

THE HIGH COURT

[2010 No. 1603 P.]

BETWEEN

PAUL McCORMACK AND RINALDO PAOLOZZI

PLAINTIFFS

AND

GINA DUFF (NÉE SENEZIO) AND SILVIO RABBITTE

DEFENDANTS

JUDGMENT of Mr. Justice Herbert delivered the 8th day of June 2012

The plaintiffs in this plenary, issued on the 18th February, 2010, are the surviving and proving executors appointed in a testamentary disposition made and executed in due form of Irish Law by Antonio Senezio, deceased, on the 29th July, 2005. Seventeen reliefs are claimed in this plenary summons, but following interlocutory proceedings, the twelfth relief was not claimed in the statement of claim. At the hearing of the action, the reliefs actually claimed by the plaintiff were as follows:-

- "1. A Declaratory Order that Antonio Senezio was a citizen of Ireland and was domiciled and ordinarily resident therein on the 13th day of February, 2007 and that his movable estate wheresoever situate outside Ireland at the time of his death devolved *inter alia* under Part VIII of the Succession Act 1965.
6. An Order pursuant to the inherent jurisdiction of this Honourable Court directing the defendants and each of them forthwith to disclose to the Plaintiffs to the extent known or otherwise available to the defendants and each of them and/or their respective servants or agents all such material information as identifies or assists in identifying all or any movable and immovable property legally and/or beneficially owned by the late Antonio Senezio at the date of his death or in which he had a legal or beneficial interest wheresoever located and in particular outside Ireland.
7. An Order pursuant to the inherent jurisdiction of this Honourable Court directing the defendants and each of them their respective servants or agents forthwith to make full disclosure of all information which identifies or assists in identifying the true market value of all or any such movable or immovable assets of the late Antonio Senezio at the date of his death.
9. An Injunction restraining the defendants and each of them from intermeddling in the assets of the estate of the late Antonio Senezio wheresoever located in the course of the Administration of the estate.
10. An Injunction to restrain the Defendants and each of them from executing any document or agreement affecting any movable or immovable assets wheresoever located of the estate of the late Antonio Senezio up and until his estate is administered in accordance with the Laws of Ireland.
11. An Order directing the first Defendant to repay the sum of €163,581.07 (with interest thereon from the 28th day of July, 2008, until payment) being movable assets of the late Antonio Senezio at the date of his death and held at the Cassino branch of Banca Carige SpA.
12. Damages for wrongful interference in and with the movable and immovable assets of the deceased.
13. All necessary accounts, inquiries and directions.
14. Interest pursuant to the Courts Act 1981.
15. Such further and other reliefs as to this Honourable Court shall seem fit.
16. Costs."

Gina Duff (née Senezio), (hereinafter referred to as "first defendant"), now a litigant in person, but then acting through Vincent and Beatty, Solicitors, delivered an extensive Defence and Counterclaim, (46 paragraphs), on the 30th June, 2010. By her defence, clarified on the 24th November, 2010, by Replies to a Notice for Particulars, the first defendant claims that the late Antonio Senezio did not make or execute his last will and testament on the 29th July, 2005 in Ireland. It is pleaded that the testamentary disposition of that date was revoked in whole or in part by a subsequent testamentary disposition made by him at Cassino in the Republic of Italy on the 29th September, 2006, if that testamentary disposition is valid in accordance with the Laws of the Republic of Italy.

The first defendant in her Defence admits that the late Antonio Senezio was a citizen of Ireland and was domiciled and ordinarily resident here at the date of his death. The first defendant admits that the plaintiffs, acting on foot of a Grant of Probate issued to both of them out of the Principal Probate Registry in Ireland on the 10th June, 2008, were in due course of administration seeking to identify all the assets of the late Antonio Senezio which formed part of his estate at the date of his death and, were legally obliged to account for the same to the Irish Revenue Authorities. The first defendant denies that she has not cooperated with the plaintiffs or has frustrated them in their inquiries in this regard. The first defendant claims that she has fully cooperated with the plaintiffs and, by herself and through her servants and agents has furnished all information, documentation, valuations and records in her possession or power which would or might assist the plaintiffs in identifying the movable and immovable assets legally or beneficially owned by the late Antonio Senezio at the date of his death. The first defendant denies that she has intermeddled with the estate of the late Antonio Senezio or with any part of that estate. As elucidated during the course of the hearing of this action, the first defendant claims that the second plaintiff was aware at all material times and, therefore both plaintiffs should be deemed to have been aware, that the late Antonio Senezio at the date of his death owned movable and immovable property in Cassino, in the Republic of Italy.

The first defendant claims that by reason of negligence, and breach of duty, including fiduciary duty on the part of the second plaintiff, she was encouraged to assume, and the second plaintiff acquiesced in that assumption and expressly and impliedly represented that the plaintiffs had no role or interest in the preservation, collection or administration of the movable or immovable assets of the late Antonio Senezio in the Republic of Italy. The first defendant claims that by reason of the foregoing she was compelled to intervene and to protect those movable and immovable assets. Acting on legal advice obtained from Avv. Ricardo Ernesto Di Vizio, she took steps to preserve these assets for the benefit of the estate of the late Antonio Senezio by having transferred to her, the real estate property at Via Casilina Sud, Cassino, another real estate property at Via Monte Maggio, Cassino, a sum of €159,700.45 from account No 2357/CAT.80 at Banca Carige, Cassino, (and a Safe Custody of Securities Policy No. 626071/11) which contained 10,481.217 Units in Carige Liquid Euro Fund, 1,250 shares in Capitalia (now Unicreditio) and, 4,000 shares in Banca Carige SpA. The first defendant claims that from the sale of these Units and Shares she partially recouped a sum of €72,657.61, which she claims she paid in Inheritance Tax in Italy on her succession to the movable and immovable assets of the late Antonio Senezio in the Republic of Italy and, a sum of €7,500 which she claims she paid to Franco Citro who claimed that this money was due to him by the late Antonio Senezio as caretaker of Via Casilina Sud, Cassino.

The first defendant claims that save for these sums, she now holds any movable or immovable property of the late Antonio Senezio in trust for the persons or persons entitled to his estate. The first defendant claims that if the plaintiffs have suffered any loss or damage or are liable to any legal criminal sanctions this was caused by the negligence, breach of duty, including breach of fiduciary duty on the part of the second plaintiff. Alternatively, she claims that it was caused by a failure on the part of the second defendant to notify her or the plaintiffs of the nature and extent of the movable and immovable assets of the late Antonio Senezio in the Republic of Italy and additionally or alternatively, of the existence of the testamentary disposition made by him at Cassino on the 29th September, 2006, and the nature of the bequests and legacies contained therein.

The first defendant counterclaims for a sum of €123,454.12 for significant expenditure and expense claimed to have been incurred by her in the preservation and additionally or alternatively the collection of the movable and immovable assets of the late Antonio Senezio in the Republic of Italy. The component elements of this sum are claimed as: Legal Fees (estimate) due to Avv. R.E. di Vizio, expenses as charged by her on behalf of the estate of the deceased (€13,672.77), travel (€5,000), and translation fees of documents in Italian, (€4,781.38).

The first defendant claims that the second plaintiff was negligent and, in breach of duty, including breach of fiduciary duty, in the following respects:-

"He failed to inform her and, failed to make any adequate inquiries from her or from her daughter as to the nature and extent of the late Antonio Senezio estate in the Republic of Italy.

He failed to inform the first plaintiff of the nature and extent of the assets of the late Antonio Senezio in the Republic of Italy and failed to appraise the first plaintiff and the Irish Revenue authorities of the history of the ownership of those assets.

He failed to inform the first plaintiff of letters to him from her daughter, dated the 2nd May, 2007, and from the first defendant herself dated the 12th June, 2007, and, failed to take any action on foot of either letter.

He failed to disclose to the first plaintiff or the Irish Revenue authorities, either in the course of the administration of the estate of Pietro Senezio (brother of the deceased, who predeceased him), or thereafter, that Antonio Senezio had been co-owner of the real estate property at Via Casilina Sud with his brother Peter Senezio.

He expressly or impliedly acquiesced in or facilitated the transfer of that property to the sole ownership of the late Antonio Senezio without reference to the estate of Pietro Senezio, by participating in and approving of the proceedings at a family meeting in or about January 2006.

He acted in conflict with his duties and interest as an executor of the estate of the late Antonio Senezio by participating in and seeking to derive a person pecuniary benefit from proceedings before the Civil Court of Cassino which were concerned with the movable and immovable assets of the late Antonio Senezio in the Republic of Italy."

At the hearing of this action the first defendant withdrew and, did not pursue this latter claim.

In his Defence and Counterclaim, (30 paragraphs) delivered on the 7th July, 2010, by his then legal agents, Beauchamps, Solicitors, the second defendant admits that the late Antonio Senezio was throughout his lifetime and at the time of his death a citizen of Ireland and, was domiciled and ordinarily resident in Ireland at the date of his death. The second defendant denies that the plaintiffs are the executors or are entitled to administer the estate of the late Antonio Senezio in that the testamentary disposition made by him in Ireland on the 29th July, 2005, was revoked in its entirety or in part by the testamentary deposition made by him at Cassino on the 29th September, 2006. The second defendant claims that the testamentary disposition made on the 29th July, 2005, in Ireland is inconsistent with the testamentary disposition made on the 29th September, 2006, at Cassino insofar as the former at paragraph 9 thereof purports to devise the real estate property at Via Casilina Sud, Cassino, to the plaintiffs as executors in trust to convert the same into money and to apply such money as directed therein. The second defendant denies that the Grant of Probate issued to the plaintiffs on the 10th June, 2008, from the Principal Probate Registry was validly issued and, claims that the plaintiffs have no entitlement to the real estate property at Via Casilina Sud, Cassino, which is bequeathed to him by the testamentary disposition made by the deceased at Cassino on the 29th September, 2006, which he claims is a valid testamentary disposition according to the Laws of the Republic of Italy.

The second defendant denies that the plaintiff were unaware that the late Antonio Senezio owned movable and immovable assets outside Ireland and claims that the second plaintiff in particular at all material times knew or ought to have known that the late Antonio Senezio had assets outside Ireland. The second defendant denies that the plaintiffs were obliged to file a Corrective Affidavit with the Irish Revenue Authorities where the testamentary disposition made by the late Antonio Senezio in Ireland was subsequently revoked by him.

The second defendant denies that he intermeddled with the estate of the late Antonio Senezio or, that separately from or in unison with first defendant, he sought to acquire that estate for his individual or their mutual benefit. The second defendant denies that the plaintiffs in exhaustive correspondence sought all material information, documentation, valuations and records from him and, he denies that he has failed or neglected to furnish such material to the plaintiffs or has frustrated the plaintiffs in ascertaining the extent of the assets of the late Antonio Senezio outside Ireland.

At paragraphs 14 and 15 of his Defence the second defendant pleads as follows:-

"14. This Defendant will refer to the document mentioned in para. 13 of the Statement of Claim and will refer to all of the documentation in the Italian proceedings for their full term and effect and in particular to establish precisely the reliefs sought by him in those proceedings. This defendant learned that that first named Defendant had wrongfully and falsely had procured the registration of the deceased's properties known as Via Casilina Sud and Via Monte Maggio into her own name and he also learned that she had claimed ownership of shares and money registered in the name of the deceased in the Banca Carige. This Defendant was aware that the deceased had bequeathed the property known as Via Casilina Sud to him and when he learned of the wrongful actions of the first named Defendant he sought and obtained legal advice from a lawyer in Italy. The second named Defendant was advised that he was, in his capacity as stipulated beneficiary, the appropriate person to institute proceedings in Italy against the first named Defendant in order to protect the estate of the deceased in Italy.

15. The proceedings referred to in para. 13 of the Statement of Claim were instituted by this Defendant for the primary purpose of protecting the assets of the deceased situate in Italy, thereby ensuring that the said assets were available for distribution in accordance with the wishes of the deceased."

The second defendant denies that the estate of the late Antonio Senezio has suffered any loss or damage or, that the plaintiffs will be liable to any legal or criminal sanctions by reason of any act or omission on his part and, further denies that the plaintiffs are entitled to any relief sought in the Statement of Claim against him. In his Counterclaim the second defendant claims the following reliefs:-

"(1) Revocation in whole or in part of the Grant of Probate which issued on the 10th June, 2008.

(2) That this Honourable Court shall pronounce against the validity of the alleged will made on the 29th July, 2005, or such parts thereof as are inconsistent with the Italian will.

(3) That this Honourable Court shall pronounce in solemn form of law for the true last will of the deceased dated the 29th September, 2006.

(4) A grant to this Defendant of Letters of Administration of the estate of the late Antonio Senezio.

(5) Further and other reliefs.

(6) The costs of and incidental to these proceedings."

I believe it to be of very considerable importance, in the interests of clarity that at this point in the judgment I set down in a sequential list the dates of certain key events, which dates and events I find were admitted or, were established by oral, affidavit or documentary evidence during the course of the trial.

24-5-'76. Some time prior to his death on this date, Attilio Senezio, father of the late Antonio Senezio, acquired a dwelling house and land at Via Casilina Sud and, buildings at Via Monte Maggio, both at Cassino (F.G.) in the Republic of Italy. On his death, both devolved to Benedetta Senezio (née Morelli) his surviving spouse.

27-2-'81. Benedetta Senezio died leaving both properties to her six surviving children in equal shares, (she was predeceased by a daughter who died in 1967).

25-10-'85. Having purchased the shares of their siblings, including the first defendant, Peter Senezio and Antonio Senezio were registered as co-owners in equal shares of both real estate properties at Cassino.

29-5-'05. Peter Senezio executed a last Will and Testament in Ireland and appointed the plaintiffs to be the executors thereof.

29-7-'05. Antonio Senezio executed a last Will and Testament in Ireland and appointed the plaintiffs to be the executors thereof.

26-8-'05. Peter Senezio died unexpectedly. He was survived by N.M. a natural daughter, who was lawfully adopted by the first defendant.

- 10-'05. Antonio Senezio gave the first plaintiff a sealed envelope to be opened on his death, which he stated contained a list of his assets.

14-1-'06. "Family meeting" was held at the home of Antonio Senezio at Clontarf, Dublin. The second plaintiff, both defendants and N.M. were present together with other members of the family. Antonio Senezio claimed the half share of Peter Senezio, deceased, in the real estate property at Via Casilina Sud in Cassino and, this was conceded by all present.

20-4-'06. An Inland Revenue Affidavit was filed by the plaintiffs in the estate of Peter Senezio. No overseas assets were returned.

6-6-'06. A Grant of Probate issued in the estate of Peter Senezio, deceased.

8-6-'06. Antonio Senezio was registered in Rome as the sole owner of both properties at Cassino – No. 50. Vol. 749. A valuation of €111,267.30 was placed by him on the half share of Peter Senezio passing to him.

27-9-'06 Antonio Senezio gave a mandate to the second defendant permitting him to operate current account No. 2357/CAT.80, at the Cassino branch of Banca Carige SpA.

29-9-'06. Antonio Senezio declared a last will before Dr. Labate, a Notary, at Cassino devising the dwelling house and lands at Via Casilina Sud to the second defendant subject to the payment of a number of specific pecuniary legacies and, to another condition but making no other dispositions.

13-2-'07 Antonio Senezio died and is survived by D.H. a natural son, who had been lawfully adopted in the United Kingdom. He is also survived by his life long partner Antoinette Salveta.

21-6-'07 The Italian "will" of Antonio Senezio was published at Cassino.

14-9-'07 The first defendant filed a Declaration of Succession, in the Republic of Italy, - No. 89 Vol. 55, - claiming to be the sole heir of the late Antonio Senezio. In this Declaration both real estate properties in Cassino are valued in the total sum of €824,415.26.

30-10-'07 Both real estate properties in Cassino were registered in the name of the first defendant as sole owner.

18-12-'07 The second defendant, represented by Avv. Pasquale Matera, issued an Act of Summons in the Civil Court of Cassino claiming sole ownership of the dwelling house and lands at Via Casilina Sud and a share to be ascertained by the Court, in the real estate property at Via Monte, Maggio and, in the securities and sums held by the late Antonio Senezio, in the Cassino branch of Banca Carige SpA.

24-12-'07 This Act of Summons was served on the first defendant.

17-3-'08 The first defendant filed a Declaration of Succession - No. 26. Vol. 60 - claiming succession as his sole heir to the moveable assets of the late Antonio Senezio, in the Banca Carige SpA. This Declaration placed a value of €457,701.45 on these assets.

10-6-'08 A Grant of Probate issued in Ireland to the estate of the late Antonio Senezio. The value of the estate declared in the Irish Inland Revenue Affidavit was €10,638,599.69 gross/€10,552,549.69 net. No return was made of any overseas assets.

7-7-'08 The first defendant represented by Avv. R.E. Di Vizio, issued proceedings and on the 17th July, 2008, obtained an Order - No. 458/08 - from the Civil Court of Cassino directing the Banca Carige to transfer to the first defendant a sum of €155,000 being 50% of the encashment value of the Banca Carige Step - Up Bonds 03/07 the whole of which had been paid into Account 2357/CAT.80, in the Cassino branch of Banca Carige SpA. Following their maturity on the death of the late Antonio Senezio.

17-10-'08 The second defendant represented by Orazio Grosso, Solicitor, on the 13th October, 2008, issued an Act of Summons in the Civil Court of Cassino seeking revocation of Order No. 458/08 of 7th July, 2008, of that Court and, that the first defendant be ordered to repay (with costs etc) the sum of €155,000 obtained by her from Banca Carige on 1st August 2008, on foot of that order.

