December 1996
HEARING DATES:	28 November 1996
JUDGMENT OF:	Kearney J

REPRESENTATION:

Counsel:

Applicant:	M.F. Michaels
Respondent:	D.R. Dalrymple

Solicitors:

Applicant:	Clayton Utz
Respondent:	Dalrymple & Associates

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kea96033

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 118 of 1992

IN THE MATTER of the Estate of the late Charles William Tapp

AND IN THE MATTER of an application for the discharge of WILLIAM TAPP as Administrator of the Estate and the appointment of BEN TAPP as Administrator in his stead

CORAM: KEARNEY J

REASONS FOR DECISION

(Delivered 5 December 1996)

The application

On 24 November 1992 Letters of Administration c.t.a. in this Estate were granted to William Tapp, a son of the deceased, the 3 Executors named in the Will having renounced probate thereof. William Tapp now desires to be discharged from the office of Administrator. Accordingly, Ben Tapp, another son of the deceased, applied by summons of 21 October 1996 to have William Tapp removed from the office of Administrator and to have himself appointed as Administrator in his place. I heard submissions on the application on 28 November and rule on it today.

The background

In par13 of the affidavit of William Tapp of 11 November 1992, filed in support of his application for appointment as Administrator, he deposed:

> "13. The names and ages of the persons entitled to share in the estate are as follows:
>
> a. Sam Tapp - 29 years.
>
> b. Joe Tapp - 28 years.
>
> c. Ben Tapp - 27 years.
>
> d. William Tapp - 25 years.
>
> e. Daniel Tapp - 20 years.
>
> f. Billy Clements (commonly known as Billy Tapp) - 35 years.
>
> g. Sarah Caroline Tapp - 24 years.
>
> h. Kate Tapp - 18 years.
>
> i. Toni Coutts - 31 years.
>
> j. Shing Clements (commonly known as Shing Tapp) - 32 years."

Under the Will when the youngest surviving child reaches the age of 25 years, the first 6 named above each take 12.5% of the residue of the Estate, the next 2 take 7.5% each, and the last 2 take 5.0% each.

According to the statement of Estate assets in the affidavit of William Tapp of 16 September 1992 the major assets in the Estate at that time were:

	Estimated Value
Killarney Station	$13,500,000
Roper Valley Station	3,200,000
Maryfield Station	4,000,000

The principal liability shown in that affidavit was a disputed debt claimed by Elders interests of $11,500,000 for funds allegedly advanced to the deceased. At that time the estimated value of the entitlements of the beneficiaries were: as to the first 6 the sum of $1,100,000 each; as to the next 2, the sum of $660,000 each; and as to the last 2, the sum of $440,000 each.

In par5 of Ben Tapp's affidavit of 7 October 1996 in support of his application to be appointed as Administrator, he deposes:

> "Since those affidavits [that is, the affidavits of William Tapp of 16 September 1992 and 11 November 1992] were sworn, the [Estate] litigation with Elders [over the 'principal liability' referred to above] has settled. The proceeds of that litigation have been used to pay out all creditors of the Estate and the surplus was distributed to the beneficiaries of the Estate of the deceased in accordance with the Will. To the best of my knowledge, the only matter remaining outstanding for the Estate is its action against the NT of Australia, being Supreme Court of the Northern Territory proceeding No. 299 of 1992."

Ms Michaels of counsel for both Ben and William Tapp informed me from the Bar table that the debts of the Estate had now been paid, except for a debt to Sarah Caroline Tapp; that most of the assets had been distributed among the beneficiaries; and that the present position of the Estate is as indicated in par5 above.

Setting aside the applicant Ben Tapp, all but 1 of the remaining beneficiaries have filed Consents to the discharge of William Tapp as Administrator, and to the appointment of Ben Tapp in his place "and to an administration bond [by Ben Tapp] being dispensed with".

