

**THE HIGH COURT ON CIRCUIT
NORTHERN CIRCUIT
COUNTY OF DONEGAL**

**[2006 No. 134 CA]
[E88/2005]**

BETWEEN

SEAN MCGLYNN AND CATHERINE MCGLYNN

PLAINTIFFS

AND

DANIEL GALLAGHER AND CHARLES GALLAGHER

DEFENDANTS

Judgment of Mr. Justice John Edwards delivered on the 8th day of October, 2007.

1. This is an appeal against an Order of His Honour Judge John O'Hagan made at Letterkenny on the 9th day of May, 2006 wherein the learned Circuit Court Judge struck out the defence of the first named defendant dated 16th March, 2006 on the basis that it failed to disclose any reasonable answer to the plaintiffs' claim and was scandalous, frivolous and vexatious. Further, the learned Circuit Court Judge granted judgment to the plaintiffs in default of defence as against the first named defendant consisting of a declaration and certain injunctions as claimed in the plaintiffs' Equity Civil Bill. He further awarded the costs and expenses of the application to the plaintiffs. The first named defendant appeals against the whole of the said Order of His Honour Judge O'Hagan. He was not legally represented at the appeal before me and appeared in person. By my leave his wife Elva Gallagher was permitted to make representations on his behalf at the hearing of the appeal. However, Elva Gallagher is not a party to the proceedings.

The Plaintiffs' Proceedings

2. The plaintiffs are the legal personal representatives of Margaret (otherwise Madge) Friel deceased late of Drumdeevin, Termon in the County of Donegal. The said Margaret (otherwise Madge) Friel died on 31st day of March, 2001 at Lagan Valley Nursing Home, Ballindrait in the County of Donegal having made her last will and testament with codicil on the 28th day of December, 1994 whereby she appointed the plaintiffs as executors of the said will. A Grant of Probate was extracted by the plaintiffs on 8th of October, 2003. This has been exhibited before me as has the will and codicil.

3. By her said will and codicil the deceased devised, *inter alia*, her farm at Knocknabollan contained in folio number DL29754 of the Register of Freeholders in the County of Donegal to her cousin Anton Gallagher of Porthall, Lifford in the County of Donegal in fee simple. The deceased's said cousin Anton (otherwise Anthony) Gallagher died on 4th March, 2001 thereby predeceasing the deceased and on the death of the deceased the devise to Anton (otherwise Anthony) Gallagher became adeemed, and the farm at Knocknabollan fell to be divided amongst the next of kin of the deceased pursuant to s. 74 of the Succession Act, 1965 and the Rules of Intestacy. The deceased's said cousin Anton Gallagher was the father of the defendants.

4. It is pleaded at para. 8 of the plaintiffs' Equity Civil Bill that following the extraction of the Grant of Probate the plaintiffs engaged auctioneers to sell the farm at Knocknabollan contained in folio DL29754 aforesaid. It is pleaded that on or about the 22nd March, 2004 the defendants and/or each of them wrote to the plaintiffs' auctioneer and asserted an interest in the property established by occupation. The plaintiffs contend that this was done falsely and maliciously and in an attempt to interfere with the sale of the property. It is pleaded that the defendants have continued to falsely and maliciously deny that the deceased was the sole legal and beneficial owner of the property and that the plaintiffs are entitled to sell the said property as executors of the deceased's estate, despite repeated requests for the defendants to desist. It is further pleaded that the defendants and each of them have further claimed that the succession laws have no application and that the said bequest to Anton Gallagher should be transferred to his heirs, successors and/or assigns.

5. It is pleaded at para. 9 of the Equity Civil Bill that the plaintiffs subsequently agreed the sale of the property to Eunan Gallagher, Solicitor (in trust) for a purchase price or sum of €170,000 subject to the special condition *inter alia* that the plaintiffs would issue proceedings for declaratory relief that the deceased was the sole legal and beneficial owner of the property and that the plaintiffs are entitled to sell the property as executors of the deceased's estate. The present proceedings were issued to that end. It is further pleaded that the defendants and/or each of them are attempting to deny the plaintiffs' entitlement to the said lands as executors of the estate of the deceased, who was registered as full owner on or about the 18th April, 1953. The plaintiffs allege that the defendants and/or each of them have interfered with the sale and threaten and intend unless restrained by court order to continue to wrongfully falsely and maliciously deny the plaintiffs' title to the said lands as executors of the estate of the deceased. It is pleaded that the defendants and/or each of them, their servants and/or agents have no rights whatsoever over the deceased's lands now or in the past. It is further pleaded that the defendants and/or each of them have not been in occupation of the said lands. Further, it is pleaded that the defendants by their actions have caused the estate to suffer loss, damage, inconvenience and expense which is continuing. The prayer to the Indorsement of Claim in the Equity Civil Bill claims diverse reliefs including the declaration and injunctions granted by His Honour Judge O'Hagan.

