



# Fustum Funnidos Tantaraboo

*Rt. Hon. Sir Robert Megarry*

**T**HE RIGHT HONORABLE SIR Robert Megarry is an immensely important figure in English law. He has written leading books on equity, land law, the Rent Acts, and the literature of the law.

I have known him since 1988, when our friend Charles Alan Wright introduced us. Professor Wright also introduced me to Sir Robert's highly entertaining *Miscellany-at-Law* (1955) and *Second Miscellany-at-Law* (1973), which are learned romps through strange and remarkable cases, striking courtroom exchanges, wise and witty utterances from the bench, and much more that illuminates some dark crannies of British and American law. When we met, I learned that Sir Robert was producing a third miscellany – a project that he had been working on since 1974. In July 2004, while visiting Sir Robert at Lincoln's Inn, I learned that the project – almost complete – had hopelessly stagnated. So I offered to help bring the book out, and 18 months later the book was published by Hart Publishing in the U.K. and the Lawbook Exchange in the U.S. What follows is chapter 20. Read it and smile.

– Bryan A. Garner



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*The Rt. Hon. Sir Robert Megarry, LL.D., F.B.A., became a Chancery judge in 1967 and was Vice-Chancellor of the Supreme Court when he retired in 1985. Copyright 2005 Sir Robert Megarry and Lindsay Merriman. Introduction copyright 2006 Bryan A. Garner.*



Sir Robert Megarry.  
(courtesy of Bryan Garner)

**D**ISPUTES ON THE CONSTRUCTION of wills are numberless. As every lawyer knows, no answer lies in saying that all that the court has to do is to find out the intention of the testator. Brett L.J. once said: "It sometimes amuses me when we are asked to say what was the actual intention of a foolish, thoughtless, and inaccurate testator. That is not what the Court has to determine: all the Court can do is construe, according to settled rules, the terms of a will, just as it construes the terms of any other written document."<sup>1</sup> The classic statement is by Parke J.: "In expounding a will, the Court is to ascertain not what the testator actually intended, as contradistinguished from what his words express, but what is the meaning of the words he has used."<sup>2</sup> A quarter of a century later, as Lord Wensleydale, he reiterated his views: "The first duty of the Court expounding the will is to ascertain what is

the meaning of the words used by the testator. It is very often said that the intention of the testator is to be the guide, but that expression is capable of being misunderstood, and may lead to a speculation as to what the testator may be supposed to have intended to write, whereas the only and proper inquiry is, what is the meaning of that which he has actually written."<sup>3</sup>

In former days the rule seems to have been even stricter, and rich with moral overtones. In 1555 Brook C.J. said that a man

ought to direct his meaning according to the law, and not the law according to his meaning, for if a man should bend the law to the intent of the party, rather than the intent of the party to the law, this would be the way to introduce barbarousness and ignorance, and to destroy all learning and diligence. For if a man was assured that whatever

<sup>1</sup> *Ralph v. Carrick* (1879) 11 Ch.D. 873 at 876.

<sup>2</sup> *Doe d. Gwillim v. Gwillim* (1833) 5 B. & Ad. 122 at 129.

<sup>3</sup> *Roddy v. Fitzgerald* (1858) 6 H.L.C. 823 at 876; and see 1 Misc. 264.

words he made use of his meaning only should be considered, he would be very careless about the choice of his words, and it would be the source of infinite confusion and uncertainty to explain what was his meaning.<sup>4</sup>

It would, said Le Blanc J., be a “very dangerous rule to go by, because it would be to say that the same words should vary in their construction according to the quantity of the property or the situation of the party disposing of it.”<sup>5</sup> Today, some would say “Why not?”

At times the courts show little enthusiasm for the task of construing wills: “I do not know of any more unsatisfactory duty for a Judge than that of being called upon to put a construction on an instrument with respect to which, it may be presumed, the framer of the instrument had himself no very definite notion. It is a duty, however, of necessity imposed on the Judges of this Court, who, as Lord Mansfield<sup>6</sup> has observed, must sometimes feel that they are the only authorised interpreters of nonsense.”<sup>7</sup> Yet authority is not always duty. Arden M.R. (later Lord Alvanley C.J.) once exclaimed: “My duty, sir, to find out [the testator’s] meaning! Suppose the will had contained only these words ‘*Fustum funnidos tantaraboo*.’ Am I to find out the meaning of his gibberish?”<sup>8</sup> There are, indeed, testators who in their wills, “speak as if the office of language were to conceal their thoughts,”<sup>9</sup> harking back to Oliver

