

THE HIGH COURT
IN THE MATTER OF THE ESTATE OF PADRAIG LYNN, LATE OF WOOLSTONE HOUSE, BALLYOATE, MULLINGAR IN THE COUNTY OF WESTMEATH, PERSONAL TRAINER/FARMER, DECEASED

[Record No. 2013/8125 P]

BETWEEN**BRIDGET LYNN****PLAINTIFF****AND****OLIVE O'HARA LYNN AND SEAN LYNN****DEFENDANTS****-AND-**

[Record No. 2013/10067]

BETWEEN**SEAN LYNN****PLAINTIFF****AND****OLIVE O'HARA LYNN****DEFENDANT****(By original action)****AND BETWEEN****MICHAEL LYNN****(By order to carry on dated the 27th day of February 2014)****PLAINTIFF****AND****OLIVE O'HARA LYNN****DEFENDANT****JUDGMENT of Ms. Justice Iseult O'Malley delivered the 5th November, 2015****Introduction**

1. These proceedings concern the circumstances in which the late Sean Lynn, with the consent in writing of his wife, Mrs. Bridget Lynn, transferred their farm and family home to their son, the late Padraig Lynn. The transfer took place on the 24th November, 2008. It is common case that Padraig's 35th birthday was on the 26th November and that there were tax advantages to finalising the transaction before that date.
2. The defendant in both actions, Olive O'Hara Lynn, was Padraig's wife and is his legal personal representative. Padraig died intestate in tragic circumstances on the 7th December, 2011, and the defendant is therefore entitled to the entirety of his estate.
3. In the first of the above entitled proceedings, commenced on the 31st July, 2013, Bridget Lynn (known to her family and friends as Queenie Lynn) claims that the transfer is void on the basis that it was an improvident and/or unconscionable transaction brought about by duress or undue influence. She says that she signed the relevant documents because of pressure, duress and/or undue influence on the part of her husband Sean and her son Padraig, that she did not act of her own free will and that she was not given appropriate independent advice.
4. The plaintiff would be entitled, under the terms of the transfer, to maintenance and support, but says that she has received none. She does not seek any order in this regard (in circumstances where she contends that the transfer is void). However, the claim that the transfer was improvident is based in part on her assertion that, although she still has a right of residence in her home, she has been given no maintenance and now derives no income from the farm.
5. She suffers from a number of medical difficulties and says that she is unable to pay for the care that she needs now and into the future.
6. The defence delivered on behalf of Sean Lynn in those proceedings admits that he presented the scheme for the transfer to Bridget Lynn and that he pressurised her, placed her under duress and unduly influenced her. However, it is denied that he in any way participated in or drew up that scheme. It is claimed that he was induced to present it and to execute it by duress, improper and illegal pressure, threats and undue influence on the part of Padraig Lynn.
7. The second set of proceedings was commenced by the late Sean Lynn by way of plenary summons dated the 19th September, 2013. Sean Lynn died shortly afterwards, on the 15th October, 2013. By order of the court those proceedings are now carried on by his son Michael Lynn as Sean's executor. The plaintiff seeks rescission of the deed of transfer, on the basis of duress and/or actual undue influence and/or illegal pressure and threats by Padraig. Specifically, it is pleaded in the statement of claim (delivered some months after the death of Sean Lynn) that the transfer was Padraig's idea; that Sean had been unwilling to transfer the property; that Padraig had shown little interest in farming; that Padraig became threatening and abusive as the deadline for the tax exemption approached; and that Padraig threatened to kill himself if the property was not transferred to him before the 26th November, 2008.
8. Olive O'Hara Lynn has denied the claims made in both proceedings. She says that soon after Padraig's death in December, 2011 she was put under significant pressure to disclaim her inheritance in favour of Sean and Bridget Lynn. However, no suggestion was ever made that the transfer was in any way tainted by duress or undue influence until 2013, when she was registered as the owner of the property. It is pleaded that the transfer was entered into voluntarily on the part of Sean and Bridget Lynn, with the full benefit of legal and accountancy advice and in full knowledge of the relevant tax reliefs. It is contended on her behalf that the only reason for these proceedings is that she refused to disclaim her inheritance, with the result that the property will not remain with blood relatives of the Lynn family.

Background facts

9. The house in question, which is on a farm of about 52 acres in Ballyoate, County Westmeath, was the family home of Bridget Lynn when she was a child. After her marriage to Sean in 1963, Bridget's parents transferred the property into Sean's name and it was thereafter the Lynn's family home. The main use of the farmland has been for sheep.
10. There were six children of the marriage: Mary, Michael, Deirdre, Tom, Siobhan and the late Padraig. The eldest, Mary, has Down's syndrome. She lives in a residential centre and attends a workshop during the week. At weekends she comes home to her mother. All of the other surviving children have their own livelihoods and their own homes.

11. Padraig Lynn, born in 1973, was the youngest of the children. After gaining a degree in business he worked for a bank for some years. He had always been involved in sport and set up his own business with a fitness and health centre. He also did fitness training with the county football team, as well as obtaining qualifications relevant to farming. At some point he inherited a piece of land beside the Lynn family home place, which was bequeathed to him by Sean Lynn's brother Michael (known as Fr. Michael).

12. Padraig was in a relationship with Olive O'Hara for some 15 or 16 years before their marriage in August, 2008. They had built a house together on Padraig's land and moved into it in 2006. It is common case that Padraig spent a lot of time looking after his mother in subsequent years.

13. It appears that Padraig developed some mental health difficulties. This affected his marriage to the extent that Olive left the house in August, 2011, in circumstances considered in greater detail below. Despite receiving professional help over a period of time, Padraig tragically killed himself in December, 2011.

Conveyances and transfers during the lifetime of Sean Lynn

14. Sean Lynn was, by all accounts, a successful farmer. Apart from the Ballyoate farm, he had owned land of his own before his marriage and he continued to acquire property. As well as farmland he bought some commercial properties in the town of Mullingar.

15. To put events in context, it is helpful to set out the provision made over the years in respect of each of the children.

16. In 1993, Sean gave his daughters Deirdre and Siobhan a commercial property in Mullingar. Deirdre is now living with her family in New Zealand. Siobhan owns a business in Mullingar.

17. In 1997, Sean and Bridget gave Michael just under a hundred acres in Enfield. They had previously given him a few acres for his 21st birthday. Michael has also bought farmland himself, and owns land adjoining the family farm, upon which he has built a house. He also has business interests in Mullingar.

18. In June, 2000 Sean gave Tom land in Churchtown. Tom had inherited about a hundred acres from Sean's uncle Pat and had bought other land himself.

Testamentary provision

19. Sean Lynn made a number of wills. The first of those presented in court to make specific provision for his children by name dates from May, 1994.

The 1994 will

20. The family home and farm were left to his wife for her lifetime, and thereafter to Michael. Other specified lands were left to Tom and Padraig, subject to a right of support, clothing and maintenance in favour of Bridget. The residue of the estate and a further specified property were left to Bridget. Mary was to be provided for, at Bridget's discretion, out of the residue and that property.

The 1997 will

21. Under a will made in January 1997, the home and farm were left to Bridget for her lifetime, and thereafter to Padraig. Another property was left to Bridget for her lifetime and thereafter to Michael. Tom was also to receive land, subject to a right to support, clothing and maintenance in favour of Brigid. Again, Mary was to be provided for at Bridget's discretion. It was confirmed that provision had already been made for Siobhan, Deirdre and Michael, and that no further provision was being made for them in the will. Tom and Padraig were appointed as executors.

The 1999 will

22. In July 1999, a new will left the family home and farm, and another small property, to Bridget for her lifetime and thereafter to Padraig. About 11 acres in Ballyoate were left to Bridget for her lifetime and thereafter to Michael.

23. A separate property in Rathtrim, comprising 60 acres, was left to Bridget for her own use and benefit absolutely (unless she predeceased Sean or died with him, in which case Michael would inherit it).

24. Under this will Tom was left 72 acres for his own use absolutely. Another 10.78 acres in Balroe were left to Bridget for her lifetime and thereafter to Tom.

25. A property in Mullingar town was left to Bridget absolutely. In the event that she did not survive Sean this property was to go to Deirdre and Siobhan.

26. Shares in FBD were left to Michael.

The 2004 will

27. Under this will the family home and farm were left to Bridget for her lifetime and thereafter to Padraig. The Ballyoate lands were left to Bridget for her lifetime and thereafter to Deirdre and Siobhan. The 60 acres in Rathtrim were left to Bridget absolutely, and to Padraig in the event that Bridget did not survive Sean.

28. The Balroe land was left to Bridget for her lifetime and thereafter to Tom. The Mullingar property was left to Bridget absolutely, and to Deirdre in the event that Bridget did not survive Sean. The FBD shares were left to Michael.

The 2009 will

29. This was made in February, 2009 (after the transfer of the family home and farm to Padraig).

30. Under this will Bridget inherited the whole of Sean's estate for her own use and benefit absolutely. In the event that she did not survive him for more than 30 days the estate was to be divided between their children in a specified manner. Padraig and his wife Olive would have received another piece of land.

31. The court has also been given information in relation to testamentary provision made by Bridget Lynn in so far as it relates to Padraig. The following aspects are of relevance.

32. In 1994, Bridget made a will in which she left all of her investments in a particular bank to Padraig.

33. A will made in 1999 left her bank shares to Sean, and in the event that he did not survive her to Padraig.

34. A 2004 will left bank shares to Sean, and to Padraig in the event that Sean did not survive her. FBD shares were left to her sons in equal shares. In the event that she survived Sean, Padraig was to receive the 60 acres in Rathtrim. The rest of her estate was to be divided between her children (including Padraig) in equal shares.

35. A will made in February, 2011 (after the transfer but before Padraig's death) left all shares, money and the residue of her estate to Padraig.

36. Subsequent wills were made after Padraig's death and are not of relevance.

The transfer documentation

37. The various documents associated with the transfer were drafted by the Lynn's solicitor Mr. Crowley, of J.J. Macken solicitors in Mullingar. They were signed in the presence of, and witnessed by, Mr. Louis Kiernan of Nooney & Dowdall, also of Mullingar. There are eight documents, all dated the 24th November, 2008.

38. The first is a deed of transfer between Sean Lynn and Padraig Lynn. It recites that the transfer of the lands is in consideration of natural love and affection, and that it is subject to rights of residence and of support, clothing and maintenance in favour of Sean and Bridget Lynn as specified in documents of the same date. It is certified that, *inter alia*, the Young Trained Farmers Relief provided for in s.81AA of the Stamp Duties Consolidation Act 1999 is applicable to the transaction. The deed includes Bridget Lynn's signature confirming her consent to the transfer for the purposes of s.3 of the Family Home Protection Act 1976.