20-10-'08 The second defendant set in train a Criminal Prosecution in the Criminal Court of Cassino against the first defendant for fraud and other offences on foot of a Formal Complaint made by him through the Italian Embassy in Dublin.

28-10-'08 The second defendant represented by Avv. Pasquale Matera, issued a revised or replacement Act of Summons in the Civil Court of Cassino, seeking a declaration that the second defendant was the sole owner, as devisee of the dwelling house and lands at Via Casilina Sud Cassino; an order establishing the share due to the second defendant and other heirs of the late Antonio Senezio, in the real estate property at Via Monte, Maggio, Cassino and, in the shares and sums held by the late Antonio Senezio, in the Cassino branch of Banca Carige SpA., and other reliefs.

1-12-'08 By letter of this date the Chief State Solicitor in Ireland, at the request of the Judge of the Civil Court of Cassino served certified copies of this Act of Summons on the second plaintiff, both defendants, and the other "heirs" of the late Antonio Senezio as listed in that Act of Summons.

16-2-'09 The second plaintiff brought his copy of the Act of Summons to the attention of the first plaintiff. He had been served early in December, 2008.

15-3-'09 A "family meeting" took place with the view to "settling" the proceedings in the Civil Court in Cassino. The second plaintiff did not attend that meeting.

9-7-'09 The first defendant was convicted by the Preliminary Investigation Magistrate of the Criminal Court of Cassino of an offence of seriously deceiving the Judge of the Civil Court of Cassino and of fraudulently receiving funds by declaring that she was the sole heir of the late Antonio Senezio and she received a suspended sentence of imprisonment, directed not to be registered in the criminal records.

17-7-'09 The second defendant filed a Declaration of Succession, - No. 13, Vol. 67, - which altered or cancelled the effect of the Declaration of Succession filed by the first defendant on the 14th September, 2007, and, amended the record by removing the first defendant a sole owner of both real estate properties at Cassino and naming as owner nine "heirs" of the late Antonio Senezio (including both defendants), in different shares.

5-2-'10 By letter of this date Orazio Grosso, Solicitor, invited all the "heirs" of the late Antonio Senezio, to attend a "family meeting" on 19th February, 2010, at the Dublin offices of his firm to finalise the "family agreement" reached on 15th March, 2009, to "settle" the Italian litigation.

18-2-'10 The Plenary Summons in the present case was issued by the plaintiffs.

19-2-'10 The plaintiffs sought an *ad interim* Injunction from this Court and, were given abridged service to seek an interlocutory injunction.

7-5-'10 After several other interlocutory applications and orders, on this date, a Consent Order was made by this Court (Mr. Justice Murphy) directing disclosure of information and production of documents, restraining intermeddling in the assets of the late Antonio Senezio, prohibiting the execution of any agreements and, giving directions with regard to the payment into this Court of specified sums of money held by the late Antonio Senezio, at the date of his death (On the 23rd February, 2010, Vincent Beatty, Solicitors, Dublin, were instructed by the first defendant and on 23rd February, 2010, Beauchamps, Solicitors, Dublin, entered an Appearance in this Action for the second defendant).

27-5-'10 Mr. Sylvester Rabbitte, partner of the first defendant and, by his late wife father of the second defendant, paid into this Court, to the credit of this action a sum of €159,700.45, representing the money paid to the first defendant by the Banca Carige SpA., from Account 2357/CAT.80, held in the joint names of the late Antonio Senezio, deceased and, Antoinette Salveta, in the Cassino branch of that bank.

15-10-'10 Banca Carige SpA., paid into this Court to the credit of this action a sum of €164,060.51, being the balance of the money in Account 2357/CAT.80.

A testamentary paper which I am satisfied on the evidence was properly executed by the late Antonio Senezio in Dublin, Ireland, on the 29th July, 2005, in compliance with the requirements of Irish Law (s. 78 succession Act 1965), is indeed a lengthy and elaborate document. I find on the evidence established that the deceased devoted a great deal of time and thought to its creation and, sought and obtained extensive and, therefore I assume, costly advice from many experts in several disciplines, for example, lawyers, accountants and tax advisers. This testamentary paper declares that:-

"This is the last Will and Testament of me Antonio Senezio of 9 Seacourt, Seafield Road East, Clontarf, Dublin 3.

I hereby revoke all former testamentary dispositions made by me and I declare that this is my Last Will."

The Attestation Clause, which is in proper form of Irish law, declares that the foregoing is: "Signed by the above-named Testator as and for his last will and Testament . . . etc."

Express provision is made for Antoinette Salveta, the deceased's partner, for her life. The document contains 25 specific legacies. Amongst the legatees are the second plaintiff, the second defendant, N.M. and D.H. Four trust funds are established with comprehensive governing provisions: a nephew's trust, a Senezio family trust, a Senizio charitable trust, and a residuary trust. Potential beneficiaries of the nephews' trust fund are the second plaintiff, the second defendant and two other nephews of the late Antonio Senezio.

Clause 9 of this document provides as follows:-

"I give all my real and personal property whatsoever and wheresoever not hereby or by any codicil hereto specifically disposed of to my Trustees UPON TRUST to sell call in and convert the same into money with power to postpone the sale calling in and conversion thereof so long as they shall in their absolute discretion think fit without being liable for loss."

The plaintiffs as certified by the Grant of Probate delivered an affidavit of Inland Revenue showing that the gross estate of the deceased, "within the jurisdiction" was €10,638,599.69 having a net value of €10,552,549.69.

The testamentary disposition made by the late Antonio Senezio in Italy appears to be in the Italian language. Avv. Carlo Bottino of Studio Legale, Preti, Manzini, Bottino and Patané, in City of Milan, Republic of Italy, a civil lawyer and a specialist in national and international real estate and succession law and a present practitioner before the Courts of the Republic of Italy, who gave evidence in the case for the plaintiffs stated in his expert opinion this disposition was, as to its Form, valid according to the Laws of the Republic of Italy. No contrary opinion was offered to me and the expert evidence of Avv. Bottino in this regard was not in any way challenged or invalidated. A translation of this disposition into the English language by Quid Limited, Translation and Interpreting Services, Dublin, Ireland, was accepted as accurate by all of the parties appearing before me and also by Avv. Bottino and, there was no request to have the translation certified as correct by the Italian Embassy here. In translation the disposition reads as follows:-

"LAST WILL AND TESTAMENT No. 1098 (Notary's stamp).

FORMAL WILL

REPUBLIC OF ITALY

On Friday the Twenty Ninth day of September of the year 2006 (29 September Two Thousand and Six) at 9 o'clock,

Mr. Senezio Antonio born in Dublin (Ireland) on 14 January 1934, domiciled in Cassino (FR) Via Casilina Sud (Tax Code: C.F.SNZ NTN 34A14 Z 116V)

APPEARS before me, Dr. ROBERTO LABATE, a Notary in Sora, registered on the list Notaries of the Notarial District of Cassino, in the presence of witnesses D'ALESSANDRO MURIZIO, born in Sciacca on 31 July, 1955, residing in Cassino, Via Rossine No. 80, and LORINO SIMONETTA, born in Cassino (FR) on 31 May 1967, residing there, via Rossini No. 80.

The appearing party, whose identity, I, the Notary have ascertained asks me to receive his will in an authenticated form and I, the Notary acceding to this request made to me, I take down the testator's will, as declared to me, in writing as follows:

'I revoke and cancel any other will that I might have made prior to this.

Being unmarried and not having any children I leave the real estate property that I own in CASSINO (FR) Via Casilina Sud consisting to a building and lands, listed in the land register under folio 35, cadastral map 385 (building) and in folio 35 cadastral maps 103, 163 and 213 (lands) to my nephew RABBITTE SILVIO born in Dublin (Ireland) on 27 October 1967 on condition that the latter pays to cousins Paolozzi Roberto, born in Dublin, (Ireland) on 30 December, 1936; Paolozzi Rinaldo, born in Dublin (Ireland) on 28 August 1967; Staunton Stella, born in Dublin (Ireland) on 25 November 1959 and Hughes Giovanna, born in Dublin (Ireland) on 18 February, 1965 the sum of €25,000 (that is Twenty five Thousand Euro) each as well as the sum of Euro 100,000.00 (that is One Hundred Thousand Euro) each to aunt Duff Gina, born in Dublin (Ireland) on 17 July, 1935 and, should she die before me, to her daughter M.N. and to uncle Senezio Luigi, born in Dublin (Ireland) on 18 September 1936, and, should he die before me, to children Vincenzo, Linda and Attilio.

Moreover, I state that my nephew Rabbite Silvio must allow his sisters Cassidy Marisa born on 16 July 1966 and Rabbite Bettina, born on 23 September 1981 to spend holidays in the house described above.

This is my will and testament.'

Having been requested to do so, I the Notary have executed this will, typed by a person whom I trust and partly handwritten by myself, on a sheet consisting of one page in addition to this one. I have read this will to the testator who declares it to be in conformity with his wishes. The will is signed by the testator, the witnesses and by me, the Notary, the Notary at past nine o'clock.

Antonio SENEZIO

D'ALLESANDRO Maurizio

LORIO Simonetta

Another signature (Not legible)

(STAMP)."

From the evidence at the hearing of this action I am satisfied that Avv. Matera did not know, until he received by telefax and by courier a letter dated the 15th December, 2009, from the first plaintiff, that the late Antonio Senezio had made a previous will in Ireland, had made tax declarations to the Irish authorities, was survived by D.H., his natural son and that the late Peter Senezio was survived by N.M. a daughter. Avv. Matera was not therefore in a position to inform the Notary of these matters and, I am satisfied that Dr. Labate was not appraised of these matters by Antonio Senezio. In his letter to Avv. Matera the first plaintiff raised issue of whether this Italian will might be invalid by reason of what the first plaintiff claimed were a number of false statements made therein by Antonio Senezio. These were identified by the first plaintiff as follows:-

"That he was domiciled in Cassino (FR), Via Casilina Sud,

that he did not have any children,

that Gina Duff and Luigi Senezio were his uncle and aunt, and, that N.M. was the daughter of Gina Duff."

In my opinion the penultimate and ultimate statements identified by the first plaintiff were not false. I find that the late Antonio Senezio was referring to the aunt and uncle of Silvio Rabbitte, the person directed to make the payments, and was not referring to them as his own aunt and uncle. He had previously referred to "cousins". The persons so named were cousins of Silvio Rabbitte, but were nephews and nieces of Antonio Senezio. N.M. is indeed the lawful daughter of Gina Duff by adoption and, in my opinion it was not a falsehood on the part of the late Antonio Senezio to describe her as he did. Though his letter dated the 16th December, 2009, did not deal directly with this query by the first plaintiff as to the possible invalidity of the Italian disposition and, is not addressed further by him in his subsequent correspondence with the first plaintiff, Avv. Matera appears to indicate that none of these matters would render the disposition invalid as a will in Italian Law. Avv. Bottino, in his evidence before me, stated that these matters would not affect the formal validity of the disposition as a will of immovables in Italian Law. The Italian will is therefore valid as regard form in Ireland by reason of the provisions of s. 102(1)(a) and s. 102(1)(e) of the Succession Act 1965. The essential validity of the dispositions in the Italian will is a matter to be determined according to the *lex situs* by an appropriate Court in the Republic of Italy.

Section 85 of the Succession Act 1965, provides, in the second subsection, that a will may be revoked by another will, duly executed. When such a second and later will of a testator, which is formally valid, contains a general revocation clause, the admissibility of evidence to show the testator's intentions in inserting that clause, - whether he did or did not intend to revoke all previous testamentary dispositions whatsoever and wherever made by him, - is, as regards conflict of law issues, a matter of construction to be decided by reference to the law of his domicile at the date of making of the will containing the general revocation clause. (I am aware of the different opinion expressed by Tadgell J. in *Re. Barker: Nemes v. Baker* [1995] 2 V.R. 439, - Supreme Court of Victoria). An exception to this rule is allowed where the will itself, expressly or by clear implication, shows that a testator intended the will to be interpreted, as regards matters of construction, in accordance with some other code or system of law or, in the case of immovable property, if to give effect to the will according to this rule would conflict with the *lex situs* which must prevail. (*In the Matter of Adams, deceased: Bank of Ireland Trustee Company Limited v. Adams and Others* [1967] I.R. 424 at 458-9 per. Budd J.).

As a rule of conflict of laws the domicile of a testator is to be determined in accordance with the *lex fori*, in this case the law of Ireland, (*In the Matter of Adams deceased* (above cited) p. 435). The late Antonio Senezio was born in Ireland and consequently his domicile of origin is Irish. The burden of proof lies on the party asserting it that a testator had abandoned his domicile of origin and had acquired a domicile of choice: in the present case, in the Republic of Italy. During the course of the hearing of this action, all parties accepted that Antonio Senezio was domiciled in Ireland at the date of his death which occurred on the 13th February, 2007, four months and fifteen days after the making of his Italian will. While the Interlocutory Order of this Court made on the 7th May, 2010, declares that Antonio Senezio deceased was a citizen of Ireland and was domiciled in Ireland on the 13th February, 2007 (the date of his death), this was not made by the Court consequent upon a trial of the issue, but, as appears on the face of that Order, only reflects the agreement in this regard of the plaintiffs and the defendants. However, this agreement cannot determine the matter and, having regard to the declaration of the late Antonio Senezio in his Italian will I must determine the issue having regard to all the evidence, including that evidence.

The Italian will dated the 29th September, 2006, states that Senezio Antonio, was born in Dublin (Ireland) on the 14th January, 1934, and was domiciled in Cassino (FR) Via Casilina Sud. As Dr. Labate was not called as a witness in the case I cannot determine whether this statement as to domicile originated with him or with the late Antonio Senezio. I cannot determine whether this statement forms a material part of the will or whether the will consists only in that part of the document in parenthesis. Even acting on the assumption that this statement as to domicile was made and acknowledged by the late Antonio Senezio, this is not in itself sufficient to determine the matter. It is of course a material factor to be taken into account in determining, the domicile of the late Antonio Senezio at the date of execution of his Italian will. I adopt the decision of Costello J. (as he then was) that such a statement is a conclusion of law rather than a statement of a testator's past intentions, (*In the Goods of Rowan, deceased: Joseph Rowan v. Vera Agnes Rowan and Another* [1988] I.L.R.M. 65 at 69).

The legal principles applied in the Law of Ireland in determining an issue of this nature were summarised by Budd J., in *Re. Adams deceased* (above cited) p. 434 where he held as follows:-

"From a consideration of the case law it is clear that it is a question of fact to determine from a consideration of all the known circumstances in each case whether the proper inference is that the person in question has shown unmistakably by his conduct, viewed against the background of the surrounding circumstances, that he had formed at some time the settled purpose of residing indefinitely in the alleged domicile of choice. Put in more homely language that he had determined to make his permanent home in such place. That involves, needless to say, an intention to abandon his former domicile. Where he has made a declaration touching on the matter it must be weighed with the rest of the evidence. Such a declaration may be a determining factor, but will not be permitted to prevail against established facts indicating more properly a contrary conclusion.

The legal principles involved may be further summarised from Dicey's *Conflict of Laws* (7th Ed.) in this fashion. A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently or indefinitely, and not otherwise. On abandoning a domicile of choice, a person either acquires a new domicile of choice or resumes his domicile of origin. A domicile of choice is acquired by the combination of residence and an intention of permanent or indefinite residence."

The evidence in the present case clearly and, beyond any reasonable doubt established that the chief residence of the late Antonio Senezio, - his home, the place where he was mostly to be found, the location of his "*lares and penates*", - on the 29th September, 2006, the date of the Italian will and, during the whole of his life up to the date of his death on the 13th February, 2007, was in Dublin, Ireland. His life-long partner, Antoinette Salveta resided and continues to reside at the address 9, Seacourt, Seafield Road East, Clontarf, Dublin. His businesses were in Ireland. His assets here were valued for the purpose of obtaining a Grant of Probate, at €10,638,599.69. His only form of recreation of which I heard evidence, - bloodstock and horse racing, - was in Ireland. The first defendant in her affidavit sworn on the 22nd March, 2010, in this action states at para. 9, "that he was passionate about horse racing and took pride in his ownership of thoroughbred horses".

The evidence established that the late Antonio Senezio never gave any indication, by deed or by word, to either of the defendants, or to either of the plaintiffs, in particular, the first plaintiff who was his solicitor for many years, and, whose legal firm had acted for him for several decades, of an intention to cease residing in Ireland and to take up residence at Via Casilina Sud or Via Monte Maggio in Cassino, either permanently or indefinitely. I am satisfied on the evidence that the first plaintiff did not even know of the existence of these properties prior to the 16th February, 2009. From the time it was purchased by his father, Attilio Senezio, prior to 1976, the dwelling house, buildings and lands at Via Casilina Sud was used solely as a holiday home. The evidence established that during the lifetime of the deceased's parents, - Attilio Senezio, who died on the 24th May, 1976, and, his surviving spouse Benedetta Senezio who died on the 27th February, 1981, - it was used by them and their children and grandchildren for that purpose only. The property at Via Monte Maggio so far as the evidence established appears never to have been used for any purpose since the date of its purchase by Attilio Senezio. From the time they became joint owners of these two real estate properties in Cassino on the 25th October, 1985, having purchased the interests of their siblings, including the first defendant, Peter Senezio prior to the date of his death on the 26th August, 2005, and the late Antonio Senezio spent vacations at the real estate property at Via Casilina Sud with Peter spending considerably more time there than Antonio. Evidence was given that the Senezio brothers had an arrangement with a local man, Mr. Franco Citro to act as caretaker of this property when they were not in actual occupation. No evidence was given during the hearing of the action that the late Antonio Senezio had any close friends in Cassino or, that he had any relatives in Italy with whom he was in constant contact. Apart from ancestry, these two real estate properties in Cassino and, the current account and other movable assets in the Cassino branch of the Banca Carige, the deceased had no discernable real contact with Italy or Cassino other than as a place where he spent occasional vacations the number of which had decreased as he grew older.