Goldsmith’s assertion that “the true use of speech is not so much to express our wants, as to conceal them.”<sup>10</sup>

Difficulties sometimes arise in unexpected places. The will of George Bernard Shaw set up elaborate trusts designed to encourage the replacement of the conventional alphabet of 26 letters by a more ample alphabet of at least 40 letters that would allow each sound to be represented by a letter of its own instead of requiring groups of letters. Unfortunately these trusts ran into legal difficulties, and in due course they came before Harman J.:

The testator, whatever his other qualifications, was the master of a pellucid style, and the reader embarks on his will confident of finding no difficulty in understanding the objects which the testator had in mind. This document, moreover, was evidently originally the work of a skilled equity draftsman. As such, I doubt not, it was easily to be understood, if not of the vulgar, at any rate by the initiate. Unfortunately the will bears ample internal evidence of being in part the testator’s own work. The two styles, as ever, make an unfortunate mixture. It is always a marriage of incompatibles: the delicate testamentary machinery devised by the conveyancer can but suffer when subjected to the *cacoethes scribendi*<sup>11</sup> of the author, even though the latter’s language, if it stood alone, might be a literary masterpiece.

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4 *Throckmerton v. Tracy* (1555) 1 Plowd. 145 at 162.

5 *Doe d. Hick v. Dring* (1814) 2 M. & S. 448 at 455.

6 And Lord Henley L.C. before him: *Le Rousseau v. Rede* (1761) 2 Eden 1 at 4.

7 *Cookson v. Bingham* (1853) 3 De G.M. & G. 668 at 674 (per Lord Cranworth L.C.).

8 W.C. Townsend, *Lives of Twelve Eminent Judges* (1846), vol. 1, p. 149, pressed into town planning service, *arguendo*, in *Fawcett Properties Ltd. v. Buckingham County Council* [1961] A.C. 636 at 647; and see 2 *Law and Lawyers* (1840) at p. 74 (“fustun”).

9 *Lowe v. Thomas* (1854) 5 De G.M. & G. 315 at 317 (per Knight Bruce L.J.).

10 *The Bee*, Oct. 20, 1759, para. 2.

11 Itch for writing.

This will is a long and complicated document made on June 12, 1950, when the testator was already 94 years old, though it is fair to say that it is rather youthful exuberance than the circumspection of old age that mars its symmetry.<sup>12</sup>

The judge then examined the relevant clauses of the will, including one that provided for the destination of the trust funds if the trusts “shall fail through judicial decision,” and then discussed the objections to the validity of the trusts. These he found insuperable: “The result is that the alphabet trusts are, in my judgment, invalid, and must fail. It seems that their begetter suspected as much, hence his jibe about failure by judicial decision. I answer that it is not the fault of the law, but of the testator, who failed almost for the first time in his life to grasp the legal problem or to make up his mind what he wanted.”<sup>13</sup>

Sometimes there is misplaced ingenuity. Father O’Flaherty, of Glenflesk, Co. Kerry, once wished to provide certain sums for the saying of Masses and for making repairs to the church. With the aid of a bank manager he hit on the device of depositing money at a bank and receiving deposit receipts made out in favour of “the Parish Priest of Glenflesk,” and naming those purposes. When he died the question was whether his successor in office took these moneys subject to trusts imposed by the receipts, or whether the moneys formed part of Father O’Flaherty’s estate.

In the King’s Bench Division in Ireland it was held that Father O’Flaherty’s successor

held the moneys in trust for the stated purposes. Lord O’Brien C.J. observed that –

the argument that the money for Masses was lodged for Father O’Flaherty himself, involved this rather fantastic suggestion – that the Rev. Maurice O’Flaherty might, by some extraordinary resurrectionary process, rise from the dead, and at the Chapel of Baraduff, in the County of Kerry, say in the flesh Masses for the repose of his soul, which was, for the time being, in another world in a state of purgation for the sins – the venial transgressions – committed in this world. That, in fact, the reverend gentleman might arise in the flesh and leave his soul behind him. There is no warrant for this suggested segregation of animated body and suffering soul in any book of authority from the Year Books to the present day.<sup>14</sup>

The contentions of Mr. Daniel Browne, “who brought to the argument of the case much spiritual warmth,”<sup>15</sup> accordingly succeeded. But the Court of Appeal disagreed. FitzGibbon L.J. stigmatised the decision of the King’s Bench as involving, not a resurrectionary process, but “the prenatal ownership of a hypothetical depositor – of a successor who may never be appointed”;<sup>16</sup> and that was that.