The remaining beneficiary, Sarah Caroline Tapp, for whom Mr Dalrymple of counsel appears, seeks to be provided with certain information concerning the Estate, before William Tapp is discharged from his office of Administrator. She also objects, independently, to the appointment of Ben Tapp as Administrator in his stead.

The affidavit material relied on

By letter of 25 April 1996 (annexure MFM1 to her affidavit of 27 November 1996) Ms Michaels informed Mr Dalrymple that William Tapp was willing "to provide you [as solicitor for Sarah Caroline Tapp] with financial documentation in relation to the Estate."

She also informed him at that time of the 'state of play' in proceedings No.299 of 1992, the action brought by William Tapp as Administrator against the Northern Territory of Australia. I note that he instituted those proceedings by Writ on 5 November 1992, claiming damages for the alleged destruction condemnation and compulsory destocking of livestock on Maryfield, Roper Valley and Killarney Stations, in the course of the defendant's brucellosis and tuberculosis eradication campaign (BTEC). Details of the claim are set out in the Statement of Claim filed on 16 August

1994; there appear to be 3 distinct causes of action, arising from events alleged to have occurred on the 3 cattle stations over a period of some 8 years. Ms Michaels informed me that the claim is for some $9.5 million. Clearly, it is complex litigation; the trial is estimated to take at least 2 to 3 weeks, and up to 6. William Tapp has made an offer to settle the action; the defendant has not yet responded to that offer. The case has not yet been set down for trial. On 22 October 1996 the defendant was ordered to provide further and better particulars of its amended Defence; on 25 November the plaintiff sought further and better particulars of the defendant's Rejoinder. Progress of the action towards trial will be monitored by the Chief Justice again in mid-December 1996. I note that in the course of the case-flow management of the proceedings, his Honour directed on 29 March 1996 that a new Administrator of the Estate be appointed within 1 month; this application to do so is made some 7 months after that order was made.

By his affidavit of 4 November Mr Dalrymple had indicated that he was instructed to consent to the discharge of William Tapp as administrator, but to object to the appointment of Ben Tapp in his stead. At the hearing before me on 28 November, this approach was varied to that set out on p4.
Mr Dalrymple deposed on 4 November that he had ascertained that a Mr Wayne Nourse, a chartered accountant and an Official Liquidator, would be prepared to act as Administrator of the Estate, subject to suitable arrangements being made for his remuneration and his being "provided with an up-to-date statement of payments and receipts in relation to the Estate."
Mr Dalrymple deposed that on 25 October he had requested that "a

comprehensive statement of payments and receipts … for the period 1/7/95 to date be provided [by 1/11/96]"; I note that no such statement has yet been made.

By her affidavit of 29 October Sarah Caroline Tapp deposed as to the reasons for her concerns as to the administration of the Estate by William Tapp, and her objections to the appointment of Ben Tapp as Administrator. On 13 July 1994 she had instituted proceedings No.142 of 1994 against William Tapp, claiming in essence that as Administrator he was in breach of his fiduciary duty to her as a beneficiary under the Will, and that he had breached the terms of the trust created by the Will. On 22 December 1994 those proceedings were settled by a Deed of Settlement. Clauses 3.1 and 5 of the Deed provide:

> "3.1 Subject only to [William Tapp's] obligations under clause 1.1.2 hereof [to pay $30,000 to Sarah Caroline Tapp within 14 days of receipt by the Estate of the proceeds of the BTEC claim No.299 of 1992] [Sarah Caroline Tapp] hereby fully and unconditionally releases and discharges William [Tapp] from any and all claims, rights of action, suits, liabilities or obligations of any type in his capacity as Administrator including those raised, alleged in or incidental to the Court Proceedings [No.142 of 1994].
>
> …
>
> 5. William [Tapp] agrees to send or provide to [Sarah Caroline Tapp] all and any information she may reasonably require in relation to the Estate."