The Defence

6. The Equity Civil Bill was issued on 3rd October, 2005 and by a letter dated 17th October, 2005 the second named defendant, Charles Gallagher, wrote to the plaintiffs confirming that he was not in any way occupying or claiming possession of the lands at Knocknabollan contained in folio 29754 aforesaid. As a consequence of this letter no further steps have been taken in the proceedings with respect to the second named defendant and no orders have been sought against him. However, the first named defendant wrote to the County Registrar for the County of Donegal on 16th March, 2006 indicating that he wished to defend the proceedings and setting out in the said letter the grounds of his defence. Although it is not strictly in conformity with the Rules of the Circuit Court, this document has been treated (quite correctly) as a pleading in the nature of a "Defence" in answer to the plaintiffs' Equity Civil Bill. The letter of 16th March, 2006 was in the following terms:-

"Dear Sir or Madam,

I wish to defend these proceedings on the grounds that Mr. Sean McGlynn has been informed by Probate that Corrective Affidavits are requested and should have been forwarded to Probate as serious discrepancies have been discovered on Revenue Commissioners Affidavits that he has duly sworn for Probate.

2. The testator was unfairly treated by Mr. Sean McGlynn when he failed as directed to pay her fees to the Nursing Home and release to her her money where and when she needed it. The late Madge Friel was left penniless for the six years she spent in care. Despite owning eight farms of land and having €131,000 in savings in bank accounts which were in the care of Mr. McGlynn.
 3. No Residue Clause on Will or Codicil.
 4. Will and Codicil are the same date.
 5. Money for Letting of Lands not on Revenue Affidavits as advertised in local newspaper, The Derry People and Donegal News dated 22nd November, 1996.
 6. Willing to change the Will from Gallagher Sisters to Gallagher Daughters of his own accord.
 7. Clonkillymore Farm folio DL30462 not on the Will at all, but squatted on and obtained through Squatters Rights on 7th May, 2004. And was also up for letting on 22nd November, 1996.
 8. Letterfad Farm folio DL29759 mentioned on the will going to Anton Friel but not entered on Schedule of Lands and Buildings on Revenue Affidavits. This farm has also been successfully claimed by Squatters Rights on 16th October, 2002.
 9. Mr. Sean McGlynn's first letter to my mother Mrs. Kathleen Gallagher dated 30th May, 2001 in it he said he was a beneficiary in the Will as well as being the Executor and Administrator, which he later remedied on 27th June, 2001.
 10. Valuation of Land Folio DL29754, valued at €38,100 on Revenue Affidavits is now selling at €170,000 Mr. McGlynn has a contract drawn up for sale of this land on Civil Bill E88/05 Paragraph 9.
 11. Mr. McGlynn has sold land folio DL29754 by Private Treaty when it should have been Public Auction.
 12. Mr. McGlynn should not be deducting costs as he and his Wife are Executors of the will.
 13. The late Madge Friel's wishes have not been fulfilled as to her Gold Watch with her initials on it. This watch is mentioned on the Will but is not left to anyone. A careful and skilful Solicitor would have noticed this unfinished. This is a fine example of the misconduct of Mr. McGlynn.
 14. Bank documents are not attached to the late Madge Friel's assets on Revenue affidavits on Probate.
 15. Mr. McGlynn accuses me of writing to the Auctioneer who was selling the land on Civil Bill E88/05 to stop the sale, when it was my Solicitor who wrote to Mr. McElhinney.
 16. Mr. McGlynn ignored my solicitor Mr. Hewson and sent the Civil Bill E88/05 by registered post to my home.
 17. Mr. McGlynn is guilty of Slander of Title by posting the Civil Bill to a complete stranger.
 18. There is no surname on Capital Acquisitions Tax Schedules of Lands and Buildings and no folio number on land been sold on Revenue Affidavits.
 19. There is no Farming Assets entered at part 3, 4(a) on Revenue Affidavits for 18 sheep advertised for sale on 22nd November, 1996 by Mr. McGlynn.
 20. There are people mentioned on the Will as Madge Friel's cousins, they are not cousins of Madge Friel's.
- I invoke Article 40.6.1 of the Constitution and say that under s. 4, 6, 10, 11, 25, 26, 27, 28 of the Criminal Justice [Theft and Fraud Offences Act, 2001] this Solicitor is guilty of an Offence and wrong doing.

