

It's a wonderful life!

Mark Pawlowski takes a festive look at some of the more humorous cases taken from the English & Commonwealth law reports

Contacting the spirit world

Very spooky behaviour can be found in the criminal law case of *R v Young* [1955] QB 324. Four members of a jury, while staying overnight in a local hotel, used a ouija board to contact the victim of a murder to determine the guilt or innocence of the accused. The Court of Appeal, not surprisingly, held that this was a material irregularity and duly quashed the conviction for murder.

Unreasonable behaviour?

Most family law practitioners will be aware of *O'Neill v O'Neill* [1975] 3 All ER 289. This involved a wife's petition for divorce, which was based on her husband's unreasonable behaviour in embarking on an extensive two-year programme of renovation of the matrimonial home in order to cure dampness under the floorboards. As part of this work, the toilet door was removed for a period of eight months, causing great embarrassment to the wife and the parties' teenage daughter and friends. In the words of Lord Justice Cairns: 'When they wanted to use [the lavatory] at a time when the husband was working under the floorboards, there had to be some communication to avoid his coming up when the lavatory was in use . . .'

The wife also complained that her husband had failed to keep himself clean and hardly ever bathed. The county court judge dismissed the wife's petition referring to the words in the marriage service, whereby the parties promised to take each other 'for better or for worse'. However, the Court of Appeal rejected this ruling. It held that the question of whether the petitioner could not reasonably be expected to live

with the respondent for the purposes of the Matrimonial Causes Act 1973 was to be judged by the provisions of the Act, not by the language contained in the *Book of Common Prayer*.

Who is to blame?

Few of us are unlikely to forget the 'toilet roll' case involving the claimant, Mrs Sayers, who visited a public toilet owned by the local council: *Sayers v Harlow Urban District Council* [1958] 1 WLR 623. She entered the cubicle and, having closed the door behind her, realised she could not get out. She eventually decided to climb over the door by standing with her right foot on the toilet seat and her left foot on the toilet roll and its attachment. Having got into this position, she realised she could not get out and, in trying to get back down, she put her weight onto the toilet roll which revolved causing her to fall and injure herself. The Court of Appeal held that she was entitled to succeed in her negligence action against the council, but that she had been guilty of contributory negligence in her actions in trying to get out of the cubicle making her one-quarter to blame for her injuries.

Weird wills

Cases involving wills and testamentary dispositions are a fertile source for oddities. In *Hodson v Barnes* (1926) 43 TLR 71, a will, which had been written on the shell of a hen's egg, was sought to be admitted to probate. An empty eggshell had been found on top of the deceased's wardrobe, upon which was written, in the deceased's handwriting: '17-1925. Mag: Everything I possess—JB.' The dead man's initials were, in fact, 'JB', and he called his wife 'Mag'. The court held that, without evidence from extrinsic circumstances, the writing on the eggshell could not be deemed to be a

testamentary disposition.

Taken by itself, without the words 'to Mag', it could not be said that the eggshell disposed of any property. The eggshell was invalid as a will because the deceased (although a pilot on the Manchester Ship Canal) could not be classified as a 'mariner at

sea' (within the statutory exception in s 11 of the Wills Act 1837) when the writing on eggshell was made. In the course of his judgment, Lord Merivale said (at 72): 'As a testamentary act the writing on the egg was one of the most grotesque proceedings conceivable on the part of a man in a responsible position . . .'

The case of *Brown v Burdett* (1882) LR 21 Ch D is another bizarre decision concerning testamentary disposition. The testatrix directed in her will that all the rooms in her house (except for four rooms, which she instructed that a housekeeper and his wife should occupy) should be blocked up for 20 years in her memory. This was held to be void on the grounds that it was capricious and contrary to public policy.

Haunted houses

In the American case of *Stambowsky v Ackley* [1992] Conv. 8-15, the purchaser discovered that the house that he had recently bought from the vendor was widely reputed to be possessed by poltergeists. The vendor had reported the alleged sightings of ghosts both in the *Reader's Digest* and in local newspapers. However, the purchaser did not become aware of this reputation until after he had bought the house, whereupon he commenced proceedings for rescission of the contract. The judge held that, as the vendor had publicly reported paranormal activity to various sections of the press, he was estopped from denying that it existed. Accordingly, the purchaser was entitled to rescind the contract.

Marriage vows

The unusual decision of the Nova Scotia Supreme Court in *Re Spears and Levy* [1975] 52 DLR (3d) 146 will be of particular interest to equity lawyers. Here, a man and a woman lived together believing themselves to be married. In fact, their ceremony of marriage was invalid due to a former marriage of the woman which had not been dissolved. The woman was, nevertheless, awarded a widow's share of the matrimonial home on the basis of her partner's marriage vow ' . . . and with all my worldly goods I thee endow'. It was held that these words were sufficient to give rise to an expectation of inheritance so that the man's heirs were bound by a constructive trust to pay the woman the amount she would have received as a widow. The suggestion, however, that the parties' common intention could be deduced from the words spoken at the parties' wedding ceremony is, to say the least, bizarre.

NLJ

Mark Pawlowski is a barrister & professor of property law in the School of Law, University of Greenwich (www.gre.ac.uk).