In pars 5, 8, 11, 13, and 15-20 of her affidavit of 29 October, Sarah Caroline Tapp deposed:

> "5. During the course of litigation between the estate and my

brothers William, Ben, Joe and Billy on the one hand and Elders IXL on the other, evidence was adduced which demonstrated that the accounting and administrative aspects of the management of my father's properties in the period leading up to his death had not been in accordance with accounting and administrative best practice.

8. Since 22/12/94 I have not received any accounting from William Tapp referable to the administration and operation of pastoral business carried on by the estate at Roper Valley Station, or of the Estate generally, and I have not been provided with particulars as to the distribution of the Estate's funds received since November 1993, or at all, and I believe that Ben Tapp has also not been provided with proper particulars as to the financial affairs of the estate since the appointment of William Tapp as Administrator.

…

11. Up until about 5 years prior to my father's [that is, Charles William Tapp's] death, Ben [Tapp] had no management training or experience. He has to this day never received any formal training in accounting, bookkeeping, office management, tax law, or any other aspect of the administration and management of a business.

…

13. Ben [Tapp] has been based at Roper Valley Station ever since [1986]. I believe that the Station's cattle operations are of merely marginal profitability, but about 5 years ago Ben obtained formal qualifications enabling him [to] fly helicopters on a commercial basis, and I believe that he operates a busy and profitable business as a helicopter pilot, flying his own helicopter, principally involved in contract mustering.

…

15. I believe that Ben's helicopter-mustering business commitments (which require him to spend most of his time in remote rural areas) and lack of relevant formal qualifications make him ill-suited to take on the responsibilities of Administrator of the Estate.

16. I also believe that there are continuing tensions between the beneficiaries, in particular between my brothers, which would make it extremely difficult for Ben to properly and adequately undertake his duty as Administrator to comprehensively report on matters regarding the Estate to the other beneficiaries.

17. I believe that because of these tensions, there is a danger that an Administrator who is also a beneficiary will be placed in a position of potential if not actual conflict as regards the details of and the basis for any settlement of the BTEC litigation against the N.T. Government.

18. I believe that it is very important that Ben, and my other brothers as well, be available at all times to the lawyers who are preparing the BTEC litigation on behalf of the Estate [that is, Messrs Clayton Utz] against the N.T. Government, and I would agree that it is entirely appropriate that they be appropriately remunerated by the Estate for any time that they spend working together with the lawyers in relation to the litigation.

19. I believe that it would be difficult and inappropriate for Ben to be the person who had to determine what his own remuneration should be in relation to assisting the lawyers with the preparation of the litigation (i.e. in the capacity as an adviser with intimate knowledge of the N.T. pastoral industry and the BTEC program, in particular as it related to my father's properties).

20. I believe that my concerns as regards the inappropriateness, in terms of his lack of formal qualifications and relevant experience, of the appointment of Ben as Administrator of the Estate would apply to any of my other brothers as well. Ben, William, Joe Tapp, and Bill Tapp were all parties to the litigation with Elders IXL … and that litigation was settled without reference to any of the beneficiaries of the Estate who were not also parties [to that action No.299 of 1992]."

In par4 of her affidavit of 6 November Ms Michaels responded to the allegations by Sarah Caroline Tapp of 29 October and by Mr Dalrymple of 4 November as to the failure of William Tapp to account for the administration of the Estate, as follows:

"4. I am informed by William Tapp and verily believe that:-

4.1 William has offered the beneficiaries opportunities to peruse all of the financial information held by the Estate on more than one occasion, including at a meeting held of the beneficiaries in November 1994 [sic, 1995];

4.2 at that meeting, one of the other beneficiaries, Toni Tapp-Coutts, took a copy of all of the Estate's bank account statements for each of the beneficiaries;

4.3 [Sarah Caroline Tapp] did not take up the offer made at that meeting last November to peruse the Estate's financial documents;

4.4 William has instructed the deceased's accountants, Giles and Giles, to prepare the tax returns and financial accounts for the Estate. All financial records have now been prepared and are in the possession of Messrs Giles and Giles in Adelaide; and

4.5 William is willing to provide [Sarah Caroline Tapp] with all financial information which he has in his possession in respect of the Estate."

