Neutral Citation [2012] IEHC 408

THE HIGH COURT

[2008 No. 11089 P]

BETWEEN

WILLIAM NAYLOR

PLAINTIFF

AND

JEAN MAHER

DEFENDANTS

JUDGMENT of Mr. Justice O'Keeffe delivered on the 14th day of September, 2012

1. This case is concerned with the ownership of the lands of the late Michael Hoare ('the deceased') and specifically those lands described in Folio 21455 and 18131 of the Register of Freeholders for the County of Tipperary ('the lands'). The plaintiff, William Naylor, asserts his entitlement to the lands on two main grounds: firstly, that, in consideration of the plaintiff's work on the lands for minimal remuneration over a period of more than 30 years, it was agreed that the deceased would devise the lands to the plaintiff and that, in consequence, a proprietary estoppel arises in his favour as against the estate of the deceased; secondly, that the will of the deceased of 9th day of November, 2006, ('the 2006 Will') should be struck down on the basis that it was extracted by duress and undue influence exerted by Jean Maher, the defendant, and that the deceased's will of 30th day of September, 2005, ('the 2005 Will'), under which the lands were devised to the plaintiff, should be admitted to probate as the deceased's valid last will and testament.

2. The defendant denies that the plaintiff is entitled to the reliefs sought in the Plenary Summons and Statement of Claim. The defendant, in her capacity as the personal representative of the deceased, also seeks an order that the 2006 Will be proved in solemn form and makes a counterclaim which seeks, *inter alia*, the payment of fees allegedly due from the plaintiff under a Licence Agreement dated 1st January, 2005, as well as orders for vacant possession of the deceased's lands which are occupied by the plaintiff. The deceased under the 2006 will devised the lands to the defendant.

Background

3. The deceased, who was one of sixteen children of Mr. William Hoare and his wife, Elizabeth, was born on the 21st August, 1925. The background to this case can be traced to the acquisition by Mr. William Hoare of the lands at Derrylahan. The lands were registered in the deceased's name in 1952. Although they initially comprised 310 acres, the lands consisted of approximately 122 acres at the time of the deceased's death on 7th April, 2007. Mr. Liam Rigney, auctioneer and valuer, gave evidence to the Court as to the current value of the lands as at February 2011, in the amount of €525,000. He confirmed that this value had not changed much by the time he was giving evidence on the 15th December, 2011 and that it represented a more than 50% reduction from the April 2007 value of €1.2m.

4. Mrs. Eileen Naylor, the mother of the parties to this action, was originally a tenant of the deceased's father in Moorpark Street, Birr, in the 1950s. Mrs. Naylor's first husband, Oliver Naylor, emigrated to England in the 1950s. During the 1950s, Mrs. Naylor had five children: Alan (born on 21st August 1950); Michael (born on 24th July 1952); Jean, the defendant (born on 15th March 1954); William, the plaintiff in this action (born on 9th July 1955); and Terry (born on 2nd September 1957). Although Mr. Naylor was recorded as the father of all five children on their birth certificates, it now appears that he was not in fact the father of some of these children, and in particular the three younger children. Mr. Naylor, who remained in England until his death in 1977, did not play any active role in the family's life.

5. From the evidence before the Court, it appears the parties' mother, Mrs. Eileen Naylor (later Hoare), had a longstanding relationship with Michael Hoare, the deceased, which began during her time as a tenant at Moorpark St. This relationship led to the Naylor's' move to a house on the lands at Derrylahan sometime around 1959 or 1960. While he did not stay overnight, the deceased spent his days at Derrylahan. Eventually, after Mr. Naylor's death, he married Mrs. Naylor on 16th July 1981 and, after spending a few years in Derrylahan, the couple moved to a house on Military Road in Birr in 1983. Mrs. Eileen Hoare (as she then was) died in 2001.

6. The relationship between the deceased and Mrs. Naylor and the question of the Naylor children's parentage form an important part of the backdrop to the present case. In the course of the defendant's evidence, it became clear that, although she always described herself as a stepdaughter of the deceased (including in the Inland Revenue Affidavit sworn following his death), the defendant had in fact learned from her mother and the deceased in their lifetime that she was the natural daughter of Mrs. Eileen Naylor (later Hoare) and the deceased.

7. Notwithstanding this knowledge on the defendant's part, the defendant, in pre-trial correspondence and also at paragraph 1 of the Defence, did not admit that the plaintiff was the lawful son of the deceased and placed the plaintiff on full proof thereof. In the course of the hearing, counsel for the defendant indicated that, while the plaintiff's parentage was not being admitted, it was not being denied and the defendant did not intend to call adverse evidence or to cross-examine the plaintiff's witness on this issue. The plaintiff adduced both genetic and non-genetic evidence on this issue. Dr. Denise Syndercombe-Court, a forensic haematologist, from Barts and The London School of Medicine and Dentistry testified that, on the basis of DNA analysis conducted by her, that a brother of Dr. Gerard Hoare was very likely the father of the plaintiff and his brother, Terry. Dr. Gerard Hoare gave evidence of the circumstances in which the deceased developed his relationship with the deceased's mother and excluded the possibility of any of his other brothers being the father of the plaintiff. Furthermore, Dr. Hoare, the plaintiff himself and Felim Kennedy gave evidence of the physical resemblance and common characteristics between the two men. Dr. Hoare outlined the circumstances in which the deceased developed his relationship with the plaintiff's mother. The case proceeded on the basis that the plaintiff was the natural son of the deceased, although the deceased had referred to him as his stepson.

8. The plaintiff is now 56 years old. From the age of around 4, the plaintiff grew up on the lands at Derrylahan and, with the exception of a six month period working in Dublin in 1972, he has always worked on the lands at Derrylahan. He married Frances Naylor

on 6th May 1978, with whom he has three children, Keith Naylor (born on 20th April 1979), Lynda Ryan (nee Naylor) (born on 12th May 1981) and Adrian Naylor (born on 12th February 1984).

9. The defendant is now 57 years old. In the early 1970s, the defendant left Derrylahan to work in Dublin and later in Limerick. She married Mr. John Maher in 1977, with whom she had three children, Patrick (October 1977) Brian (June 1978) and Eileen (June 1980), all of whom are beneficiaries under the deceased's Wills. The Mahers initially lived in Roscrea before moving to the United States of America for periods in the early years of the 1980s and then for a period to Spain between 1983 and 1989. Upon their return to Ireland, the defendant and her husband separated. The defendant and her children initially lived with her parents at Military Road, Birr, before moving into her mother's house at Townsend Street in 1993/1994.

10. The deceased made three wills during his lifetime. In the first will, dated 21st September 1995, ('the 1995 Will') which only came to light over the past year, the deceased left the 40 acres *"at present occupied"* by the plaintiff *"at Derrylahan, Rathcabbin"* to the plaintiff, who was described as his *"stepson".* The remainder of the lands *"at Derrylahan, Rathcabbin"* were devised to his nephew, Raymond Hoare. With the exception of property at Moorpark St., Birr, which was left to his niece, the residue of Mr. Hoare's estate was left to his wife, Mrs. Eileen Hoare.

11. In the deceased's second will, dated 30th September 2005, the defendant is appointed as sole executrix. She is bequeathed the deceased's house at Military Road, Birr, the sum of €200,000 and the residue of the deceased's estate. Her children were each to receive bequests, the sums of €100,000 for Eileen and of €25,000 for Brian and Patrick. Alan Naylor and Michael Naylor were each to receive the sum of €75,000. The deceased's farmland, described as being situated at Walshpark and comprising 120 acres, was bequeathed to the plaintiff. Walshpark is the townland in which the deceased's lands are situate.

12. In his third will, dated 9th November 2006 , which is the subject of the challenge in the present case, the deceased devised his *"farm and lands situate at Rathcabbin",* together with the house at Military Road, Birr to the defendant. As in the 2005 Will, the defendant was appointed as executrix and the residuary legatee. The deceased left the sum of €150,000 to the plaintiff. He left a similar sum of €150,000 to Eileen Maher, the defendant's daughter, and sums of €70,000 to each of the defendant's sons, Brian Maher and Patrick Maher. To Alan Naylor and Michael Naylor, the deceased left the sums of €40,000 each.