On the 17th May, 2005, and the 18th May, 2005, Peter Senezio and Antonio Senezio purchased 10,650 Banca Carige SpA. shares, giving their address as Via Casilina 38, 3043 Cassino, F.R. Peter Senezio died unexpectedly on the 26th August, 2005, on the 13th June, 2006, Antonio Senezio opened a current account, No. 2357/CAT.80 at the Cassino branch of the Banca Carige in the names of himself and Antoinette Salveta, giving as his address, Seafield Road East, Dublin. In an affidavit sworn at the Italian Embassy in Dublin on the 27th June, 2006, Antonio Senezio declared that he was an Italian Citizen, born in Dublin on the 14th January, 1934, and resident in Ireland at No. 9, Seacourt, Seafield Road, Dublin.

Avv. Bottino gave evidence at the hearing of this action that under the nationality and citizenship laws of the Republic of Italy, a person whose parents were Italian was entitled to Italian citizenship. Therefore, the deceased's description of himself as an "Italian Citizen" though misleading was not legally incorrect. In a Declaration of Succession to the estate of Peter Senezio in the real estate properties at Via Casilina Sud and Via Monte Maggio Cassino, No. 50 Vol. 749, Ministry of Finance, Registry Office of Rome, bearing a stamp dated the 8th August, 2006, the late Antonio Senezio gave his "residence" as Via Casilina Sud, Cassino. In a Confirmation of Mandate dated the 18th September, 2006, to the second defendant to operate account No. 2357/CAT.80 given to the Cassino branch of the Banca Carige, Antonio Senezio gave his address as Seafield Road East, Dublin. The Mandate being confirmed was in respect of current account No. 2357/CAT.80 held in the names of Antonio Senezio and Antoinette Salveta. The evidence established that this Mandate was executed on the 27th September, 2006, at the Cassino branch of the Banca Carige, in the presence of Antoinette Salveta, the second defendant and his wife. During this brief visit to Cassino in September, 2006 the late Antonio Senezio, Antoinette Salveta the second defendant and his wife stayed at the real estate property at Via Casilina Sud. Evidence was given to me, which was not disputed, and though not corroborated by expert medical evidence, is sufficient for me to find that from at least as early as January 2006, the late Antonio Senezio had been diagnosed as terminally ill. He died on the 13th February, 2007.

I am quite satisfied by the evidence and, I so find, that the late Antonio Senezio, neither did nor said anything from which it could properly be inferred that he had determined to make the real estate property at Via Casilina Sud, Cassino his home and chief place of residence either permanently or indefinitely. I accept the evidence of the second defendant that Antonio Senezio had an affection for the property and wished it to remain in the Senezio Family. I accept the evidence of the second defendant that for this reason he offered to leave it to the second defendant because he believed that the second defendant had sufficient means to maintain the property. The status of the real estate property at Via Casilina Sud as a holiday home and not a permanent residence is further confirmed in my opinion by the condition which the deceased attached to his Italian will, that the second defendant must allow his named and identified sisters to spend holidays there. I find on the evidence that the late Antonio Senezio never abandoned his domicile of origin in Ireland. It is plain from the documents to which I have referred and, which were admitted into evidence, that the late Antonio Senezio gave, Seafield Road East, Dublin or Via Casilina Sud, Cassino as his address or place of residence quite indiscriminately according as it suited the particular transaction. I am fully satisfied on the evidence and, I so find, that the late Antonio Senezio was domiciled in Ireland at the date of execution of his Italian will and, at the date of his death.

I cannot erase or disregard what is stated by the deceased in his Italian will. In particular I cannot ignore that part of the text of the will in parenthesis which is stated to have been taken down by the Notary as declared to him, commencing with the words, "I revoke and cancel any other will that I might have made prior to this". There is a very heavy burden on the plaintiff executors and indeed the second defendant insofar as towards the end of the trial Senior Counsel on his behalf informed me that the second defendant was no longer contending that the Irish will of the late Antonio Senezio had been revoked by his Italian will, to show that this revocation clause did not revoke all previous testamentary dispositions. They must satisfy me that there is sufficient evidence that the late Antonio Senezio did not intend to revoke the Irish will made prior to the Italian will.

The fact that the Italian will of the late Antonio Senezio deals exclusively with his real estate property at Via Casilina Sud, Cassino (FR), and, is made in Italian form while the Irish will is made in Irish form and on its face deals only with property in Ireland, is in my opinion sufficient according to the law of Ireland to raise an issue as to whether the late Antonio Senezio did or did not intend to revoke his prior Irish will. Shorn of the formal notarial clauses, there is, in my opinion, no express or clear indication by the late Antonio Senezio in his Italian will that it should be construed in accordance with Italian law rather than in accordance with the law of

his domicile at the time when the Italian will was made, which was the law of Ireland. The incorrect statement in the Italian will that he was, "domiciled in Cassino (FR) Via Casilina Sud" is in my opinion more indicative of a determination on the part of the late Antonio Senezio to establish an exclusively Italian identity for the disposition rather than to express any choice of law in its construction. Dr. Labate was not called as a witness at the hearing of the action before me. Therefore I have no evidence as to how the Italian will and in particular the part of it in parenthesis came to be in the Italian language. However, the fact that it is in the Italian language and in an Italian format is not in my opinion a sufficient indication that the late Antonio Senezio wished it to be construed in accordance with Italian Law. It is noteworthy that the part of the Italian will in parenthesis contains no Italian legal terminology, technical language or provisions, other than the reference to "Cadastral maps" in identifying the property, which might suggest a different intention on the part of the late Antonio Senezio.

The part of the Italian will of the late Antonio Senezio in parenthesis ends with the statement, "This is my Will and Testament". It has long been accepted in Ireland, (*Leslie v. Leslie and Others* [1872] I.R. 6 E.Q. 332 at 335), that such words on their own, even with the addition of "last" do not operate as an express revocation of an earlier will (*In the Goods of Martin* [1968] I.R. 1).

In my opinion, there is nothing in these two wills, Irish and Italian which renders them wholly inconsistent. If by Clause 9 of his Irish will the late Antonio Senezio intended to deal with assets both within and outside Ireland not otherwise identified and specifically devised and bequeathed by him, then the Italian will by necessary implication revokes the Irish will in part. It revokes it only to the very limited extent of removing from the ambit of Clause 9 of the Irish will, the real estate property at Via Casilina Sud, Cassino (FR). I am however, satisfied on the evidence that the late Antonio Senezio did not intend Clause 9 of the Irish will to apply to movable or immovable assets outside Ireland.

Section 90 of the Succession Act 1965, provides that extrinsic evidence is admissible to show the intention of the testator and to assist in the construction of or to explain any contradiction in a will. On the face of the Italian will of the late Antonio Senezio there is no apparent uncertainty as to the general revocation clause. However, because of the matters which I have identified and considered an uncertainty emerges as to what he intended to revoke by that clause. In such circumstances, even adopting a conservative and literalist approach to the interpretation of s. 90 of the Succession Act, I find that I am entitled to have regard to direct or consequential evidence of the circumstances surrounding the making of the Italian will by the late Antonio Senezio. (See for example, *In the Estate to Wayland* [1951] 2 A.E.R 1041 at 1043 F: this is a decision of the Probate Divorce and Admiralty Division of the High Court in England in which the facts gave rise to similar issues and the applicable law was essentially the same as in Ireland). This evidence of surrounding circumstances only confirms me in the view which I would have taken in any event, having regard to the other matters which I have already addressed, that the late Antonio Senezio intended the general revocation clause in his Italian will to be limited to revocation of and prior wills made by him in Italy.

The late Antonio Senezio executed a lengthy and complex will in Ireland on the 29th July, 2005. This must have involved a great deal of thought on his part and required the services of several legal and financial experts not one of whom was made aware by him of the existence of off shore assets of any nature or kind. While the law of Ireland has long accepted that testators are entitled to act capriciously in their testamentary dispositions, in these circumstances, it is risible to consider that he late Antonio Senezio travelled to Italy in September, 2006 to revoke this Irish will by an Italian will, the sole effect of which was to leave a holiday home to a nephew subject to certain conditions, and therefore die intestate as to all his enormously valuable assets in Ireland with all the consequences with a perusal of the Irish will shows he had sought with immense care to avoid.

The uncontested evidence before me was that at a family meeting which took place at his home in Clontarf, Dublin on the 14th January, 2006, the late Antonio Senezio claimed that after he and his brother Peter Senezio had become co-owners in equal shares of the real estate property at Via Casilina Sud, Cassino (FR) in 1988, they had agreed to make cross wills in Italy each leaving his moiety in the property to the other. After the unexpected death of Peter Senezio on the 26th August, 2005, despite searches by his Italian lawyer, no Italian will of Peter Senezio could be found. There is no reference to any off shore assets in the Irish will of the late Peter Senezio. The evidence established that at that family meeting on the 14th January, 2006, it was agreed, though very reluctantly agreed by the first defendant and her daughter (by adoption) N.M., the natural child, and on the evidence of Avv. Carlo Bottino, under the laws of Italy the sole heir of Peter Senezio that Antonio Senezio would succeed to the half share interest of the late Peter Senezio in the real estate property at Via Casilina Sud. The evidence before me was that at this family meeting there was no mention made at all of the other real estate property at Via Monte Maggio, Cassino. As I have already indicated the evidence established that Antonio Senezio became registered in Italy as full owner of both real estate properties at Cassino on the 8th August, 2006.

The second defendant gave evidence that Antonio Senezio had informed him at Cassino in September, 2009 of the legacies which he intended to include in the Italian will. The second defendant agreed to accept the devise of the real estate property at Via Casilina Sud subject to the payment of those legacies and the holiday condition in favour of his two sisters. The second defendant, told me in evidence that the late Antonio Senezio had valued the property at Via Casilina Sud at €600,000 and the total amount of the legacies contained in his Italian will was €300,000. His evidence was that the late Antonio Senezio had explained to him that these legacies represented the half share of Peter Senezio in the property and he hoped by these legacies to bring an end to any resentments which had lingered in the Senezio Family by reason of his becoming full owner of the real estate property at Via Casilina Sud following the death of Peter Senezio.

I am satisfied on the evidence and I find that the late Antonio Senezio deliberately and consciously made no disposition in his Italian will of the real estate property at Via Monte Maggio, Cassino (FG) or of the movable assets in the Cassino branch of the Banca Carige. I am satisfied on the evidence that for some years prior to his death, the late Antonio Senezio had been endeavouring to sell this real estate property at Via Monte Maggio, which was a very much less valuable property than that at Via Casilina Sud and had been purchased by his father Attilio Senezio simply as an investment. In September, 2006 the late Antonio Senezio understood that an offer had been made to purchase the real estate property at Via Monte Maggio for the sum of €100,000. The second defendant gave evidence to me that the late Antonio Senezio had told him at Cassino on the 27th September, 2006, when he accepted the Mandate in respect of current account No. 2347/CAT.80, held in the Cassino branch of the Banca Carige in the joint names of himself and Antoinette Salveta, that the proceeds of the sale of the real estate property at Via Monte Maggio would be paid into that account and would become the property of Antoinette Salveta. I am satisfied from the evidence that in September, 2006 the late Antonio Senezio knew that he was suffering from incurable cancer.

The second defendant gave evidence that the late Antonio Senezio wished to keep his Italian affairs and his Irish affairs segregated and entirely separate. The second defendant stated in evidence that he well recalled his late uncle in Cassino in September 2006, using the phrase "Italy for the Italian, Ireland for the Irish". This evidence is corroborated by the clear evidence that neither Antonio Senezio's solicitors nor his accountants in Ireland were ever made aware that he had assets in the Republic of Italy or elsewhere. His legal, financial, and tax advisers in Ireland in the preparation of his Irish will gave their expert advice without being told of the existence of assets in the Republic of Italy or elsewhere. His Italian lawyer Avv. Pasquale Matera did not know about the Irish will until the 16th December, 2009, that is, two years and ten months after the death of the late Antonio Senezio, when he received a

communication by telefax and courier from the first plaintiff. The second defendant told me in the course of his sworn testimony that he did not know that the late Antonio Senezio had made a will in Ireland until after his death even though he and his two sisters are beneficiaries under the terms of this Irish will. I am satisfied from the entirety of the evidence that this aphorism of the late Antonio Senezio has informed every act and omission of the second defendant with respect to the Italian assets of his late uncle Antonio Senezio from September, 2006 to the date of this judgment.

The first plaintiff gave evidence that the late Antonio Senezio gave him a sealed envelope to be opened only after his death. The late Antonio Senezio told him that this envelope contained a list of his assets. When the first plaintiff opened this envelope after the death of Antonio Senezio and perused the list of assets enclosed in it, that list did not contain any item of offshore property either movable or immovable. I am satisfied that the proper inference to be drawn from this and the other evidence to which I have adverted is that but for the procedural direction given by the Judge of the Civil Court of Cassino which caused the Act of Summons issued by the second defendant against the first defendant to be served in Ireland through the Office of the Chief State Solicitor on other named heirs of the late Antonio Senezio resident in Ireland, no one in Ireland but some members of the Senezio Family would ever have become aware nor, in my judgment, was it ever intended by the late Antonio Senezio that they should become aware of his Italian will or of its provisions and vice versa as regards his Irish will.

In my judgment, without having to resort to any extrinsic evidence, there is sufficient other evidence available to enable me to conclude, as a matter of construction that the late Antonio Senezio by the general revocation clause in his Italian will did not intend to revoke his prior Irish will. Once the admissible extrinsic evidence is also taken into account there is overwhelming evidence that it was not his intention by that general revocation clause in his Italian will to revoke his Irish will. I am fully satisfied that his sole intention was to revoke only such prior wills as he might previously have made in Italy, such as the will he claimed at the family meeting on the 14th January, 2006, he had agreed to make in 1988 leaving his assets in Italy to his brother Peter Senezio in the event that Peter Senezio survived him.

The movable estate of the late Antonio Senezio in Italy at the date of his death on the 13th February, 2007, which included the funds now lodged to the credit of this action and, any other movable assets of the deceased wherever located outside Ireland, will devolve according to the Intestacy Laws of Ireland. The two real estate properties of the late Antonio Senezio at Cassino will devolve in accordance with the Laws of the Republic of Italy. I am satisfied that the late Antonio Senezio by his Italian will intended to deal only with the real estate property at Via Casilina Sud, Cassino (FG). By his Irish will the late Antonio Senezio intended to deal only with his movable and immovable assets in Ireland of every nature and kind and wherever located in Ireland. I therefore refuse all of the reliefs sought by the second defendant in his Counterclaim.

I find on the evidence that the existence of the Court of Cassino Act of Summons issued on the 28th October, 2008, by Avv. Pasquale Matera on behalf of the second defendant was not known to the first plaintiff in the instant proceedings until the 16th February, 2009. On that date a letter from the Chief State Solicitor dated the 1st December, 2008, with a copy of this Act of Summons annexed which had been served personally on the second plaintiff in early December, 2008 was given to him by the second plaintiff. I am satisfied that the existence of these proceedings was not known to the second plaintiff until he was served with this letter by the Chief State Solicitor.

This Act of Summons makes reference to a number of matters none of which I find, were known to the first plaintiff prior to the 16th February, 2009. An issue arises on the evidence whether all or some of them were known to the second plaintiff prior to the 1st December, 2008. It was accepted during the course of the hearing of this action by Senior Counsel for the plaintiff that any such knowledge on the part of one of the executors must be considered in law to be knowledge on the part of both. These matters, pleaded in the Act of Summons of the 28th October, 2008, were as follows:-

"That Peter Senezio and Antonio Senezio were joint registered owners since the 25th October, 1985, of real estate properties at Via Casilina Sud and Via Monte Maggio, Cassino (FR) in the Republic of Italy.

That by a Public Testament dated the 29th September, 2006 and published on the 21st June, 2007, Antonio Senezio had left the real estate property at Via Casilina Sud to the second defendant.

That in August 2007, the first defendant by means of a false declaration obtained registration in her sole name of these two real estate properties at Cassino.

That Antonio Senezio had money and shares deposited at the Cassino branch of the Bank of Carige SpA."

The evidence established that the Irish Inland Revenue Affidavit delivered by the plaintiffs on the 20th April, 2006, in order to obtain a Grant of Probate on the 6th June, 2006, of the Irish will of Peter Senezio made on the 29th May, 2005, of which they were also executors, made no return of foreign assets held by him at the date of his death on the 26th August, 2005. Similarly, the Irish Inland Revenue Affidavit delivered by the plaintiffs, as executors therein appointed, in order to obtain a Grant of Probate on the 10th June, 2008, of the Irish will of the late Antonio Senezio made on the 29th July, 2005, made no return of foreign assets held by him at the date of his death on the 13th February, 2007. I accept the evidence of the first plaintiff that he was very surprised to learn of these immovable and movable assets held by the late Antonio Senezio in Cassino and immediately appreciated that a Corrective Affidavit should be filed with the Irish Revenue Authorities as soon as possible.

With this in mind he wrote on the 2nd March, 2009, in the same terms to each of the defendants, to Luigi Senezio, only surviving brother of Antonio Senezio and to other members of the Senezio, Rabbitte and Paolozzi families, stressing that all offshore assets held by the late Antonio Senezio in his sole name or, in partnership or, in the names of nominees must be disclosed. He received no replies to this letter.