In par5 of her affidavit Ms Michaels rejected the allegations in par5 of Sarah Caroline Tapp's affidavit of 29 October (p5). As to the objection to the appointment of Ben Tapp as Administrator (pp7,8), and the suggestion (p5) that a professional accountant be appointed, she deposed in par6 of her affidavit:

"6. … I am instructed by Ben and William Tapp and verily believe that:

6.1 they and Daniel Tapp object to an independent Administrator being appointed;

6.2 one of the reasons for their objection is that during the course ' of the litigation [with the Elders interests] referred to in Miss Tapp's affidavit [of 29 October 1996], a Court-appointed Receiver was appointed to run the properties the subject of the dispute ("the Receiver");

6.3 they have seen, through the actions of the Receiver, and believe, that "things can get out of control", most particularly, costs;

6.4 they believe that the Administrator of the Estate if [sic, is] a family matter which ought to be dealt with within the [Tapp] family."

Ms Michaels also deposed in par7 of her affidavit that Ben Tapp was "contactable the majority of the time" and was "aware of his duties and responsibilities as Administrator."

In her affidavit of 22 November 1996 Sarah Caroline Tapp responded to the contents of Ms Michael's affidavit of 6 November. She referred to the meeting of beneficiaries held in November 1995 and, inter alia, annexed a copy letter of 13 November 1995 written to the beneficiaries by Ms Michaels for William Tapp in which it was stated, inter alia:

> "I write to advise you that it is my intention to resign as Administrator of the Estate. I will need to make an application to the Court for this to happen and the Court must appoint an alternative Administrator.
>
> My solicitors have made enquiries as to who would be suitable to appoint, in the absence of no other suitable family member being available. The Court's obligation is to appoint some proper person as the Administrator. The results of the enquiries made by my solicitors are that there are two suitable organisations which could be appointed as Administrator in my place. They are as follows:-
>
> 1. The Public Trustee - this is a Government organisation which administers Estates and prepares wills for members of the public. The Public Trustee usually works on a commission basis which is 4% of the gross capital estate. In my solicitor's discussions with the Public Trustee, they did indicate that given the size of the BTEC claim, a fair and reasonable expense could be negotiated depending on the work requirements.
>
> 2. Geoff Nourse of Deloitte Touche Tohmatsu (formerly Pannell Kerr Forster). Geoff has indicated that he has done similar work in the past. In the absence of any other agreement, he would charge for his work on an hourly rate of $190.00, however, it would be possible to reach agreement with him that his fees be based on a percentage of whatever is recovered from the BTEC litigation.

I suggest that the identity of the new Administrator be discussed at the meeting at the end of November."

I note that at that time, some 12 months ago, the Administrator was contemplating as his replacement exactly the same type of professional person that Sarah Caroline Tapp now seeks. In her affidavit of 22 November Ms Tapp deposed inter alia, as to what occurred at the beneficiaries' meeting in November 1995 and its outcome, viz:

"4. I verily believe that there were no accounting documents available for inspection nor given to any beneficiary at or after the meeting [of November 1995].

5. The principal topic of discussion at the meeting was the proposed resignation of William Tapp as Administrator, and the appointment of a replacement, …

…

7. A number of beneficiaries nominated themselves "for the job" of Administrator, with both Ben Tapp and Joe Tapp going into some detail about what they would "cost". These details did not include percentages, but certain cash figures were mentioned, varying according to the outcome of the BTEC case.

8. After a period of heated argument, a secret ballot was held, the result of which was that Joe Tapp was "elected" as Administrator.