One may turn to a Scunthorpe solicitor whose will, made in 1930, achieved the ultimate in providing for every eventuality. The final clause ran: “Lastly I declare that in the event of the Second Coming of Our Lord and Saviour Jesus Christ my Will shall (so far as may be legally permissible) come into

<sup>12</sup> *Re Shaw decd.* [1957] 1 W.L.R. 729 at 731; [1957] 1 All E.R. 745 at 747–48. Minor differences in wording and punctuation have been resolved in favour of the more Harmanian.

<sup>13</sup> 1 W.L.R. at 746; 1 All E.R. at p. 759.

<sup>14</sup> *O’Flaherty v. Browne* [1907] 2 I.R. 416 at 421.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, at p. 433.

operation and take effect as though I were dead.<sup>17</sup> But a retired school teacher put the Second Coming first, though with prudent precautions. He left his whole estate of over £26,000 in trust to be paid to the Lord Jesus Christ in the event of a Second Coming. The estate was to be invested for 80 years, and “if during those 80 years the Lord Jesus Christ shall come to reign on Earth, then the Public Trustee, upon obtaining proof which shall satisfy them of his identity, shall pay to the Lord Jesus Christ all the property which they hold on his behalf.” If Christ did not appear within the 80 years, the whole estate was to go to the Crown; and the income was to be accumulated for 21 years and then paid to the Crown.<sup>18</sup>

One will looked innocent enough. Subject to a life interest to his widow, the testator left a specified part of his lands to each of his seven sons, George, Richard, Thomas, Henry, John, Becher, and William, save that to Thomas, who had already received some land, he gave one shilling. The will then directed that if any son died before he was thirty, his share should go “to his next eldest brother, and so on, respectively”; and there was a similar provision if any son died “without issue” after he was thirty. All the sons had attained the age of thirty, four had no issue, and one had no issue still living; and the question was how the will would work if one of the sons died without issue. Suppose John (No. 5) died without issue: was it Henry (No. 4) or Becher (No. 6) who was John’s “next eldest brother”? Was it the youngest of the older brothers, or the oldest

of the younger brothers, who was the “next eldest”? In short, upwards or downwards?

This question was argued in Ireland before three King’s Bench judges; and each gave a different answer. In effect, Gibson J. said “Downwards,” Wright J. said “Upwards,” and Boyd J. held the provision to be void for uncertainty.<sup>19</sup> The natural result was an appeal, though from indecision rather than decision.<sup>20</sup> All three members of the Court of Appeal said “Downwards.”<sup>21</sup> FitzGibbon L.J. reached his conclusion by notionally resurrecting the testator for questioning. To do this would be “the fair test” of the meaning of the words: “If I asked him, ‘Who is your eldest son?’ he would answer, ‘George.’ ‘Who is the next eldest?’ ‘Richard.’ ‘Who is the next eldest?’ ‘Thomas.’ ‘And so on, respectively,’ until he had come to the youngest, ‘William.’”<sup>22</sup> Yet this examination in chief was balanced by no cross-examination; and the probable course of question and answer springs readily to mind. The question would begin with the youngest, and would at least have the merit of being framed in terms of the word “brother,” as used in the will, and not “son.” “Who is William’s next eldest brother?” “Becher.” “Who is Becher’s next eldest brother?” “John”; and so on, upwards. This would at least avoid equating “next eldest” with “next youngest,” as proceeding downwards appears to do. The Court of Appeal did indeed succeed in distilling certainty from the obscure; yet was the appellate process even-handed throughout? Nobody, alas, pursued a further appeal. In contrast, it is hardly surprising that a will that had been

17 From the will of R.A.C. Symes, *ob.* April 29, 1933; *ex rel.* Plowman J. The will was before the court on another point.

18 *Re Digweed* [1977] *The Times* Jan. 21.

19 *Crofts v. Beamish* [1905] 2 I.R. 349.