39. The second is a deed of indenture between Padraig Lynn of the one part and Sean and Bridget Lynn of the other part. By its terms Padraig covenanted to support, clothe and maintain Sean and Bridget "*in the like manner as they have been heretofore accustomed*". There is a proviso to the effect that, in the event of either of them going to reside in a hospital, home or other institution, Padraig would give them money in lieu (to an amount at his discretion), and a further provision by virtue of which they both agreed to postpone all of their rights if it was necessary to enable Padraig to raise any borrowing against the property.

40. The third document is a deed of grant, by virtue of which Padraig Lynn granted a right of residence to his parents for their respective lifetimes.

41. The fourth is a declaration executed by Sean and Bridget Lynn in fulfilment of the requirements of the Family Home Protection Act, 1976; the Family Law Act, 1981; the Judicial Separation and Family Law Reform Act, 1989; the Family Law Act, 1985 and the Family Law (Divorce) Act, 1996.

42. The fifth document is headed "*Acknowledgement and Admission*" and is signed by Bridget Lynn. This records her awareness of the transfer and her acceptance that she had been advised fully as to her rights as a spouse under the Succession Act 1965. That clause continues:

"It is has also been explained to me and I understand that following the transfer my husband Sean and myself will have the following rights over the property:-

(a) Exclusive Right of Residence in the dwelling house for our respective lifetimes

(b) Right of Support, Clothing and Maintenance out of the lands.

I am fully satisfied with this arrangement and fully satisfied that my husband Sean shall proceed with the Voluntary Transfer of the property accordingly and I hereby irrevocably consent to the said Voluntary Transfer to my son Padraig."

43. The document goes on to record that the full meaning and effect of her rights under the Family Home Protection Act and her obligations as a parent under s.117 of the Succession Act had been explained to her. It was stated that the full meaning and effect of the grant of the rights of residence and of support, clothing and maintenance had been explained and that she understood that, apart from those rights, she would have no claim or right whatsoever in respect of the property. She also understood that Padraig would be able to deal with the property as he saw fit, including selling or mortgaging it, without reference to her or to Sean.

44. Finally, the document recites as follows:

"I have obtained independent legal advice from Louis Kiernan, Solicitor Mullingar County Westmeath on all matters set out in this Acknowledgement and Admission and he has explained the same fully to me. I am satisfied that my husband Sean proceed with this Voluntary transfer of my property to my son Padraig."

45. The next document is a similar "*Acknowledgement and Admission*" signed by Sean Lynn. It confirms that the full meaning and effect of a "*revocation clause*" has been explained to him and that he requires the deed to be irrevocable. The rest of the document is much the same as that signed by Bridget, with the difference that the reference to the right of support, clothing and maintenance omits the words "*out of the lands*".

46. The seventh document is a declaration of solvency by Sean Lynn. It also records his understanding of the difference between revocable and irrevocable, and his instructions that the deed should be irrevocable. It is noted that he had availed of independent legal advice.

47. The final document is a declaration by Sean Lynn with respect to any burdens or other matters that might affect the folio.

Evidence relating to the transfer

48. I propose to deal firstly with the evidence from the accountant and solicitor who advised Sean and Bridget Lynn, despite the fact that they were called as witnesses for the defence. This is because it is easier to summarise Mrs. Lynn's evidence in a comprehensible fashion if their version is set out first.

The accountant

49. Mr. Malachy Stephens is a chartered accountant. He said that he has acted as accountant to the Lynn family for 12 to 15 years, and for Padraig Lynn from around 2005. During that period he did the annual returns in relation to Sean Lynn's farm income. He was aware of the details of the land holdings, stock, herd numbers and other assets. He was also familiar with the previous transfers effected by Sean, although they had been carried out before he began to act for him.

50. Mr. Stephens said that he met with Bridget and Sean Lynn on the 29th October, 2008. An entry in his office diary records the appointment as being with Bridget, from which he draws the inference that she was the person who arranged it. He has produced notes made by him at that meeting.

51. The subject of the meeting was noted as being the proposed transfer of the house and farm to Padraig. There was reference to retention of a right of residence. Indicative valuations were noted for the purpose of considering potential tax liability. The figures were €1m for the farm and €120,000 for the house. There was also a note referring to a house and six acres at a value of €200,000 which was said to relate to Padraig's property. It was estimated that he had borrowed that figure by way of mortgage.

52. It was noted that Sean had a contributory pension of approximately €120,000. Bridget did not have a pension and there was a query as to whether she would be eligible for a non-contributory pension. Mr. Stephens said that it was his view that the transfer of the land would not affect either of their pension entitlements. The benefit of the transfer lay in the 50% stamp duty relief because Padraig was a qualified young farmer. The duty at the time was of the order of 9%, which in the case of a property worth €1.6 m would have been around €150,000. The saving therefore would have been about €75,000.

53. Mr. Stephens said that both Sean and Bridget Lynn were astute business persons and they would "*absolutely*" have had consideration for this saving. However, the main purpose of the meeting was to establish whether or not any tax liability would be incurred by reason of the transfer.

54. The first issue was capital gains tax. Disposal of the property would constitute a capital gains tax "*event*". However, because of Sean's age and his history of farming the land he would qualify for retirement relief, exempting him from capital gains tax liability.

55. The second issue was gift tax. Based on the indicative values Mr. Stephens calculated that, after the transfer, 84% of Padraig's assets would be agricultural. Because this was over the figure of 80% prescribed in respect of agricultural relief, the value of the gift would be reduced for tax purposes by 90%. This would leave the gift under the taxable threshold for a gift from parent to child.

56. The notes of the meeting also list the other properties owned by Sean Lynn. Mr. Stephens said that this was part of the initial discussions, centred on the fact that the transfer would lead to a loss of income.

57. There was also a discussion about how the land would be farmed after the transfer. Mr. Stephens said that there was "*a general agreement*" that Sean and Padraig would create a partnership for the farm. The possibility was raised that Bridget might be entitled to carer's benefit or allowance. His office subsequently followed this up.

58. On the 7th November, 2008, Mr. Stephens wrote a letter addressed to Sean headed "*Transfer of lands to your son Padraig Lynn*", referring to and summarising the discussion at the meeting.

59. There was a further meeting on the 24th November, 2008, at the request of the Lynns' solicitor Mr. Crowley. This was to consider the figures again, based on the professional valuations that had by then been received. Mr. Stephens was able to confirm that the tax liability would be nil.

60. Mr. Stephens said that Bridget Lynn attended both meetings and was fully apprised of all relevant information. She did not express any unhappiness or concern about the transfer.

61. On the 16th June, 2009, Mr. Stephens's office wrote to Mrs. Lynn advising her as to the qualifications for carer's benefit and allowance.

62. Mr. Stephens also identified accounts he had prepared for the farm partnership established between Sean and Padraig after the transfer. This partnership covered the entire holding of the lands owned by Sean and Padraig.

63. When the partnership was set up Sean had contributed just under €40,000 by way of farm equipment and stock. He had also put in €25,340 in cash.

64. The accounts covered the period from the 1st January, 2009, up to the 7th December, 2011 (the date of Padraig's death). Livestock sales for that period were approximately €60,000 per year. Farm subsidies were about €31,500 per year. Sean had withdrawn €47,623 over the period, while Padraig had withdrawn €5,668. The closing balance attributed to Sean was €10,178 and to Padraig was €6,347.

65. In cross-examination Mr. Stephens confirmed that he had not met with Bridget Lynn on her own in relation to the matter.

66. He further confirmed that he was aware that the transfer would have to be effected before Padraig's birthday on the 26th November in order to avail of the relief against stamp duty.

67. Mr. Stephens was asked why the letter of the 7th November, 2008, was addressed only to Sean Lynn. He said it was because the file was in his name.

68. Asked by counsel for Michael Lynn whether he had detected any signs of stress or pressure on Sean's part, Mr. Stephens said that he had not.

The solicitors

69. Mr. Patrick Crowley is the principal in the firm of J.J. Macken, having been a partner there since 1990 and having taken over the practice in 2007 on the retirement of his partner. The Lynns were clients of the firm.

70. Mr. Crowley recalled being contacted by Sean and Bridget in relation to the proposed transfer of the land to Padraig. The reason for the transfer was so that he could avail of "*the farmers' scheme*" and for this purpose it had to be done while he was under 35 years of age. Mr. Crowley said that Sean and Bridget called in to him a number of times.

71. Mr. Crowley identified handwritten notes dated the 4th November, 2008, as being his notes from the first consultation in relation to the matter. Sean and Bridget were present. Mr. Crowley noted *inter alia* the following items of relevance:- the description of the property; Padraig's date of birth; the fact that Padraig had the requisite certificates; the circumstances pertaining to Mary; whether the farmyard was to be included in the transfer; and the extent of the area surrounding the house to be included with the right of residence.

72. The notes included the following:

"No support and maintenance. Income solely and entirely his."

73. This note was made, according to Mr. Crowley, because he asked Sean and Bridget how they would support themselves in the future. He said that it was *"not good"* to transfer substantial lands without provision for support and maintenance. Sean and Bridget specifically instructed him that they did not wish to include such a right. He noted in the attendance that they owned other properties, which were listed, and that Mary was to be provided for out of them. His understanding was that they were sufficiently provided for and that *"they knew what they were doing"*.

74. The note also referred to the possibility of reserving a right of residence for Mary, but not an exclusive right. Advice was given in relation to Succession Act implications, for Mary in particular.

75. In the event, Mr. Crowley decided on his own initiative to include a covenant for maintenance and support. He said that he was not satisfied to do a transfer of this sort without such a covenant. He put it in, not because he was not satisfied that the Lynns could provide for themselves, but because one could not know the future. He wanted to ensure that the transferors were protected and that the transferee knew what he was taking on.

76. The attendance also notes that Sean and Bridget were advised in relation to obtaining independent legal advice. Mr. Crowley said that this was his usual practice, and was for the protection of everyone concerned.

77. Mr. Crowley estimated that this meeting would have lasted at least an hour and probably an hour and a half. He said that there was nothing to suggest that Sean and Bridget were under pressure. It was his understanding that they had a good idea of what was involved.

78. On the 18th November, 2008, Mr. Crowley sent a fax to Mr. Stephens in which he stated *inter alia* that he had been consulted by Mr. Sean Lynn and Mrs. Bridget Lynn about the transfer.