…

10. My participation in the meeting ended when I was physically attacked by another sibling over my opposition to the appointment of Ben Tapp as Administrator, but I am informed and verily believe that after the decision to appoint Joe Tapp as Administrator, no further business was conducted at the meeting.

11. On the basis of conversations I have had with beneficiaries Sam Tapp and Toni Coutts, I verily believe that no financial records of any kind were provided by William Tapp to the other beneficiaries after my departure from the meeting in November 1995.

12. Matters raised at the meeting by Toni Coutts before I left included the matter of when William Tapp was going to repay the estate the $14,000 that he had borrowed from estate funds for the purpose of renovating his house at Roper Valley Station, and the matter of whether Giles and Giles had completed all outstanding estate tax returns. No satisfactory answer was obtained from William Tapp in relation to these queries.

13. I am informed and verily believe that both prior to and since the November 1995 meeting, Toni Coutts has written to William Tapp requesting proper financial reports in relation to the estate, and that she has never received such requested reports."

Ms Tapp also annexed a copy letter of 10 September 1996 to the beneficiaries from Ms Michaels in which she stated, inter alia:

> "William [Tapp] has now decided to allow Ben [Tapp] to take his place as Administrator of your late Father's estate.
>
> William has asked that you contact me within the next 14 days if you have any objection to Ben replacing him. We enclose a Consent to administration which we request that you execute and return to us as soon as possible.
>
> We are instructed that since last November William has drawn the amount of $6,000.00 on account of his commission as executor [sic, Administrator]. As you will be aware from our letters during the course of this year, there has been substantial progress in relation to this matter since that time. William has asked us to tell you that he is happy to meet with any or all of you prior to Ben taking over and discuss any matters in relation to the administration.
>
> Ben has asked us to inform you that his requirements for taking on the role as Administrator are as follows:-
>
> 1. he will not make any major decision in relation to the Estate without the agreement of 70% of the beneficiaries, which is either 70% in number or 70% in entitlement under the will;
>
> 2. Ben's only commission will be 3% of any gross settlement or judgment obtained from the Northern Territory; he will not charge the Estate for any disbursements such as petrol or accommodation. In the unlikely event that Ben is required to fly anywhere on Estate business, he will seek immediate reimbursement of his airfare;

3. any money raised from beneficiaries or other sources (unless a lower rate is available for those sources) will attract an interest rate of 33% per annum, ie further advances of funds by beneficiaries will be treated as loans to the Estate payable on settlement or judgment with interest of 33%; this is the same rate charged to the estate by the Legal Aid Commission during the Elders trial;

4. any proceeds received from the BTEC litigation will, less costs, be distributed in accordance with the shares in the Will;

5. Ben requires an indemnity in relation to any liabilities which he incurs as a result of acting as Administrator in the form attached (*). You may wish to seek legal advice in relation to this indemnity; and

6. Ben or we will provide you with an update on developments in relation to the litigation and Estate at least every 6 weeks."

In her affidavit of 22 November Ms Tapp deposed, inter alia, as to her further concerns as to the proposed appointment of Ben Tapp as Administrator, viz:

"14. … On or about 21/9/96, after I had received the said letter [of 10 September 1996], I received a telephone call from Ben Tapp.

15. Ben Tapp told me that he was phoning to "follow up" in relation to the 10/9/96 letter, and restated what was said in the letter as to his role and fees. The conversation then proceeded as follows:

I said: Have we got an advice yet on the merits of the [BTEC] case, and if so, what are the good points and what's the down side?

He said: It hasn't been done yet as Alistair's [a reference to the barrister Mr Alistair Wyvill] on holiday, but he'll be on to it as soon as he gets back, which is soon.

I said: What about the 3% you're asking? I think that's a bit excessive in the light of the fact that Toni and Shing are only getting 5% [of the residue of the Estate] anyway, and all the boys are getting nearly twice as much already. I think this is only a commercial venture on your part, and if

that's the case, I think a professional would do better at handling the administration of the Estate.