20 Without a decision there can usually be no appeal.

21 See *Crofts v. Beamish*, *supra* note 19, at 353.

22 S.C. at p. 364; and see *per* Walker and Holmes L.JJ. at pp. 365, 367.

“written upon three sides of a sheet of paper,” and executed “at the bottom of the third side” should travel the whole way from the Vice-Chancellor’s court in Ireland to the House of Lords.<sup>23</sup>

Opinions often differ about the advisability of particular testamentary dispositions. But “the testator is a despot, within limits, over his property.”<sup>24</sup> Even so, despotism does not always triumph. One Canadian testator provided in his will: “It pleased the Lord to give me two sons equally dear to my heart; to give them equal justice I leave all my land to the first great grandson descending from them by lawful ordinary generation in the masculine line. . . .” The testator may have prided himself on the aptness of his language; but he had forgotten the rule against perpetuities, which invalidated the whole devise and so left the land to descend as on an intestacy to the testator’s elder son and those claiming under him.<sup>25</sup> Nor are the circumstances of will-making always the best. Coke’s advice was that men should provide for their wives and children by settlements made in their lifetime “by sound advice of learned counsel,” rather than leaving their property “to stand wholly upon their last will, which many times is made when they lie upon their death-bed (and few men pinched with the messengers of death have a disposing memory) sometimes in haste, and commonly by slender advice.”<sup>26</sup>

Most wills, of course, are made long be-

fore the death-bed. In Ireland Porter M.R. was once giving judgment in a case on the construction of a will: “In those circumstances,” he said, “I am perfectly certain that the testator intended his farm to go to his nephew James.” “Indeed he did not, me Lord,” said a voice at the back of the court. “Bring forward that man,” ordered Porter; and an attendant brought the culprit to the front of the court. “Who are you, Sir?” demanded Porter. “Me Lord, I’m the testator, and I never meant James to have the farm.” He had left Ireland some years before, and had never written home; and so had been presumed to be dead.<sup>27</sup> In such circumstances, probate or letters of administration to the estate may be granted. Yet, statute apart,<sup>28</sup> everything done under the authority of the probate or letters of administration is in law a nullity if in fact the “deceased” is still alive.<sup>29</sup> It may be added that in days gone by those wishing to resort to the Prerogative Office in order to examine wills proved in the Province of Canterbury had to time their visits; for as the Law List 1779<sup>30</sup> helpfully revealed: “Hours from 9 till 2, and 3 till 6, if light so long, as no Candles are lighted in this Office.”

In considering the date on which a “provision” has been “made” by will or codicil, a question once arose about the effect of a codicil that confirmed a provision made by the will. Was the date on which the provision was “made” the date of execution of the will or that of the confirmatory codicil? Lux-

23 *Watson v. Arundel* (1876) 10 I.R.Eq. 299 (see p. 301), *reversed sub nom. Watson v. Arundell* (1876) 11 I.R.Eq. 53, *affirmed sub nom. Singleton v. Tomlinson* (1878) 3 App.Cas. 404 (see at p. 405).

24 O.W. Holmes Jr., *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 417, 420 (1899).

25 *Ferguson v. Ferguson* (1878) 2 S.C.R. 497.

26 10 Co.Rep. xiv; cp. Co.Litt. 111b (where the pinch is “by” the messengers of death).

27 A version of this appears in A.M. Sullivan, *Old Ireland* (1927) p. 66.

28 See, e.g., Law of Property Act 1925, s. 204; Administration of Estates Act 1925, ss. 27, 37. See also *Cunnius v. Reading Sch. Dist.*, 56 A. 16 (Pa. 1903).

29 *Allen v. Dundas* (1789) 3 T.R. 125 at 129, 130; *Devlin v. Commonwealth*, 101 Pa. 273 (1882); *Scott v. McNeal*, 154 U.S. 34 (1894).

30 p. 94.

moore L.J. decided in favour of the will; and he cited venerable authority on the relationship between will and codicil:<sup>31</sup> "Whereupon the writers conferring a testament and a codicil together and perceiving the odds betwixt the one and the other, they call a testament a great will, and a codicil a little will. And do compare the testament to a ship, and the codicil to a boat, tied most commonly to the ship."<sup>32</sup> To take the date of the codicil would be "to transform the codicil from the boat commonly tied to the ship into the ship itself and then to scuttle the ship."<sup>33</sup> But soon the House of Lords swept away these sophistries by holding that no provision was "made" until the testator died, and both will and codicil took effect together.<sup>34</sup>

Sometimes a will is used to settle old scores; and the jurisdiction of the court to exclude defamatory words from probate of a will is exercised sparingly. In one case,<sup>35</sup> the entire will was in these words:

I leave all property of every kind to my sister Mary, in consequence of the cruel and murderous conduct of my wife, in this illness, as well as in past instances.  
13th December, 1823.  
James Curtis.