By a letter dated the 11th March, 2009, the first plaintiff sought the following from each of the defendants:-

"(a) A certified copy of the Italian will of the late Antonio Senezio,

(b) A Schedule of all lands and buildings owned by the late Antonio Senezio in Italy, and,

(c) A Schedule of financial securities and cash held in the Banca Carige.

By a letter in response dated the 25th March, 2009, the second defendant furnished a copy of the Italian will of the late Antonio Senezio to the first plaintiff. He informed the first plaintiff that the late Antonio Senezio had agreed to sell the real estate property at Via Monte Maggio, Cassino and intended to pay the proceeds of sale into a bank account which he held at the Cassino branch of the

Banca Carige, but the sale had not been completed because of his death. The late Antonio Senezio had added the name of Antoinette Salveta to this account as he intended to leave it to her. The second defendant stated that the legal proceedings taken by him in Italy arose because the first defendant had falsely succeeded in claiming all the assets of the late Antonio Senezio in Italy. For her part the first defendant wrote to the first plaintiff by letter dated the 26th March, 2009, stating that she did not personally have any of the documents requested but had forwarded his letter to her solicitor in Italy and understood that he was in the process of replying to the first plaintiff.

The first plaintiff considered both replies unsatisfactory. By a letter dated the 3rd April, 2009, he advised the first defendant that her solicitor had not contacted him and insisted that she must have details of the Italian assets of the late Antonio Senezio as she had claimed them in Italy and had control of them. By a letter of the same date he informed the second defendant that his letter of the 25th March, 2009, did not deal properly with his request for information and sought from him, as a matter of urgency, a valuation of all the assets of the late Antonio Senezio in Italy and the identity or identities of the person or persons having control over those assets. By a letter undated but received by the first plaintiff on or about the 21st April, 2009, the first defendant informed him that she was aware of two real estate properties at Cassino at Via Casilina Sud and Via Monte Maggio which she stated had been purchased by her late father Attilio Senezio and had remained in the family ever since. She stated that she was aware that the late Antonio Senezio had a joint bank account at Cassino with his partner Antoinette Salveta. The only other Italian assets of which she was aware were some shares in Banca Carige but perhaps there were more. The remainder of her letter, apart from expressing regret that her solicitor in Italy had not contacted the first plaintiff is an apology for her claiming the assets of the late Antonio Senezio in Italy. This disingenuous letter from the first defendant caused the first plaintiff to write on the 21st April, 2009, to the second defendant asking for confirmation of what the first defendant revealed about shares and money held by the late Antonio Senezio in the Cassino branch of Banca Carige SpA.

By a letter of the same date to Antoinette Salveta, the first plaintiff inquired about the joint account which the first defendant had informed him was held by her and the late Antonio Senezio in the Banca Carige, in particular when she first knew about it and what amount was in it at the date of death of Antonio Senezio. In his letter to the second defendant, the first plaintiff informed him that his co-executor, the second plaintiff had told him that Sylvester Rabbitte had stated to the second defendant that there was a sum of €350,000 in the Banca Carige and, that he had obtained valuations of the two real estate properties in Cassino which placed a value of €900,000 on the property at Via Casilina Sud and €100,000 on the property at Via Monte Maggio. He requested from the second defendant, as a matter of urgency, a copy of these valuations, a certificate from the Banca Carige SpA. as to the funds of the late Antonio Senezio held by it at the date of his death, a valuation of the shares held by that bank on behalf of the late Antonio Senezio at the date of his death, bank accounts, bank statements and, copies of tax returns made by the late Antonio Senezio in Italy for the previous five years.

At a meeting between the first plaintiff and the second defendant at the Weston Hotel in Dublin on the 6th May, 2009, the second defendant told the first plaintiff that Peter Senezio and Antonio Senezio purchased these two real estate properties in Cassino from their siblings and held them as co-owners in equal shares. Each had agreed to leave his share of the properties to the other should he survive him. When Peter Senezio died no Italian will could be found. After a family meeting Antonio Senezio took succession to both real estate properties at Cassino. Antonio Senezio returned a valuation of €150,000 on the Via Casilina Sud property and a valuation of €54,000 on the Via Monte Maggio property to the Italian Revenue Authorities and paid all Inheritance Tax in Italy. The late Antonio Senezio had brought the second defendant to Italy and had there made a will leaving him the real estate property at Via Casilina Sud provided he paid a sum of €100,000 each to the first defendant and to Luigi Senezio and, €100,000 between the members of the Paolozzi family. This will was published in Italy in June, 2007. In addition to claiming the two real estate properties in Cassino in 2008, the first defendant had removed a sum of €159,000 from the account of the late Antonio Senezio in Banca Carige SpA. by claiming that she was the sole survivor. The second defendant told the first plaintiff that he had taken civil and criminal proceedings against the first defendant in Italy. He told the first plaintiff that Sylvester Rabbitte had produced the valuations to which I have already adverted at another family meeting called to try to settle the problems in Italy and had stated that there was €350,000 in the bank account of the late Antonio Senezio in Italy. At this family meeting he had agreed with the first defendant to discontinue all proceedings in Italy against her and to pay her a sum of €125,000 in addition to the legacy of €100,000 to which she was entitled under the Italian will of the late Antonio Senezio.

By a letter dated the 12th May, 2009, Antoinette Salveta informed the first plaintiff that in June, 2006 the deceased had added her name to the bank account in Cassino. She stated that at the date of death of Antonio Senezio there was about €16,000 in this account, but he also had an investment account which matured on his death and, this resulted in an additional sum of about €310,000 being added to the joint bank account. She understood that the second defendant had taken proceedings in Italy against the first defendant because the first defendant had made false declarations that she was the only successor to the late Antonio Senezio and, had claimed everything, including the bank account in Cassino. Antoinette Salveta stated that she believed that the first defendant had full information about all these matters.

I find that the letter dated the 12th May, 2009, from Avv. R.E. Di Vizio to the first plaintiff is simply a restatement of the attempts on the part of the first defendant to justify her fraudulent deception of Civil Court of Cassino and Banca Carige SpA. As Avv. Di Vizio was not called in evidence by the first defendant, I shall refrain from making any further comment on this letter. By a letter dated the 14th May, 2009, to Avv. Di Vizio the first plaintiff sought from him a statement of the total amount of money in Banca Carige SpA., to include the sum €159,700.45 withdrawn by the first defendant, valuations of any shares or securities held by that bank and valuations of any real estate properties held by the late Antonio Senezio in his own or in joint names or, in the name of any other person or persons. The first plaintiff also sought details of the sum of €72,657.61 claimed to have been paid by the first defendant in inheritance tax in Italy. I find that the evidence adduced during the hearing of this action established that the Italian revenue authorities accepted that the sum of €47,811.47 was paid by the first defendant but did not accept that the remaining sum of €24,846.14 was also paid.

In reply, by a letter dated the 15th May, 2009, Avv. Di Vizio sent the first plaintiff the following documents:-

(1) A copy F.23 Form dated the 3rd August, 2007, signed by the first defendant and bearing a "PAGATO" stamp from Banca Popolare Del Cassinate, Atina Inferiore, Republic of Italy which refers to "Imposta Successione" in the sum of €24,846.14

(2) A copy F.23 Form dated the 13th September, 2007, signed by the first defendant and, bearing a, "PAGATO" stamp from Banca Popolare Del Cassinate, Atina Inferiore, which refers to "Imposta Successione" in the sum of €47,811.47.

(3) A Ministry of Finance, Declaration of Succession, No. 89 Vol. 55, by the first defendant, born and residing in Ireland, to real estate in Cassino valued at €824,415.26.

(4) A Ministry of Finance, Declaration of Succession, No. 86 Vol. 60, by the first defendant to movable estate, total value €457,701.65 comprising the following:-

Donto Corrente No. 2357 Cat. 80 (half share) of €16,868.23

Polizza Custodia Titoli del Fono Carige Liquid Euro €61,985.92.

1250 Azioni Capitalia (Unicredito Ord). €8,667.50

4,000 Azioni Banca Carige SpA €13,680.80

Nominale €310,000 Obbligazioni Carige Step-Up 03/07 €356,500.

The writer added that Antoinette Salveta was claiming one half of the money and that he did not have notice of any securities held by the late Antonio Senezio.

By letters dated the 19th May, 2009, the 3rd June, 2009, and the 24th June, 2009, the Irish revenue authorities capital acquisitions tax unit, instructed the first plaintiff that the estate of Peter Senezio and the estate of Antonio Senezio were under investigation and, that consequently no dispersal of assets in either estate was to take place without prior notice to that unit. A demand was made that all papers and documents held by the first plaintiff or which came into possession of his law firm be forwarded as a matter of urgency to the unit. Corrective affidavits were required to be delivered in both estates in accordance with the provisions of s. 1048(2) of the Taxes Consolidation Act 1997. It was pointed out that the late Antonio Senezio was chargeable to Irish income tax on his worldwide income. It was stated that the plaintiffs as executors of the late Antonio Senezio were accountable for this tax which was payable out of his estate and that until this tax was paid the net estate to be distributed was not ascertainable, (s. 1047 and s. 1048(1) and (2) of the Taxes Consolidation Act 1997, and s. 45 Succession Act 1965). The plaintiffs were informed that they were obliged to deliver a written statement to the revenue authorities containing particulars of profits and gains which arose or which had accrued to Antonio Senezio before his death from property or cash assets held by him outside Ireland.

On the 20th July, 2009, a letter dated 27th June, 2009, was received by the first plaintiff from Avv. Di Vizio. I find this communication to be both extraordinary and disquieting but again as Avv. Di Vizio was not called in evidence at the hearing of this action I shall put the matter no further than that. In this letter, he states that the first defendant is challenging the validity of some of the bequests made by the late Antonio Senezio in his Italian will. He asserts that the first defendant wrote to the second plaintiff in June, 2007 and he responded stating that he was acting in the Irish will only. Then quite remarkably having regard to the facts to which I have already adverted and, in particular the letters dated the 26th March, 2009, 24th April, 2009, 12th May, 2009, 14th May, 2009 and, 15th May, 2009, Avv. Di Vizio continues as follows:-

"Due to your recent request for information from my client and from this office please let me know the extent of your office's current involvement and I would be grateful if you would please clarify this matter."

In reply, by letter dated the 4th August, 2009, the first plaintiff advised Avv. Di Vizio that he was acting in the Irish estate of the late Antonio Senezio, in which capacity he was legally obliged to render an account of his assets in Italy to the Irish revenue authorities. He requested Avv. Di Vizio to furnish him as a matter of urgency with a full valuation of the assets held by the late Antonio Senezio in Italy, a request which he had already made in his letter dated the 21st July, 2009. No response to this letter was received from Avv. Di Vizio. On the 24th November 2009, the first plaintiff wrote again to Avv. Di Vizio urgently seeking a full valuation of the movable and immovable assets of the late Antonio Senezio in Italy.

The first defendant told me in evidence that she did not know who had valued the real estate property at Via Casilina Sud, Cassino. She made a similar claim with regard to the real estate property at Via Monte Maggio. However, in cross-examination by Senior Counsel for the plaintiffs she was obliged to accept that on the 1st August, 2007, Avv. Di Vizio acting on her behalf had instructed a surveyor, Giovanni Di Stasio, to prepare a valuation of that property. I am satisfied that the proper inference to be drawn from the evidence is that the first defendant procured herself to be registered as sole owner of both these real estate properties at Cassino on the 14th September, 2007, and submitted a valuation of both in the total sum of €824,415.26. In so doing she acted on valuations obtained either by herself or by Avv. Di Vizio on her behalf. Despite the urgent requests from the first plaintiff these valuations were not furnished to him.

The first plaintiff pointed out to Avv. Di Vizio that the Declaration of Succession in which the figure of €824,415.26 appeared was not the equivalent of and was not acceptable as a valuation of the two real estate properties at Cassino. The same was true of the Declaration of Succession to the movable properties in the Banca Carige. A detailed statement, as to these movable assets dated the 3rd February, 2010, was ultimately obtained by the first plaintiff from the legal office of the Banca Carige SpA. Such a statement, if not already in the possession of the first defendant or of Avv. Di Vizio on her behalf, given the communications between the first defendant, Avv. Di Vizio and the Banca Carige SpA, between the 17th March, 2008, and the 6th August, 2008, were readily available by either of them from the Banca Carige and, could have been furnished to the first plaintiff. These Declarations of Succession would have to be furnished by the plaintiffs to the Irish revenue authorities and, in my judgement it was reasonable and proper for the first plaintiff to seek copies of the valuations from which the figures stated in these Declarations of Succession were derived.

I reject the submission made by the first defendant that the plaintiffs ought to have obtained these valuations for themselves. The plaintiffs as executors of the estate of the late Antonio Senezio are obliged to preserve the assets of the estate. To seek valuations themselves without first endeavouring to obtain the valuations which the facts suggest were available to the defendants would be entirely inconsistent with that duty. In addition, it is probable that the Irish revenue authorities would still require copies of the original valuations in circumstances where the estates of both Peter Senezio and Antonio Senezio were under investigation by them. I reject this submission that the plaintiffs could and should have obtained their own valuations as explaining or excusing the failure on the part of the defendants to furnish copies of the valuations to the plaintiffs.

In this letter, dated the 24th November, 2009, to Avv. Di Vizio the first plaintiff asks if there is some title document, some secret trust, or some contract which gives a quarter share in the real estate property at Via Monte Maggio, Cassino to the first defendant as stated in the Court of Cassino Act of Summons issued on behalf of the second defendant on the 28th October, 2008, or, did Peter Senezio or Antonio Senezio transfer such an interest to her and, if so, is the transfer registered. The first plaintiff asks whether the second defendant is taking a separate action against the first defendant in respect of the sum of €159,700.45 obtained by her from Banca Carige SpA. and if so, how far has that action progressed. Finally, the first plaintiff asks for the address of the branch of the Banca Carige where the funds of the late Antonio Senezio were kept and for the identity of the officer of the bank who managed the

account of the late Antonio Senezio. The remainder of this lengthy letter is taken up informing Avv. Di Vizio of the grievous misstatements made by the late Antonio Senezio in his Italian will and of the wrongful claims being made by the defendants to the movable and immovable assets of the late Antonio Senezio. The first plaintiff insists that these matters and the existence of the Irish will and the claims of the Irish revenue authorities must be drawn to the attention of the Italian courts.

By a letter dated the 24th November, 2009, the first named plaintiff sought information from the first defendant regarding the whereabouts of the funds withdrawn by her from the account of the late Antonio Senezio at the Cassino branch of Banca Carige, the basis upon which it is contended that she was entitled to a quarter interest in the real estate property at Via Monte Maggio, Cassino, whether she was in possession of securities the property of the late Antonio Senezio which had been held in the Banca Carige SpA., whether she knew of the existence of the joint signatory to the account in the Banca Carige and, if so why she withdrew funds from that account without the authority of that co-signatory. The first plaintiff insists that the funds withdrawn by the first defendant be returned to the Banca Carige SpA, and, that any securities held by the late Antonio Senezio which were in her possession be immediately sent to the office of Brendan P. McCormack and Son Dublin, Solicitors for the executors.

In my opinion these queries addressed by the first plaintiff to the first defendant and to her lawyer in Italy were all legitimate, pertinent and reasonable requests. Avv. Di Vizio replied to this letter from the first plaintiff dated the 24th November, 2009, by a letter dated the 25th November, 2009. In this letter Avv. Di Vizio asserts that the documents sent to the first plaintiff with his letter dated the 15th May, 2009, were the only documents he had, Avv. Di Vizio accepts that the first defendant was not an aunt of the deceased. In this letter he states that according to Italian law, N.M. was the only heir of Peter Senezio, deceased, and that she had been adopted by the first defendant. He accepted that he learned from the first plaintiff's letter dated the 24th November, 2009, that the late Antonio Senezio had a surviving son, D.H. and considered that this might affect the essential validity of the Italian will. In this letter he goes on to inform the first plaintiff that when Peter Senezio died, his brother Antonio Senezio made a false Declaration of Succession which he signed as only heir of Peter Senezio. He considered that a one half interest in the real estate properties at Via Casilina Sud and Via Monte Maggio, Cassino belonged to N.M. and that proceedings would be commenced to assert her right in this regard. Avv. Di Vizio concludes this letter by saying that he would furnish more answers to the first plaintiff as soon as possible.

By letter dated the 21st January, 2010, the first plaintiff called upon the first defendant to reply to his letter dated the 24th November, 2009, within seven days failing which proceedings would be taken against her. He notified her that the executors considered that she had intermeddled and was intermeddling in the foreign assets of the late Antonio Senezio. A copy of this letter to the first defendant was enclosed with a letter of even date sent by the first plaintiff to Avv. Di Vizio calling upon him to respond to the letters dated the 13th May, 2009, 21st July, 2009, 4th August, 2009 and 24th November, 2009. To this letter to Avv. Di Vizio the first plaintiff received a most extraordinary reply by telefax on the 25th January, 2010, which stated as follows:-

"If you need more urgent information, you might please translate your request. Mrs. Senezio also asked me, before replying to know for whom you are acting."

The first plaintiff responded on the same date stating:-

"Mrs. Duff (nee Senezio) is well aware that we are acting on behalf of the executors of the estate of Antonio Senezio, namely Paul McCormack and Rinaldo Paolozzi. Please let us hear from you."