79. Mr. Crowley next saw the Lynns on the 20th November, 2008, although the office diary records telephone contact on other dates. A further appointment was made for them for the following afternoon, the 21st, at 2.30. The intention appears to have been to have the documents executed on the 21st but in the event the Lynns met with Mr. Stephens for a final discussion on Monday 24th, before attending at Mr. Kiernan's office in the firm of Nooney & Dowdall later that day. Mr. Crowley said that the matters dealt with by Mr. Stephens included the farming partnership and joint bank account to be set up between Sean and Padraig.

80. Mr. Crowley said that it was his firm belief that Bridget Lynn understood what she was signing. She had not indicated to him that she had any concerns or that she was being put under pressure. If she had, or if he had thought for one moment that she was not happy to go through with the transfer, he would not have gone ahead with it.

81. Mr. Crowley said that Sean did not alter the will he made in 2009. He also recalled seeing Bridget about her own will subsequently. She had some other queries but never raised any issue in relation to the transfer. No complaint had ever been made to the Law Society about his advices in the matter.

82. In cross-examination Mr. Crowley accepted that he had not seen any of the three persons involved – Sean, Bridget or Padraig – on their own. He agreed that he had considered that he was acting for Padraig as well as his parents. It was put to him that Bridget had wanted to see him on her own but never got the opportunity. He responded that all she had to do was ring and ask to see him.

83. He said that he did not know whether Bridget had a legal interest in any of Sean's property. He was aware that Padraig had inherited land from his uncle and had his own house. He did not consider whether or not it was advisable, in those circumstances, to transfer the family home. However, it was his view that it is not appropriate to transfer a family home, and his usual practice is to discuss this with the client.

84. Mr. Crowley thought that Bridget Lynn might have contacted him with questions about family property maybe five or six times before the matter of the transfer. Asked about her health in November, 2008 he said that he had been aware that she had Parkinson's disease and sometimes used a walking stick. He did not know of any other complaints. He knew she was getting medical treatment.

85. Asked further about the advice he had given, Mr. Crowley said that he told Bridget Lynn that she had certain rights under the Succession Act and that if she went ahead with the transfer she would forego all of those rights in relation to the property. He also explained to both Bridget and Sean that they had a moral duty under the Succession Act to provide for all their children in accordance with their means, and that if they did not do so the transfer could be challenged. He said that he would have checked their wills before proceeding, as he would never do a transfer such as this without checking the wills. It was put to him that this was an *inter vivos* transfer to a child of the deceased, which could not be the subject of a challenge under the Succession Act, and he said that he was erring on the side of caution.

86. Mr. Crowley was asked

"What did Bridget Lynn gain, if anything, by effecting this documentation?"

His reply was that she gained the fulfilment of her wishes.

87. It was accepted by Mr. Crowley that under Law Society rules now in force he could not act for more than one of the three parties concerned in such a transaction. He was permitted to do so in 2008 but had taken the precaution of ensuring that Sean and Bridget got independent advice. He did not accept that they should have been advised separately, in circumstances where he had been instructed not to make provision for maintenance.

"In view of what's happened it may well be correct. That's all very fine saying that today."

88. It was put to him that Bridget had more to lose than Sean, and he responded that she was *"firmly behind"* getting the transfer done as quickly as possible.

89. Certain passages from the 2002 Law Society guidelines were put to Mr. Crowley including the following: -

"A solicitor should not accept instructions which he suspects have been given by a client under duress or undue influence. Particular care should be taken where a client is elderly or otherwise vulnerable to pressure from others. A solicitor will usually but not always see a client alone. In the case of suspected duress or undue influence the solicitor should ensure that the client is seen alone."

90. He responded:

"Well, it must be borne in mind that I was consulted by Bridget, the late Sean Lynn and Bridget Lynn, who came to me with a firm, clear and fixed intention of transferring their property to their son Pdraig. Pdraig Lynn, I don't think he contacted me, I think it was about the 20th before I saw him, I may have spoken to him before that. But in all honesty he wasn't, he did not involve himself in the transaction, as far as I could see, at all, until he was asked by me to come in, I think it was on the 20th, to go through documentation so that I could explain to him his obligations as well as what was happening in the transfer."

91. He said that if he had sensed any question whatsoever he would have acted differently. It was his professional judgment, having known the Lynns over the years, that there was no question of undue influence. It was put to him that the Law Society guidelines stated that a solicitor's obligations were not fulfilled simply by carrying out instructions. He said that he had carried out instructions but not *"in a vacuum"*. He had known the people he was dealing with for a number of years and had formed the view that they were there because they wanted to be.

92. He did not accept that Sean Lynn had rung his office and said that his wife did not wish to proceed. If that had happened he would have taken a completely different course.

93. Mr. Crowley accepted that no one had adverted to the possibility that Pdraig might predecease his parents. However it was his view that the rights of support and maintenance conferred in the transfer were still in place and were enforceable against Pdraig's estate.

94. Ms. Ethel Battle has worked in the office of J.J. Macken for over 40 years. She answers the telephone, logs calls, makes appointments and is responsible for maintaining the office diary. She also witnessed all of Sean Lynn's wills referred to above.

95. Ms. Battle said that she knew both of the Lynns very well from coming in and out of the office for a long number of years. They were clients of Mr. Crowley's predecessors before he took over the practice. She was on first name terms with them. Sometimes they came separately and sometimes together, generally after making an appointment.

96. Ms. Battle was asked about an entry in the diary for Wednesday the 29th October, 2008, which read *"Mrs. Lynn transfer"*. She explained that if a client who rang the office had a few different matters in train she would ask which they were calling about, so that she could tell Mr. Crowley when putting the call through to him. On this occasion Mrs. Lynn had said that she needed an appointment about a transfer.

97. An entry in the diary for Friday the 30th recorded a call made by Mr. Crowley to Mrs. Lynn.

98. On the 4th November Mrs. Lynn had an appointment at 2.30 pm. Ms. Battle recalled that Mr. Lynn came with her, and that she showed them into the consultation room. She estimates that the meeting took an hour to an hour and a half.

99. On Wednesday the 5th November Mrs. Lynn called to give Pdraig's date of birth.

100. On the 12th November Mr. Crowley rang Mrs. Lynn about a valuation. On the 18th November Mr. Crowley rang Mr. Lynn about stamp duty. Ms. Battle explained that Mr. Crowley would ask her to ring *"Sean or Bridget Lynn"* and she would put through whichever of them answered the phone.

101. On the 20th November there was an appointment at 2.30 pm for Sean, Bridget and Pdraig Lynn. On the following day there was an appointment at the same time for Sean and Bridget.

102. On the 24th November there was an appointment noted in the diary for a meeting with Mr. Malachy Stephens at 3.45pm in his office.

103. Ms. Battle confirmed in cross-examination that Mrs. Lynn had never attended the office on her own in relation to this particular matter. She had, however, come on her own in relation to her own will.

104. Mr. Louis Kiernan has been a solicitor in the firm of Nooney & Dowdall for over 12 years. He said that he did not know the Lynns personally but was aware of them from living nearby. His uncle and aunt had been friendly with Sean and Bridget. He himself knew Thomas and Michael from football, and had played on the same team as Pdraig but they were not friends *"as such"*.

105. Mr. Kiernan recalled getting a phone call from Mr. Crowley asking him if he was available on the 24th November, 2008, to give independent legal advice. The documentation and the covering letter were delivered to his office before the Lynns came to him. He familiarised himself with the documents before they arrived.

106. Mr. Kiernan said that the meeting went on for 20 to 30 minutes. He went through each document in turn. He remembered it as being *"a pleasant consultation"*. They were *"a nice couple"* and he was satisfied that they understood everything that was being discussed. Sometimes one might have a concern, and he would always look out for indications that the person was uncomfortable, didn't seem to understand or was expressing doubts. There were no worries in this case. He asked them, in relation to each document, whether they understood it and were happy with it. The Lynns were happy to proceed, did not ask any questions and did not express any concerns.

107. Asked about his role, Mr. Kiernan said that he made it clear to them that he was independent of Mr. Crowley's office and that he was taking a fresh look to explain things to them. He was not there to persuade them one way or the other. However, if he had had any doubts he would have stopped, having regard to the fact that this was a big transfer involving a family home. He wanted to make sure that they understood that it was irrevocable and that they would no longer have control.

108. Mr. Kiernan referred to notes made at the meeting. They record that he had satisfied himself as to the capacity of the Lynns, because they were older people. He recalled that Bridget was walking with a distinct hunch but he had no worries in relation to her

mental capacity. He had also written the words “consent” and “no pressure or coercion” in the notes. He said that he had asked them whether they were under any pressure or coercion, whether there was anybody “in the background” forcing them to do this and they had said that there was not and that they were happy to go ahead. He said that he was getting responses from both of them.

109. The notes record that Mr. Kiernan explained that Padraig would be “free to sell, gift, sell, part, pass it on etc”.

110. Mr. Kiernan said that he was not aware that Sean had intended to leave the property to Padraig in any event, or of any other financial considerations. They did discuss the fact that there were other children and that Sean and Bridget were happy that the others had been looked after.

111. The transfer documentation was then signed by Sean and Bridget in Mr. Kiernan’s presence and was witnessed by him.

112. In cross-examination Mr. Kiernan was asked if he would, in the same circumstances, see the two of them together now. He said that he would not, because of his experience in this case and because of the fact that the Law Society no longer permitted solicitors to act for both sides of a transaction even in the case of a voluntary disposal.

113. He said that he was aware that Padraig had his own house. He did not raise any question with Sean and Bridget as to why, that being so, the family home was being transferred to Padraig. He did not make enquiries as to Padraig’s assets. He did not ask Bridget or Sean whether they had any other assets. He did not advert to the possibility that Padraig would predecease his parents. He said that he did deal with the possibility that Padraig might divorce, remarry or move abroad. He asked whether there were other persons with an interest in the property, but not whether there was anyone else living there. He did not advise Bridget that her right to maintenance was related only to the income from the land.

114. Mr. Kiernan said that it was his clear impression that Bridget Lynn understood the implications of the transfer and was happy to proceed. He did not see it as part of his role to ask whether she would make any financial gain from it.

115. Mr. Kiernan said that no complaint had been made to the Law Society about his handling of the matter.

Bridget Lynn’s evidence

116. As of the date of the hearing, Mrs. Lynn was living in the house with her brother-in-law Pat. He has lived there since Sean and Bridget got married, in an extension they built for him. He has always required assistance with daily life and is now 84 years old.

117. Mrs. Lynn said that in 2008 Padraig was living with his wife in the house he built on the land given to him by Fr. Michael. She said that he had six acres and that she and Sean had given him another six.

118. Mrs. Lynn said that no one spoke to her in 2008 about giving more land to Padraig. She was very disabled at that time and in great pain because of problems with her back. She said that on the 18th or 19th November, 2008, she had been to a medical appointment in Dublin. When she came home her husband said to her that “they were thinking of leaving the home place to Padraig”. She said she couldn’t believe this. She was in great pain at the time.