13. Although the plaintiff's mother, Eileen, had married a Mr. Oliver Naylor, who was listed as the father of her five children on their birth certificates, her husband had, as stated earlier, moved to England permanently in the early 1950s. The plaintiff gave evidence that he never once met Mr. Oliver Naylor and the only occasion on which he saw the man, who was recorded as his father on his birth certificate, was in his open coffin when he was brought home from England for burial locally in Birr in 1977. Derrylahan was in an isolated location some 5 or 6 miles from Birr and owned by the deceased.

14. Conditions in Derrylahan were basic, with no electricity, no running water and no toilets when the family moved there. The deceased, although he returned to Birr each night, spent his days and had all his meals in Derrylahan. He developed the farm, by bringing cattle, sheep and pigs onto the land. As schoolchildren the plaintiff and his siblings assisted in milking the cows every morning and evening. Historically, there were rumours and suspicions locally about the nature of the relationship between the plaintiff's mother and the deceased. They did not marry until 1981, a few years after Mr. Oliver Naylor's death. Even though it was only in 1981 that the deceased became the plaintiff's step-father as a matter of law, it was only during these proceedings that the biological relationship between the two men has been clarified. However, the deceased and the plaintiff had a close working association prior to 1981, in the 1970s. This continued over the deceased's working life.

15. The Naylor children helped their mother and the deceased on the farm.

16. The plaintiff had a poor attendance record at primary school and left school without having completed his primary schooling. He had continuing literacy difficulties throughout his life resulting in an inability to read and write, which proved a major handicap for him in his life. He now has some functional literacy at a very basic level for reading. As time went on, and the farm's dairy operation developed, the plaintiff's contribution to the dairying operations and general farming was substantial. In particular, from the time he left school prematurely in 1969/1970, the plaintiff devoted himself full time to the farm, working long hours seven days per week and with no time for outside interests. In 1972, the plaintiff's mother, who was concerned about his inability to read and write, arranged with a local doctor with whom she was friendly, Dr. Ritchie, for the plaintiff to go to Dublin for professional consultations and assistance in relation to his learning difficulties. During his six months in Dublin, the plaintiff, then aged 17, continued to be hard-working and had three jobs: working in the Terenure Laundry, in a part-time role assisting with Mr. Simpson's garden, and as a lounge boy and later barman in Slattery's public house, Terenure. The plaintiff earned between £25 and £30 per week, much of which he saved, and gained a certain financial independence. During this period, the plaintiff's evidence was that his brother, Michael Naylor, returned to work on the farm. He was summoned home from England in advance of the move by the plaintiff to Dublin in order to carry out the twice daily milking of the herd of cows. However, when he decided to return to England, the plaintiff was recalled to the farm to assist the deceased. The defendant has contested this, alleging that it was in fact she, and not Michael, that stayed on the farm and milked the cows during this time. However, while there is some issue about whether it was the defendant or her mother that had called the plaintiff to return to Derrylahan, when Michael decided that he wanted to return to England, there is no dispute about the fact that the plaintiff was recalled to work on the farm because the deceased was unwell. The plaintiff's recollection was that the defendant said the deceased wanted him to come home to work on the farm. The plaintiff returned and resumed working on the farm with the deceased.

Pleadings

17. The statement of claim asserts that the plaintiff is the lawful son of the deceased, Michael Hoare, who died on 7th April, 2007. The defendant is sued in her capacity as a prospective executrix of the will of the deceased dated 9th November, 2006.

18. The plaintiff and the defendant were raised on lands at Walshpark, Co. Tipperary comprised in Folios 21455 and 18131, the Register of Freeholders, Co. Tipperary.

19. The plaintiff, when aged 14 years, left school in or about the year 1969 and went to work full time on the land and farm above mentioned, and continued, save for one short break, to manage and operate the farming lands up to the death of the deceased on 7th April, 2007.

20. It is claimed that in or about the middle of 1973, the deceased made the first of many express representations (which were reiterated subsequently and frequently) to the effect that the plaintiff was working the lands as aforesaid for himself and that they would be his one day. By reason of the said express representations it is claimed the plaintiff was encouraged in the belief (reinforced by the constant assurances given to him by the deceased) that the lands would *"one day be his".* In reliance on these representations and assurances, made to him by the deceased, the plaintiff continued to work the lands up to the death of the

deceased.

21. During the years the plaintiff expended monies on the land for the maintenance of buildings as well as seeds. Such monies were expended in the expectation that the lands would be his.

22. It is claimed that he received minimal remuneration as the deceased received the income from the lands. It is claimed that based on the representations made to him he was induced to act to his detriment.

23. Further, it is claimed, that on 9th November, 2006, the deceased executed his last will and appointed the defendant as his sole executrix.

24. By a provision of the will of 30th September, 2005, the deceased devised all his farmland containing 120 acres to the plaintiff (being the lands hereinbefore referred to). The will of 30th September, 2005, was drawn up on the instructions of the deceased it is claimed by Messrs. Lucey & Company Solicitors which firm, up to and including the date of said will had at all material times acted for and on behalf of the deceased.

25. Following the death of the deceased, the plaintiff became aware that on 9th November, 2006, the deceased had revoked the will. This will was not drawn up by Messrs. Lucey but drawn up by Ms. Kinsella-Leavy, Solicitor, Tullamore.

26. It is stated that the will of 9th November, 2006, was executed by the deceased at the Birr Community Health Unit, was not in type written form and was witnessed by Ms. Kinsella-Leavy and another member of that firm.

27. The provisions of the said will provided that the plaintiff should receive the sum of €150,000.

28. It is claimed that the said will was void and of no effect as it was not executed in accordance with the provisions of the Succession Act, the deceased was not of sound disposing mind at the date of the execution of the will and the purported execution of the will was procured by the duress and/or undue influence brought to bear upon the deceased by the defendant.

29. It is not now contested that the will was not executed in accordance with the provisions of the Succession Act nor that the deceased was of sound disposing mind at the date of execution on 9th November, 2006. The particulars of duress and/or undue influence are pleaded as follows:-

> *"(i) At the date of execution of the pretended Will, the Deceased was under the dominion and control of the Defendant and was dependant upon her;*
>
> *(ii) The Deceased executed the second, pretended, Will at the behest and instigation of the Defendant;*
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> *(iii) The Defendant was aware that the Deceased was in frail health and did not wish to change his will dated the 30th day of September, 2005, yet a new Solicitor was procured for the purposes of execution of the said Will at the instigation and behest of the Defendant;*
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> *(iv) The Deceased was beholden to the Defendant and it was necessary for him to comply with her requests and demands, and there are reasonable grounds for believing that if the Deceased did not execute the pretended Will in the terms thereof for the benefit of the Defendant (and her immediate family), he would be cut off from the love and affection of the Defendant, and put in a home;*
>
> *(v) was instrumental in the procurement and execution by Kinsella-Leavy and Company, Solicitors, of the second Will of the deceased dated 9 November, 2006, and; by reason of the terms of his second, pretended, Will the Defendant took for her own benefit (and the benefit of her immediate family) a significantly increased share of the estate of the Deceased;*
>
> *(vi) The Defendant was instrumental in the procurement and execution by Kinsella-Leavy and Company, solicitor, of the second Will of the deceased dated 9 November, 2006, when she knew, or ought to have known, that the Deceased's usual solicitor (who had drawn up the Will dated September, 2005 and usually acted for the Deceased), was, at all material times, available to take instructions regarding the execution of the Will dated 9 November, 2006;*
>
> *(vii) The Will dated 9 November, 2006, was not in type written form;*
>
> *(viii) The said Will was executed in hospital whilst the deceased was on respite care and in frail health;*
>
> *(ix) Changes were effected as between the Will dated 30th day of September, 2005, and the second, pretended Will dated the 9th day of November 2006, the net effect which were to the material and disproportionate benefit of the Defendant and her immediate family;*
>
> *(x) In all the circumstances the Deceased was in a vulnerable position and lacked the ability to resist the pressure and demands or requests of the Defendant to execute the pretended Will in the terms hereinbefore set out and pleaded;*
>
> *(xi) In all the circumstances the Deceased neither know nor or approved of, nor was he capable of knowing or approving of, the contents of the said second, pretended, Will prior to the execution of the same;*
>
> *(xii) In all the circumstances the execution of the said pretended Will was not the product of the free and voluntary act or acts of the Deceased, but, rather, was the product of requests and/or demands made of the Deceased by the Defendant, said the Deceased was in fear of not complying wide the said requests;*
>
> *(xiii) In all the circumstances undue influence was exercised on the deceased by the Defendant which caused him to take a course of action in relation to disposal of his estate which he would not have taken if no such influence had been exercised on him."*

30. It is claimed as a result of the matters pleaded that the will of 9th November, 2006, was not a righteous transaction. Further, in the replies to particulars, the plaintiff referred to conversations, which the defendant had with witnesses, which indicated that the farm was left to her by the deceased in a changed will.