By a letter dated the 29th January, 2010, the first defendant responded to the letter from the first plaintiff dated the 21st January, 2010, by requesting that he meet her to discuss the matter. She complained that her partner, Sylvester Rabbittie (surviving spouse of her deceased sister and by that union father of the second defendant) had requested such a meeting between the Senezio Family and the executors on several occasions. She stated that if the first plaintiff had attended such a meeting she had hoped to sit down and discuss with him his queries regarding the proceedings in Italy relating to the estate of the late Antonio Senezio. This letter from the first defendant was followed by a letter from Avv. Di Vizio dated the 1st February, 2010, in which, having made the quite unbelievable assertion that the first defendant had acted respecting all Italian laws, goes on to put in issue, even if obliquely, the standing of the first plaintiff to seek any information from him or the first defendant. Avv. Di Vizio states that the late Antonio Senezio was an Italian citizen who had properties in Italy so that the applicable law was the law of the Republic of Italy. By his Italian will the late Antonio Senezio had revoked all former wills including all wills existing in Ireland. He stated that he would prefer not to start a trial in Cassino against the Irish heirs because in that case an Italian court would be investigating and making a decision applying Italian law even to Irish properties. He concludes this letter by inviting the first plaintiff to let him know what next decisions to take.

I find the statement in this letter from Avv. Di Vizio that the first defendant acted "respecting all Italian Laws" to be totally incomprehensible. Though it did not emerge until very late in the course of the evidence and then only in cross examination in this lengthy trial before me, I am satisfied that on the 9th July, 2009, the first defendant pleaded guilty and had been convicted of deceiving a Judge of the Civil Court of Cassino and fraudulently acquiring €155,000 on the basis of false applications and was sentenced to one year imprisonment, suspended. Avv. Di Vizio acted for the first defendant in these criminal proceedings and his professional fee, described as follows:-

"Counsel in the criminal proceedings N.4016/08. RGNR before the Preliminary Hearing Judge of Cassino. €5,000 plus 12.5% general expenses plus C.P.A. (4%) plus VAT (20%)."

This is an item in the claim for damages by the first defendant against the plaintiffs in this present action. Due to the fact that Avv. Di Vizio, despite having come to Ireland and sworn an affidavit on the 22nd March, 2010, in the case for the first defendant was not called in evidence by the first defendant at the hearing before me, I shall not pursue this matter further.

It was a constant complaint by both defendants throughout the hearing of this action that if the plaintiffs and in particular the first plaintiff had met with all the members of the Senezio Family together, they could have discussed with him all his queries regarding the proceedings relating to the Italian estate of the late Antonio Senezio. Indeed, the first defendant claims damages on the basis that the plaintiffs were negligent and in breach of duty towards her in refusing to meet her, particularly in view of the fact that the first plaintiff had met with the second defendant at the Weston Hotel on the 6th May, 2009. The response of the first plaintiff to the letter from the first defendant dated the 29th January, 2010, is to be found in a long letter dated the 10th February, 2010, to which I shall advert shortly. In the course of this letter the plaintiff informed the first defendant that he considered that it would be wholly inappropriate for him to meet with her as their roles were at that time adversarial. I find that the first plaintiff acted correctly and lawfully in refusing to meet the first defendant at this time. Had the first defendant requested such a meeting in response to his letter of the 2nd March, 2009, or even his letter dated the 11th March, 2009, it would have been acceptable for the first plaintiff to have met with the first defendant had he chosen to do so and had Avv. Di Vizio agreed, as it is clear from her letter dated the 26th March, 2009, to the first plaintiff that Avv. Di Vizio was then her legal advisor. I find that the first plaintiff owed no duty, fiduciary or otherwise, to meet the first defendant and, such duty was not brought into existence by his meeting the second defendant on the

6th May, 2009.

I accept the evidence given by the first plaintiff, which is corroborated by the contemporaneous attendance made by him and proved in evidence that his meeting with the second defendant at the Weston Hotel, Dublin on the 6th May, 2009, was solely for the purpose of obtaining information regarding the assets of the late Antonio Senezio outside Ireland. The primary obligations imposed by law, executors are to identify, collect and protect all the assets of their testator. No distribution of any of those assets can take place until all proper debts, - which include taxes, - of the deceased have first been paid out of those assets. In the circumstances pertaining on the 29th January, 2010, there was clear evidence that the first defendant had been seriously intermeddling in the estate of the late Antonio Senezio deceased and that she had fraudulently obtained and continued to retain possession of most of his assets in Italy. I find that in such circumstances it would have been unprofessional and grossly improper for the first plaintiff as an executor of the estate of the late Antonio Senezio deceased and as solicitor acting for the proving executors of that estate to have met with or entered into any informal communications with the first defendant. It was the evidence of the first plaintiff that Sylvester Rabbitte had written to him on three occasions in February and March, 2009 solely with regard to the payment of specific legacies in favour of his daughter and her two sons contained in the Irish will of the late Antonio Senezio. This had been stated by the first plaintiff to the first defendant in his letter to her dated the 10th February, 2010. Sylvester Rabbitte who, I believe, was in court when this evidence was given by the first plaintiff, was not called in evidence to dispute this recollection of the first plaintiff.

By a letter dated the 3rd February, 2010, to the first plaintiff stated to be in response to letters from him dated the 24th November, 2009, and the 21st January, 2010, the general management, legal office of Banca Carige SpA., Genoa, furnished a full and detailed statement of all the accounts held by the late Antonio Senezio in the Cassino branch of the bank as of the date of his death, together with a statement for these accounts from the date when they were opened until the 3rd February, 2010. This letter also informed the first plaintiff that a balance of €164,222.35 remained in account No. 2357/CAT.80 and would remain blocked in the bank "until the settlement of the disputes currently in progress".

I find on the evidence that the second plaintiff received a letter dated the 5th February, 2010, from Orazio Grosso, Solicitor of Grosso and Maldonado, Solicitors, of 6 Clanwilliam Square, Dublin and, admitted to the Roll of Avvocati in Italy, informing him that proceedings in the Civil Court of Cassino regarding the estate of the late Antonio Senezio had been adjourned to the 17th September, 2010, and that the Judge had, "requested that a solution should be found amongst the parties involved". I doubt very much whether the Judge made any such "request". I think it more likely that the Judge suggested that the parties involved should try to achieve a compromise amongst themselves. In a letter dated the 16th December, 2009, Avv. Pasquale Matera advised the first plaintiff that he had received information from Orazio Grosso, Solicitor that negotiations were in progress in Ireland between the heirs of the late Antonio Senezio with a view to achieving an amicable settlement of the whole matter. Avv. Matera was obviously referring to the "whole matter" in the Republic of Italy. Orazio Grosso, solicitor, further notified the second plaintiff that the first defendant was at that juncture prepared to accept the offer made to her at the Senezio Family meeting on the 15th March, 2009, and that the second defendant had agreed to discharge any legal fees which the second plaintiff had incurred in the matter. Annexed to this letter was a, "Private and Confidential Agreement to Facilitate Execution of the Italian Estate of the late Antonio Senezio". This Agreement, which was to be produced to the Judge of the Civil Court of Cassino provided that in return for the payment by the second defendant of the legacy provided in the Italian will of the late Antonio Senezio, together with an additional sum of €125,000 to the first defendant, the defendants, the second plaintiff, N.M., Luigi Senezio, Marisa Rabbitte, Bettina Rabbitte, Roberto Paolozzi, Stella Staunton (nee Paolozzi) and Giovanna Hughes (nee Paolozzi), would not contest the Italian will of the late Antonio Senezio and, the second defendant would be entitled to proceed before the Civil Court of Cassino to obtain confirmation of the validity and effectiveness of that will with a view to his becoming the sole beneficial owner of the real estate property at Via Casilina Sud, Cassino. It was further provided that the defendants would cooperate in facilitating the proper administration of the estate and, all parties would agree to discharge their respective tax liabilities arising from the receipt of distributions from the estate. I am quite satisfied that these latter provisions were referring to the administration of the Italian estate of the late Antonio Senezio and, to tax liabilities arising in the Republic of Italy only. Orazio Grosso, solicitor, suggested that all parties, including the second plaintiff attend a meeting on the 19th February, 2010, at the offices of his law firm so that this agreement could be executed by all and the actions before the Civil Court of Cassino withdrawn.

The essential validity of the provisions of the Italian will of the late Antonio Senezio insofar as it deals with immovable property in the Republic of Italy and, any issues as to succession and descent are matters governed by the *lex situs* and are therefore matters to be determined by a Judge of an appropriate Court in the Republic of Italy applying the laws of the Republic of Italy. The validity and effect of a family agreement as to succession would also be a matter to be decided by an Italian Court. However, on the facts of the present case, this proposed family agreement would in Irish law constitute a serious and unlawful intermeddling in the estate of the late Antonio Senezio. In Irish law the real estate property of the late Antonio Senezio at Via Casilina Sud Cassino, may not be transferred to the person or persons entitled, until the tax liabilities of the late Antonio Senezio in Ireland have been ascertained and paid. The plaintiffs' executors are personally liable in this regard. This does not appear to be the law in the Republic of Italy. By a letter dated the 28th February, 2010, to the first plaintiff, Avv. Pasquale Matera advised that in Italy the State has a tax lien on the assets of a deceased and, property subject to such a lien passes directly to the heirs without any prior necessity to check whether all outstanding tax liabilities of the deceased have been paid and, without any necessity for prior State approval to the transfer. The right of the Italian revenue authorities to demand payment from the heirs for any tax liabilities of the deceased remains unaffected by any transfer of the property. Avv. Matera went on to advise the first plaintiff that in cases of disputed succession the court decides the issue and the person or persons declared to be the heir or heirs will be responsible for any tax liability of the deceased. As Avv. Carlo Bottino did not give a contrary opinion in the course of his evidence before me, I will accept this statement of the law of the Republic of Italy by Avv. Matera as both accurate and correct. Avv. Bottino told me in evidence that by the law of the Republic of Italy the "heir" or "person interested" or "an agent" is obliged to declare all assets of a deceased in Italy but not global assets.

The second plaintiff told me in evidence that he had informed the first plaintiff about this letter from Orazio Grosso, solicitor. I accept the evidence of the first plaintiff, supported by the evidence of the second plaintiff, that he was very concerned to hear of this development that he had advised the defendants, by letter, of the involvement of the Irish revenue authorities and, of their direction to him that there be no distribution of any of the assets of Peter Senezio or of Antonio Senezio without prior notice to them. I find on the evidence that acting on the advice of the first plaintiff the second plaintiff did not sign this, "Private and Confidential Agreement" and did not attend the proposed meeting at the offices of Grosso and Maldonado, Solicitors, on the 19th February, 2010. The inference I draw from the evidence is that both defendants, despite all the explanations, cautions and warnings contained in the many letters sent to them and to their lawyers in Italy by the first plaintiff from the 2nd March, 2009, to the 25th January, 2010, themselves intended to execute and, to procure the execution by all the other indicated members of the Senezio, Rabbitte and Paolozzi families of this, "Private and Confidential Agreement". I am further satisfied by the evidence and I find that if this "Private and Confidential Agreement" had been executed by all as intended, the defendants did not propose to bring to the attention of the Judge of the Civil Court of Cassino any of the matters which the first plaintiff in this lengthy correspondence had signalled and insisted should be put before the Civil Court of Cassino. I find on the evidence that the defendants intended to abide by what the second defendant alleged was his late uncle's legal philosophy as regards his assets of, "Italy for the Italian and Ireland for the Irish".

By a letter dated the 10th February, 2010, the first plaintiff, having taking issue with what was stated by Avv. Di Vizio in his letter of the 1st February, 2010, informed Avv. Di Vizio that the plaintiffs would take appropriate legal proceedings to protect the assets of the late Peter Senezio and the late Antonio Senezio. By a further letter dated the 10th February, 2010, to the first defendant, the first plaintiff stated that he had been driven to the conclusion that she had failed and neglected to deal with the inquiries made and issues raised by him in his letter to her dated the 24th November, 2009, and called on her to deal with these matters by return of post. He further called on the first defendant to return to Banca Carige SpA., the money that she had unlawfully removed from the Cassino branch of that bank. The first plaintiff had made a similar request to the first defendant in his letter dated the 24th November, 2009, and, had also requested the return by her to the offices of his law firm of any securities of the late Antonio Senezio in her possession. In his letter dated the 10th February, 2010, the first plaintiff informed the first defendant that the plaintiffs would no longer tolerate her intermeddling in the administration of the estate of the late Antonio Senezio and, intended to seek an Order from this Court prohibiting such intermeddling by her. The originating Plenary Summons was issued in the present action on the 18th February, 2010. On the 9th March, 2010, Vincent and Beatty, Solicitors, entered an appearance in the action on behalf of the first defendant. On the 23rd February, 2010, Beauchamps, Solicitors, entered an Appearance in the action on behalf of the second defendant. On the 25th February, 2010, the first defendant undertook to this Court not to intermeddle in any land, money, shares or securities forming part of the assets in the Republic of Italy of the late Antonio Senezio.

In his letter to the first defendant dated the 24th November, 2009, the first plaintiff sought the following information:-

"The location of the €155,000 withdrawn by her from the Cassino branch of Banca Carige SpA.

The basis upon which she claimed title to this €155,000.

The reason why she withdrew this €155,000 from the account at the Cassino branch of the Banca Carige SpA, without the authority of the surviving co-signatory.

The basis upon which she claimed an interest in the real estate property at Via Monte Maggio, Cassino.

Whether any securities held by the late Antonio Senezio in the Banca Carige were in her possession."

After his meeting with the second defendant at the Weston Hotel, Dublin on the 6th May, 2009, the first plaintiff in his endeavours to obtain meaningful information about the assets of the late Antonio Senezio outside Ireland appears to have focused upon making inquiries from the first defendant and her lawyer in Italy, Avv. Di Vizio. It was not until the 23rd November, 2009, that the first plaintiff wrote to Orazio Grosso, solicitor, whom he came to believe was acting for the second defendant in proceedings in Cassino to recover the money unlawfully removed by the first defendant from the joint account held by Antoinette Salveta and the late Antonio Senezio in the Cassino branch of the Banca Carige. From Orazio Grosso, solicitor, the first plaintiff requested the following information:-

"Had the Judge in the Italian Court been informed that the statements by the late Antonio Senezio in his Italian will that he was domiciled in Cassino (FR), that he did not have any children and, that the first defendant and Luigi Senezio were his uncle and aunt were not true.

Had the Judge in the Italian Court been informed that the late Antonio Senezio had a surviving son, who was named as a legatee in the Irish will of the late Antonio Senezio.

Had the Judge in the Italian Court been furnished with a copy of this Irish will of the late Antonio Senezio.

On what basis was the second defendant claiming an interest in the real estate property at Via Monte Maggio, Cassino and in the money and securities in Banca Carige SpA.

On what basis was it stated in the Court of Cassino Act of Summons of the 28th October, 2008, that the first defendant was entitled to a quarter share in the real estate property at Via Monte Maggio, Cassino.

When and where did the late Peter Senezio or the late Antonio Senezio transfer this interest to the first defendant.

Was there a contract or title document granting the first defendant that interest in the property and, if the latter, was it duly registered."

On the 25th November, 2009, Orazio Grosso, Solicitor, telephoned the first plaintiff. The first plaintiff, with the assistance of a contemporaneous memorandum made on the 25th November, 2009, proved in evidence, recalled that Mr. Grosso stated that he represented the second defendant only in proceedings taken against the Banca Carige SpA. in respect of the money paid by that bank to the first defendant. He informed the first plaintiff that Avv. Pasquale Matera represented the second defendant in all matters relating to the Italian will of the late Antonio Senezio and the two real estate properties in Cassino. He gave it as his opinion that D.H. the surviving natural son of the late Antonio Senezio had no claim to the assets of his natural father in Italy by reason of his status as the son of the his parents by adoption. Mr. Grosso stated that he considered that the late Antonio Senezio was Italian and his Italian will came first and there could be no fraud on the Irish Revenue as there was in existence a Double Taxation Agreement between the Republic of Italy and the Republic of Ireland and taxes would be paid in Italy.

Avv. Carlo Bottino gave evidence, which I accept, that this Double Taxation Agreement does not extend to Inheritance Tax in Italy or to Capital Gains Tax in Ireland. I accept his evidence, which was not disputed by any other competent expert on the laws of the Republic of Italy at the hearing before me, that in Italian law N.M. and D.H. even though lawfully adopted retained in full their rights as only children of their respective fathers, Peter Senezio and Antonio Senezio. He further told me that according to the provisions of Italian Citizenship and Nationality law a person, such as the late Antonio Senezio, born to Italian parents was deemed to be a citizen of the Republic of Italy. I also accept his expert opinion in this regard which was not disputed.

On the 9th December, 2009, the first plaintiff again wrote to Orazio Grosso, solicitor, seeking the following information:-

"Were the two actions taken by the second defendant in the Civil Court of Cassino to be heard together and if not had the matter been raised with the Court administration.

Was he acting for the second defendant and others in an action to have the Italian will of the late Antonio Senezio declared valid.

Was he maintaining an opinion that the non disclosure of offshore assets in the Inland Revenue Affidavit filed here in order to obtain a Grant of Probate in the estate to the late Antonio Senezio was of no consequence and that it was not necessary for the plaintiffs to file a Corrective Affidavit.

Was he aware that both Peter Senezio and Antonio Senezio were domiciled in Ireland and were born and resided here throughout their lives.

Was he aware that the late Antonio Senezio made a false statement in his Italian will that he had no children and had made a false Declaration of Succession in Italy stating that he was the only heir of the late Peter Senezio."

The first plaintiff requested an urgent reply to these queries and notified Mr. Grosso that the figures disclosed in the "Agenzia Della Entrata" documents relating to Peter Senezio and Antonio Senezio were under scrutiny. The first plaintiff concluded by asking Mr. Grosso, if he was not acting for the second defendant in the proceedings in the Civil Court of Cassino relating to the Italian will of the late Antonio Senezio, to furnish him as a matter of urgency with the email address of Avv. Matera.