119. On the following morning Sean said to her that “they” had decided to give it to Padraig while he (Sean) was still alive, and that Malachy Stephens, the accountant, had advised this. Mrs. Lynn says that she responded that this was ridiculous, that she was not giving away her home. Sean said that it had to be given to Padraig before he turned 26 (sic) so that he could get his grants.

120. Mrs. Lynn said that she was brought to J.J. Macken’s to see Mr. Crowley. At that stage she saw a letter addressed to Sean from Mr. Stephens. It referred to a discussion on a date at the beginning of November but she did not know about it.

121. Mrs. Lynn said that Sean put pressure on her, and told her that Padraig was putting pressure on him. This was on a Friday evening. She continued:

“I didn’t want to cause trouble if you like and break up a marriage and not give it to them and I said there will be murder or war or there will be a lot of disturbance. I decided at that stage that I’d give it to them. I didn’t want to give it to them. I cried for the two nights. Monday night I had to go in and sign for it...”

122. The meeting with Mr. Crowley was described. Mrs. Lynn said that she asked him what would happen to her, and he told her that she would be looked after and that nothing would change for her. She would still be in control of her home. He said that he would get someone to advise her, and then sent her up to Dowdalls to see Mr. Kiernan. She did not get a chance to talk to Mr. Crowley on her own. She did not see the documents in his office.

123. Mrs. Lynn said she was brought to meet with Mr. Kiernan in his office on a different day. She said he asked her did she know “what was in the letter” and she made some remark to the effect that “you have to trust in your professional people and hope they do the best for you”. They were there for 10 to 15 minutes. She was not on her own with Mr. Kiernan at any time. She said she signed with great regret and did not do it voluntarily. She would never give her home away and did not know what had happened.

124. Asked about the “Acknowledgment and Admission” document, Mrs. Lynn identified her signature but said that she did not remember signing it. She said that she understood that she had entitlements as a spouse, but that she did not remember it being explained to her. She understood that the references to the exclusive right of residence meant that she was entitled to live there as long as she wanted. She understood that the right of support, clothing and maintenance meant that she would get what she needed as before “from the profits of the land”. However, she said that it was not explained to her. She did not remember being asked was she “fully satisfied” with these arrangements, and she had not been so satisfied. She did not accept that the “full meaning and effect” of her rights under the Family Home Protection Act had been explained to her, or the relevant provisions of the Succession Act, or the implications of the transfer.

125. Mrs. Lynn said that she did not accept that Mr. Kiernan had fully explained the matter to her. He should have sat her down and talked to her for an hour to explain it. She should have been given time to consider the documents. She does not think (despite acknowledging her signature) that she saw the documents in Mr. Kiernan’s office.

126. Mrs. Lynn said that she signed because she was forced to by Sean. He, in turn, was under pressure from Padraig. She and Sean feared that Padraig’s marriage would break up if they did not.

127. Mrs. Lynn accepted that the other children had been given land. However, she said, Padraig got education and money instead.

He was not really a farmer.

128. Shown the document containing the Family Home consent, Mrs. Lynn said she understood that by signing it she was signing away the farm and the house. She understood, but did not remember, the clause providing that her rights under the transfer would be postponed in the event of the property being mortgaged or charged, or in the event that she went to reside in an institution.

129. According to Mrs. Lynn, she has received no maintenance or support since the date of the transfer. She got nothing from Pádraig or from his estate. She said that she knew nothing about the partnership between Sean and Pádraig.

130. Mrs. Lynn said that after the transfer Pádraig and Olive took over the farm and put sheep and eight horses on it. She and Sean had previously been getting between €20,000 and €25,000 from farm subsidies. That was their income and it was now lost forever. Her only income now, she said, is the widow's pension of €230 a week.

131. Mrs. Lynn's health continues to be poor. She said that she has the assistance of HSE home help for brief periods in the morning and evening, and her family assist when they can. Her home is unsuitable for a wheelchair user. (However, it must be noted that she did not refer to the fact, established in evidence by a witness called on her behalf, that she has been receiving assistance from the Home Instead agency since a date some weeks before the hearing. That witness said she did not know who was paying the bills).

132. In cross-examination, Mrs. Lynn was asked about her relationship with Sean. She agreed that he was "*terrific*" with her and very loyal to her. He was a very hard working man, devoted to his family. She agreed that all the land transfers to the children were discussed with her and she had signed some of them.

133. Each of the wills Sean had made was put to Mrs. Lynn. In relation to the 1997, 1999 and 2004 wills, under which the home place was left to Pádraig, she said that she did not recall this feature but was not saying that she did not know about it.

134. Mrs. Lynn agreed that Pádraig had done a Teagasc course in 2003 and was a "*qualified farmer*" after it. She denied that there was an intention at that time that he should take up his inheritance and farm the homestead, and said that he was too busy training sport teams.

135. Mrs. Lynn described Pádraig as being very helpful as her health failed. He would take her to the doctors. He put her to bed and helped her up. He brought her to the bathroom and took her out on drives to cheer her up. He was also very good to his uncle Pat and would get up at night to look after him.

136. For the year before Pádraig died he was in receipt of the Carer's Allowance. However, Mrs. Lynn took issue with the suggestion that he had put the money into her household account, and said that he spent it on his flower garden and a jeep.

137. Pádraig and Olive got married in 2008, having been going out together for some 16 years. Olive was working for the HSE and had a project that involved bringing children to ride horses on Pádraig's land. Mrs. Lynn did not accept that she had known Olive "*for years and years*", saying that they met occasionally. "*She was young and I was old*".

138. Mrs. Lynn agreed that Pádraig continued to help Sean on the farm and to look after her after his marriage. However, she said, his time was very scarce and they did not see much of him.

139. It was put to Mrs. Lynn that not long after the wedding she had told Olive that Pádraig would be getting the home place, as Sean had willed it to him. She said that she did not recall. She further said that she did not recall Sean ever saying that he wanted Pádraig to have it.

140. Asked about an application to the Department of Agriculture under the REPS scheme, in which Pádraig was the nominated farmer, Mrs. Lynn said that she did not know about it but agreed that she was not surprised by it. She nonetheless maintained that Pádraig was not a farmer, saying that he never engaged in manual labour on the farm like the other boys in the family. She accepted that the Department would have carried out checks.

141. It was put to Mrs. Lynn that it had been decided that Sean could retire, with Pádraig taking over the land as the registered farmer. Sean and she would be the beneficiaries of the Department's retirement scheme provided the transfer occurred while Pádraig was under 35. She agreed that his birthday was the critical date.

142. It was further put that the professional advice was that the lands should be transferred to Pádraig rather than leaving them to him. Mrs. Lynn expressed a view to the effect that the professional advisers had let her down.

143. Mrs. Lynn was asked about her claim to have no income, in view of the fact that she had inherited all of Sean's estate. She said that she did not know whether she had. It was put to her that under the 2009 will he had left her all his lands and stock, and the benefit of the farm partnership. She said that she was not involved in the partnership and did not know if she benefited from it. She got no money from Pádraig. She denied any knowledge of the fact that income continued to come from the farm after Pádraig's death, none of which went to Olive. She did not know that Sean had applied to the Department for a new herd number for the farm in January, 2012.

144. In answer to a question from the court Mrs. Lynn said initially that Sean had had 40 or 60 acres when he died. She then said it was 60 to 70, but that she did not know if she owned it. Finally she said that it was 80 to 100 acres.

145. Mrs. Lynn confirmed that it was her evidence that she had nothing to do with any preparations for the transfer and that it was foisted upon her. The letter of the 7th November, 2008, from Mr. Stephens, referring to the recent meeting about tax liability arising from the proposed transfer, was put to her. She denied that she had been at such a meeting. She was not interested in tax issues and knew nothing about it.

146. It was then put to her that Mr. Stephens had a note of the meeting of the 29th October, 2008, with herself and Sean and she said that she could not remember it. She would not accept that the transaction was discussed with her and continued to maintain that she knew nothing until asked to sign.

147. She also denied having consulted JJ Macken about the transaction, as suggested in the faxed letter of the 18th November from Mr. Crowley to Mr. Stephens. The record of her phone call to the solicitor's office on the 29th October was put to her and she denied it. She said that it was not true that she was in that office on the 4th November. She did not accept that there had been a call on

the 12th November about the valuation and she knew nothing about it.

148. Mrs. Lynn further denied telling Mr. Kiernan that she consented to the transfer, or that she had been asked by him whether she was under any pressure or coercion. She asserted that she had told him that she did not want to sign, that she did not know whether it was right or wrong to sign.

149. In cross-examination on behalf of the estate, Mrs Lynn was asked about the pressure she claimed had been put on her by Sean. She responded:

"He just said to do it and that was the right thing. He was very quiet about all this. I don't know why. He was just, I don't know was he a bit depressed or I don't know what was wrong but he was anxious to get it done and he said we should do it. I said I didn't want to, your home is your home. I said my parents wouldn't like this and I didn't want it done and that is it. I didn't want it breaking up marriages or breaking up my own marriage or causing disagreements or arguments and I didn't have much of an option, but I did it against my will..."

150. She clarified that she did not think that her own marriage would break up, but feared that there would be rows.

151. Padraig had, she said, been in ill health. He had been getting psychiatric help for two years before his death and had gone to counsellors and to hospital. When he wasn't well he felt very low and slept a lot. He was very upset when his wife moved out. She did not think there had been any physical violence on his part, but she thought that Sean would have been worried about Padraig's reaction if the transfer had not gone through.

Medical evidence relating to Bridget Lynn

152. There is no doubt but that Mrs. Lynn has for several years suffered from poor health.

153. Her current GP, Dr. D'Alton, stated that he had first met her in August, 2008. At that time she had a history of severe Parkinson's disease since about 1998; spinal disease for which surgery was required in 2002; osteoarthritis and coronary disease. She was attending a neurologist, a cardiologist and an orthopaedic surgeon with a particular interest in spinal surgery.

154. Dr. D'Alton went through the medications Mrs. Lynn was taking in 2008. These included sleeping tablets, an inhaler, stomach tablets and combinations of medicines in respect of her heart condition and Parkinson's.

155. Dr. D'Alton confirmed that Mrs. Lynn had seen her neurologist, Professor Timothy Lynch, on the 19th November, 2008, and that this was a review which had been scheduled nine months earlier. He also confirmed that on the 19th November Professor Lynch had reported that Mrs. Lynn's Parkinson's disease was reasonably stable, and that he would see her again in one year's time.

156. Dr. D'Alton said that he had not been asked to assess any question of Mrs. Lynn's fitness in relation to testamentary capacity when she made wills in 2011 and 2012.