31. The plaintiff claims specific performance of the various oral agreements made between him and the deceased from 1973 onwards. The plaintiff relied on estoppel as against the defendant and/or a declaration that the deceased held the lands in trust for him. Further, or in the alternative, the plaintiff sought a declaration that the deceased held the lands in an equitable estate for his life, with the plaintiff being entitled to an estate in the said lands following upon the death of the deceased. A declaration is sought that the estate of the deceased is bound in equity by the several promises he made to plaintiff to bequeath the estate to him. A declaration is sought that the plaintiff is entitled to the said property and an order directing the defendant to assent to the vesting in the within plaintiff of the legal estate of the deceased. An order is sought that the administration of the said estate proceed as if the interest in the said lands purportedly bequeathed to the defendant had been validly bequeathed to the plaintiff and an order that the defendant executrix will execute a consent to the registration of all or any rights to which the plaintiff is entitled in consequence of this order. Damages for beach of contract are sought.

32. Alternatively, an order is sought striking down the will of 9th November, 2006 on the grounds that it was extracted under duress and influence by the defendant, her servants and agents. On this basis, an order was sought admitting the will of 30th September, 2005, to probate.

33. The defence and counterclaim of the defendant pleaded that it was not admitted that the plaintiff was the son of the deceased. The defendant admitted that she was the daughter of her mother, Eileen Hoare (formerly Naylor) and was the stepdaughter of the deceased.

34. The claim of the plaintiff in relation to the lands was denied and the plaintiff was placed on full proof of the various representations and matters pleaded by him in the statement of claim. It was denied that the execution of the will of 9th November, 2006 was procured by duress and undue influence. It was also denied that the will was not a righteous action.

35. In the counterclaim, the defendant pleaded that by virtue of a license agreement, the deceased had licensed 46 acres to the plaintiff for the term of five years commencing on 1st January, 2005 for a license sum of €5,000 per annum. It was claimed that the licensed sum was paid for two years and that since then it had not been paid.

36. It is claimed that in further breach of the terms and conditions of the said licensing agreement there was damage to the property, the trees had been removed and rubbish had been dumped in the farmyard.

37. It is claimed that the plaintiff has failed, neglected and refused to vacate the property and has indicated that he intends to remain in possession of same. The conduct of the plaintiff amounts to a continuing trespass, further acts of nuisance, the wrongful interference with the beneficial occupation, possession, enjoyment and user of the lands of the defendant.

38. Mesne profits were claimed in respect of lands in the occupation of the plaintiff to include Area Aid, REPS and other Grant Payments.

39. The defendant sought an order proving that the 2006 Will is the true and original will of the deceased. Further, a declaration that the licensing agreement dated 1st January, 2005, has been validly terminated by the effluxion of time or, in the alternative, by the conduct of the plaintiff. An order directing that the plaintiff discharge to the defendant the mesne profits and license fees owed and to deliver up clear and vacant possession of the property is also sought.

Assurances Given to the Plaintiff

40. The first assurance given to the plaintiff was upon his return from Dublin in 1972. When the plaintiff raised the question of his wages for his work on the farm, which, was around £12 per week, and was much less than what he had been earning in Dublin, the deceased asked why he would pay the plaintiff any more when the plaintiff would be farming for himself and that it would be for his own benefit.

41. Again following his return from Dublin in 1972 he stated to the deceased that he was *"getting the big money"* in Dublin and that he was earning comparatively little by working on the farm. The deceased replied *"why should I pay you any more"* The deceased also stated *"you will be farming for yourself"* and *"it would be in your benefit".* The plaintiff understood this to mean that they would be working the farm together and that he would *"input to owning the farm"*. The plaintiff gave evidence that any time over the next six years if he looked for a raise the deceased would state, *"this place is going to be yours and I am leaving this to you".* He said he believed and trusted the deceased, as the money he was making was very small.

42. Subsequently, when the plaintiff was worried about his education, the deceased stated to him *"why are you worrying about that. You will be farming always".* The deceased stated that his father never had a good education and not to worry about getting an education. The deceased on another occasion told the plaintiff *"You will be farming all the time".* The plaintiff understood this to mean that he would own the farm.

43. After the plaintiff had reclaimed the bog land, the deceased and the plaintiff had a conversation in the Three Corner Field where the deceased complimented the plaintiff on the work done and stated *"the rest of this land is going to be yours as well".* The deceased pointed out over his land and stated *"this land here, I am leaving you this land here."* This reinforced the plaintiff's understanding that the promise related to all the lands at Derrylahan; it was not limited to those three fields which were transferred to him in 1999. The reclamation work on this land by the plaintiff took 4 – 5 years.

44. In the 1980s, the plaintiff erected his own sheds in the area the deceased had transferred to him with his mother as intermediary. He stated under cross-examination that he didn't want to build on the deceased's land while the deceased was there and that the deceased had promised the rest of the land to him anyway.

45. In or around 1982 or 1983, the plaintiff began working part-time with the Smiths who were agricultural contractors, he told the deceased that he had no money and the deceased replied *"I have no money but the place will be yours, I am leaving this place to you".*

46. When the plaintiff went to work for the Smiths, the deceased ceased paying him. He worked with the Smiths for 16 years as required. However, work on the deceased's farm was a priority. He fed the cattle in winter, did topping and rolling, applied fertilizer, saved the hay and looked after his dry stock which could number 60/70 animals. He brought some of the deceased's sucklers to his house and calved them on occasions. The plaintiff continued to carry on work on the deceased farm but any time he approached the deceased about compensation the deceased stated *"why would I pay you sure this place is going to be yours anyway".*

47. After the plaintiff erected slatted sheds on the deceased's land, the land was not registered as his but he did not have a problem

doing the work because the deceased stated that the lands were the plaintiff's.

48. In 1999, when the deceased transferred land to Mr. Madden, the plaintiff's mother was annoyed and stated that the deceased should not have sold that land to Mr. Madden and that that plot was to be the plaintiff's with the rest of the place.

49. In 2002, the plaintiff asked the deceased if he could buy one of the deceased's houses on Pound Street in Birr and the deceased told him that he could. However, when the plaintiff subsequently asked about the houses in 2004, the deceased stated *"God, I am after forgetting all about that. I sold them to Michael"*. The plaintiff met the deceased at a later date and the plaintiff stated that the deceased had promised him the houses. The deceased replied *"I did but what about it… aren't you okay sure haven't I fixed you up with all this here as I told you before. You have all the land, I have that done for you*", to which the plaintiff replied he trusted him entirely.

50. In 2005, the plaintiff planted a row of whitethorn bushes in order that the deceased would comply with his Rural Environment Protection Scheme (REPS). The plaintiff asked him for money and the deceased stated, *"Why would I pay you for that… sure you are doing it for yourself".*

51. When the plaintiff reseeded a field he purchased the grass seed himself and approached the deceased about payment. The deceased stated *"why would I give you money… you are doing it for yourself as I told you before. The place is going to be yours anyway".* The plaintiff said he believed the deceased and did not look for money from him.