On the same day, the 9th December, 2009, the first plaintiff wrote to the second defendant informing him that he intended thereafter to deal directly with Mr. Orazio Grosso, solicitor and with Avv. Matera without further reference to him. He requested the second defendant to furnish him with a copy of the valuations of the two real estate properties at Cassino which the second defendant had told him at their meeting at the Weston Hotel, had been produced by Sylvester Rabbitte at a "settlement meeting". The first plaintiff formally requested the second defendant to furnish him by return with any valuations in his possession of any property of the late Antonio Senezio.

On the 15th December, 2009, the first plaintiff forwarded, by telefax and by courier a letter to Avv. Pasquale Matera acquainting him with the many issues perceived by him and his co-plaintiff as arising in relation to the Italian assets and the Italian will of the late Antonio Senezio and expressing concern that the proceedings before the Civil Court of Cassino might not reflect the true facts. Avv. Matera replied by email on the 16th December, 2009, stating that he had not been told that Antonio Senezio had a son and that that son had survived him, that Antonio Senezio had made a will in Ireland, that tax declarations had been made by Antonio Senezio in Ireland which did not disclose assets in the Republic of Italy and he had not been told that the late Peter Senezio had a living descendent. Avv. Matera advised the first plaintiff that under Italian law the Civil Court of the Cassino was only concerned with identifying the heirs of the late Antonio Senezio and establishing their respective shares in his assets and that therefore tax issues were not relevant to those proceedings. By a letter dated the 10th February, 2010, transmitted to Avv. Matera by telefax and by courier the first plaintiff pointed out the under the law of Ireland all assets of deceased persons, including offshore assets, were subject to a prior charge in favour of the Irish Revenue for taxes payable by the deceased and, that no distribution of assets could take place and no title could pass to any lawful heir until the full amount due to the Irish revenue had been paid. The first plaintiff requested that these matters should be brought to the attention of the Judge of the Civil Court of Cassino. In his letter of reply dated the 28th February, 2010, to which I have already made reference, Avv. Matera informed the first plaintiff that the proceedings before the Civil Court of Cassino had been adjourned to see if the parties, all of whom were in Ireland, could reach an agreement with regard to the division of the property by means of an amicable settlement of the entire matter. On the 2nd March, 2010, Vincent and Beatty, Solicitors for the first defendant in response to a query of the 1st March, 2010, from the first plaintiff informed him that the balance of the movable assets of the late Antonio Senezio not held by Banca Carige SpA., amounted to €170,000 and that this sum was held in an account in the Banca Popolare del Cassinate at Atina in the Republic of Italy.

Eleven Affidavits exhibiting a large number of documents were filed in these proceedings by and on behalf of the parties. These affidavits were as follows:-

19th February, 2010, affidavit of the first plaintiff.

9th March, 2010, affidavit of the first defendant.

9th March, 2010, affidavit of Beatrice Healy of Beatrice's Translation Services clarifying that a figure was €1,250 and not €1,250,000.

10th March, 2010, affidavit of Sylvester Rabbitte, non-party (partner of the first defendant and through his marriage to her deceased sister father of the second defendant).

22nd March, 2010, second affidavit of the first defendant.

22nd March 2010, affidavit of Avv. R.E. Di Vizio.

22nd March, 2010, affidavit of the second defendant.

26th April, 2010, affidavit of D.H. (natural son of the late Antonio Senezio).

28th April, 2010, second affidavit of the first plaintiff.

28th April, 2010, affidavit of the second plaintiff.

5th May, 2010, second affidavit of the second defendant.

On the 7th May, 2010, an Order was made by this Court by consent of the parties and Sylvester Rabbitte (a non party) in the following terms:

1. The first defendant to produce immediately all court orders obtained by her against the Banca Carige SpA in the Civil Court of Cassino affecting the movable property of the late Antonio Senezio .
2. The defendants and each of them to immediately disclose all material or information known or available to them or to their servants or agents which identified or assisted in identifying all or any movable and immovable property of the late Antonio Senezio wherever located, legally or beneficially owned by him at the date of his death or in which he had a beneficial interest.
3. The defendants to immediately make full disclosure of all information which identified or assisted in identifying the true

market value of all or any movable or immovable assets of the late Antonio Senezio at the date of his death.

4. The defendants be restrained from intermeddling in the assets of the estate of late Antonio Senezio save for the purpose of compliance with this order.

5. The defendants and each of them be restrained from executing any document or agreement affecting any movable or immovable assets wheresoever located of the estate of the late Antonio Senezio pending trial of the action other than for the purpose of complying with this order.

6. The second defendant to produce to the plaintiffs within thirty days such documents in his power possession or procurement as purports to be a testamentary disposition of the late Antonio Senezio in Italy and the working papers relevant to the preparation thereof.

7. The sum of approximately of €164,000 standing to the credit of account No. 2357/80 in Banca Carige SpA be transferred to the credit of this action: the defendants to take all reasonable steps to procure such transfer within 21 days.

8. The first defendant to furnish to the plaintiffs all documentary evidence in her possession or power and, if possible Brokers Sell Contract Notes in respect of the sale or disposition of the following shares

(a) 1250 shares in Capitalia (now Unicredito) and

(b) 4,000 shares in Banca Carige

9. Sylvester Rabbitte to repatriate and pay into Court within 21 days the sum of €159,700.45 lodged to his account with Banca Popolare del Cassinate, Atina, in the Republic of Italy.

By a letter dated the 6th May, 2010, Beauchamps, solicitors then acting on behalf of the second defendant wrote to the first plaintiff stating that the second defendant considered that he should not have been joined as a party in this action and that he had consented to the reliefs contained in the foregoing Order of this Court without prejudice to this contention and, to his claim for costs by reason of the fact that the proceedings were unnecessary as against him since he had all times cooperated fully with the plaintiffs. This letter also states that, "there are no movable or immovable assets in his possession". Though I am convinced that Beauchamps, solicitors were entirely unaware of the fact and, were stating in good faith what had been told to them by the second defendant this assertion was incorrect. On the 17th July, 2009, by a Declaration of Succession Vol. 67, No. 13, a record of which had been uncovered by Avv. Carlo Bottino on a registry search, the second defendant had procured himself to be registered as owner of a quarter share of in both the real estate properties in Cassino. This was not admitted by the second defendant until almost the end of his own cross-examination by Senior Counsel on the last day of witness evidence in this very lengthy trial. By a letter dated the 14th May, 2010, Vincent and Beatty, Solicitors in Ireland for the first defendant, wrote to the manager of the Banca Popolare del Cassinate asking to be furnished with all documents in his or her possession relating to units in the Carige Liquid Euro Fund, 1,250 shares in Capitalia (now Unicredito Ord.) and 4,000 shares in Banca Carige SpA within seven days. By a further letter of that date to Banca Carige SpA, Vincent and Beatty, Solicitors informed the bank that Antoinette Salveta consented to the transfer of the money remaining in account No. 2357/CAT. 80 in the Cassino branch of the bank to this Court. By another letter of the 14th May, 2010, Vincent and Beatty called upon the Avv. Di Vizio to furnish to the plaintiffs:-

"All court orders obtained by the first defendant in the Civil Court of Cassino against Banca Carige SpA, affecting any movable property of the late Antonio Senezio.

All material or information identifying any movable or immovable assets wheresoever located outside Ireland held by the late Antonio Senezio at the date of his death, either legally or beneficially.

All information which would be of assistance in identifying the true market value of the two real estates properties at Cassino at the date of death of the late Antonio Senezio

All documentary evidence and, if possible, Brokers Sell Contract Notes in respect of the sale or disposition of any shares or securities held by the late Antonio Senezio at the date of his death.

Any additional material or information which might assist in identifying or valuing any property held by the late Antonio Senezio at the date of his death."

This letter stated that the first defendant required the assistance of Avv. Di Vizio in complying with the Court Order of the 7th May, 2010. The first defendant told me in the course of her evidence that she was not aware of any valuations save those to which I have already made reference. Banca Carige SpA and her own bank, Banca Popolare del Cassinate had arranged for the disposal of certain shares and securities and the proceeds had been paid to her. She told me that she had no documentation regarding these transactions.

In compliance with the Order of this Court made on the 7th May, 2010, Mr. Sylvester Rabbitte paid into court, the sum of €159,700.45 to be held to the credit of this action. Banca Carige SpA., paid into court the sum of €164,000 to be held to the credit of this action.

I am satisfied from a careful consideration of the oral evidence and from the documents produced and admitted into evidence during the course of the hearing of this action, and I find, that on the 2nd March, 2009, when the first plaintiff first wrote to the defendants indicating that it was necessary to file a corrective affidavit with the Irish revenue authorities disclosing all (added emphasis) offshore assets held by the late Antonio Senezio in his sole name or in partnership or through nominees and again on the 11th March, 2009, when the first plaintiff first sought documentation from the defendants in relation to the assets held by the late Antonio Senezio in the Republic of Italy, the defendants were, or one or other of them was aware of all the following facts either personally or through their lawyers in Cassino (FR) in the Republic of Italy.

The evidence established that on the 28th December, 2005, Sylvester Rabbitte, partner of the first defendant since the death of her sister, his wife and, father of second defendant, sent a letter to the late Antonio Senezio making a claim that N.M. was entitled to

the interest of her late father Peter Senezio, who died on the 26th August, 2005, in both real estate properties in Cassino.

On the 14th January, 2006, a family meeting was arranged and took place at the house of the late Antonio Senezio at Clontarf, Dublin. Present at this meeting were the second plaintiff, both defendants, Luigi Senezio, N.M. (natural daughter of the late Peter Senezio and legally adopted daughter of the first defendant), Roberto Paolozzi, Stella Staunton (nee Paolozzi), Bettina Rabbittie and Marisa Cassidy (nee Rabbittie). The deceased's partner Antoinette Salveta, A.G., lifelong partner of Peter Senezio and D.H. surviving natural son of the late Antonio Senezio were not present at this meeting. At the date of this meeting, the late Antonio Senezio was very ill suffering from small cell lung cancer. At this meeting the late Antonio Senezio claimed that he and his late brother Peter Senezio had agreed to leave the real estate property at Via Casilina Sud to each other by cross-wills. I am satisfied on the evidence and I find that at this meeting no mention whatever was made of the property at Via Monte Maggio, Cassina. The late Antonio Senezio circulated a document in the Italian language which was read by those present at the meeting who could read Italian. Following the unexpected death of Peter Senezio, his lawyer in Italy was unable to find a will there. The late Antonio Senezio insisted that he was entitled to the half share of Peter Senezio in this property. He stated that if those present did not agree to this demand, he would claim from them the money he alleged he had spent in the upkeep, repair and maintenance of the real estate property at Via Casilina Sud. Eventually all present, Stella Staunton being the last to concede accepted the late Antonio Senezio as sole owner of the real estate property at Via Casilina Sud and agreed to sign whatever papers were necessary to give effect to this agreement.

The second defendant admitted that in the early part of 2006, he had accompanied the late Antonio Senezio and Antoinette Salveta to a bank at No. 14 Neeld Parade, Wembley, London. At the request of the late Antonio Senezio the second defendant and Antoinette Salveta signed some documents in this bank adding their own names to an account held by the late Antonio Senezio in the bank. He told them that he wished the money in that account to go to D.H. (his natural son). In September, 2006, the second defendant asked the late Antonio Senezio about this account. The deceased told him that the account was closed, that he had dealt with it and to forget all about it.

By letter dated the 5th July, 2012, Beauchamps Solicitors, then acting for the second defendant, informed the first plaintiff that the second defendant was aware of an Allied Irish Bank (GB) account with a number 55025003, but had no details relating to it.

By letter dated 9th September, 2010, the Customer Services Division of Allied Irish Bank Group (U.K.) Plc. advised the first plaintiff that account No. 55024003 was opened as a sole personal account and the late Antonio Senezio was the only signing authority. The bank held no records to show Ms. Salveta or the second defendant as having any authority to sign on this account nor could the bank see any signature on any documentation.

I am therefore unable to conclude whether the late Antonio Senezio had one, two or even three accounts with Allied Irish Bank Group (UK) Plc. In their letter dated the 5th July, 2010 to the first plaintiff, Beauchamps SOLICITORS advised that the second defendant had confirmed to them that the possibility of the existence of assets of the late Antonio Senezio in Switzerland had been spoken about amongst the members of the family for many years. This was confirmed by the second defendant in the course of his evidence at this trial, but nothing further was produced in this regard.

On the 27th September, 2006, the late Antonio Senezio gave the second defendant a mandate to deal with his Custody of Securities Policy No. 626071/11 at the Cassino branch of Banca Carige. This mandate was to continue until the death or incapacity of one of them. Also on the 27th September, 2006, at Cassino the late Antonio Senezio and Antoinette Salveta gave the second defendant a mandate to deal with current account No. 2357/CAT.80 held in their joint names at the Cassino branch of Banca Carige SpA., this mandate to continue until the death or incapacity of one of them. I accept the evidence of the second defendant that he was told by the late Antonio Senezio that he was leaving the money in this account to Antoinette Salveta. I find that in September, 2006 the second defendant did not know the nature or value of the securities contained in Policy No. 626171/11. The second defendant accepted in evidence that the deceased had told him that there was at least €300,000 in the Cassino branch of Banca Carige. The second defendant told me during the course of his evidence that the late Antonio Senezio during the same visit to Italy in September, 2006 had asked Antoinette Salveta to "help" if the legatees under his Italian will wished to be paid their legacies in Italy and suggested that the second defendant would then pay an equivalent sum to Antoinette Salveta in Ireland.

The second defendant gave evidence which I accept, that in September, 2006 the late Antonio Senezio had shown him the real estate property at Via Monte Maggio Cassino. He had been trying to sell it and told the second defendant that he hoped to get €100,000 for the property and this sum would be added to the money already held in current account No. 2357/CAT.80. The second defendant knew from his visits to that property that since about 1980 Mr. Franco Citro was caretaker of the real estate property at Via Casilina Sud. The second defendant recalled that the late Antonio Senezio had told Mr. Citro in his presence that the property was being left to the second defendant. The second defendant gave evidence that Mr. Citro told the late Antonio Senezio in his presence that he believed he had found a purchaser who was willing to pay €100,000 for the real estate property at Via Monte Maggio. The second defendant told me in the course of his evidence that the late Antonio Senezio considered the value of the real estate property at Via Casilina Sud to be €600,000 in September, 2006 and by reference to that valuation determined the amount of the legacies in his Italian will which totalled €300,000. By a Declaration of Succession dated the 18th July, 2007, registered in the Registry Office in Rome on the 14th September, 2007, the first defendant procured herself to be registered as sole owner of the two real estate properties of late Antonio Senezio at Cassino claiming to be his sole heir. In this Declaration of Succession, the total value of the two real estate properties at Cassino is stated to be €824,415.26. On the 24th July, 2007, a surveyor, Giovanni di Stasio received a mandate from the first defendant to prepare a valuation of the real estate property at Via Monte Maggio. His report dated the 1st August, 2007, placed a value of €82,500 on this property. No evidence was forthcoming at the trial of this action as to the value placed on the other property at Via Casilian Sud, by whom this was assessed, or when, or at whose behest. The first defendant in evidence claimed that she had paid Italian inheritance tax of €24,846.11 on either the 26th July, 2007, or the 31st August, 2007 and a further sum of €47,811.47 on the 13th September, 2009, in respect of this succession. The first named defendant stated in evidence that she had borrowed €72,657.61 from Sylvester Rabbittie in Italy to pay this inheritance tax.

In October, 2007 Avv. Pasquale Matera advised the second defendant by telefax or email that the Italian will of the late Antonio Senezio had been published (on the 21st June, 2007) and that inheritance tax in the sum of €4,919.07 had to be paid by the second defendant before the real estate property at Via Casilina Sud could be registered in his name. The second defendant went to Cassino in November, 2007 to put Avv. Matera in funds to pay this sum. The second defendant told me in evidence that he did not obtain a valuation of the property. He believed that Avv. Matera must have used an existing valuation in land registry documents. Avv. Carlo Bottino gave evidence that in Italy payment of inheritance tax is on an initial self assessment basis and that this is subsequently checked by the appropriate tax authorities who then make their own assessment and can raise a subsequent demand in the event of a shortfall.

The second defendant gave evidence that in November, 2007 he found the perimeter gates of the real estate property at Via Casilina Sud, Cassino, chained and padlocked. He also found that the locks on the house itself had been changed. He spoke to Mr. Citro who

told him that he was working for the first defendant who owned the property and informed him that Avv. Di Vizio was her lawyer in Cassino. On his behalf Avv. Matera contacted Avv. Di Vizio and was informed that the first defendant was the owner of the property. The evidence established that on the 4th June, 2007, the first defendant had paid a sum of €7,560 to Mr. Franco Citro. On the 13th June, 2007, she paid him another €1,000 and on the 25th June, 2008, she paid a further sum of €3,000. On the 23rd June, 2009, Sylvester Rabbitte paid Mr. Citro €2,600 on behalf of the first defendant. Acting on the advice of Avv. Matera, the second defendant commenced proceedings in the Civil Court in Cassino against the first defendant on the 18th December, 2007. This Court of Cassino Act of Summons was served on the first defendant on the 24th December, 2007. This Act of Summons sought relief in respect of the two real estate properties in Cassino and also in respect of securities and money stated to have been held in the names of Antonio Senezio and the second defendant in the Cassino branch of the Banca Carige SpA.