He said: Well I reckon an out-of-court settlement would be in the area of $1.5 million, and that's what I've based the 3% on.

I said: How did you get to that figure, and without having yet received the barrister's advice? I didn't think an out-of-court settlement would be for the same amount claimed in the Writ, otherwise why have a settlement, but that's [that is, $1.5 million] a pitiful amount. And does everyone know about or expect this to be an agreeable amount?

He said: I haven't really discussed it with anyone yet.

I said: How did you get to this figure?

He said: It's just what I reckon.

I said: Well, I already have an appointment with a lawyer to talk about my rights and rights of appeal in regard to the Estate.

He said: Well, if you've got any objections, the handover is in Court on Thursday, and you'll have to front up there.

16. I verily believe that in his telephone conversation with me on 21/9/96, Ben Tapp was deliberately or recklessly underestimating the likely amount for which the BTEC case could realistically be expected to settle for, in order to overcome my misgivings as regards the size of the commission he would receive as Administrator if the case was settled on more favourable terms than those he mentioned to me.

17. I verily believe that Ben Tapp wishes to assume the role of Administrator of the Estate principally because he is interested in obtaining a financial benefit from doing so.

18. I verily believe that the appointment of Ben Tapp (or any other beneficiary) as Administrator will not only not be to the benefit of the Estate, but that it will further the gradual destruction to the fabric of the relationships between the Tapp family beneficiaries that was so evident at the November 1995 family meeting - destruction that derives from the inappropriateness and lack of credibility at this

stage of any single sibling purporting to make financial decisions for the benefit of all the other siblings.

19. I verily believe that my interests in particular will be adversely affected by the appointment of Ben Tapp as Administrator, and my concerns in that regard are heightened by information I have already received to the effect that over the last two months Ben Tapp has been receiving information from the solicitor for the Estate [Ms Michaels] which he has passed on to the other beneficiaries, but not to myself."

Annexure "A" to Mr Dalrymple's affidavit of 22 November is his letter of 7 November 1996 to Ms Michaels, part of which is as follows:

> "I refer to our conversation at Court this morning, and confirm that you will convey to William Tapp Caroline's request that he provide her with the documentation requested in my letter to you dated 25/10/96, in accordance with his undertaking set out in paragraph 4.5 of your 6/11/96 affidavit [see p8]. Caroline is particularly keen to obtain a copy of the documentation referred to in paragraph 4.4 of your affidavit [see p8].
>
> I believe it will assist the expeditious resolution of the application [of 21 October 1996] now before the Court if the requested documentation can be provided as soon as possible before the adjourned date of 28/11/96 - preferably by close of business on 21/11/96. Could you please attempt to arrange for the documentation to be provided within that time frame."

I note that none of this "documentation" has as yet been provided. In his affidavit of 22 November Mr Dalrymple deposed that while Mr Wayne Nourse was no longer available to act as Administrator of the Estate, Messrs Geoffrey Finch and Allan Garraway, chartered accountants and Official Liquidators, were each prepared to accept an appointment as Administrator.

Ms Michaels wrote to Mr Dalrymple on 25 November 1996 stating, inter alia:

"I refer to your letter of 7 November 1996.

Since we attended at Court on 7 November 1996, I have informed William [Tapp] of your request to obtain a financial documentation in relation to the Estate. Unfortunately, William and I have been trying to speak with each other since that time but without success. William has recently moved and is not available to be contacted by telephone. Nonetheless, I reiterate William's willingness to provide you with financial documentation in relation to the Estate."

Conclusions

The application of 21 October 1996 was made pursuant to s41(1)(b) of the *Administration and Probate Act* which provides, as far as relevant:

"… where an … administrator to whom representation has been granted …

…

(b) desires to be discharged from his office of … administrator; or

…

the Court may upon application order the discharge … of that … administrator, and the appointment of some proper person as administrator in place of the … administrator so discharged …, upon such terms and conditions as the Court thinks fit, and may make all necessary orders for vesting the estate in the new administrator, and as to accounts, and such order as to costs, as the Court thinks fit."