The court, however, refused to expunge any of these words. The decision was to the same effect in another case,<sup>36</sup> where the will concluded with the following words:

Lastly, it is my most sacred wish that the brief "Honywood v. Honywood," 1859, should be kept in the family, and handed down to all ages as a witness of the terrible iniquity which has robbed

me of my birthright, and blotted out the Essex branch of Honywood for ever, and by which F.E.H. did most deliberately and designedly defraud me and my heirs of our patrimony and inheritance for ever. I hereby record my most solemn conviction that my poor brother, the late W.P. Honywood, was perfectly unconscious and innocent of what was done, and that he was simply an instrument in the hands of his wicked and remorseless wife. This is my last will and testament.

An old problem may be presented in a modern dress. The case of the Seventeen Residuary Elephants can be stated thus:<sup>37</sup> A circus proprietor died in 1966, domiciled in England, and survived only by his three sons, A, B, and C. After his debts and funeral and testamentary expenses had been paid, the only assets of his estate consisted of seventeen elephants, each of about the same value and none of them enceinte. By his will, the deceased gave half his entire estate to A, one-third to B, and one-ninth to C. Uncertain about how to divide the elephants, and not wanting to sell any of them, the sons asked their friend X, also a circus proprietor, to advise them. X rode over on one of his elephants, and, after some thought, put his elephant among the seventeen. He then directed A to take nine of the elephants (excluding X's), and similarly directed B to take six, and C to take two, drawing lots for the order of choice. Having thus distributed all seventeen of the testator's elephants, X then mounted his own elephant and rode home. The question then was how far this division

31 *Re Sebag-Montefiore* [1944] Ch. 331 at p. 342.

32 *Swinburne on Testaments* (7th ed. 1803), vol. 1, p. 29.

33 *Re Sebag-Montefiore*, *supra* at p. 343.

34 *Berkeley v. Berkeley* [1946] A.C. 555.

35 *Curtis v. Curtis* (1825) 3 Add. 33.

36 *In b. Honywood* (1871) L.R. 2 P. @ D. 251.

37 See (1959) 103 S.J. 760, 800.

was unsatisfactory, and for whom.

The answer is not simple. It is best taken by stages.

1. Under the will, A was entitled to eight and a half elephants, B to five and two-thirds, and C to one and eight-ninths. Expressed in fifty-fourths, these fractions (excluding the integers) amount to 27 for A, 36 for B and 48 for C; and the total of the integers and fractions is 16 and 3 fifty-fourths. Thus 51 fifty-fourths of an elephant were undisposed of, and passed as on an intestacy.
2. Under the partial intestacy the sons *prima facie* take equally on the statutory trusts. Each son is therefore *prima facie* entitled to 17 fifty-fourths in addition to his share under the will.
3. The shares that each ought to receive under the will and the partial intestacy, taken together, are thus – A: 8 and 27 fifty-fourths, plus 17 fifty-fourths: total 8 and 44 fifty-fourths. B: 5 and 36 fifty-fourths, plus 17 fifty-fourths: total, 5 and 53 fifty-fourths. C: 1 and 48 fifty-fourths, plus 17 fifty-fourths: total, 2 and 11 fifty-fourths.
4. Under X's distribution, A in fact received 9 elephants, which was 10 fifty-fourths too much; B received 6 elephants, which was 1 fifty-fourth too much; and C received 2 elephants, which was 11 fifty-fourths too little. C was thus the only son to whom X's division was unsatisfactory, to the extent of 11 fifty-fourths; and A and B must make up the deficiency by contributing their excess fifty-fourths.
5. That is the *prima facie* view; but it will probably be displaced by the rule as to hotchpot. For, subject to any contrary intention, on a partial intestacy there is hotchpot of the benefits under the will among issue of the testa-

tor.<sup>38</sup> Neither A nor B could therefore claim under the intestacy until under the will and intestacy taken together C had received as much as they were each given by the will.