157. Professor Lynch said that he had been seeing Mrs. Lynn since 2002. She had highly complex medical problems, which he listed as *"coronary heart disease; hypertension; underactive thyroid gland; osteoarthritis; osteoporosis; high cholesterol; bladder problems; bowel problems etc including significant back problems and neck problems"*. He gave a description of the main symptoms she was experiencing in 2008.

158. As far as Mrs. Lynn's current condition is concerned, Professor Lynch said that things have gotten harder for her over the years by reason mainly of the combination of Parkinson's disease and arthritis and she required more care. He noted that she had said to him that her *"motivation and drive and initiative were a bit less than before"* and commented:

"Which is perhaps remarkable because over the years Bridget has soldiered on from 1997 to 2014 and has always struck me and others as a very motivated driven woman who coped with many illnesses and just got through them."

159. Asked in cross-examination about his use of the words *"motivated"* and *"driven"* Professor Lynch said that he meant this *"in the best terms"*. He agreed that Mrs. Lynn had a sharp brain, and that he would not describe her as a *"wilting violet"*.

Evidence of Olive O'Hara Lynn

160. Ms. O'Hara Lynn said that she had been seeing Padraig since about 1992. They got engaged in 2004, and started building their house on the land left to Padraig by Fr. Michael. They moved into the house in 2006. In the same year she took up a job with the HSE. Padraig was partly engaged with his fitness business and partly with farming. He was also involved in training the county team. Ms. O'Hara Lynn said that they did not have a lot of money and were furnishing the house piece by piece.

161. She said that she had a good relationship with Sean Lynn, who she described as an impressive man. She always got along with Queenie also, and did not remember ever having an argument with her. Ms. O'Hara Lynn said that Queenie told her at some point that Padraig was to get Ballyoate. However, she says that in fact Padraig never told her about the transfer until 2010.

162. Padraig and Olive got married in August, 2008. Ms. O'Hara Lynn said that Queenie was in good health at the time and had a great day at the wedding. The couple went away for a few days after the wedding but left the honeymoon until December, when they went to the Caribbean.

163. By this time the fitness business had closed although Padraig was still doing some evening classes and a bit of team training. According to Olive, he was working full time on the farm in the partnership with Sean.

164. Ms. O'Hara Lynn is a Resource Worker with the HSE, working mainly with young adults with intellectual and physical disabilities. She had spent several years working with horses previously and in 2010 she did a course in *"equine assisted learning"*. This is a specialised therapy using horses for people with special needs. She subsequently, with HSE approval, set up facilities for the treatment of young autistic persons using the Ballyoate property.

165. Ms. O'Hara Lynn said that Padraig began to become very unwell around October or November, 2010. He was low, tearful and under pressure. People had high expectations of him and he felt that he could not meet them. She brought him in to see Dr. D'Alton. Padraig was relieved to have discussed the issue with the doctor and subsequently went several times to see Professor Murphy, a psychotherapist. Professor Murphy was trying to get him to see that he was spending too little time on himself and his own activities. Padraig began to improve for a while but then started to go down again.

166. In August, 2011 Ms. O'Hara Lynn left the house and went to stay with a friend. She said that she did so because she was not equipped to deal with what was happening and wanted to force him to get help. He did go to Edmundsbury Hospital. He was seeing Professor Murphy and a counsellor, and Olive kept in touch with them. She also remained in phone contact with Padraig and met him on occasion.

167. However, Ms. O'Hara Lynn became increasingly concerned about Padraig's behaviour. He came to her workplace and was driving around to her friends' houses and to her brother looking for her. She felt that he was not himself and, after speaking to his counsellor and a female Garda, she applied for a safety order. The sworn information grounding the application stated that she was in fear of her life due to her husband's continuous mental and physical abuse and harassment since she left the family home. The order was made on the 10th November, 2011. Padraig was present in court and consented to the order.

168. Ms. O'Hara Lynn said that this was heartbreaking for her because she really loved him. She did not suggest to him that the marriage was over, or discuss selling the house or land.

169. In answer to the suggestion that she might not have married Padraig unless the lands were transferred, Ms. O'Hara Lynn pointed out that they were already married when that happened. She said that that year, 2008, was one of the happiest years of their lives. Padraig was very well that year and in great form. It had never been suggested to her by Sean that Padraig put pressure on him, or had said that he would harm himself if he was not given the land. Nor did she hear it said, before 2013, that the transfer had been improvident.

170. Ms. O'Hara said that she received no money in respect of either the stock or the land until 2013, when she got a single farm payment. She has not been farming the land. She had moved back into her house for a while in 2012, during which time Sean Lynn frequently called in to her. Michael also came a few times, looking for letters from the Department of Agriculture. He asked her if she had found out how much tax she would have to pay back on the six acres to get it back into her name.

171. She said that it became clear that she was not welcome in the area and she rented out the house from August, 2012.

172. In cross-examination Ms. O'Hara Lynn was asked why she thought the Lynn's family home had been included in the transfer, given that she and Padraig had a house of their own. She said that Padraig had envisaged that at some stage they would sell their own house and move into the farmhouse to look after his parents. She understood that Mrs. Lynn has a deep attachment to her home, and agreed that she had told her that it would always be her home. She had fully intended to sign it back to her until she was asked to sign the disclaimer. Communications broke down and everything was being done by solicitors' letters. She could not say what her present intentions are, given everything that had happened and what had been said about Padraig.

173. Ms. O'Hara Lynn agreed that she had seen Padraig lose his temper. However she had never seen him act aggressively towards Sean and had never seen Sean afraid of Padraig. She did not accept the proposition that there were *"two Padraigs"*.

Medical evidence relating to Padraig

174. Dr. D'Alton was also Padraig's GP. According to his records, he saw Padraig in April, 2005. On that date he noted the following:

"Depressed, traumatic family split, reduced interest, tearful, not suicidal, refer for counselling."

Dr. D'Alton did not recollect any detail as to the circumstances giving rise to this.

175. There was no further mention of depression or psychiatric illness in the records from that point up to October, 2010. At that time Dr. D'Alton noted that Padraig was in a depressed mood and had thoughts of suicide. He referred him to a consultant, Dr. Matt Murphy in Edmundsbury Hospital. The letter of referral reports Padraig and Olive as saying that psychological problems had been ongoing for several years, and that Padraig had seen psychologist Michael Byrne for one session, which he found helpful.

176. Mr. Byrne's report noted that Padraig was struggling with a lack of appreciation from his family for the care that he was giving his parents and his uncle. Dr. D'Alton's observation on this was that he was aware that Padraig was a very hard working, conscientious person who gave very generously of himself.

177. Dr. Murphy saw Padraig in November, 2010. Padraig told him that he had been *"in a dark place"* for about six months but was now much better. He described sleep disturbance, thoughts of self harm and exhaustion.

178. In cross-examination on behalf of the estate Dr. D'Alton was asked about the note he made in October, 2010 that Padraig had a *"difficult"* relationship with his father. He responded that he had no particular information on that issue, other than that Padraig worked very hard on the family farm and that fathers and sons do not always agree. He was asked if he had seen any indication of *"anger issues"* and replied that he had not.

Events after the death of Padraig

179. It is apparent that after Padraig's death matters developed in a direction which unfortunately led to the current proceedings. However, to a large extent the court is not concerned with what exactly occurred. The following evidence is referred to only on the basis that it can shed some light on the parties' perception of previous events.

180. Padraig's funeral was on a Saturday. On the morning of the following Monday Olive O'Hara Lynn went with her brother Cyril to her house in Ballyoate. She found a number of people there before her including Bridget Lynn, Bridget's sister Margot, Michael Lynn, Siobhan Lynn and Siobhan's partner. It appears that they must have let themselves in with Padraig's key. It also appears, as conceded in evidence by Bridget, that they were looking at some papers of Padraig's.

181. According to Ms. O'Hara Lynn, Michael Lynn said to her that she had got everything she wanted when she left. Siobhan asked her if what she wanted was a few acres for her horses. Queenie said that she wanted her house back, and Olive said that it was hers (Queenie's) and always would be. She had her own home. Michael said that he had been good to her the previous week but that the show was over and it was down to business. She said that Queenie told her that she should get a solicitor, and not to go to J.J. Macken's.

182. Ms. O'Hara Lynn said that she never agreed to waive her rights in relation to Padraig's estate.

183. The detail of her evidence in relation to the events of that day was supported by her brother Cyril O'Hara. Mr. O'Hara also said that around Easter 2012 he received a phone call from Michael Lynn. Michael said that no matter what, the place was coming back to

them. He asked Mr. O'Hara to put pressure on Olive.

184. Mr. O'Hara was not cross-examined.

185. Mrs. Lynn accepted that she had been there, claiming that she had been looking for papers that belonged to her. She also accepted that there had been a discussion about the land. It was possible that she told Olive to get a solicitor. She said that she could not remember instructing a solicitor herself but it was very possible. Olive had said that her house was her own and had also agreed to give the land back. She agreed that she subsequently asked Mr. Crowley for copies of the transfer documents.

186. After this incident Ms. O'Hara Lynn did engage a solicitor, Mr. Tynan, and the Lynns instructed a new solicitors' firm to deal with the matter.

187. Also shortly afterwards Michael Lynn phoned Mr. Stephens. He told him that he understood that Olive was going to disclaim her inheritance, which would mean that his parents would inherit Padraig's estate. He asked for advice on the tax implications for his parents.

188. On the 15th December, 2011, a solicitor from the firm of O'Donovan Cowen emailed Olive's solicitor Mr. Tynan. He stated that he had been instructed by Sean and Bridget to "*regularise*" affairs following Padraig's death. He understood that agreement had been reached with Olive in relation to "*the transfer back*" of both the family home and the farm. A further letter on the 5th January, 2012, referred to Sean and Bridget's instructions that Olive had indicated that she would sign the necessary documents after the Month's Memory.

189. The correspondence between the solicitors continued for a lengthy period of time. I do not propose to deal with it in detail except to note two aspects. One is that each solicitor maintained a consistent position – Messrs. O'Donovan Cowan asserted that a binding agreement had been entered into on the Monday after the funeral, while Messrs. Tynan Larkin said that that there had been no agreement on the part of their client to waive her rights and that she would finalise her attitude in due course.

190. The second noteworthy aspect is that in May, 2012 O'Donovan Cowan were concerned about finalising matters because of a risk that the farm entitlements might be lost in the absence of proof to the Department's satisfaction as to ownership. Tynan Larkin responded by proposing that the entitlements should be transferred into Ms. O'Hara Lynn's name, since she was the person entitled to extract administration, "*pending a final decision being made in relation to all of these matters*". This letter concluded as follows:

"For the purpose of clarity let there be no doubt whatsoever that Mr. and Mrs. Lynn, Snr. will not be disturbed in the family home and they will continue to reside there with the same rights and privileges as before and their maintenance and support will be provided for from the income derived from the farm as heretofore."