Signed

Daniel Gallagher"

The Motion before His Honour Judge O'Hagan

7. By a Notice of Motion dated 21st April, 2006 the plaintiffs gave notice of their intention to apply to the Circuit Court on 9th May, 2006 at 10.30 a.m. or at the first available opportunity thereafter for the following orders:-

- "1. An Order striking out the Defence of the first named defendant on the basis that same discloses no reasonable answer to the plaintiffs claim herein.
2. In the alternative an Order striking out the defendant's Defence dated the 16th March, 2006 on the ground that same is scandalous.
3. In the alternative an Order striking out the defendant's Defence dated 16th day of March, 2006 on the grounds that same is frivolous and vexatious.
4. An Order for Judgment against the first ... named defendant .. in the following terms:-

(a) a Declaration that the deceased Margaret Friel (otherwise Madge Friel) was the sole legal and beneficial owner of the property comprised in folio DL29754 of the Register County Donegal and that the plaintiffs are entitled to sell the said property as executors of the deceased's estate.

(b) an Injunction restraining the first named defendant his servants and/or agents from denying the plaintiffs title to the said property as executors of the estate of the deceased.

(c) an Injunction restraining the first named defendant his servants and/or agents from interfering with the sale of the said property.

(d) such further or other Order as to this Honourable Court shall seem just and meet.

(e) the Costs of these proceedings.”

