

HIGH COURT. Apia. 1959. 12, February. ROTHWELL J.

Estate - letters of administration - motion to dispense with sureties to administration bond.

Sureties to the administration bond will be dispensed with, and the written consents of the children and creditors will not be required in special circumstances, as in this case, where sureties had been sought without success and where the Court accepts the undertaking of Counsel to see to the proper administration of the estate.

Principles upon which sureties will be dispensed with in future cases, laid down.

MOTION for letters of administration, asking for sureties to the administration bond to be dispensed with.

Jackson, for applicant.

Cur. adv. vult.

ROTHWELL J.: This was a motion for letters of administration in the estate of Abner Duffy deceased on behalf of his widow as next of kin. The motion asked for sureties to the administration bond to be dispensed with as sureties had been sought without success and considerable difficulty in obtaining sureties was anticipated. Counsel intimated that this was a very common experience in administration matters in Western Samoa.

The affidavit in support disclosed that there were six children without advising whether they were within or out of the jurisdiction and further estimated the value of the estate as under £1,000, debts being estimated as not exceeding £300. On the basis of that affidavit the application for grant was deferred and Counsel was asked to file a supplementary affidavit made by himself giving more accurate information as to the exact value of assets and the exact amount of debts and some assurance that the creditors would be paid and the interests of children attended to notwithstanding that there were no sureties to the administration bond. It is to be noted that on the basis of the original affidavit the children would not participate in the distribution of the estate, the value being under £1,000.

The supplementary affidavit shows that the only asset in the estate is a half share in a piece of freehold land which had in the meantime been sold under contract conditional upon grant of administration for £3,300. The half share due to the estate is accordingly £1,650. The debts deposited were £22.3.0 owing to the Government of Western Samoa and £78.5.7 owing to Burns Philp Limited. Allowing for costs of administration and costs of sale of the land, there will probably be a residue of £1,400 available for the beneficiaries of which the widow will be entitled to approximately £1,133 and the children £266.

It appears therefore that the function of sureties in a normal case would be to ensure protection of the rights of creditors in respect of approximately £100 and the rights of beneficiaries other than the administratrix to the extent of £266. This would normally be insisted upon in the absence of express written consents by the children and by the creditors. Such consents will not be required in this case as the Court accepts the undertaking of Counsel to see that administration is properly conducted. Letters of administration granted, sureties dispensed with.

On general principles and in particular having consideration to the provision which exists under the new rules now about to be enacted, it is considered useful to lay down principles upon which sureties to administration will be dispensed with in future cases.

1. The normal rule in New Zealand is that sureties will not be dispensed with where there are beneficiaries

other than the applicant for administration and/or creditors.

2. That rule will normally be relaxed as in New Zealand only where the other beneficiaries and/or the creditors consent in writing to sureties being dispensed with and such consents are annexed as exhibits to the affidavit in support of motion for grant (these requirements will appear in the form of a note to form 44 in the schedule to the new rules).
3. In special circumstances where there is some difficulty about written consents, the Court will consider further relaxation on the basis adopted in the present case namely, an affidavit to be filed by the solicitor for the applicant giving an assurance of orthodox and proper administration based upon some factors in connection with the estate which will enable the solicitor properly to give such assurance.