191. On the 6th April, 2013, letters of administration were granted to Ms. O'Hara Lynn.

192. Proceedings were initiated by Mrs. Lynn on the 31st July, 2013.

Valuations and current use of the farm

193. It will be recalled that at the time of the transfer Mr. Davitt valued the house and lands at a total of €1.6m.

194. For the purposes of these proceedings Mr. Michael Farrelly was engaged on behalf of Mrs. Lynn. Mr. Farrelly is a brother-in-law of Michael Lynn but assured the court that he had carefully considered the situation and was satisfied that there was no conflict of interest and nothing to prevent him from giving a proper professional opinion. He considered that the value had been overestimated by Mr. Davitt and also for the Inland Revenue affidavit. The true value of the house, in his estimation, is €60,000 to €70,000 – in effect, the value of the site. The farmland, at average Westmeath prices, is worth €300,000.

195. In relation to the house, Mr. Farrelly makes the point *inter alia* that the closeness of the farmyard to the house makes it undesirable or difficult to separate the house from the farm. There also appears to be a right of way from the lands belonging to Michael Lynn to the farmyard beside the house, for the purpose of using the sheep-dip.

196. Mr. Farrelly agreed that there were some sheep on the land when he inspected it in 2014, and that a gateway leading to Michael Lynn's land was open.

197. On behalf of Ms. O'Hara Lynn, Ms. Eileen McLoughlin has valued the house at €220,000, the lands at €520,000 and the sheds and outbuildings at €15,000. These are the same figures as set out in the Inland Revenue affidavit relating to Padraig's estate. She also referred to the fact that there were open gates, with sheep going from one paddock to another.

198. In the autumn of 2012 Ms. O'Hara Lynn engaged an agricultural advisor, Mr. Jimmy Forbes. Mr. Forbes gave evidence that when he entered Padraig's herd number into the Department of Agriculture single farm payment system the name and address of Sean Lynn, rather than Padraig Lynn, came up. Mr. Forbes explained that the single farm payment is attached to a herd number, rather than to any specific piece of land. However, a farmer must have land available to qualify for the payment.

199. It appeared from the records that after the 2008 transfer Padraig had a herd number covering the home farm and also other lands owned by Sean but leased to Padraig. The payment was made into a nominated bank account which he understood to have been the partnership account set up by Padraig and Sean. It further appeared that after Padraig's death Sean had applied to the Department to have the herd number transferred back into his name as herd owner. Mr. Forbes successfully applied for a herd number covering Padraig's lands, including the home farm, and transferred the entitlements to Ms. O'Hara Lynn with effect from 2013. However, in both 2013 and 2014 some other person had put in a claim in respect of the land.

200. Mr. Forbes said that he had inspected the farm in October, 2014. It was being farmed. There were sheep on the land, most of which had no identification.

201. Mrs. Lynn denies knowing anything about who has been farming the land since Padraig's death. Michael Lynn has not given evidence.

Hearsay evidence

202. Both sides have adduced a certain amount of evidence that is, on the face of it, hearsay.

203. A number of witnesses were called on behalf of the estate of the late Sean Lynn with a view to establishing his attitude to the transfer at the time he was entering into it. The admissibility of this evidence was debated at the hearing. Determination of the admissibility issue was held over to this judgment.

204. Ms. Olive O'Hara Lynn, the defendant, also gave evidence about Sean's state of mind in the period after Padraig's death and before the proceedings were issued. Although no objection was taken to her evidence it seems proper to apply the same criteria throughout.

Evidence adduced on behalf of the estate of Sean Lynn

205. Mr. Denis Killeen said that he was a sheep farmer and had known the Lynn family for many years. He described the late Sean Lynn as a sound man to deal with, level headed, clever and generous.

206. Mr. Killeen said that he recalled Sean coming to visit him in November, 2008. He remembered that it was shortly after his daughter's first birthday, which was on the 14th. He said that Sean told him that he felt that he was being pressurised into signing over the land and that his wife did not want to. Sean thought that going through with the transfer might help with Padraig's marriage problems. Mr. Killeen expressed the view that Sean seemed under pressure.

207. Mr. Killeen described Padraig as a happy, jolly fellow who was very helpful. He could not say that Sean was afraid of him at that time.

208. In cross-examination Mr. Killeen said that he had not spoken to Mrs. Lynn or to Michael Lynn, or to any other person, about this conversation. He did not know why the solicitor contacted him asking if he had information relevant to this case.

209. He is friendly with Michael Lynn and knows his phone number off the top of his head. He did not socialise with Sean. He did not give him any advice on the occasion of the conversation.

210. Mr. Clive Walsh said that he had known the Lynns for 12 years. In 2008 he was 17 years old and helped out on the farm. He described the relationship between Sean and Padraig as "*touchy*", saying that Padraig might "*jump down Sean's throat*" but that Sean would walk away rather than retaliate.

211. On one occasion Padraig told Sean to "*fuck off*". Mr. Walsh said that he believed Sean was afraid of Padraig. Another time, he saw Padraig put his own head through a plastic tray out of annoyance with his mother.

212. Mr. Walsh said that he had come to give evidence because Michael rang and asked him how his relationship with Sean and Padraig was. He has been doing occasional work for Michael, for which he is paid in cash and in firewood. He also helps out at the home place if Mrs. Lynn needs help to fix anything.

213. Mr. Eamon Drew lives close to the Lynns and has worked on the farm on and off over the years. He would often join Sean for breakfast on Sundays. Asked to describe the relationship between Sean and Padraig, Mr. Drew said that after the transfer "*it wasn't good, it was bitter*". He recalled an occasion when Padraig had lost his temper because his uncle Pat spilled some water in the yard. Sean had been used to running the farm and now Padraig was taking over. Padraig made Sean remove his tools from a workshop and he had to bring it to Michael's place. Sean was a peaceful man. Asked if Sean was afraid of Padraig, Mr. Drew said "*I'd say he was the latter end*", adding that it was his view that Padraig was "*never right*". It transpired that what he meant by this was that Padraig had killed himself.

214. Mr. Denis Linehan is the solicitor acting on behalf of Sean Lynn's estate. His evidence was that he was originally instructed in relation to Bridget Lynn's proceedings, in which Sean was a defendant. He said that he had two consultations with Sean in August 2013, one being on the 12th and the other on the 24th. There are typed attendances in respect of both but the original notes are missing in respect of the 24th August.

215. The attendance for the 12th August records the instructions relevant to the transfer. Padraig was said to have approached his parents in mid to late summer of 2008. He said to them that he was a qualified farmer and that the stamp duty exemption would no longer apply after he reached 35. Sean Lynn said that he was "*fearful*" as to what would happen to Padraig if the land was not transferred, meaning that he felt Padraig would harm himself. The attendance records him as saying that he had known that Padraig was going through marital difficulties at the time, and that Padraig had said that the transfer would save his marriage. Sean also described Padraig as "*difficult*" and said that he had been aggressive on many occasions. He expressed, according to Mr. Linehan, "*a certain fear*" of Padraig but said that he had never assaulted him.

216. Mr. Linehan discussed the statement of claim in Bridget's proceedings with Sean and was instructed by him that he had "*convinced*" his wife that transferring the property was the best thing to do. He was also instructed that the assertion in the statement of claim that Sean had telephoned J.J. Macken's and told somebody there that Bridget did not want to proceed was correct. However she subsequently changed her mind. Sean said that the matter was dealt with "*in a rush*".

217. On the 24th August, 2013, Mr. Linehan met again with Sean and Michael. This time the attendance records that Sean told him that the primary reason for the transfer was so that Olive could engage in her "*horse activities*". He said that Bridget had told him she was not happy, and he had communicated this to Mr. Crowley. However, Sean continued to put pressure on her and told her that Padraig would either commit suicide or harm them unless the farm was transferred. Padraig had indicated this to him. Sean accepted that this was not communicated to Mr. Kiernan. He felt that he had no option but to "*comply or die*".

218. Mr. Linehan was asked in cross-examination how he had come to be involved in the case. Initially he said that he had previously acted for a cousin of Michael Lynn. Subsequently he said that he had acted for Michael himself in some business dealings. Michael had instructed him to enter an appearance for Sean, before Mr. Linehan had met with Sean. Michael had set up the consultations, retrieved the pleadings from Sean's former solicitor and given Mr. Linehan the transfer documents.

219. Mr. Linehan said that Sean had not told him about any conversation with Denis Killeen. That information had come from Michael. This was also the case in respect of Clive Walsh and Eamon Drew. However he had contacted Aidan Davitt, the valuer, on his own initiative.

220. Mr. Linehan noted that Mr. Crowley's file in relation to the transfer had been opened only three weeks before the transfer took place, and gave it as his opinion that there had indeed been "*something of a rush*". He accepted that he had not been aware, until discovery was made in these proceedings, that Padraig had been the intended beneficiary in relation to the home place under Sean's

wills.

221. Mr. Aidan Davitt said that he was an auctioneer. He is a nephew of Mrs. Lynn, being the son of her sister Margot. He said that in November, 2008 Sean Lynn came to see him by appointment and asked him to carry out a valuation of his house and farm, and also Padraig's house and farm. Mr. Davitt said that Sean "*didn't seem himself, he seemed to be a bit worried*". He told him twice, while Mr. Davitt was working on the valuation, not to tell Mrs. Lynn about it.

Hearsay evidence of Olive O'Hara Lynn

222. Ms. Olive O'Hara Lynn said that after Padraig's death Sean was very supportive of her and frequently called in to her house. She felt that he was unhappy with the direction matters were taking. He said that he was under severe pressure at home, particularly from Michael.

223. Ms. O'Hara Lynn said that she received a text message from Tom (who, she went to some pains to say, was not involved in putting any pressure on her) on the 9th May, 2012. The message asked her to ring Sean because he was in fear of his life.

Conclusions on the hearsay issue

224. Not all of the above material is hearsay but the more significant parts are. In so far as hearsay evidence has been given, I do not consider it appropriate to take it into account. It suffers not only from the normal infirmities of hearsay, in that it is simply impossible to cross-examine upon it, but is in my view downright unreliable.

225. Neither Mr. Killeen, Mr. Walsh or Mr. Drew were mentioned to Mr. Linehan by Sean Lynn as being people to whom he had expressed concern about the transfer. They were all brought into the picture by Michael, after Sean's death. It is particularly odd in the case of Mr. Killeen, since he said that he had never discussed the conversation he had with Sean with anyone else. All of them are connected by friendship, relationship or employment to the Lynn family and in particular to Michael.