8. The motion was grounded upon an affidavit of Sean McGlynn sworn on the 21st April, 2006. In that affidavit Mr. McGlynn deposes that he is a solicitor and one of the personal representatives of Margaret Friel (otherwise Madge Friel) late of Drumdeevin, Termon in the County of Donegal and the first named plaintiff in the proceedings. He states that by her last will and testament and one codicil made the 28th day of December, 1994 the said Margaret Friel (otherwise Madge Friel) did *inter alia* “give devise and bequeath my farm at Knocknabollan (folio 29754 County Donegal) to my cousin Anton Gallagher of Porthall, Lifford in fee simple”. The Grant of Probate and the will and codicil were exhibited before me. He further deposed that the said Anton Gallagher the intended devisee died on 4th March, 2001 and Anton Gallagher’s death certificate is also exhibited. He further deposed that the testatrix Margaret (otherwise Madge) Friel died on 31st March, 2001 and her death certificate is exhibited. He then states that in accordance with the law of succession the devise to the said Anton Gallagher became adeemed and the property the subject thereof fell into the residue of the estate of the late Margaret (otherwise Madge) Friel. He says that by a letter addressed to Mrs. Anton Gallagher, Porthall, Lifford, Co. Donegal (the widow of the said Anton Gallagher) the said Mrs. Gallagher was advised of the devise in the will of the late Margaret (otherwise Madge) Friel in favour of her late husband Anton Gallagher, but that, unfortunately, due to his predeceasing the testatrix, the land would now form part of the residue of the estate of the testatrix. Mr. McGlynn exhibits a course of correspondence with the said Mrs. Anton Gallagher and with Wilson and Simms, Solicitors, acting on her behalf. He states that following on from that correspondence the lands were subsequently offered for sale by McElhinney Properties by way of private treaty. He deposes that a sale of the lands was agreed in 2004 and a contract was entered into between the purchaser and the personal representatives of the deceased. He states that because there is no residue clause in the last will and testament, or codicil, of the deceased the residue fell to be divided among her next of kin, namely her nephews and nieces of which there are approximately 18 in total. At paragraph 9 of his affidavit Mr. McGlynn deposes that at no time have any proceedings been brought or threatened by any of the beneficiaries to the last will and testament of the late Margaret (otherwise Madge) Friel and that in fact the estate has been substantially distributed, save and except for the property at Knocknabollan in folio DL29754 aforesaid. Mr. McGlynn states that the first and second named defendants did claim an entitlement in the property in correspondence through a firm of solicitors that acted for them at one point, namely Cleary and Company, Solicitors, of Raphoe, Co. Donegal. The course of correspondence between the offices of Cleary and Company, Solicitors, and Sean McGlynn and Company, Solicitors, is exhibited. Mr. McGlynn states that as neither the first nor second named defendant caused any proceedings to be issued on foot of their claim the plaintiffs caused the present proceedings to be issued seeking, *inter alia*, a declaration that the deceased was the sole legal and beneficial owner of the property in question and that the plaintiffs are entitled to sell the property as executors of the deceased’s estate. Mr. McGlynn deposes that the personal representatives are anxious to proceed with the sale of the property in question in order to complete the administration of the estate but that they have been unable to do so due to the actions of the first named defendant. He exhibits the letter of 17th October, 2005 from the second named defendant and confirms that no reliefs are being sought against the second named defendant in the circumstances. At paragraph 14 of his affidavit Mr. McGlynn asserts that the purported Defence of the first named defendant has been lodged for the purposes of delay only and that the same does not show or contain any valid grounds of defence to the plaintiffs’ action. He further deposes that the first named defendant is neither a devisee under the will of the testatrix nor a beneficiary of her estate. He is the son of the named devisee Anton Gallagher who predeceased the testatrix who was in turn a cousin of the testatrix. The only persons entitled in law to the residue of the estate are the nephews and nieces of the deceased. He further asserts that the first named defendant has not shown in his purported Defence that he has any entitlement to the lands the subject matter of the proceedings herein nor any entitlement in the estate of the late Margaret (otherwise Madge) Friel. Further, although the first named defendant previously claimed, through Cleary and Company, Solicitors, to be in occupation and possession of the lands the subject matter of these proceedings for many years, no such claim is made in his Defence nor does he claim to be entitled by adverse possession. The plaintiffs categorically deny that the first named defendant has been in occupation or possession of the lands and it is denied that he is entitled in any way, either legally or beneficially, to the same, or any part thereof.

9. A replying affidavit was filed on behalf of the first named defendant. This was an affidavit of Daniel and Elva Gallagher sworn on the 27th of March 2006. It is a relatively short document and it is appropriate to recite the substantive parts of it in full.

“1. We Daniel and Elva Gallagher say and believe that Mr Sean McGlynn Solicitor has been informed by Probate that a Corrective Affidavit is requested and should have been forwarded to Revenue as serious discrepancies have been discovered on Revenue Commissioners Affidavits that he has duly sworn for Probate.

Exhibit “A”

2. We say and believe that Mr Sean McGlynn has also been involved in Extracting Dubious Grants from Board Failte.

Exhibit “B”

Contrary to the Criminal Justice Theft and Fraud Act 2001. Section 25, 26, 27, and 28. Refer to Article 3. Liability of Legal Persons:

Paragraph 1.

Each Member State shall take the necessary measures to ensure that legal persons can be held liable for fraud, active corruption and money laundering committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on

- a power of representation of the legal person, or
- an authority to take decisions on behalf of the legal person, or
- an authority to exercise control within the legal person.

As well as for involvement as accessories or instigators in such fraud, active corruption or money laundering or the attempted commission of such fraud.

Paragraph 3.

Liability of a legal person under 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the fraud, active corruption or money laundering.

Article 40 1 and 3 of the Constitution states and I quote

1. All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral and of social function.

3.1. The State guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2. The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen."

10. The matter came on for hearing before His Honour Judge O'Hagan at Letterkenny on the 9th of May, 2006. Following a consideration of the evidence before him the learned Circuit Court Judge felt it appropriate to strike out the first named defendant's Defence on the basis that it failed to disclose any reasonable answer to the plaintiffs' claim and was scandalous, frivolous and vexatious. Further, the learned Circuit Court Judge granted plaintiffs judgment in default of defence as against the first named defendant in accordance with paragraph 4 of the Notice of Motion, and made the declaration and granted the injunctions prayed for therein. He further awarded the costs and expenses of the application to the plaintiffs.