On the 17th March, 2008, the first defendant made and subsequently registered at Cassino and at Rome a Declaration of Succession as sole heir to the movable assets of the late Antonio Senezio in the Cassino branch of Banca Carige SpA. These assets were valued in this Declaration of Succession at €457,701.65. It was the evidence of the first defendant that this figure was calculated by reference to the nominal value of the shares and the money in the account. By letter dated the 17th March, 2008, to Banca Carige SpA, the first defendant demanded that the bank liquidate the financial instruments held by the late Antonio Senezio in the safe custody of securities policy No. 626071/CAT. 11 at the bank and transfer the funds realised to her account at the Banca Popolare del Cassinate, Via Volsci, Atina. She identified this Policy as containing 10,487.217 Carige liquid euro fund shares valued at €61,985.92 at the date of death of the late Antonio Senezio, 1,250 Unicredito shares, 4,000 Bank Carige SpA. shares, and Carige Step – Up 03/07 bonds, nominal value €310,000 in account 2357/CAT.80. By a letter dated the 17th April 2008, witnessed by Avv. Di Vizio, she cancelled the direction to liquidate account No. 2357/CAT.80 but demanded payment of a sum of €150,000 from that account. By this letter she also directed the transfer of the identified shares to her account at the Banca Popolare del Cassinate.

On the 27th May, 2008, Avv. Di Vizio sent an irrevocable Order of Transfer of securities and shares to the legal department of the Banca Carige SpA., at Genoa.

On the 30th June, 2008, Avv. Di Vizio took proceedings on behalf of the first defendant against Banca Carige SpA., in which the first defendant claimed the money held in account No. 2357/CAT.80 in the Casino branch of the bank as full sister and sole heir of the late Antonio Senezio.

By Order 458/08 made on the 7th of July, 2008, the Civil Court of Casino directed Banca Carige SpA., to pay €155,000, being 50% of the sum of €310,000 standing in account No. 2357/CAT.80, to the first defendant.

On the 15th July 2008, the enhanced value of the Carige Liquid Euro Shares in the sum of €64,118.09 was transferred by Banca Carige SpA., into the account of the first defendant at Banca Popolare del Cassinate Atina.

On the 6th August, 2008, a sum of €155,000 together with costs, charges, fees and expenses making a total sum of €159,700.45 was transferred by the Banca Carige by electronic transfer to the account of the first defendant at the Permanent TSB Bank, Rathfarnham, Dublin.

The following day the first defendant obtained a bank draft, payee unnamed, for the entire of this sum. The name of the payee was not recorded in her Permanent TSB bank statements. The evidence established that this draft was in fact given by the first defendant to Sylvester Rabbitte. The entire sum thereafter became lodged in a corporate account controlled by Sylvester Rabbitte in Italy.

The Unicredito ordinary shares were sold and the proceeds of €5,730.10 were credited to the account of the first defendant in the Banca Popolare del Cassinate on the 30th June, 2008. The Banca Carige SpA., shares were sold and the proceeds of €9,313.34 were credited to the same account of the first defendant on 30th June, 2008. A sum of €64,118.09, being the enhanced value of the Carige liquid euro fund shares was paid into the same account of the first defendant on the 15th July, 2008. Seven transfers, each in the sum of €10,005.16 and, a single transfer in the sum of €9,005.16 were made from this account of the first defendant between the 8th July, 2008, and the 8th September, 2008, to a transferee identified in the account statement as Rabbitte Catering Servicetm, effectively closing this account of the first defendant. In evidence before me the plaintiff claimed that she had borrowed the sum of €72,657.61 from Sylvester Rabbitte in order to pay the inheritance tax arising on her succession to the two real estate properties in Cassino. The first defendant claimed that these eight payments represented the repayment of this loan together with interest which she always understood would be payable to Sylvester Rabbitte but in respect there had been no discussion and no rate had been agreed.

By a letter dated the 8th September, 2008, Orazio Grosso, solicitor in Ireland and member of the Bar of Cassino, on behalf of the second defendant called upon Banca Carige SpA. to restore the *status quo ante*. An affidavit setting out the claim of the second defendant and the other "heirs" of the late Antonio Senezio, – Luigi Senezio, Roberto Paolozzi, the second plaintiff and Stella Staunton (nee Paolozzi) was sworn at the Italian Embassy in Dublin on the 29th or 30th September, 2008. On the 2nd October, 2008, Banca Carige SpA., indicated that it would not move to set aside Order 458/08 of the Civil Court of Cassino. On the 28th October, 2008, the Court of Cassino, Act of Summons which was served on the second plaintiff in early December, 2008, and which he brought to the attention of the first plaintiff on the 16th February, 2009, was issued in Cassino. On the 21st November, 2008, based on the affidavit of the 30th September, 2008, and other documents, the second defendant made a formal complaint of fraud against the first defendant to the Director of Public Prosecutions of Cassino (Frosinone). At this time, Banca Carige SpA. had frozen the balance of the money remaining in account No. 2357/CAT.80 pending resolution of the dispute as to ownership of that account. A number of interlocutory applications were made in the proceedings before the Civil Court of Cassino which had been commenced by the Act of Summons of the 28th October, 2008. The Judge of the Civil Court of Cassino hearing this matter was not told about the Irish will of the late Antonio Senezio or, of the existence of D.H. his surviving natural son. Neither Avv. Matera or Avv. Di Vizio had been informed of these matters at this time.

The evidence established that a family meeting was held on the 15th March, 2009, with a view to resolving these Italian proceedings. The second defendant offered to pay the first defendant a sum of €150,000 in addition to the sum of €100,000 to which she was entitled under the terms of the Italian will of the late Antonio Senezio. This was accepted by the first defendant at the meeting. However, she told me in the course of her evidence that following the meeting she changed her mind and decided that this additional payment was insufficient. It appears that it was at this meeting that Sylvester Rabbitte, partner of the first defendant, claimed that he had obtained a valuation of the real estate property at Via Casilina Sud which fixed its value at €900,000. When requested to make this valuation available to the plaintiffs Sylvester Rabbitte declined unless he was first paid a sum of €1,000.

Having considered the extensive correspondence, to which I have adverted, which passed between the first plaintiff and the defendants and their lawyers in the Republic of Italy between the 2nd March, 2009, and the 28th February, 2010, in the light of these facts, most or all of which were known to or, readily ascertainable by each of the defendants before either of them responded to any

letter whatsoever from the first plaintiff, I am satisfied and, I so find, that the defendants did not make full or proper disclosure to the plaintiffs of all material information known to them and their respective servants and agents, such as would assist the plaintiffs in identifying the nature, location, ownership and value of the assets of the late Antonio Senezio in the Republic of Italy or elsewhere outside Ireland.

Contrary to what was asserted by both defendants at the hearing of this action, I find that they did not cooperate fully with plaintiffs who, I find, were acting properly and reasonably in due course of administration in seeking to identify, gather and secure the assets of the late Antonio Senezio held outside Ireland and, for that purpose to trace any and all dealings with those assets or any of them following the death of the late Antonio Senezio on the 13th February, 2007. I reject the claim made on behalf of the second defendant by his former solicitors in their letter to the first plaintiff dated the 6th May, 2010, that these proceedings were unnecessary as far as he was concerned and that he should not have been joined in this action as he had cooperated at all times with the plaintiffs. The defendants did furnish some information to the first plaintiff, but I find that it was neither sufficiently comprehensive nor fully accurate.

I find that the plaintiffs were fully justified in prosecuting to a full hearing before this Court their claim against both defendants for information regarding the assets of the late Antonio Senezio in the Republic of Italy and elsewhere outside Ireland and the defendants own involvement with them. I find that the hostile and recriminatory stance adopted by both defendants towards the plaintiffs during the course of the evidence was as unedifying as it was entirely unjustified. In particular, I deplore the often repeated and less than subtle accusations by both defendants during the course of their evidence, that the first plaintiff in endeavouring to do with very commendable restraint and patience what he was legally obliged to do as an executor of the Irish will of the late Antonio Senezio and, as solicitor for the proving executors appointed by that will, especially under the concerned and very immediate scrutiny of the Irish revenue authorities, was betraying the trust which the late Antonio Senezio and other members of the Senezio Family had reposed in him and in his law firm for very many years. However, as result of the oral and documentary evidence furnished at the hearing of this action the plaintiffs do not now consider it necessary to seek further orders for disclosure against the defendants or either of them.

I find on the evidence that the defendants and each of them have wrongfully intermeddled in the assets of the estate of the late Antonio Senezio in the Republic of Italy, both by their actions there and in Ireland. I find that the intermeddling by the first defendant in unlawfully claiming and obtaining possession of both real estate properties at Cassino, in unlawfully claiming and obtaining possession of all the movable property of the late Antonio Senezio in the Banca Carige SpA, other than the sum of €164,000 frozen in account No. 2357/CAT.80 by that bank in or about November, 2008 and subsequently paid by the bank into this Court to the credit of this action and, in selling and converting into money the shares forming part of those movable assets of the late Antonio Senezio was of a most serious nature and has caused loss to the estate. The actions of the second defendant in taking proceedings against the first defendant in the Civil Court of Cassino claiming title as devisee under the Italian will of the late Antonio Senezio to the real estate property at Via Casilina Sud and, claiming a share, to be ascertained together with other alleged "heirs" of the late Antonio Senezio in the real estate property at Via Monte Maggio, Cassino and, in the movable assets of the late Antonio Senezio held in the Cassino branch of Banca Carige SpA., at the date of his death, while understandable having regard to the behaviour of the first defendant, nonetheless amounts to intermeddling in the estate of the late Antonio Senezio. This intermeddling on the part of the second defendant has not caused loss or damage to the estate.

Both defendants sought to explain their intermeddling by claiming that they had acted only pursuant to legal advice received from their respective lawyers in Cassino. However, I find on the evidence that whatever advice they may have received from those lawyers in Cassino must be regarded as entirely vitiated by the failure on the part of both defendants to disclose to them facts of the utmost materiality and additionally in the case of the first named defendant, by her conscious, deliberate and fraudulent representation that she was the sole heir of the late Antonio Senezio. In any event, even if such legal advice served to explain the actions of the second defendant and some only of the actions of the first defendant it could not excuse their intermeddling in the assets of the estate of the late Antonio Senezio. I am quite satisfied on the evidence and I find that neither defendant ever intended to disclose to the executors of the Irish will of the late Antonio Senezio or to the Irish revenue authorities the existence of any of these assets of the late Antonio Senezio in the Republic of Italy.

I find on the evidence that both defendants, despite the repeated warnings given to them by the first plaintiff in the course of the correspondence which passed between them, between the 2nd March, 2009 and the 28th February, 2010, continued to intermeddle in the assets of the late Antonio Senezio up to the 19th February, 2010, on which date a meeting was to take place at the offices of Grosso and Maldonado, Solicitors at 6 Clanwilliam Square, Dublin, to finalise and sign a, "Private and Confidential Agreement to Facilitate Execution of the Italian Estate of the late Antonio Senezio". I am satisfied that this meeting would have taken place and the agreement would have been signed and acted upon by both defendants, without any notice either to the plaintiffs or to the Irish revenue authorities, but for the fact that the second plaintiff informed the first plaintiff of the proposed meeting and, acting on the advice of the first plaintiff and of Counsel declined to attend. Further, these proceedings were commenced on the 18th February, 2010, claiming an injunction prohibiting the defendants and each of them from executing any such document or agreement. In addition, the evidence of the pressure exerted on the first defendant by the second defendant and by Orazio Grosso, solicitor on his behalf to honour the agreement made at the family meeting on the 15th March, 2009, was most disconcerting.

In the circumstances, the only proper inference to be drawn from the evidence is that the defendants and each of them would continue to intermeddle in the assets of the estate of the late Antonio Senezio unless restrained by order of this Court. I will therefore order that the defendants and each of them, their servants and agents, be restrained from intermeddling in any manner whatsoever in the assets of the estate of the late Antonio Senezio wheresoever located both within and outside Ireland. I will order that they also be restrained from executing by themselves, their servants or agents or by anyone on their behalf any document or agreement affecting the immovable or movable assets of the estate of the late Antonio Senezio wherever located both within and outside Ireland without further order of this Court.

I find on the evidence that the first defendant received in total a sum of €238,861.93 out of the movable assets of the estate of the late Antonio Senezio. On the 30th June, 2008, the sum of €9,313.34 was paid into her Atina account from the sale of the Banca Carige shares and on the same day €5,730.10 from the sale of Unicredito Ord. shares. On the 15th July, 2008, the sum of €64,118.09 was paid into her Atina account, being the enhanced value of the Carige liquid euro shares. On the 6th August, 2008, a sum of €159,700.45 was transferred by Banca Carige SpA, to her Permanent TSB Bank account at Rathfarnham, Dublin, being one half of the money in current account No. 2357/CAT.80 in the Cassino branch of the bank.

Of the remaining movable assets of the late Antonio Senezio in the Republic of Italy, a sum of €164,069.50 has been lodged by Banca Carige SpA., in this Court to the credit of this action. A further sum of €8,433.55 has been paid or credited to Antoinette Salveta representing one half of the money in current account No. 2357/CAT.80 on the 13th February, 2007, the date of death of the late Antonio Senezio. The sum of €159,700.45 has been paid into this Court to the credit of this action by Sylvester Rabbitte.

I find that the first defendant must repay to the plaintiffs, as executors of the Irish estate of the late Antonio Senezio the sum of €79,161.53 paid by her to Rabbitte Catering Servicetrm in alleged repayment of an alleged loan to her by Sylvester Rabbitte to enable her to pay Italian inheritance tax of €47,811.47 and €24,746.14, in total €72,657.61 together with, alleged interest on this alleged loan of €6,503.92. The first defendant claimed in evidence that she knew that she would have to pay some interest on this alleged loan because Sylvester Rabbitte had to account for this money, but she admitted in cross-examination by Senior Counsel for the plaintiff that neither the payment of interest nor the rate of interest had been discussed and agreed between them. She claimed that Banca Popolare del Cassinate Atina had insisted that this sum of €79,161.53 be transferred to Rabbitte Catering Servicetrm in seven tranches of €10,056.16 with a final tranche of €9,005.16. No evidence to explain this alleged insistence was furnished by the first defendant at the hearing of this action. If this sum of €72,657.61 was in fact paid by the first defendant in discharge of Italian inheritance tax, - and on the evidence the Italian revenue authorities are disputing the payment of the sum of €24,846.14, - this indebtedness arose entirely by reason of her fraudulent claim by as sole heir of the late Antonio Senezio to legal succession to his assets in the Republic of Italy. No part of this money is recoverable by the first defendant from the estate of the late Antonio Senezio.

In her Declaration of Succession to the movable assets of the late Antonio Senezio in the Republic of Italy, dated the 17th March, 2008, the value of those assets is stated to be €457,701.45. However, the total amount of movable assets of the late Antonio Senezio traceable on the evidence is €411,365.30. In these circumstances a further sum of €46,336.15 appears to remain due and owing by the first defendant to the estate arising out of her intermeddling in the movable assets of the estate of the late Antonio Senezio. However, on the balance of probabilities I am satisfied that this seeming deficit is in fact due to an over valuation in that Declaration of Succession of the Unicredit ordinary shares, the Banca Carige SpA, shares and, the Carige step-up 03/07 units. I will therefore order that the first defendant pay to the plaintiffs the sum of €79,116.53 with interest thereon from the 28th July, 2008, to the date hereof pursuant to the provisions of s. 22(1) of the Courts Act 1981, and thereafter in accordance with the provisions of O. 55, r. 42 of the Rules of the Superior Courts.

The first defendant claimed that her intermeddling in the assets of the estate of the late Antonio Senezio in the Republic of Italy was motivated solely by a concern to protect and, to preserve those assets for the benefit of such members of the extended Senezio Family as might ultimately be found to be entitled to them. In her Counterclaim in this action, the first defendant claimed a sum of €123,454.12 as money due to her by the estate of the late Antonio Senezio for money paid by her for the benefit of the estate in the preservation and additionally or alternatively the collection of the movable and immovable assets of the late Antonio Senezio in the Republic of Italy. I find on the evidence that the first defendant did not obtain and take possession of the immovable and movable assets of the late Antonio Senezio in the Republic of Italy and, deal with and convert into money shares forming part of those movable assets, for the purpose of collecting and preserving those movable and immovable assets. I reject her claim in this regard and dismiss the counterclaim based on it.

In her evidence to me the first defendant claimed that a "friend" in Italy, - never identified, - had told her that if inheritance tax was not paid the State authorities would claim possession of the two real estate properties at Cassino. She also claimed that Avv. Di Vizio had warned her that Mr. Franco Citro might claim title to the real estate property at Via Casilina Sud based on long possession. Avv. Di Vizio was not called in evidence by the first defendant at the hearing of this action. There was no evidence before me that he had been informed by the first defendant that Mr. Citro, as, I find on the evidence, she well knew, had at all times been employed as a caretaker of the real estate property at Via Casilina Sud by Peter Senezio and Antonio Senezio and, following the death of Peter Senezio by the late Antonio Senezio and, probably even before that by her parents Attilio and Benedetta Senezio. Moreover, there was no evidence before me that any such claim had been made or even intimated by Mr. Citro. Indeed the evidence established that Mr. Citro had informed the first defendant that money was owed to him for various payments made by him on behalf of the late Antonio Senezio for local charges, utility services and day to day expenses, on foot of a running account maintained by him whereby he was given a sum of money to meet these charges and expenses each time one of the Senezio brothers stayed at the property and, anything he was required to expend over and above this sum would be refunded to him on the next visit. The second defendant produced in evidence a Book of Account which I am satisfied was maintained by Mr. Citro pursuant to this arrangement.