The Relationship between the Plaintiff and the Deceased

52. The plaintiff had a close relationship with the deceased. The deceased was very much *'the boss'* and, while he was never in good health, he oversaw the running of the farm and had a great attachment for the lands at Derrylahan. Mr. Hoare was described as a gruff man with whom one would not win an argument. However, he was a creature of habit and showed considerable loyalty to those with whom he worked. While the plaintiff and the deceased got on very well, their relationship was very much characterised by the high degree of respect and deference which the plaintiff showed to the deceased. The deceased was not a man one would tell what to do, he said.

53. On a day to day basis, the physical work was done by the plaintiff. This was both during the dairying farming and subsequently with the suckler herd. This did not exclude the deceased from engaging outside contractors to do specific work. When the dairying ceased around 1982, the need for fulltime labour did not continue.

54. Around 1995 to 1996, some of the bog land was sold to the Office of Public Works. While the plaintiff was disappointed at the sale, he did not challenge the deceased out of respect for him and, because he had no specific interest in the bog land in any event. He was reassured when he was told that he would get the rest of the land. Similarly, when the house and site were sold to the deceased's nephew, Peter Madden, in 1999, the plaintiff and his mother were disappointed because the lands at Derrylahan had been promised to him. The plaintiff's view was that, while the deceased was alive and continued to promise him the rest of his land, he should not be greedy and make an issue of the transfer to Peter Madden. The portion of the lands – including the fields known as the Bog Field, the Bog Garden, and the Three-Corner Field and registered on Folio TY30202F – was also transferred to the plaintiff by the deceased through Mrs. Eileen Hoare in early 1999.

55. At all times it was clear that what the deceased promised to the plaintiff was the lands at Derrylahan. It did not, for example, include his other properties, such as houses he owned in Birr. The deceased continued to give the plaintiff similar assurances in relation to the lands in the last decade of his life. As part of the REPS, which began in 1999, for the lands at Derrylahan, the plaintiff planted a whitethorn hedge on both his own and on the deceased's lands and he also installed an electric fence. However, when the plaintiff sought payment for these jobs, the deceased reiterated his position, that he should not be expected to pay the plaintiff given that his lands would all be the plaintiff's in time.

56. The deceased was a private man and did not readily share his business with others. Friends and neighbours also heard the deceased acknowledge these assurances given to the plaintiff. At an early stage, in the late 1970s, in the context of the deceased asking his neighbour Felim Kennedy if he would let him go onto Felim Kennedy's lands to deepen a drain which ran into the deceased's adjoining lands, the deceased made a comment to Felim Kennedy, that the drain would be good for both Mr. Kennedy and the plaintiff when they would be running the farms in the future. Similarly, when Mr. Kennedy had a discussion with the deceased regarding the new sheds that had been erected on the lands and when Mr. Kennedy mentioned the advent of slatted houses, the deceased commented that the sheds would be sufficient for him but that the plaintiff could install slatted houses if he wished when he became the boss.

57. Much later, in September 2001, Eamon Dolan heard the deceased say to the plaintiff, while the plaintiff was engaged in work on the land, that he, the plaintiff, would be well looked after when all of the lands would be his. More recently, Pat Smyth - a friend into whose home the deceased called - recalled a specific occasion on which he, the plaintiff and the deceased had great difficulty in bringing the cattle in and he commented on the hardship that the plaintiff endured. In reply to this comment, the deceased said that the plaintiff was doing the work for himself and that he would give him Derrylahan, as Mr. Smyth himself knew. This was around August 2003. The deceased made a similar comment in Mr. Smyth's house when another guest, Mr. Brendan Sullivan, was also present. As Mr. Sullivan described this conversation, the deceased said to the men that the plaintiff knew that anything the deceased had at Derrylahan was the plaintiff's. He put the time around 2004.

58. This assurance also corresponded with the understanding of those who were closest to the parties. In particular, Dr. Gerard Hoare, the deceased's brother, considered that the transfer of the lands at Derrylahan to the plaintiff under the 2005 Will was *"par for the course".* This was based on his very longstanding knowledge of the deceased who had introduced the plaintiff to farming and who had spent much of his life working the farm with him.

Work Performed by the Plaintiff

59. From an early stage, as a young boy, the plaintiff was involved in work on the farm at Derrylahan. The plaintiff milked the deceased's cattle, and other members of the family helped him in the 1960s. He also watered the cattle, minded pigs, and fed the animals. As he grew older, the plaintiff would have to stay up at night to mind the sows and bonhams.

60. The deceased also had crops on the farm, which the plaintiff used to thin and weed. The farm was described by the plaintiff as very stony and he stated that he and his siblings spent a lot of time picking stones out of the fields.

61. There was also barley on the farm and the plaintiff would help put it into the loft and turn it regularly in the winter. He would help put the barley into plastic bags and bring it to a grinder in Birr.

62. The work on the farm had intensified by 1968. At this stage there was an electric milking machine on the farm and the plaintiff, then aged 13, was primarily responsible for milking the cows. The plaintiff helped to calve the cows and to teach the calves how to drink.

63. The plaintiff had to repeat fifth class, when he only attended class for 41 days. He left school in March 1970. The plaintiff at this stage was working seven days a week, and never had a holiday or a break.

64. The plaintiff returned from Dublin in 1972 and resumed work on the farm. He would bring the milk to the creamery. He fed the animals and cleaned the sheds. He also began to plough the barley at this stage.

65. When the plaintiff returned from Dublin, he also started a process of reclaiming poor land. This involved ploughing certain fields and reseeding them.

66. Around 1982 the deceased ceased his dairy farming but continued with dry cattle and suckling cattle. The plaintiff would do other work on the defendant's land, *e.g*. fencing and rolling the fields, cleaning and tillage, in addition to assisting with the cattle.

67. The deceased gave the plaintiff a plot of land on 26th January, 1999 and the plaintiff was registered as full owner. The plaintiff cleaned it up, reseeded it, took the weeds off and ploughed it several times in order to get it in good order. This process took approximately five years. Eventually the field had grass on it and the plaintiff was able to put cattle on it.

68. From 1983, the plaintiff continued to work on the deceased's farm: feeding the cattle, doing the topping and rolling, applying fertilizer, bailing the hay and bringing the hay in. The plaintiff also dosed the cattle and calved some of the deceased's sucklers at his own house on occasions. The deceased stopped paying him once he started working for the Smiths.

69. The deceased told his REP representative that any work that was to be done would be done by the plaintiff. The REP representative wanted whitethorn trees to be put on the deceased's land, and these were put down by the plaintiff. The plaintiff did the REPS work on the deceased's land.

70. Around 1999 the deceased gave all his cattle to the plaintiff. He stated that he was not able for them any longer and that he would still be able to see them if the plaintiff had them.

71. In 2001 the plaintiff was still doing jobs on the farm for the deceased.

Deceased's Land Transactions
72. On 23rd May, 1996, the Minister for Arts, Culture and the Gaeltacht became the registered owner of Folio TY 25646F (formerly part of Folio TY 18131).

73. On 21st January, 1997, the deceased transferred to Eileen Hoare the lands comprised in Folio TY 21455 and TY 18131. The transfer to Eileen Hoare was first transferred to Eileen Hoare as an intermediary and then to the plaintiff to avoid stamp duty.

74. On 1st January, 1999 a licence was executed by James Lucey & Co. Solicitors between the deceased and the plaintiff as per the REPs requirements for Folio TY 18131.

75. On 26th January, 1999, the plaintiff became the registered owner of Folio TY 30202F.

76. On 7th July, 1999, Peter Madden became the registered owner of Folio TY 30834F.

77. On 1st January, 2005 the deceased and the plaintiff executed another licence as per REPS requirements.

Witnesses for the Plaintiff

Evidence of Mr. Lucey
78. Mr. Lucey is a solicitor practicing in Birr.

79. In 1997, the deceased instructed Mr. Lucey's firm in the transfer of 46 acres to the plaintiff. There was a difficulty in relation to stamp duty in the transfer, as there would be a 50% relief on stamp duty between direct relations, but as a stepson (as the plaintiff was at the time represented to be), the plaintiff would not qualify for such relief. It was decided in order to minimise stamp duty that the transfer would go from the deceased to his wife, who was the plaintiff's mother, and from her to the plaintiff. The initial transfer was executed on the 21st January, 1997 and the transfer from Mrs. Naylor to the plaintiff took place on the 21st November, 1998. The plaintiff paid £2,100 stamp duty.