The Appeal to the High Court

11. The matter came on for hearing before this Court on Monday the 30th of July, 2007. An appeal to the High Court from an Order of the Circuit Court involves a hearing de novo. In that context the plaintiffs sought leave to file in Court a supplemental affidavit of Sean McGlynn sworn on the 19th of July 2007, a copy of which, I was informed, had been served on the first named defendant so that he would have notice of its contents. The first named defendant confirmed that this was so and in turn sought leave to file a further affidavit by way of reply, which replying affidavit was sworn by Daniel and Elva Gallagher on the 28th of July 2007. The Court acceded to both applications and has received and considered both affidavits and the documents exhibited therein. It is necessary to refer to these affidavits in some detail.

12. Paragraphs 1 to 18 of Mr. McGlynn's affidavit of 19th July, 2007 consist largely of a rehearsal of matters already covered in his previous affidavit. However, at para. 19 thereof he deals expressly with the issues raised by the first named defendant in his Defence of the 16th of March 2006 in relation to the administration of the estate of the testatrix. He states that he has decided to do so without prejudice to his contention that the first named defendant has no *locus standi* in raising issues in relation to the administration of the estate of the testatrix as he is neither a devisee in the said will nor one of the persons entitled to share in the residue thereof, nor would he be a beneficiary on intestacy. In my determination Mr. Gallagher is absolutely right in what he says with respect of the standing of the first named defendant and there was no obligation on him whatever to deal with the issues raised by the first named defendant in relation to the administration of the estate. However, he has chosen to do so and in the circumstances is appropriate to put on the record what he has deposed to in that regard. He proceeds to address seriatim each of the points raised by the first named defendant in relation to the administration of the estate of the testatrix in the order in which they appear in the letter of 16th March, 2006. His evidence was as follows:-

"1. Nursing charges were included in the original Inland Revenue Affidavit but were not in fact added to the total debts therein. This was merely an adding error and did not effect the situation with regard to tax or otherwise but merely caused the net estate to be overstated. A corrective affidavit has in fact been lodged with the Revenue Commissioners in this regard.

2. It is denied that the testatrix was in any way unfairly treated by me this deponent during her stay in Lagan Valley Nursing Home. This deponent was for a time acting under Power of Attorney of the testatrix at which time a direct debit for payment of nursing home fees had been set up with Ulster Bank Letterkenny. No moneys other than payment of such fees were withdrawn from the accounts of the deceased during her lifetime and all moneys remained invested therein until after issue of Grant of Probate in the estate. The testatrix did become incapacitated some years prior to her death suffering from dementia as a result of which the Power of Attorney in favour of this deponent became invalid as it was an enduring Power of Attorney and therefore neither the testatrix nor this deponent could give any instructions or directions to the Ulster Bank. This deponent did inform Mrs. Helen McCoy niece of the testatrix of the position and advised her to seek advice regarding making the testatrix a ward of court. I this deponent received no instructions in this regard.

3. No residue clause appears in the will or codicil of the testatrix as she would not specify as to who she wished to bequeath the residue although it was made known to her on the making of the will that any residue would fall in the absence of such clause to her surviving nephews and nieces and she understood same.

4. The will of the deceased was prepared in the office of the deponent on instructions taken prior to the date of execution. The codicil was handwritten by this deponent on the date of the execution of the will and said codicil this deponent having received further instructions from the testatrix on the date arranged for the signing of the will.

5. Although lands of the testatrix were advertised for letting on the 22nd November, 1996 I this deponent was subsequently instructed by the testatrix that she had not wished to let the said lands and consequently no letting was entered into. It was not your deponent who instructed the Auctioneer to advertise the lands.

6. The reference in the will to the "Gallagher sisters" was in accordance with the instructions of the testatrix. I this deponent was not familiar with the Gallagher family and when informed subsequent to the death of the testatrix the same were the daughters of Anton Gallagher I accepted same.

7. The said property comprised in folio DL30462 was acquired by a third party by adverse possession during the lifetime of the testatrix despite this deponent having made representation to the Land Registry. This was during the incapacity of

the testatrix.

8. The property comprised in folio DL29759 was also acquired by one Anton Friel by adverse possession during the incapacity of the testatrix. The said lands were in fact devised and bequeathed in the will to the said Anton Friel but were not included in the Schedule of Assets as they had already vested in same.

