

10.5.78

In the Grand Court of the Cayman Islands  
In Probate and Administration  
Cause Nos. 229 of 1978 and 230 of 1978

IN THE MATTER of an application for the appointment of AARON SAMUEL TATUM to represent the estate of AVONS KENNEDY TATUM, deceased

IN THE MATTER of the application for a grant of Administration at litem in respect of the estate of AVONS KENNEDY TATUM

AND

IN THE MATTER of an application for the appointment of WILLIAM MAULDEN SCOTT to represent the estate of CHARLES EDMUND SCOTT

IN THE MATTER of an application for a grant of Administration ad litem in respect of the estate of CHARLES EDMUND SCOTT

Mr. C. Gill for applicant

RULING

The following ruling applies to both applications heard together.

Section 12 of the Succession Law makes it clear that letters of administration cannot be granted until the expiration of 21 days from the date of application for the grant. There is no express power given to the court to vary or abridge that period for any purpose, e.g. for a limited grant or otherwise.

O 15 r. 15 (and earlier O 16 r. 46) has no application as that provision contemplates proceedings in existence. There are none in existence yet and cannot be until an administrator is appointed. Furthermore, the deceased person is not an "interested person" in an action under the Law Reform Law 1977 (superceding the Fatal Accidents Law) as nothing enures for the benefit of the estate. Actions under that Law are for the benefit of dependents specified therein.

Section 162 (1) proviso (b) of the Supreme Court of Judicature (consolidation) Act 1925 of the U.K. is for a different purpose from that now applied for - namely, in essence, a contraction of the time specified in the Succession Law and, in any event, has no exact counterpart in our law. The several cases quoted are, for the same reason, of little assistance in these applications.

I am satisfied that I have power to appoint an administrator for a limited purpose e.g. litigation - overriding those with prior claims, but that is not the issue here.

It is submitted that the court has inherent jurisdiction to accede to the applications bearing in mind its status under section 26 of the Succession Law. Inherent jurisdiction cannot be invoked to override an express provision of law.

It is also suggested that great injustice would flow from a refusal of the application. The present position is purely the result of inaction. Had an administrator been appointed earlier - and there was no reason why one should not have been - no difficulty would have arisen. The applicants are the authors of their present dilemma.

In any event, as I see it, an action for the benefit of the estate for pain and suffering and loss of expectation of life would still be maintainable if an administrator is appointed by virtue of section 5 of the Estates Proceedings Law 1974.

There is no provision under which I can accede to the applications. Accordingly, both are dismissed.

Sir John Summerfield.  
CHIEF JUSTICE

10th May, 1978.