6. From this it follows that C was entitled to the whole of the 51 fifty-fourths that passed as on intestacy. He had already had 6 of these fifty-fourths, for although the will had given him only one and 48 fifty-fourths of an elephant, X's distribution had given him two entire beasts. The remaining 45 fifty-fourths should be provided by A and B disgorging the fifty-fourths that they received in excess of their rights under the will. A must therefore give C 27 fifty-fourths, and so reduce his 9 elephants to 8 and 27 fifty-fourths, and B must correspondingly give C 18 fifty-fourths and so reduce his 6 elephants to 5 and 36 fifty-fourths.
7. On the footing that there is nothing to exclude hotchpot, the answer to the question is thus that X's division of the elephants was unsatisfactory only to C, to the extent that although he was entitled to 2 and 45 fifty-fourths of an elephant (or 2 and five-sixths), he received only 2 elephants. The deficit of five-sixths must be made good by A as to three-sixths and by B as to the other two-sixths.

Animal lovers distressed by the prospect of dividing living elephants into fractions will take comfort from the thought that orders for the recovery of fractions of a man are enforced by sale of the undivided entirety and division of the proceeds in the appropriate fractions.<sup>39</sup>

At least the future George III's problems on fractions were not bedevilled by statute. While he was in his teens his mathematical tutor set him a question on a childless man

38 Administration of Estates Act 1925, ss. 47, 49.

39 See *ante* p. 285.



who made a will during his wife's pregnancy. The will gave her one-third of his estate if she bore him a son, but two-thirds if she bore him a daughter, with the residue in each case to the child. He died, leaving an estate worth £6,300, and his widow then had twins, a boy and a girl.<sup>40</sup> No record of the royal answer appears to have survived.

To the problem of fractional elephants and posthumous twins may be added the problem of fractional states. To be elected President of Nigeria, a candidate must not only obtain the highest number of votes cast at the election, but also obtain "not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation."<sup>41</sup> In default of any such majority, there is provision for election by an electoral college instead.<sup>42</sup> In an election in 1979, the candidate with the highest number of votes duly obtained over one-quarter of the votes in 12 of Nigeria's 19 states. His difficulty was that the highest vote that he could muster in any other state was 243,423 out of the 1,220,763 votes cast in the State of Kano, and that was only 19.95 per cent. Two-thirds of 19 states is, of course, 12  $\frac{2}{3}$  states, and as there was no practicable way of dividing Kano into geographical thirds, one view was that the phrase "at least two-thirds of all the States" must mean 13 states. On that view, the candidate had failed to satisfy the statute.

The majority view, however, was that the phrase meant 12  $\frac{2}{3}$  states, and that Kano

fell to be fractioned not geographically but numerically. Two-thirds of the 1,220,763 votes cast in Kano came to 813,842, and it was held that all that the statute required was that the candidate should obtain at least one-quarter of this number of votes, namely, 203,460.5. His 243,423 Kano votes duly satisfied this requirement, and so he had been validly elected.<sup>43</sup> This process, of course, compared the undivided total number of votes cast for the candidate with a mere fraction of the total number of votes cast for all candidates: 100 per cent of the candidate's votes was compared with 66.6 per cent of the total votes.

This abandonment of the principle that like should be compared with like is capable of producing interesting results. If, for example, 1.2 million votes had been cast in the state, and the six candidates had each obtained exactly 200,000 of these, then for these purposes each of the six would have obtained "one-quarter of the votes cast at the election" in that state, thereby showing that Nigerian votes in bulk had the remarkable quality of being divisible into six quarters.<sup>44</sup> Nearly ten years passed before Nigerian constitutional arithmetic was restored to orthodoxy. The expedient was simple. The number of states was increased by two, and forthwith a sweetly divisible 21<sup>45</sup> stood in place of the original (and equally divisible) dozen; the tyranny of the usurping prime number was no more. *GB*

40 J. Brooke, *King George III* (1972), p. 88.

41 Electoral Decree 1977 (as amended by Electoral (Amendment) Decree, 1978, s. 7), s. 34A(1)(c).

42 *Ibid.*, s. 34A(3).

43 *Awolowo v. Shagari* [1979] 2 F.N.R. 60 (Sup. Ct. Nigeria), Obaseki J., concurring on different grounds, and Eso J., dissenting.

44 Twelve quarters, if there had been 20 states; for then the fraction for the fractional state would have been one-third. For other criticisms, see B. Obinna Okere (1987) 36 I.C.L.Q. 788 at 801-03.

45 See, e.g., G. Fawehinmi, *Bench and Bar in Nigeria* (1988), p. xiv. At p. 374 is a "List of Female Legal Practitioners Who Indicated Their Sex at the Time of Call." The *modus significandi* was doubtless at large.