9. The reference in correspondence to this deponent as "beneficiary" was clearing a typing error and should have read "executor". At any rate a copy of the said will was enclosed with said correspondence from which it was clear that this deponent was not a beneficiary.

10. Lands were valued by McElhinney Properties a respectable firm of Auctioneers at the date of death. Obviously same have increased in value since.

11. It is a matter for the executors whether lands should be sold by private treaty or auction. The manner of sale was on the advice of the Auctioneer.

12. This deponent is entitled to costs for the administration of the estate in the usual way.

13. This is a mere oversight that there is a bequest of jewellery contained in the said will. This does not invalidate the will in anyway.

14. Bank documents are not required to be lodged with Schedule of Assets.

15. It is irrelevant whether the defendant or his solicitor wrote to the Auctioneer selling the lands as the solicitors merely acting on behalf of the defendant

16. This was an oversight and this deponent is still legally entitled to serve proceedings directly on the defendant.

17. Civil bill was posted to one Charles Gallagher at an address obtained from Cleary and Company Solicitors who had previously purported to represent same. At any rate this is not slander of title.

18. Any error in this regard is irrelevant and the information is clear from all documents lodged.

19. The sheep were sold during the lifetime of the testatrix and the proceeds have been accounted for.

20. This paragraph is not specific."

13. Mr. McGlynn goes on to depose expressly that he is not guilty of any offence or wrongdoing and that the Defence of the first named defendant does not disclose any such. He asserts that the Defence of the first named defendant is frivolous, vexatious, scandalous and slanderous and that the first named defendant has been guilty of incorrect, slanderous and misleading statements in an effort to avoid the completion of the administration of the estate of the testatrix and in particular the sale of the property the subject matter of these proceedings.

14. The affidavit of Daniel and Elva Gallagher sworn on 28th July, 2007 purports to reply to Sean McGlynn's affidavit of 19th July, 2007. It is lengthy but I propose nevertheless to recite the terms thereof with the exception of the contents of paragraphs 8, 9 and 10 which are simply not relevant to the issues that I have to decide. These paragraphs relate to complaints relating to the manner of service of documentation on the first named defendant and communications with a member of staff at the Central Office of the High Court concerning when and where the appeal would be heard. The deponents make the usual averments at paragraph 1 and then proceed:-

"2. We say and believe that Sean McGlynn's affidavit of 19th July, 2007 is a scandalous abuse of the Legal Process, prepared and designed for Sean McGlynn and his wife Catherine McGlynn's own personal gain. The Will and Probate as prepared by Sean and Catherine McGlynn is immoral and void. It is a negligent misrepresentation of the facts. The omissions in the Will, Codicil and Probate of Madge Friel amount to the tort of negligence. Negligence involves the breach of a legal duty of care, whereby the damage is caused to the party to whom the duty is owed. It is the doing of a person of some act which a reasonable and prudent man or woman would not have done in the circumstances of the case in question, or the omission to do something which would be expected of such man or woman under such circumstances.

3. We say and believe that Sean and Catherine McGlynn are guilty of negligent misrepresentation by preparing a false statement, made with no reasonable grounds for believing it to be true, which is one of fact, intended to be acted upon, and which actually misleads and induces others to believe.

4. We say and believe that Sean and Catherine McGlynn not only set out to defraud the deceased Madge Friel and the Gallagher family but they also prepared a False Sworn Probate Document which serves to defraud the Inland Revenue. Which renders the Will, Codicil and Probate void. The fact he failed to lodge a Corrective Affidavit as requested by the Revenue Commissioners because in doing so Sean and Catherine McGlynn would have to further incriminate themselves and would lose out financially, if they were to tell the truth.

5. We say and believe that Sean and Catherine McGlynn have perverted the Course of Justice by Fraudulent Conversion, which is the offence committed by Sean and Catherine McGlynn who fraudulently tried to convert to their own use property which they had been entrusted to keep in safe custody for others and which they had received for, and to account for, other person or persons.

6. We say and believe that Madge Friel was denied the right to testamentary freedom, which was the right of Madge Friel to dispose of her property according to her wishes. Heirs Successors or Assigns and a Residue Clause are omitted from the Will and Codicil of Madge Friel. Which the Irish State guarantees in the Irish Constitution.