80. On 1st January, 1999, Mr. Lucey drafted a licence agreement for six years between the plaintiff and the deceased in relation to 21 acres that formed part of Folio 18131. This agreement was at the instigation of the deceased and on the recommendation of his REPS advisor, Mr. Kirwan.

81. In February 1999, Mr. Lucey dealt with the transfer of land at Derrylahan comprising over two acres and a house from the deceased to Mr. Madden for a consideration of £25,000. The deceased retained the exclusive use and benefit of the land for himself during his lifetime.

82. In May 2000, Mr. Lucey also acted for the deceased in the transfer of three acres of land at Birr to Terry Naylor. A balance of the purchase price remained outstanding.

83. On 30th September, 2005, Mr. Lucey prepared a will for the deceased. He went to the deceased's house in Birr. He was surprised by his physical condition as he was very frail. He had a nebuliser and oxygen and was short of breath. The deceased appointed the defendant as sole executrix to the will. He devised his house at Military Road, together with the contents therein to the defendant. The deceased's instructions to Mr. Lucey were that the farm was to go to the plaintiff; Mr. Lucey stated that he was very definite in that regard. Mr. Lucey stated that there had always been public speculation that some of the children had been fathered by the deceased and that he believed that the plaintiff was the deceased's natural son. Mr. Lucey considered bringing this up with the deceased in relation to his duties under s. 117 of the Succession Act, if the lands were not going to the plaintiff even though this might have caused offence. Mr. Lucey was eventually satisfied that the deceased's instructions were fair to all his children, whether they were natural or stepchildren. The deceased also bequeathed the sum of €200,000 to the defendant who was his principal carer.

The residue was left to the defendant. Terry Naylor was not included in the will because he had not discharged the balance of the monies that was owing on the purchase price for three acres of land. Mr. Lucey believed that Terry was a son but that provision had been made for him and that the three acres were adequate provision.

84. He said he had known the defendant for many years and that she was a strong determined woman who was very independent. He had to bear in mind the influence she could be bearing on the deceased in relation to the bequest to her or any of her children. He was conscious that she could have an influence on the deceased – almost a controlling influence. He satisfied himself in relation to the deceased making the will because of his background knowledge of the deceased and because he was alone with the deceased and knew his views. He was satisfied that it was a fair will and that it satisfied the deceased's obligations.

85. When comparing the two wills, he found it hard to comprehend how the devise of 120 acres of land to the plaintiff could change in thirteen months to the bequest of €150,000. He knew that the plaintiff had been working the lands for years and could not reconcile this bequest with the bequest in the will he had drawn. He bore in mind his belief that the plaintiff was the natural son of the deceased and that there could be a problem with a section 117 claim.

86. He was adamant that he advised the defendant of the contents of the will as requested by the deceased. He said it was something that one would not forget as it is not often a testator would ask a solicitor to inform a beneficiary of the contents of the will.

87. Mr. Lucey stated that Ms. Kinsella Leavy, the solicitor who prepared the 2006 will, was a colleague and a friend and that he was surprised that she did not contact him for some background information in relation to making the later will. He said he could have cautioned her in relation to the deceased's vulnerability and concerns he had in relation to the defendant to ensure no influence was exercised by the defendant in relation to the content of the will. The defendant was not in the room when the will was being drawn up.

88. After the 2005 will, Mr. Lucey did not have any more contact with the deceased.

Evidence of Dr. Shaun O'Keeffe
89. Dr. O'Keeffe, a consultant physician and geriatrician at Galway University Hospital gave evidence of having reviewed the medical notes and records in relation to the deceased these included records Tullamore General Hospital and from Dr. McAuliffe, his G.P. He also saw the notes of the community nursing unit.

90. It was clear that the deceased was a man who had many medical conditions in his last years and they included respiratory problems, fibrosis, chronic airways disease and repeated chest infections. He also had cardiac disease with heart failure, atrial fibrillation and diabetes. From time to time he suffered from anxiety and depression. He suffered from unsteadiness and had repeated falls leading in some cases to serious injury. He needed a lot of medication over the years. He was on what he called *"polypharmacy"* that is a large number of medications.

91. He noted that the deceased had a number of episodes of cognitive impairment in particular during his admission in March 2005 to Tullamore Hospital where he was very sick after a fall and had several fractured ribs. During that admission he had a mental test called *"the Mini-Mental State Exam".* His scoring was consistent with moderate cognitive impairment. Again in 2007 during his admission to hospital, his score was similar. In 2004, his scores were within the normal range.

92. The notes emphasised his medical condition particularly his respiratory function. The notes indicated he had become increasingly frail throughout 2005 and ended up needing continuous oxygen treatment.

93. During 2005 – 2006, he had repeated respite admission to the Community Nursing Unit. This was a sign of his physical frailty.

94. He had some nine respite admissions during 2006 and one would not have this level of intervention unless somebody with physical needs and a degree of frailty.

95. He first came under the care of Dr. Shiels, Cardiologist and Physician in Tullamore in 2000. He was under the care of Dr. Shiels again in 2007. He was subsequently in hospital for two weeks and after that he had his final admission.

96. He was on a nebuliser and continuous oxygen for about 18 hours a day from May 2005 onwards. This greatly restricts mobility and is a sign of severe cardio respiratory disease.

97. He was on painkillers for shingles which he developed in 2005. He was on Benzodiazepine which is an anti-anxiety and sedative drug. He was off this drug from March to May 2005 but subsequently went back on them in July 2006.

98. He said that from a medical point of view, the priority would be the management of the medical illnesses. The two day tests for the cognitive function were 31st March, 2005 and 5th April, 2007 and the readings of 18/30 were normal.

99. In Spring 2005, he had his major fall. The nurses notes at that time recorded that he was disorientated, in March, 2005. X-rays at the time showed fractures and heart failure. He had heart strain secondary to his lung problems.

100. In late 2005, he had a total of 21 days in respite care, 63 days in total in 2006 and two admissions during 2007, until his death.

101. The results indicated that he was vulnerable to having declines in cognitive functions in given circumstances. Such circumstances, one is more sensitive to the affect of Benzodiazepine and also age and alcohol.

102. Dr. O'Keeffe said he was taking standard medications for atrial fibrillation and for his stomach upset and heart failure.

103. In relation to the medication that the deceased was on when he was admitted to respite on 8th November, 2006, he was on medication which most people tolerate well but the effect of it was going to be greatest in those who are old. It could increase the vulnerability to cognitive difficulties. It was very hard to tell the effects on an individual without examining them.

104. Respite would be standard treatment where the person needs care and where carers need a break.

105. The MMSE on 4th March, 2005 would not raise a red flag. His score was still within the normal range.

Evidence of James Kirwan
106. He is a bachelor of agricultural science and started dealing with the books and paperwork of the defendant from 1995 onwards. He made the Area Aid Applications and the REPS for both the plaintiff and deceased.

107. Payments under the REPS was capped in 1999 at a maximum of 40 hectares or 100 acres. As the deceased had more than 100 acres and the plaintiff had less than 100 acres, it was decided that the deceased would license some land to the plaintiff which resulted in 9 hectares being licensed from the deceased to the plaintiff.

108. Area Aid Applications were made up to 20th April, 2006. They were separate schemes but connected to one another. The field that was licensed to the plaintiff was the triangular field which was adjacent to the road and to the plaintiff's other land.

109. It was the plaintiff who did the physical work that required to be done. By the time Mr. Kirwan met the deceased he was not physically able for hard work. It was agreed between the deceased and the plaintiff to submit applications under the REPS 3 scheme in 2005. It was decided between them that the amount of land to be licensed to the plaintiff would be increased. This happened as the deceased's stock numbers were reduced and the plaintiff's numbers were increasing. The total area involved was 18 hectares or 46 acres in respect of which a license was entered into. They had to indicate what extra work would be done and they agreed to plant 300m of a new hedge on each farm. It was a white thorn hedge.