226. The evidence given by Mr. Davitt, that he was asked by Sean not to tell Queenie that he had done a valuation, makes very little sense in circumstances where he was in receipt of a letter from Mr. Crowley referring to the fact that he was instructed by both Sean and Bridget.

227. The evidence given by Mr. Linehan as to his instructions are problematic in a different way. I have no reason to doubt that his notes accurately record the instructions given by Sean Lynn. However, it is a striking fact that the first of these consultations, which concerned the statement of claim in Bridget's case, took place on the 12th August, 2013. The statement of claim was not delivered until the 20th August. The only inferences that could be drawn from this are either that the attendances have been falsified (which I consider unlikely) or (which is overwhelmingly more likely) that Sean was given a copy in advance. In circumstances where both of them had previously been instructing a solicitor with a view to having the transfer reversed, the possibility of a discussion between Bridget and Sean as to the possibility of getting the transfer invalidated is one that cannot reasonably be excluded. It further seems likely that they had discussed the best approach to this. It would not, therefore, be safe to rely upon the attendances as evidence of the truth of their contents.

228. In so far as the non-hearsay evidence is concerned, it seems to me that it does not take things further than to say that Sean and Padraig did not always get along.

229. Olive O'Hara Lynn's evidence as to Sean's unease after Padraig's death is in my view too equivocal to bear any weight. Nor, in my view, would it be safe to draw any inferences from the content of the text message from Tom. Tom was not called as a witness by either party, and it may well be that he does not wish to take sides in the matter. However, he is the only person who could explain the context of his message. I therefore propose to disregard it.

Submissions on behalf of Mrs. Lynn

Unconscionable or improvident transaction

230. On behalf of Mrs. Lynn, reliance is placed on the following definition:

"First, that one party was at a serious disadvantage to another by reason of poverty, ignorance or otherwise, so that circumstances existed of which unfair advantage could be taken; secondly, that the transaction was at an undervalue; and thirdly, that there was a lack of independent advice."

231. This formulation, taken from *Hanbury & Martin on Modern Equity* (4th ed., 1991) was quoted with apparent approval by Shanley J. in *Carroll v. Carroll* [1998] IEHC 42; [1998] 2 I.L.R.M 218, and further adopted by Gilligan J. in *Prendergast v. Joyce* [2009] IEHC 199 (both discussed further below).

232. Counsel submits that the transfer under consideration comes within these criteria. It is argued that Mrs. Lynn was under a serious disadvantage in that she was the person with most to lose in relinquishing her family home rights and her Succession Act rights, while also losing the ability to provide for her own future care from the farm income. She was further under a disadvantage by reason of her age and medical condition, and because Padraig was her carer. It is said that "*the circumstances were such as to enable unfair advantage to be taken, whether or not such advantage was taken.*"

233. It is further submitted that the transaction was at an undervalue. Mrs. Lynn was, it is contended, a beneficial co-owner of house and lands which were valued at €1.6 m. She derived no benefit from the transfer. It is further contended that the provisos in relation to the right of clothing, maintenance and support significantly increased the vulnerability of Mrs. Lynn, as did the right of the new owner to charge the property without any provision for her protection.

234. It is submitted that there is no explanation as to why the family home should have been transferred to Padraig, given that he had his own house on his own lands. There would have been no tax implications if it had not been transferred. Mr. Crowley did not give any advice as to the prudence of this aspect, despite it being his view that it is not usual to transfer the family home and that retention of a right of residence is not really sufficient.

235. The differences between the two documents headed "*Acknowledgement and Admission*" are pointed out and it is argued that these differences were never explained to Mrs. Lynn. It is further pointed out that Mr. Crowley did not advise her that, if the house was not transferred, she could have a right under the Succession Act 1965 to appropriate it in the event that Sean predeceased her. There appears to have been no advice in respect of the position of her daughter Mary.

236. It is submitted that Mrs. Lynn was in a vulnerable position, not being the owner of the land, and that the advice she received could not be considered appropriate independent advice as required by the Law Society guidelines. She was never advised while on her own, but always in the presence of her husband. Mr. Crowley was in a position of advising all three parties, while Mr. Kiernan was advising both Sean and Bridget Lynn.

Undue influence

237. In reliance on the House of Lords decision in *Allcard v. Skinner* (1887) 36 Ch D 145, cited with approval by the Supreme Court in *Carroll v. Carroll* [1999] 4 I.R. 241, counsel submits that undue influence cases fall into two categories. The categories are set out in the judgment of Cotton L.J. as follows:

"First, where the Court has been satisfied that the gift was the result of influence expressly used by the donee for the purpose; second, where the relations between the donor and the donee have at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence over the donor. In such a case the Court sets aside the voluntary gift, unless it is proved that in fact the gift was the spontaneous act of the donor acting under circumstances which enabled him to exercise an independent will and which justifies the Court in holding that the gift was the result of a free exercise of the donor's will...In the second class of cases the Court interferes, not on the ground that any wrongful act has in fact been committed by the donee, but on the ground of public policy, and to prevent the relations which existed between the parties and the influence arising therefrom being abused."

238. It is submitted that the instant case properly falls within the second category but that the plaintiff has in any event discharged the burden of proof in respect of the first.

Submissions on behalf of Michael Lynn

239. Counsel for the estate of Sean Lynn relies on the authorities referred to above as establishing a presumption of undue influence in the case of an *inter vivos* transaction between persons who are in a special relationship. It is submitted that in this case the presumption is not rebutted by the rationale proffered for the gift – namely, the tax relief – since the evidence showed that it was not necessary to transfer the family home in order to avail of the relief. This, it is contended, is clear evidence that Sean Lynn was not acting of his own free will.

240. It is further submitted that undue influence can be inferred from Mrs. Lynn's evidence as to what Sean said to her about Padraig; the note in Dr. D'Alton's records that Sean and Padraig had a difficult relationship; the evidence of Messrs. Killeen, Walsh and Drew; the attendances of Mr. Linehan and the sworn information lodged by Olive in her application for a safety order.

241. Padraig is described in counsel's submissions as "a powerful and threatening personality" in contrast to the "vulnerable" Sean.

Submissions on behalf of the defendant

242. On behalf of Ms. O'Hara Lynn it is submitted, in reliance on *Provincial Bank of Ireland v McKeever* [1941] I.R. 471, that the presumption of undue influence can be rebutted by evidence that the donor took independent advice or that the transaction was the free exercise of the donor's will. Both of these matters are said to be established, as is the absence of any mental infirmity on the part of Sean and Bridget Lynn. It is argued that the plaintiff's case here must fall with the rebuttal of the presumption since there is no evidence of actual undue influence or duress.

243. The defendant lays emphasis on the evidence of the proposed bequests of farmland to Padraig by both Sean and Bridget Lynn, both before and after the transfer, in the context of other transfers and bequests to his siblings.

244. In so far as the law on unconscionable or improvident transactions is concerned, the defendant refers to the following passage from Professor Delany's *Equity and the Law of Trusts in Ireland* (4th ed., 2007), as approved by Laffoy J. in *Keating v. Keating* [2009] IEHC 405:

"A transaction may be set aside in equity where one party is at a serious disadvantage by reason of poverty, ignorance or some other factor such as old age, so that unfair advantage may be taken of that party. Equity will intervene particularly where a transfer of property is made for no consideration at all or at an undervalue and where the transferor acts without the benefit of independent legal advice."

245. It is submitted that these considerations have no application in the instant case. It is argued that events after the death of Padraig do not support the plaintiff's contention that the transfer was improvident. If she has received no income from Ms. O'Hara Lynn, it is because the lands are being farmed by the plaintiffs.

The authorities

246. The Supreme Court decision in *Carroll v. Carroll* [1999] 4 I.R. 241 concerned the transfer of a public house, together with residential accommodation, by an elderly widower to his son. The property was in practical terms the father's only asset. On his expressed instructions a right of residence was reserved for himself but no right of maintenance and support. The solicitor who drafted the transfer was engaged and paid by the son, and the file was in the son's name. He met with the father twice, for a total of about thirty minutes, and kept no record of the discussion. He did not enquire as to whether the father had any other assets, or whether there were other children – there were two daughters, who had been assured by their father at all times that they would have a home in the premises. All of the solicitor's correspondence was directed to the son.

247. In upholding the finding of the High Court that the presumption of undue influence had not been rebutted, Denham J. referred to the two categories of "undue influence" cases described in the passage from *Allcard v. Skinner* quoted above at paragraph 237. On the facts of the case, the Court was dealing with the second category, and the onus therefore lay on the donee to establish that the gift resulted from the free exercise of the donor's will. Citing Delany on *Equity and the Law of Trusts in Ireland*, Denham J. said that rebuttal of the presumption involved two main issues: - whether independent legal advice had been received and whether it could be shown that the decision to make the gift was "a spontaneous and independent act" or that the donor "acted of his own free will".

248. Having regard to the evidence, the Court considered that the solicitor was not in a position to advise the father appropriately in the absence of any information as to the lack of other assets and the father's other children. The Court also considered that the absence of evidence that the document was read over to the father before he signed it was an important matter. The fact that the undisputed evidence was that the father was a mentally alert man did not determine the issue.

249. The Court emphasised that it was not deciding that the son had taken advantage of his position, or had carried out specific acts of undue influence, but rather that he had not taken "assiduous care" to avoid taking advantage. In the circumstances the

presumption was not rebutted.

250. The Court also upheld the trial judge's finding that the transaction was improvident. The father, in a frail state of health, had disposed of practically his only asset without retaining a right of maintenance or support. In all the circumstances, it was clear that he was an unequal party and the equitable jurisdiction of the Court to set aside the transaction was properly invoked.

251. In *Prendergast v. Joyce* [2009] IEHC 199, a 70-year old woman who was found by the court to have been "very frail, depressed and severely anxious", as well as suffering from poor concentration and memory, opened a joint account with her nephew a few days after the death of her husband. She subsequently transferred significant amounts of money, which had previously been held in an account with her husband, into the account.

252. In applying the principles discussed in *Carroll v. Carroll* and finding that a presumption of undue influence arose, Gilligan J. rejected a submission that there would first have to be evidence that the transactions were in themselves wrongful and explicable only on the basis of undue influence. There was no requirement of improper behaviour on the part of the beneficiary. He also found that the advice given to the donor by the bank manager did not suffice to rebut the presumption, saying (at p.541):

"It should be noted that the focus in this regard is on ensuring that the particular donor fully appreciates the quality of the transaction. This means that greater care must be taken to ensure that persons who are particularly susceptible to exploitation, such as those who are aged, or suffer from ill health, or are vulnerable, genuinely understand the nature and effect of the transactions into which they enter, particularly when those transactions are of substantial value. The advice must also be such as a competent advisor would give if acting solely in the interests of the donor. In my view a person in such a position vis-à-vis [the aunt] would of necessity have cautioned her about the gravity of what she was doing. The evidence does not establish that this was done in the present case ... I am not satisfied on the evidence that [she] received adequate independent expert advice to give her a full appreciation of what she was doing at the time she gave effect to the transfer."