7. We say and believe that in the course of Sean and Catherine McGlynn's Misconduct they have subjected both of us and our young son to torture, inhuman and degrading treatment.

11. We say and believe that the illegal sale of property Folio DL29754 only took place 14 months after Sean McGlynn and

Catherine McGlynn swore the False Inland Revenue Affidavit and it was only after they realised that they were about to be exposed that they put the property DL29754 up for sale by Private Treaty.

12. We say and believe that the Contract of Sale is not a complete Contract, that it is false in many aspects. It is Prejudice, It has been signed three ways by Sean McGlynn, Catherine McGlynn and Catherine McGlynn's sister Patricia Terry. The Contract has no signature for the deposit of €17,000 and no signature for the Witness of the Purchaser. Furthermore Gallagher McCartney, Solicitors operate from a different address at New Row, Donegal Town. In Sean McGlynn's letter to us of 29th April, 2004 he states that a sale has been agreed, yet the Agreement is dated approximately one year later. (There is an old Irish saying: ask my brother am I a liar).

13. We say and believe on the Oath for Executors, High Court Probate Sean and Catherine McGlynn have sworn that the Probate contained the true and original last Will of Madge Friel. This is false and misleading and a blatant lie. Sean McGlynn on his own admission has stated that he arrived at the Nursing Home on 28th December, 1994 with a typed copy Will for Madge Friel to sign. The original Will must be produced.

14. We say and believe that Sean and Catherine McGlynn have found themselves in a quagmire and it is so serious, that they have now discovered that to cover up for the last lie, that they must tell another lie and as a consequence, the people who suffer most are the people who try to be honest and tell the truth.

15. We say and believe that the only honourable way to resolve the problem is to remove Sean and Catherine McGlynn as Executors of Madge Friel's Will and start anew. There is no question what so ever, of any one acquiring any of Madge Friel's property by adverse possession and the whole matter and Sean and Catherine McGlynn is currently being investigated by the Garda Bureau of Fraud Investigations. Sean McGlynn has already been found guilty of Misconduct on two occasions and has been fined heavily by the Solicitors Disciplinary Tribunal for the Law Society. Furthermore Sean McGlynn is also being investigated by the Tourist Board for supplying false documents, in order to secure a grant.

16. We say and believe that if Sean and Catherine McGlynn have nothing to hide, they must as suggested by the Master of the High Court on 14th June, 2006 let us have a Discovery of Documents which Sean McGlynn will in any case, be obliged to do so for the Garda Bureau of Fraud Investigations. It was made abundantly clear to Sean McGlynn and his barrister Niall O'Neill by Justice Murphy on 24th July, 2006 that nothing would happen until the Garda Bureau of Fraud Investigations had completed their findings.

17. We say and believe that the Prevention of Corruption (Amendment) Act, 2001 Section 2, Sub. Section 3 : Clearly states and we quote a person, who knowingly gives to any agent or an agent who knowingly uses with intent to deceive his or her principal, any receipts, accounts or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his or her knowledge is intended to mislead the principal shall be guilty of an offence."

15. Finally, the affidavit exhibits various documents referred to in the text and the court has had regard to those documents.

Decision

16. Having considered the pleadings in this case and all of the evidence put before me on affidavit I am satisfied that the only course legally open to me is to dismiss the first named defendant's appeal. The plaintiffs' claim is clear and straightforward. They are the executors of the estate of the late Margaret (otherwise Madge) Friel. The property constituting the farm at Knocknabollan, which is contained in folio number DL29754 of the Register of Freeholders for the County of Donegal, forms part of the residuary estate of the deceased. The residuary estate falls to be distributed amongst a large number of nieces and nephews. To that end the plaintiffs have sought to sell the farm at Knocknabollan. The defendants have asserted that they are not entitled to do so but they have produced no evidence before me that would tend to impugn the entitlement of the plaintiffs in that regard.