110. After the deceased's death in 2007, it was agreed that the entitlements from the estate would accrue to the plaintiff for the year 2007. Since 2008, the plaintiff had been farming the deceased's land. There are annual payments of approximately €7,000 due for 2007 – 2011 due under the Single Payment Scheme and the entitlement of these payments will be determined by the outcome of the litigation.

111. The deceased and the plaintiff would discuss what work was to be done in respect of each of the plans for the respective farms. They each complemented one another in the sense as between the two farms of lands they endeavoured to get the most out of the lands and the payments to which they would be entitled.

112. In cross examination, he said that the use value of lands was the rental value plus the farm benefits that were transferable and attached to the land. The entitlements being transferred would only command 80% of their value.

113. By 2005, the deceased had reduced his farming activity. He also had less land being farmed.

Evidence of Mr. John O'Connor
114. Mr. O'Connor is a solicitor since 1980 and has been a solicitor in practice in Dublin since 1988. He is a member of the Law Society Council and has a particular interest and expertise in probate matters and has acted on various committees of the Law Society.

115. He was familiar with the background to the case having seen the statements of Ms. Kinsella-Leavy and Ms. Verona Smith.

116. He said that if he were consulted out of the blue in relation to the making of a will, he would need to know the reasons why he had been consulted. Sometimes he might refuse to do so because he felt that the family's solicitor would be the best person to deal with it or there may be a particular reason for taxation advice. He would like to consult with the previous solicitor, on occasion, with the testators consent. As a solicitor what got his antennae going in this case was the issue as to why the particular solicitor was being consulted in the case.

117. There were guidelines from the Law Society in 2002, these guidelines would have governed the drawing up of the 2006 will.

118. The guidelines recommend that a solicitor should not agree to act for a client unless he is able to carry out instructions from the client adequately. Instructions should be taken directly from the client where instructions are first received from a third party. The instructions should be confirmed directly with the client.

119. In relation to duress and undue influence, the guidelines read:-

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

120. In relation to vulnerable clients, the guideline reads:-

> *"The relationship between a solicitor and a client is a fiduciary relationship. Accordingly in dealings with any client a solicitor should be cognisant of the inexperience, youth, age, want of education, lack of knowledge or business acumen of the client."*

121. In relation to receiving instructions from an elderly person, a solicitor has a particular duty of care, the solicitor should be cognisant of the fact that such a person is going to need a formal assessment particularly in relation to testamentary capacity (which was not an issue in this case). It was not sufficient to get a medical test. A solicitor may have to do a number of visits to the particular client. The same applies to cases of duress or undue influence. There was an interface between capacity and undue influence.

122. If a solicitor was preparing a will on the spot, the solicitor would need to know the full circumstances. Unless there was an emergency, the solicitor should not do the will on the spot. If a solicitor does the will on the spot the solicitor may come back for a second visit.

123. He said that he had done over a thousand wills in his professional career and that there was only a few occasions where he would have done emergency wills where people were dying or in hospital. He would generally know the testator involved in such circumstances.

124. His usual practice was to take instructions to draft a will, send it out and then to see the client. He said that it appeared that the accountant made an assessment in relation to capacity but he did not know how he could make an assessment unless he had particular legal knowledge. The circumstances would get his antennae up as to why he was being instructed by an accountant to call out to see a particular client. He would need to ask more questions and he would need to know that from the testator.

125. A family tree should be drawn up to see why is someone being included and being excluded. A solicitor who was contacted out of the blue by an accountant to call to see somebody should be very reluctant to take on such an assignment as this, unless he had talked to the previous solicitor or unless there was some emergency involved that the previous solicitor could not attend.

126. He found the entire circumstances of the solicitor going to the Birr Community Care Unit to a total stranger whom she had never met before, unusual in the circumstances. He relied on the following check list as published by the Association of Contentious Trust and Probate Lawyers published in England for elderly persons namely:-

> *"Do you consider any issues of vulnerability or suggestibility in the client or do you feel that the client might be subject to undue influence as defined by case law? Who contacted? Did you see the client or draft the will? Who else was present when the instructions were given? What changes is your client making? Was the client/prepared to tell you while (sic) the changes were being made? Attach brief family tree. What relationship do the main beneficiaries have with your client? Has your firm acted for the client or his family before? Did you discuss the existence of life time gifts?"*

127. In his opinion there were not sufficient instructions taken as to make an assessment. This included vulnerability and undue influence. In his opinion, details of the extent of the estate should be obtained directly from the testator. He said in circumstances where the solicitor was receiving details of the assets from the accountant, it would be prudent for the solicitor to consult with the medical practitioner for the deceased and the family's solicitor of the deceased. The fact that the solicitor was receiving instructions in such a manner (from the accountant) would put a solicitor on alert as to the role of capacity and undue influence. As a solicitor he would be reluctant to accept instructions in this type of case if he did not know why he was being specifically instructed as opposed to a previous solicitor.

128. He would also require to know the relationship between the testator and his family, the financial circumstances and members of the family and why if certain members of the family were being excluded. In his opinion, this was not done. He concluded that it was extraordinary that Ms. Kinsella-Leavy (the solicitor who prepared the will) was able to make an assessment of capacity from one visit without having met the client before and without having the benefit of external evidence by way of attendance from the previous solicitor or doctor. This view equally applied towards the issue of undue influence and duress.

129. He suggested that a solicitor can have a person consult him who can learn or rehearse instructions very easily and only an experienced practitioner would be able to probe this by asking questions. This also applies to issues of duress and undue influence.

130. He said a solicitor has a fiduciary duty and it was not good enough to take a simple answer. He considered that the solicitor should have probed the matter further when the deceased was not forthcoming about the identity of the previous solicitor.

131. In his opinion, when the will was made on the spot and if the solicitor had a concern about an issue he/she should come back for a second visit to the testator to see if he was happy with the will, and this was so as the solicitor had received instructions from the accountant.

132. A solicitor owes a high duty of care to a client that they understand what they are doing and that they are not under undue influence in situations where the client might be vulnerable. He would categorise the deceased as a vulnerable client.

133. He accepted that the testators are entitled to change solicitors if they wish to do so but the solicitor would want to know why somebody is changing a solicitor. There was no presumption that a testator was vulnerable when he happens to be over 80, but the circumstances of somebody over 80 years could give rise to vulnerability.

134. If a solicitor had a second meeting with the testator, he may find such a person may not have been as primed or that he wished to change the will on the second occasion.

135. When taking instructions from a person in a care unit for a week's respite, the solicitor should ask details of the living conditions of the client and identity of carers and if such a person was a particular beneficiary or not, the solicitor would need to know the reasons why such a person is a beneficiary or not.

136. In conclusion he adopted the views expressed in the Law Reform Commission, *Consultation Paper on the Law of the Elderly* published in June 2003 in relation to undue influence, it read:-

> *"Practitioners said that they find claims of undue influence more difficult to evaluate than, for example, cases of alleged testamentary incapacity. Whereas it might be possible to form an accurate view of whether a client had sufficient capacity to transact or make a will on the basis of even a single interview, it would often be more difficult to detect evidence of undue influence without a detailed understanding of complex relationships between family members. It is also more difficult for a solicitor to assemble evidence of undue influence since medical evidence is only one factor."*

137. He accepted that the competence or incompetence of a solicitor in drawing up a will was not a matter that proves or disproves whether the will was valid or invalid. He had not done any analysis of the 2005 will.

138. He said that the guidelines for 2002 were very much a minimum guideline and they were being comprehensively undated in the light of developments in other jurisdictions. In his opinion it was very difficult to ascertain undue influence whereas capacity was probably an easier test to assess.

139. He accepted that a testator had no special legal obligation such as s. 117 of the Succession Act owed to stepchildren. This was the description by which the deceased had represented the children in the will.

140. In his opinion the question of duress or undue influence was a nightmare for solicitors because whilst capacity could be generally assessed, undue influence can happen subtly and without one's knowledge and that is the reason why he would not take instructions without knowing the testator or knowing the reasons why he was being instructed.