253. In considering whether the transaction was, additionally, improvident, Gilligan J. quoted the criteria set out in *Hanbury & Martin on Modern Equity*, referred to by Shanley J. in the High Court in *Carroll v. Carroll*.

254. Gilligan J. further held, referring to *Noonan v. O'Connell* (Unrep., High Court, Lynch J., 10th April 1987), that the jurisdiction to set aside an improvident transaction covered gifts as well as transactions for value. There was no requirement of proof of any element of moral turpitude on the part of the donee.

Discussion and conclusions

255. In the first instance it must be noted that the plaintiff has not, in reality, offered any evidence to support the plea of duress or made submissions in relation thereto. The case therefore turns on the issues of undue influence and, perhaps to a greater extent, improvidence.

256. The first question in relation to an allegation of undue influence is whether the evidence can give rise to a finding that undue influence was in fact used to bring about the transfer, or whether the case can be categorised as one giving rise to a presumption of undue influence by reason of the relationship between Padraig Lynn and his parents.

257. I am satisfied that there is no adequate evidence to support the contention that the transfer was actually brought about by the exercise of undue influence by Padraig. The allegation that he told his father that his marriage would break down, or that he would harm himself or them unless the land was transferred to him appears, in my view, to be based on a conflation of the time of the transfer – November 2008 – with the difficulties that Padraig began to experience with increasing intensity from late 2010 onwards. Although Padraig had sought treatment for depressive symptoms in 2005, there is nothing to contradict the evidence of his wife Olive that 2008, with their marriage in August of that year, was one of the happiest years of their lives. I accept that it is possible or even likely that Padraig told his parents about the significance, in terms of tax liabilities, of his 35th birthday but that in itself could not amount to undue influence.

258. I do accept, on the evidence, that the case is one giving rise to a presumption of undue influence and that the onus is therefore on the defendant to establish that the gift to Padraig (and the consent to that gift on the part of Bridget Lynn) involved the free exercise of the will of his parents. This is because of the close relationship between parent and child which, in this case, involved Padraig taking a primary role amongst his siblings in caring for his mother. (I note here that he was not, officially, her carer until a considerable time after the transfer.)

259. The first question then is as to the advice received by Sean and Bridget before the transfer was carried out.

260. The plaintiff's case is that she knew nothing of the proposal until a few days before she signed the documents, that she was never advised by Mr. Stephens and was given only skimpy advice by Mr. Crowley and Mr. Kiernan without being given a chance to talk to them alone or to consider the documents.

261. It was not put to either Mr. Stephens or Mr. Crowley, or indeed Ms. Battle, that they had fabricated their evidence (including notes of meetings and the office records) with regard to Bridget Lynn's contact with their offices or her presence at and participation in the meetings they describe. The only possible explanations for the conflict of evidence between her and them seem to be that there was fabrication, that Mrs. Lynn has forgotten the meetings or that she has fabricated a significant part of her evidence.

262. I do not accept her evidence in this regard. Mrs. Lynn, despite her age and undoubted health problems, is a clear-minded lady who has the respect of the professionals with whom she dealt and whose mental acuity is not doubted by her medical advisors. Her testimony did not leave the court in any doubt as to her understanding of the issues involved in the transfer – she was able, without difficulty to say what each of the documents meant. In my view she said that she could not remember things when faced with evidence that contradicted her position. It seems to me to be clear that she was fully involved in consulting both the accountant and the solicitor, and in agreeing with her husband on the course of action to be taken.

263. The advice given by both of these professionals seems to me to have been appropriate to the circumstances. It seems to me that in relation to this aspect the facts of the case could hardly be further from those of *Carroll v. Carroll*.

264. Mr. Stephens had been acting for Sean Lynn for years. His evidence, supported by his notes, makes it clear that he concerned himself with the consequences of the transfer in terms of loss of income, and that he was informed as to the other assets owned by the Lynns. The establishment of the partnership between Sean and Padraig, discussed with Mr. Stephens before the transfer and in

fact implemented afterwards, was a further reason to suppose that the Lynns would continue to have an income from the farm. It is fair to point out that the discussion about other assets was to an extent extraneous to the taxation matters upon which the Lynns had sought his advice, and is an indication that Mr. Stephens performed his role as professional advisor in a responsible manner. It is also fair to point out that no issue has been taken with his advice on the tax issues.

265. Mr. Crowley's evidence, similarly, leads the court to accept that he applied his mind to and gave advice on the relevant aspects of the transaction. He went through the assets owned by the Lynns and inquired about the provision being made or to be made for the other children. His evidence that he took matters into his own hands in including the right to maintenance and support is unchallenged, and I accept that he did so in order to protect Sean and Bridget against the unexpected. Although he regarded Padraig as being one of his clients in the matter (which I note would not be acceptable under current guidelines), I accept his evidence that Padraig did not in any way play a leading role, only came to the office when requested and was not present when Mr. Crowley was advising his parents. It has to be remembered that Mr. Crowley had known both Sean and Bridget for many years and I accept that he would have been aware of any hesitancy or reluctance on their part. It is quite obvious that Mrs. Lynn felt free to ring his office when she wished and could have spoken to him about any concerns. I do not accept the suggestion that Sean Lynn rang the office and said that his wife did not wish to proceed – I can see no reason why Mr. Crowley would not have followed up on such information.

266. It is true that Mr. Kiernan's meeting with the Lynns did not cover as much ground, and significantly he did not inquire as to the other assets available to the Lynns. Had the evidence been that this was the only occasion upon which they received advice, and if in fact they had not had other assets, this alone might lead to the conclusion that the presumption had not been rebutted. However, in the light of the fact that this had already been discussed in detail by Mr. Stephens and Mr. Crowley, I do not think that such weight can be attached to the omission by Mr. Kiernan to deal with the issue.

267. In the circumstances it is clear that the Lynns received advice that was independent of Padraig. The fact that Mr. Crowley considered that he was also obliged to act in Padraig's interests does not, on the evidence, obviate the fact that he gave appropriate advice on all relevant matters. There is nothing to indicate that at any stage he neglected his duty to the Lynns in order to further Padraig's interests. It is true that no one appears to have considered the possibility that Padraig would predecease his parents. However, I am not convinced that a solicitor is obliged to look beyond the material wellbeing of his clients, and to ensure that they have no objection to a spouse of a son or daughter inheriting what they give to that son or daughter.

268. I am equally satisfied that the transfer was the result of the exercise of the free will of Sean and Bridget Lynn. It must be borne in mind that Sean had been planning for many years to leave the property to Padraig, subject to a right of residence for Bridget. There can be little doubt but that she was aware of this. Her evidence, at this stage, that Padraig was never really a farmer is contradicted, not only by his qualifications, but by her own intentions in years gone by to leave him farmland if she survived Sean. The evidence of Mr. Stephens, that he was consulted with a view to the tax implications of the transfer, demonstrates that in executing the transfer they were conscious of the stamp duty relief and the fact that there would be no other tax liability.

269. The fact that the partnership between Sean and Padraig was established immediately after the transfer also points to careful planning on the part of the former. Sean put in more money and money's worth into the farm business – he also drew out more, and was entitled to more from the closing balance at Padraig's death. There is nothing here to indicate that his will had been in any way overborne by Padraig.

270. The ultimate result was that Padraig received, during his parents' lifetime, what had for a long time been intended to give him after Sean's death. As things have turned out, Mrs. Lynn is now in the same position, in material terms, that she would have been had Padraig survived Sean.

271. The contention that the transfer amounted to an improvident transaction is also not borne out by the evidence. I cannot see that any of the potential criteria have been met. This was not a situation involving ignorance, poverty or other vulnerability such as might create a situation of inequality. The fact that a valuable asset was involved cannot be decisive since, again, it is clear that the Lynns owned a significant amount of other assets and that their advisors satisfied themselves that they would be left with an income.

272. The point has been made that tax considerations had no bearing on the decision to transfer the family home, and that this was not only unnecessary but a feature that increased Mrs. Lynn's vulnerability in relation to her family home. It may well be that a transfer of the farmland without the house could have been effected, but it appears from the evidence of Mrs. Lynn's valuer Mr. Farrelly that there would always have been a difficulty in respect of the farmyard and the right of way to the sheep dip if the property were to be divided. Bearing in mind that the transfer was supposed to leave Padraig free to charge the property, this would be a material consideration.

273. Mrs. Lynn has said that after the transfer she and Sean had no income from the farm. Having regard to the partnership accounts that does not appear to be accurate. She has also said that she has been left with no income other than the widow's pension. I am not clear as to why that should be. In the first place, she inherited the entirety of Sean's estate and I am quite sure that she knows the value of that even if she is reluctant to state its extent. There has been no evidence as to what assets Sean might have owned apart from land. It will be recalled that Mr. Stephens's notes made reference to Sean's pension but there has been no evidence as to what became of that. It also appears from Mrs. Lynn's testamentary documents that she has or had assets of her own.

274. Finally, there is the fact that Ms. O'Hara Lynn is on record as stating, well before the litigation commenced, that if the farm entitlements were put in her name she would pay them over to Mrs. Lynn by way of maintenance and support. If that had been done, it is difficult to see how the transaction could be described as improvident. However, what happened was that after Padraig's death, the herd number was taken over by Sean. Subsequently, some person has been farming the land. It is clearly not Ms. O'Hara Lynn. I find it unlikely that Mrs. Lynn does not know who it is. The observations made by the valuers and by the agricultural advisor as to the presence of sheep, coupled with evidence of open gates leading onto Michael Lynn's land, point in one obvious direction.

275. Michael Lynn was manifestly involved in the instructions to Sean Lynn's solicitor and in the finding of witnesses. He has also been the subject of evidence, particularly in relation to what was said to Olive after Padraig's death, and of comment on the part of the defence. He was in court, if the comments from the defendant's counsel were correct, throughout the hearing. However, he has not given evidence. The court does not draw any direct inference from this but simply records the fact that these matters went unchallenged.

276. I therefore cannot see that the defendant is to blame if Mrs. Lynn has not been given any of the income from the farm.

277. In the circumstances I find that the allegations of duress, undue influence and improvidence have not been made out. I will dismiss both claims.