The evidence before me from the defendants and the second plaintiff was that in return for his own services as caretaker of the property, Mr. Citro had the use of the land surrounding the real estate property at Via Casilina Sud for hay. If Avv. Di Vizio advised the first defendant, as she claimed in evidence before me to file a Declaration of Succession in order to forefend against an adverse possession claim by Mr. Citro and, to prevent the two real estate properties at Cassino from being seized by State or local authorities for non payment of tax or charges, I infer that he did so only because she had informed him that she was the full sister and sole heir of the late Antonio Senezio. Avv. Carlo Bottino gave evidence at the hearing of this action, which was not challenged or discredited, that the law of the Italy allows a period of six months from the date of death within which to file a Declaration of Succession. He told me that there was no danger that the State revenue authorities would seize real estate properties even after this period had elapsed. He told me that the State revenue authorities have a charge on properties passing on death for inheritance tax and he stated that these could be and often were paid years later, but then subject to penalties for late payment. He gave this opinion as a practising civil lawyer specialising in national and international real estate law and succession law. Avv. Bottino told me that if after many notices given over a long period, local taxes or charges remained unpaid the local authority would eventually seize the property in question. I accept the evidence of Avv. Bottino that even if the Italian will of the late Antonio Senezio did not exist, the Declaration of Succession filed by the first defendant to the two real estate properties at Cassino as sole heir of the late Antonio Senezio was false having regard to the existence of Luigi Senezio, her surviving full brother and of D.H. surviving natural son of the late Antonio Senezio.

I am satisfied that the first defendant deliberately and consciously filed two false Declarations of Succession, fraudulently induced the Judge of the Civil Court of Cassino to make Order No. 458/08 on the 7th July, 2009, and, procured Banca Carige SpA., to transfer movable assets of the estate of the late Antonio Senezio to her. I am satisfied that she did this for the purpose of obtaining exclusive possession and sole ownership of the immovable and movable assets of late Antonio Senezio and not as a salvor, or a trustee, or in any other representative capacity whatsoever.

When asked in cross examination why, in April, 2007 she did not tell Avv. Di Vizio about Luigi Senezio her surviving brother or, about D.H. the surviving natural son of Antonio Senezio or, about any of the persons who had been at the family meeting on the 14th January, 2006, in order that he might give properly informed advice in the matter, the response of the first defendant was that he had never asked her anything about the family. This is scarcely surprising as she had presented herself to him as sole heir of the late Antonio Senezio. The first defendant was asked in cross-examination why she had made no attempt to correct the record or to contact any of these people and inform them of what she had done when all the immovable and most of the movable assets of the estate of the late Antonio Senezio were securely in her possession. Her response was that she did not consider this necessary as she was not claiming these assets for herself, but was holding them in trust for whoever might be declared entitled to them. As with her assertion that she only acted to safeguard those assets because no one else appeared to be taking any interest in them, I reject this latter claim also.

The evidence established that Avv. Matera published the Italian will of the late Antonio Senezio at Cassino on the 21st June, 2007, just over four months after his death. In November, 2007 the second defendant travelled to Cassino and put Avv. Matera in funds to discharge Italian INHERITANCE TAX of €4,919.07 arising on his succession to the real estate property at Via Casilina Sud as sole devisee under that will. On the balance of probabilities it may be that the first defendant was not aware of these matters. However, I find her claim to have acted as she did because no one else appeared to be taking any interest whatsoever in the immovable and movable assets of the estate of the late Antonio Senezio in Cassino to be utterly disingenuous.

The second defendant did not respond to her letter to him dated the 12th June, 2007, asking if he was dealing with the estate of the late Antonio Senezio in Italy. Having witnessed the high degree of suspicion and hostility existing between the first defendant and the second defendant during the hearing of this action I am prepared to accept that the second defendant did not reply to her letter because he considered that she was embarking on a course of attempting to go behind the agreement reached at the family meeting on the 14th January, 2006, that the late Antonio Senezio would be accepted as sole owner of the real estate property at Via Casilina Sud following the death of Peter Senezio. The first defendant wrote a letter in similar terms to the second plaintiff dated the 12th June, 2007, - as also did her daughter N.M. on the 2nd May, 2007. In his reply to the first defendant, the second plaintiff stated:-

"I have reviewed all the paperwork again regarding Uncle Tony's estate. No instructions or information regarding your query have been left or given to me, nor am I aware that any such exists."

In reply to N.M. the second plaintiff said:-

"Sorry I cannot help you. I am only aware of the details of Uncle Tony's estate as listed in his will which Paul McCormack has."

Having had no response from the second defendant and having received this response from the second plaintiff it is in my judgement significant that the first defendant, who is now seeking in this action to recoup the costs of her involvement, did not inform the second defendant or the second plaintiff or any of the family members who had been present at the meeting on the 14th January, 2006, of the advice she claims she had been given in Cassino regarding the possible danger to the assets of the estate of the late Antonio Senezio there. I find it significant that she did not ask for their proposals or assistance nor did she put them on notice that unless she received a response she intended without further communication to them to claim those assets as sole heir in order to preserve them and she would claim reimbursement from them of any legal or other expenses incurred by her if obliged to adopt such a course. It is a reasonable inference that they would all have recalled the similar threat which the defendants and the second plaintiff agreed had been made by the late Antonio Senezio at the family meeting on the 14th January, 2006, that if those present did not accept him as sole owner of the real estate property at Via Casilina Sud following the death of Peter Senezio and the inability of the latter's Italian lawyer to find any will of his in Italy.

I am also satisfied that the manner in which the first defendant dealt with the proceeds of the wrongful sale by her of the shares forming part of the movable assets of the estate of the late Antonio Senezio in Cassino and, the manner in which she dealt with the sum of €159,700.45 wrongfully removed by her from current account No. 2357/CAT.80 at the Cassino branch of Banc Carige SpA, are indicative of a deliberate stratagem on her part to render those sums untraceable and inaccessible. If, as she claimed in evidence, her sole concern with the regard to the latter sum of €159,700.45 was to keep it secure and accessible in case she should be called upon by a Court in Italy to account for it, she could have left it in her account at Banca Popolare del Cassinate, Via Volschi, Atina in the Republic of Italy or in her account at Permanent TSB Bank, Rathfarnham, Dublin.

I do not accept the evidence of the first defendant, that, to her horror Avv. Di Vizio advised her that he considered that it would be better that this sum of €159,700.45 be transferred to her account in Ireland for safekeeping, because he had been informed by Banca Carige that "someone had tried to take it", (the emphasis is mine). A communication in such terms from Banca Carige SpA to Avv. Di Vizio is altogether improbable. As the mandate given by the late Antonio Senezio to the second defendant ceased to have effect on the death of the Antonio Senezio, Banca Carige SpA, would have known by reference to its own records that the only person other than the alleged sole heir of the late Antonio Senezio entitled to make any claim to the money held in current account No. 2357/CAT.80 was and is Antoinette Salveta.

I do not accept the evidence of the first defendant that it was Avv. Di Vizio who advised her to sell the shares in the safe custody of securities policy No. 626071/CAT.11, held by the late Antonio Senezio in Banca Carige SpA., at the date of his death, in order to repay the alleged loan of €72,657.61, allegedly obtained by her from Sylvester Rabbitte in order to pay Italian inheritance tax, together with interest in some unascertained amount at some entirely unascertained rate. Avv. Di Vizio was not called in evidence by the first defendant, yet I find that he was repeatedly cited by her in attempting to explain improbabilities in her evidence, ie., that she only learned from him about the sentence imposed by the Criminal Court in Cassino on the 9th July, 2009, when she contacted him during cross examination by Senior Counsel for the plaintiff, during the course of the present action that he did not tell her and she did not know until November, 2007 that the Italian will of the late Antonio Senezio had been published in Cassino on the 21st June, 2007, and, that she only learned about the real estate property at Via Monte Maggio, Cassino from him, even though it was subsequently shown in cross examination by Senior Counsel for the plaintiffs that she had sold her interest in that property to her brothers Peter Senezio and Antonio Senezio between the death of her mother in February, 1981 and October, 1985 something which she claimed to have forgotten.

Throughout the hearing of this action, both defendants, and in particular the first defendant, asserted that the second plaintiff was at all material times aware that the late Antonio Senezio had died leaving assets in the Republic of Italy. They claimed that if he had disclosed this to the first plaintiff there would not now be a necessity for the plaintiffs to deliver a corrective inland revenue affidavit (which the defendants claimed was not required in any event) or for these proceedings. In her defence, the first defendant further claims that the second plaintiff was negligent and in breach of a fiduciary duty owed to her in:-

Failing to inform her of the nature and extent of the estate of the late Antonio Senezio in the Republic of Italy.

Failing to make adequate inquiries from her or from her daughter N.M., about the nature and extent of the estate of the late Antonio Senezio in the Republic of Italy.

Failing to inform the first plaintiff or the Irish Revenue Authorities of the nature, extent and history of ownership of the immovable assets of the late Antonio Senezio in the Republic of Italy.

Failing to inform the first plaintiff of the letter to him from N.M. dated the 2nd May, 2007, or of her own letter to him dated the 12th June, 2007, regarding the estate the late Antonio Senezio in Italy.

Failing to take any action on foot of either letter.

Facilitating or expressly or impliedly acquiescing in the transfer of the real estate property at Via Casilina Sud from Peter Senezio to the late Antonio Senezio without reference to the estate of Peter Senezio, by his participation in and his approbation of the proceedings at the Family Meeting on the 14th January, 2006.

I find on the evidence that the second plaintiff did not know that the late Antonio Senezio had died leaving immovable or movable assets in the Republic of Italy. I am satisfied that the second plaintiff knew that the late Antonio Senezio owned the real estate property at Via Casilina Sud, Cassino, because he had stayed there on vacations and, had been present at the family meeting on the 14th January, 2006, when the late Antonio Senezio claimed title to the half share of his deceased brother Peter Senezio in that property and his claim had been admitted and conceded by all present. I am satisfied on the evidence that the real estate property at Via Monte Maggio, Cassino, was not mentioned at this family meeting and, I find that the second plaintiff did not become aware of its existence or, of the existence of movable assets of the late Antonio Senezio in the Cassino branch of Banca Carige SpA, until early December, 2008 when he was served with the Court of Cassino Act of Summons issued by Avv. Pasquale Matera on the 28th October, 2008, on behalf of the second defendant.

The second plaintiff gave evidence at the hearing of this action, that about six weeks after the family meeting on the 14th January, 2006, he visited the late Antonio Senezio at his home at Clontarf, Dublin. He recalled that they sat in the garden on a bench. He stated that the late Antonio Senezio told him that he was "leaving" or "giving", - the plaintiff used both terms in his evidence, - the real estate property at Via Casilina Sud to the second defendant. The second plaintiff is a civil engineer in the service of a national utility provider since 1996. I accept the evidence of the second plaintiff that he assumed that the late Antonio Senezio had given this real estate property at Via Casilina Sud to the second defendant. It was not put to the second plaintiff that "leaving" a real estate property is commonly understood to mean leaving that property by will so that it remains an asset of the donor at death. However, I am satisfied that it is being wise with hindsight to consider that the second plaintiff ought to have been alerted to this meaning when the first plaintiff acquainted him with the list of assets contained in the sealed envelope and opened by the first plaintiff as directed following the death of the late Antonio Senezio on the 13th February, 2007.

The Grant of Probate to the estate of the late Antonio Senezio issued in Ireland on the 10th June, 2008. Admitted documentary evidence established that on the 29th or the 30th September, 2008, the second plaintiff executed a document headed, "Repubblica Italiana, Atto Notorio" and, this was accepted by him and he identified his signature on the document. This document affirms that the second plaintiff is one of the representatives of his late mother Antonietta Senezio, a full sister of the late Antonio Senezio and, a daughter of the late Attilio Senezio and Benedetta Morelli his wife. The other signatures on this document read, Luigi Senezio, Robert Paolozzi, Stella Staunton and the second defendant. The second defendant accepted in cross examination by Senior Counsel for the plaintiffs that it was he who signed "Stella Staunton" on this document. He claimed that he had done so with her authority and on her behalf. However, Stella Staunton told me that she has never visited the Italian Embassy in Dublin and, that her purported signature on this document was a forgery. It was not put to her that she had authorised the second defendant to execute this document on her behalf. The second plaintiff also told me in evidence that he was not present at the Italian Embassy, Dublin on either the 29th September, 2008, or the 30th September, 2008, and recalled signing some document at a different location.

I accept the evidence of the second plaintiff that he signed this document because the second defendant had told him that the first defendant had falsified documents in Italy and was claiming the real estate property at Via Casilina Sud and, he needed his support in signing that document to defeat her claim. I do not accept the evidence of the second defendant that on this occasion he had told the second plaintiff about the real estate property at Via Monte Maggio, Cassino, and, about the money and securities held by the late Antonio Senezio in the Cassino branch of Banca Carige SpA. I am satisfied that the second plaintiff did not know then that the second defendant was only named as devisee of that property in a will made by the late Antonio Senezio in Italy on the 29th September, 2006, and, that he did not know then that he himself was a potential beneficiary in the sum of €25,000 under the terms of that Italian will. I am satisfied on the evidence and I so find that the second plaintiff did not become aware of the existence of the Italian will of the late Antonio Senezio until he was served with a certified copy of the Court of Cassino Act of Summons by the Chief State Solicitor in early December, 2008 and, was not aware of the contents of this Italian will until some date after the 18th February, 2009.

For the same reason I am satisfied that the replies of the second plaintiff to the letters received by him from the first defendant dated the 12th June 2007, and from her daughter N.M. dated the 2nd May, 2007, to which I have already adverted, were genuine and truthful. I cannot accept that he would reply to the first defendant on the 25th June, 2007, stating that he was not aware that any estate existed in Italy if he knew that such an estate did exist and, that she and he were both potentially entitled to a share in that estate. Again, without the benefit of hindsight it would be facile to claim that the second plaintiff ought to have gone on in his reply to raise a query as to what estate of the late Antonio Senezio in Italy they were both referring to. I find that the second plaintiff had no fiduciary or other duty to the first defendant or, a duty as co-executor of the Irish will of the late Antonio Senezio to make any such an inquiry from the first defendant or from N.M. I do not consider that any fault can be attributed to the second plaintiff arising from his failure to bring these letters from the first defendant and from N.M. to the attention of the first plaintiff.

I accept the explanation offered by the second plaintiff, - that he panicked when he realised the seriousness of the issues for the executors and for the extended Senezio Family raised by it, - for his failure, between early December, 2008 and the 18th February, 2009, to bring to the attention of his co-executor, the first plaintiff, the Court of Cassino Act of Summons of the 28th October, 2008, served on him by the Chief State Solicitor. There was no evidence before me that he took any advice or, made contact with anyone regarding this Act of Summons and what it revealed in the interval. His actions on this occasion were also consistent with his action on the 25th November, 2009, when he wrote to the first plaintiff disclosing that he had been advised to obtain representation before the Civil Court in Cassino in respect of his, "interest", in the assets of the late Antonio Senezio in the Republic of Italy and, acting on this advice had given a power of attorney to Orazio Grosso, solicitor, for that purpose. He told the first plaintiff that he had become concerned that this might be giving rise to a conflict of interest with his duties as co-executor of the Irish will of the late Antonio Senezio and, he sought advice from the first plaintiff as to whether he should withdraw that power of attorney or permit matters to continue. He also brought to the attention of the first plaintiff the letter, dated the 5th February, 2010, from Grosso and Maldonado, solicitors, and the enclosed "Private and Confidential Agreement to Facilitate Execution of the Italian Estate of the late Antonio Senezio". It would of course have been preferable had he sought the advice of the first plaintiff before seeking such representation, but I do not consider that his failure in that regard is deserving of any censure by this Court.

The second plaintiff is a co-executor with the first plaintiff in the Irish will (29th May, 2005), of the late Peter Senezio who died on the 26th August, 2005, as well as of the Irish will of the late Antonio Senezio. A Grant of Probate of the will of the late Peter Senezio issued in Ireland on the 6th June, 2006. The Inland Revenue Affidavit sworn by the plaintiffs as executors of that estate on the 20th April, 2006, made no reference to any assets held by the late Peter Senezio in the Republic of Italy. The evidence before me established that the second plaintiff was present at the family meeting on the 14th January, 2006, which dealt with the real estate

property at Via Casilina Sud, Cassino, the half share of the late Peter Senezio in that property and, the insistence on the part of the late Antonio Senezio that he should succeed to that half share. All present including the first defendant and her daughter (by adoption), the natural daughter of the late Peter Senezio acceded to his demands and the late Antonio Senezio became registered in Italy as sole owner of that property on the 8th June, 2006.

In such circumstances I find that the first defendant cannot now be suffered to complain that the second plaintiff, as co-executor of the Irish and only will of late Peter Senezio was negligent and in breach of a fiduciary duty owed to her in, "facilitating or expressly or impliedly acquiescing in that transaction". All persons entitled under the intestacy/inheritance laws of the Republic of Italy, as they were propounded to me by Avv. Carlo Bottino, especially N.M., then a person of full age and of sound mind and, under the intestacy laws of Ireland, assented to the transfer of the half share interest of the late Peter Senezio in the real estate property at Via Casilina Sud to Antonio Senezio. No application was made by the first defendant or by N.M., to set aside this agreement as having been procured by duress. The second plaintiff should of course, have informed his co-executor, the first plaintiff of the existence of this asset of the late Peter Senezio in the Republic of Italy, and, this may now be a matter of concern to the Irish revenue authorities. I therefore dismiss the defence and counterclaim of the first defendant based upon alleged negligence and breach of fiduciary duty on the part of the plaintiffs or either of them.