Evidence of Mrs. Helena Connolly Shea

141. Mrs. Connolly Shea did a nursing training course in the U.K. She worked in a Nursing Home when she was 16 and attended Training College when she was 18. She said she practiced general nursing for 5 years and then went into private practice. She subsequently moved back to Ireland to look after her uncle, who was in Portlaoise Hospital, in approximately 1995. She looked after her uncle for five years before he died.

142. She met the defendant in or around 2000 through family and they met at the supermarket. She developed quite a close friendship with the defendant. The defendant complained to her about the deceased whom she was looking after and in respect of whom she was the paid carer. They had many discussions about the deceased where the defendant did the talking and she did the listening. Mrs. Connolly Shea stated that the defendant talked about the land and stated that she, the defendant, would get him to change the will in which he had left the farm to the plaintiff. Mrs. Connolly Shea stated that the defendant had told her that she had told the deceased that she wanted the farm. Mrs. Connolly Shea stated that the defendant had told her that the deceased had asked her what she would do with a farm and that she had replied that she wouldn't mind putting on a pair of wellies. She described the defendant as putting a lot of pressure on the deceased and stated that the defendant said she would give the deceased the *'silent treatment', i.e*. she would not talk to him.

143. The plaintiff sought to adduce evidence from Mrs. Connolly Shea that the defendant had endeavoured to put pressure on the deceased's accountant, Aidan Egan. Objection was taken by counsel on behalf of the defendant on the basis that such purported evidence was outside the particulars pleaded of undue duress and undue influence. She also sought to introduce evidence from Mrs. Connolly Shea in relation to the deceased's condition as a diabetic and the care that was being afforded by the defendant. Having considered the submissions of counsel, I ruled that particulars in relation to these matters had not been supplied by the plaintiff to the defendant. I further declined to abort the trial at this stage or to exclude Ms. Connolly Shea from giving further testimony on the basis that there could be no proper cross examination or discrediting of her evidence. I also indicated to counsel that I would accommodate the parties in relation to additional timing if required, so as to enable the cross examination take place.

144. The defendant told her that the deceased had made his will and had willed the farm to the plaintiff but that she was not happy about that and that she wanted him (the deceased) to change it.

145. Mrs. Connolly Shea stated that the defendant told her that if the deceased did not change his will, *"that f***** would see himself in the home".*

146. Mrs. Connolly Shea stated that the defendant told her that she was going to get another solicitor, other than James Lucey, to change the will. She stated that the defendant told her that she didn't want to take the deceased back to James Lucey because he would not be inclined to agree with what was happening.

147. The defendant subsequently came to Mrs. Connolly Shea some five months before the death of the deceased stating that she *"had got the lot".* Mrs. Connolly Shea stated that the defendant was absolutely ecstatic on this occasion. The defendant told her that the deceased had asked her *"What about Willie?"* and that she had replied *"F*** Willie, I am the one looking after".*

148. On the day that the defendant presented the will to the plaintiff, the defendant's brothers came to Mrs. Connolly Shea's house looking for the defendant. They told her that the plaintiff was very upset and that they were trying to get in touch with the defendant. Mrs. Connolly Shea was distraught about this and left a message with the defendant's daughter telling her to contact the plaintiff. Eventually the defendant phoned Mrs. Connolly Shea and said *"Don't take any notice of them, this is all rubbish".*

149. Some days subsequently, Mrs. Connolly Shea met the defendant in the hairdressers and that was the last contact they had with each other.

150. Mrs. Connolly Shea gave evidence critical in her opinion of the standard of nursing care being afforded by the defendant to the deceased.

151. On 12th January, 2012, Day 14 of the hearing, counsel for the defendant applied to the Court to have Mrs. Connolly Shea's evidence excluded on the grounds that, although she trained and worked in the United Kingdom as a nurse, she was never formally qualified and further was not registered in the United Kingdom. Counsel for the plaintiff submitted that, given the nature of the evidence of Mrs. Connolly Shea and that she did not purport to give expert professional nursing evidence, the fact that she was not formally qualified or registered in the United Kingdom did not go to the heart of her evidence. Counsel for the plaintiff further argued that the defendant had been given ample opportunity to challenge Mrs. Connolly Shea's evidence when she was in the witness box.

152. I considered the evidence that Mrs. Connolly Shea gave and ruled on the matter on 13th January. I concluded that the evidence which she gave which was critical of the defendant in her role as a carer of the deceased was premised on the basis that she was in a position to professionally comment on the suitability of the care which was afforded by the defendant. However, there was other evidence which Mrs. Connolly Shea gave in relation to the various discussions that she had with the defendant. I ruled that the justice of the matter could be dealt with by excluding the evidence that Mrs. Connolly Shea gave to the extent that it was critical of the care which the defendant gave. However, I decided that such evidence stood separately apart from the other evidence that was given, which was actual evidence of fact and discussions which evidence would be allowed to be given.

Evidence of Kay Kennedy
153. Ms. Kennedy is a nurse and was Director of Nursing at Birr Community Nursing Unit from 2001 until 2008.

154. If a solicitor wanted to make arrangements to make a will it was his responsibility to contact the particular resident. The particular resident's GP would have been contacted to assess the mental and physical capacity of the individual to make a will. She had no recollection of Ms. Kinsella-Leavy coming on the day in question, 9th November, 2006. She would have expected the making of a will to be recorded in one of the unit's books.

Evidence of Louis McCormac
155. Mr. McCormac was the manager of the Nenagh Co-op. He stated that the deceased was one of the largest suppliers of milk from 1973 to 1982. He stated that the plaintiff would do all the milking on the farm at the time.

Evidence of Felim Kennedy
156. Mr. Kennedy lives in Derrylahan, knew the deceased and knows the plaintiff. He stated that the cattle on the deceased's farm would have been looked after very well by the plaintiff. The plaintiff did all the heavy work. The deceased recognised the plaintiff's dedication as a farmer from an early age.

157. In the late 1970's he had a discussion with the deceased. The deceased mentioned that he was thinking about deepening a drain along Mr. Kennedy's land. The deceased stated *"It would be good for both of you when you both start the farm."* Mr. Kennedy asked him *"How do you mean both of us?"* and the deceased replied *"Oh, good for yourself and Willy when both of you are running the places up here".*

158. Subsequently, when Mr. Kennedy was talking to the deceased about new sheds that the deceased had erected, the deceased stated *"You know, they are going to do me for my life, they will do me now until I am finished here. And Willy can put up two … slatted houses if he wants to when he is boss".* The conversation could have been in the late 70's.

Evidence of Michael Byrne
159. He was a veterinary surgeon practicing in Birr and had been initially been in the practice of Mr. J.J. Phelan. He visited the farm in the early 1970s and visited up to half a dozen times a year, the time the plaintiff would be in his mid teens and he was the person who did all the physical work. He could not recall the deceased ever doing any physical work. He recalled he was called out at night for a sick animal. There was never an occasion when the plaintiff was not there. He had remained the vet to both to the plaintiff and the deceased up to 2005.

Evidence of Alice McEvoy
160. Ms. McEvoy is from the Carers' Benefit Section of the Department of Social Welfare. She said a carer's allowance application was received on 10th June, 2004 in respect of the deceased from the defendant. She said that an applicant could work up to ten hours a week and make €250 per week and still be entitled to the allowance. The carer's allowance was approved in October 2004 and had been in receipt of the widow's pension. The carer's allowance was approximately €5 per week greater than the widow's pension. The rules provided that one could continue to be a carer of a person was not in respite care for more than thirteen weeks in a year, and continue to receive the allowance.

Evidence of Tom Smith
161. He is a farmer and agricultural contractor. He did work for the deceased from 1971 onwards. He cut grass for him, silage and put it in the pit, then spread farmyard manure. The plaintiff was the person who was always there working when he was there. He visited the lands in the middle of June and September to spread the farmyard manure. He repeatedly was told by the plaintiff that he had cleaned off another couple of acres each year and up to 35 – 40 acres of clean land was in place. This continued up to the time the deceased gave up farming. The plaintiff came working for him around 1983. That was the time when the deceased gave up milking the cows. He said that the plaintiff did not work a full year, each year, for him. It varied. In his opinion, whilst working for him, the plaintiff did not neglect his duties on the lands in Derrylahan. Sometimes the plaintiff would start work early with him in order to go home early to do the jobs for the deceased. He said that he was very disappointed when he heard following the death of the deceased that the plaintiff did not get the lands. He said *"we all thought the place was going to be Willy's, that's all I know".*

162. The plaintiff worked for him until 1998. He recalled that at the time the plaintiff had got a piece of land from the deceased and also had a turkey business going.