17. The letter of 16th March, 2006 does not refer to any matter that would have the effect of legally undermining the entitlement of the plaintiffs to sell the farm at Knocknabollan for the purpose of distributing the residual estate of the deceased. There are many matters in the letter of 16th March, 2006, and in the affidavits filed on behalf of the first named defendant, that amount to allegations of maladministration on the part of the executors of the estate of Margaret (otherwise Madge) Friel. However, this is a straight forward title action. It is not an administration suit. Even if the allegations made by the first named defendant were well founded, and on the evidence before me I have the gravest doubts that they are (although I not deciding that question as it is not necessary for me to do so) they would not afford the first named defendant a defence to the plaintiffs' claim. The plaintiffs have a Grant of Probate that is valid on its face. I am not entitled to look behind it in these proceedings. The Court is not concerned with any property other than the farm at Knocknabollan. It is not concerned with other lands, or with the proceeds of lettings, or with gold watches, or with whether nursing home fees were paid, or with whether sheep were sold or with whether or not there were errors or omissions in the Inland Revenue Affidavit. These are matters that might be appropriately raised in an administration suit. However, it seems to me that the first named defendant could never bring such proceedings because he does not have sufficient *locus standi* (i.e. standing in law) to entitle him to challenge the Grant of Probate to the plaintiffs, or to contest the manner in which the plaintiffs are administering the estate pursuant to that Grant of Probate. To have sufficient standing in law he would have to be a beneficiary under the will, or a beneficiary on intestacy. He is neither. There are allegations of fraud and criminal misconduct, negligence and other torts, and these are made in explicit and robust terms. If, had it been theoretically open to him to do so, the first named defendant had sought to challenge the deceased's will, or had sought to have the Grant of Probate recalled or revoked in the context of a properly constituted administration suit, he would have been perfectly entitled to canvass such matters. However, this is not an administration suit and, as I have said, he has no standing to bring one. Moreover, even if such matters could be canvassed legitimately in an administration suit it would, of course, be wholly irresponsible and reprehensible for him to do so unless he had evidence to support such allegations. On the face of it he has none. Despite this he has gratuitously and inappropriately introduced them in the present proceedings.

18. The first named defendant does not appear to understand, or perhaps does not want to understand, either the law or the procedures relating to the administration of estates. While Mr. McGlynn was not obliged to explain his actions in the context of the present proceedings the explanations that he has given to the court appear to be reasonable and *prima facie* he appears to have acted properly. Mr. McGlynn says that the matters pleaded in the letter of the 16th March, 2006 and deposed to in the affidavits filed on behalf of the first named defendant are scandalous, frivolous and vexatious. Having considered all the material before me I have to agree with Mr. McGlynn. There is not a scintilla of evidence of fraud or criminal misconduct. Moreover, while there may have been some minor errors in the paperwork filed in connection with the extracting of a Grant of Probate to the deceased's estate none of these were errors of any great moment or substance and they would have had no impact with regard to tax liabilities. Moreover, the record has been amended by the filing of a corrective affidavit. Furthermore, there is no basis whatever that I can see for the

suggestion that the plaintiffs sought to gain personally from the estate of the deceased. Neither of the plaintiffs were beneficiaries of the estate. Moreover, there is nothing in the evidence to suggest that they could have benefited indirectly in any way. All of these allegations are undoubtedly scandalous, and I am satisfied that they have been made frivolously and vexatiously.

19. Perhaps more importantly I am also satisfied that the matters set out in the Defence of the 16th of March , 2006 could not, on any view of them, amount to a defence in law to the plaintiffs' claim. Mr McGlynn well makes the point that although the first named defendant previously claimed, through Cleary and Company, Solicitors, to be in occupation and possession of the lands the subject matter of these proceedings for many years, no such claim is made in his Defence nor does he claim to be entitled by adverse possession. If such matters had been raised they would indeed be matters capable of potentially providing the first named defendant with a defence to the plaintiffs' claim. I regard it as extremely significant that such claims were asserted in correspondence by Cleary & Co when they were acting in the matter on behalf of the defendants, yet they have not been re-iterated at any time since then by the first named defendant. He has not done so in his Defence, or in the affidavits filed in response to the plaintiffs' affidavits, or in arguments advanced in Court. I am satisfied that he has no legal answer to the claim and in all the circumstances I am satisfied that I must uphold the Orders of the learned Circuit Court Judge made on 9th May, 2006 and dismiss the appeal of the first named defendant. As the first named defendants' appeal was wholly unmeritorious the plaintiffs are *prima facie* entitled to their costs of the appeal. However, I will hear submissions in that regard before making a final decision on costs.