Two issues arise in this application: the question of William Tapp accounting for his administration of the Estate, and whether Ben Tapp should now be appointed Administrator in his stead. As will later appear, I consider that these 2 questions are interlinked.

A few general observations, first. An administrator c.t.a. of a deceased estate holds it on the trusts of the Will for the beneficiaries. They are entitled

to require that he maintain proper records accounting for his administration of that trust, and "provide a full rather than a reluctant response to [their] request for information"; see *Re Whitehouse* [1982] Qd R 196 at 201. See also *O'Rourke v Darbishire* [1920] AC 581 at 619-620, and 626-7. He is obliged to keep accounts so that he is able to prove what has happened to the assets and the cash of the Estate; these accounts must be complete, detailed and accurate, disclose all monetary transactions and all changes in the assets, distinguish between capital and income transactions, and be thoroughly supported by accounts and receipts.

The affidavit material discloses (pp6, 8, 9 and 15) that William Tapp is prepared to account for his administration of the Estate to Sarah Caroline Tapp. He indicated his willingness to do so nearly 2 years ago (p6). There is however no indication as to when he will in fact provide that accounting. Ms Michaels informed me that it could "take a while" as "the Estate is very complicated"; later she indicated to me that the accounts could be "ready within 28 days". I consider that William Tapp has now had ample time to account for his administration of the Estate. I note that Clause 5 of the Deed of Settlement (p6) obliges him to do so, and he is currently in breach of his obligation.

I consider that it is vital that William Tapp file and pass his accounts as Administrator before the Registrar, before he is discharged from office. As Mr Dalrymple said, at this stage there is a mere assertion that the Estate has been properly administered and that all that is outstanding in it is the BTEC

litigation. Mere assertion is not good enough. An accounting must be made. In this regard I note that s89 of the Act, introduced by the 1993 amendment, provides:

> "An executor or administrator of the estate of a deceased person shall, when required to do so by -
>
> (a) the Court; or
>
> (b) the Supreme Court Rules,
>
> file or file and pass accounts relating to the administration of the estate."

The question of the appointment of Ben Tapp as Administrator, should be considered once a satisfactory accounting for the administration to date of the Estate has been made by William Tapp. I accept that the Court has discretionary power under s41(1)(b) of the Act as to the person to be appointed Administrator, and that the same principles apply in relation to the exercise of that discretion as those which apply when an initial grant of administration c.t.a. is made. The exercise of the discretion is guided by the principle that in the case of an administration c.t.a., where the beneficiaries are in conflict, the grant should be made to the person who represents and is supported by the interests of the majority of those entitled to the residue of the estate. In this case that person is clearly Ben Tapp; he is the choice of 9 of the 10 beneficiaries who are collectively entitled to 92.5% of the residual Estate, and his appointment is opposed only by Sarah Caroline Tapp who has a 7.5% share.

I do not consider that it has been shown that Ben Tapp has displayed financial or business ineptitude such that he should not be appointed

Administrator, or has an interest which would conflict with his proper administration of the Estate.

Orders

In the light of the foregoing I make the following orders:

(1) The application of 21 October 1996 for the discharge of William Tapp as Administrator and the appointment of Ben Tapp as Administrator in his stead, is adjourned to Thursday 6 February 1997 at 10.15 am, for mention.

(2) The Administrator William Tapp will attend before the Registrar of the Court on or before Wednesday 5 February 1997, for the purpose of vouching his accounts of the Estate, under r88.78 of the Supreme Court Rules.

(3) The costs of the application of 21 October 1996 to date, are to be borne by the Estate.

(4) Liberty is reserved to William Tapp, Ben Tapp, and any of the other beneficiaries in the Estate to apply.

(5) A transcript of the proceedings of 28 November 1996 should be prepared.

———————————————