Evidence of Michael Bryant
163. He was the Assistant Director of Nursing in the community care unit in Birr. He said that if a will was to be drawn up by a solicitor, he would expect an appointment to be made by such solicitor and that it would be recorded in one of the diaries.

Evidence of Eamon Dolan
164. He lived beside the plaintiff's residence and recalled going down with him to the lands in Derrylahan and giving the plaintiff assistance. As the plaintiff's children got older this decreased in frequency. He often met the deceased whilst there.

165. He recalled a conversation which took place around September 2001 between himself, the deceased and the plaintiff. He said that the deceased was talking about the handy life and farming and the plaintiff said *"sure, look at us, we wouldn't be here if I had, working for you doing this"*. To which he replied *"Willy, won't you be well looked after when it is all yours".* His wife and the plaintiff's wife were sisters. He described the plaintiff as the engine of the whole enterprise.

Evidence of Robert Young
166. Mr. Young lives in Rathcabbin, knew the deceased and the plaintiff. He stated that the defendant once told him that she was going to put the deceased in respite for a week and that she sounded at the time as if she wasn't happy looking after him. On another occasion, the deceased was in Tullamore Hospital and the defendant said to him that she was going to get the doctor to hold onto him for another few days in Tullamore because she was going on holidays.

Evidence of Liam Rigney
167. Mr. Rigney is an auctioneer and valuer practicing in Birr. He gave evidence as to the quality of the land on the deceased's farm and the valuation of the land. He said that in respect of part of the lands there was a shared access who had been given the house by the deceased. Sharing access would be seen as a limitation. The farmyard would need to be brought up to modern day standards. There was 122 acres approximately. Of this, approximately 14 acres was in a special area of conservation. Having an SAC designation and that meant that such area could not be farmed intensively. In his opinion, the lands in February 2011 and in December were valued at €525,000. He based it on a valuation of €4,000 an acre and the farmyard about €40,000. He gave a value of €1.2m in April 2007, at the time of the death of the deceased.

Evidence of Seamus Pierse
168. Mr. Pierse is the local Manager of the Bank of Ireland branch in Birr. The deceased kept a current account in the branch which was used for his farming activities. €800/€900 were withdrawn from his account on a monthly basis.

Evidence of Terry Naylor
169. Mr. Naylor is the plaintiff's brother. He worked at a local contractors, Gill's, after leaving school. He stated that the defendant would sometimes be a bit annoyed with the deceased, that she would want to go away and it would be inconvenient for her. On one occasion she wanted to put the deceased into respite or into the Nursing Home and she said *"if he isn't careful I will put him in a Nursing Home".*

170. Mr. Naylor was not in Ms. Kinsella Leavy's office for the reading of the will but he learned of the contents of such about two days later.

Evidence of Tom McClure
171. Mr. McClure was a friend and companion of Mrs. Connolly Shea. He was aged 85 years and was wheelchair bound. He was hard of hearing. He heard the defendant state that if the deceased didn't change his will and leave the farm to her instead of the plaintiff, the deceased would find himself in a home. He heard the defendant state that the plaintiff was not entitled to the farm and that it was her place. He stated that the defendant subsequently came into the house excited stating *"I have got the lot".* Twice during his evidence he said he was confused.

Evidence of Paula Phelan
172. Ms. Phelan is the Director of Nursing at Birr Community Nursing Unit, and has been in that position since 2008. She said the first admission of the deceased for respite was 5th October, 2005 and there followed further admissions at six weekly intervals approximately. The deceased was admitted on 8th November, 2006 and was subsequently admitted on 14th March, 2007 and discharged on 21st March, 2007. She gave evidence of the route that Ms. Kinsella Leavy would have to have taken to have attended the deceased in order to make the 2006 will. She stated that there was no record of any attendance by Ms. Kinsella Leavy and that such attendance should have been noted.

Evidence of Jim Phelan

173. Mr. Phelan is a qualified veterinary surgeon who commenced practice in 1953 and worked for the deceased's father as far back as 1953. He worked for the deceased up to 1998 and has since retired. Whilst the dairying activities were carried on, he visited the farm approximately twenty times a year. He recalled the plaintiff being on the lands from the time he was nine years old. From the time he left school, he appeared to be all the time on the farm night and day. He received assistance from the plaintiff when required.

174. He described the deceased as having stomach trouble all his life. He avoided physical work which was left to the plaintiff. He described the assistance given to him by the plaintiff as holding and restraining animals and lending what assistance he could. He described the plaintiff as being a very good farmer and a diligent worker. Whilst the deceased was involved in the buying and selling of cattle, the plaintiff did everything else in regard to the farming activities.

175. Once the deceased gave up his dairying, there would not be as many calls to see the dry stock.

Witnesses for the Defence

The Evidence of the Defendant
176. She was born on the 15th March, 1954, in Birr. When she was about five she moved with the family to the farm at Derrylahan. As far as she knew her father worked in England. She does not remember seeing him until she was about 12 or 13. She recalled being sent by her mother to ask the deceased when they were moving to Derrylahan. The plaintiff was a year younger than she was. When they moved to Derrylahan there were no facilities, no bathroom and no toilet and all six slept in the one room. There was no electricity. Water was sourced out of a well. After a while they moved into different rooms when those rooms were made habitable.

177. She went to school at Rathcabbin.

178. The water did not come until the 1970s.

179. In the 1960s her recollection of the farming activities was crop growing, turnips and corn growing. They also had cattle, sheep, pigs and chickens. Her mother helped on the farm. The deceased paid their mother every week for their keep and they lived on that money. Every member of the family was involved in the farming activities when they were young. She recalled the deceased doing tractor work and on the plough. When they got older they drove the tractor.

180. In the 1970s, the dairy herd was established and they milked the cows morning and evening. They did it before school and when they came home after dinner. The cows were initially milked by hand and there could have been up to 30 cattle. In the 1960s the deceased used to bring workmen with him from time to time. Her mother kept a few turkeys at Christmas time. The turnips and crops stopped around 1970.

181. After the national school she went to the technical school for about a year and a half in Birr.

182. In 1970 they were all still at home. Her older brothers had finished school.

183. When she finished in the technical school she stayed at home for about six months and recalled that this was the year when the plaintiff went to Dublin.

184. She got a job in Bloomfield Hospital in Donnybrook and was there for nine months approximately. She then got a job in Barrington's Hospital in Limerick. She went home at weekends. She stayed in Barrington's Hospital until late 1976.

185. She got married in early 1977 and moved to Roscrea. Her husband, John Maher, was 35 years older than she was. She gave up work at that stage and her son Patrick was born in October, 1977, Brian was born in June 1978 and Eileen was born in June, 1980. Her husband, a widower, had eight children.

186. She lived in Roscrea until 1980 and visited America in 1980, staying for three weeks and repeating this in the following year until 1983 when they went to Spain during the winter period.

187. They bought a house in Spain. Each year they returned to Ireland from mid June to mid October. This continued until 1989 when they returned to live in Ireland thereafter. They stayed in different houses when they returned including with her mother and the deceased in his house in Military Road, Birr. Herself and her husband separated around 1989 and she went to live with her mother and the deceased until about 1994, when she moved to Townsend Street. Her children at the time were in primary school.

188. In the mid 90s, her mother got cancer and she looked after her. She died in January, 2001. She got a part-time job in 2003.

189. She resided about five minutes away from her mother and the deceased.

190. Her husband died in December, 1999. Her late husband and herself agreed that they would divide up the properties they had between their children. When her husband died she got a non-contributory widow's pension.

191. In the mid 1990s and 2000 she was in receipt of lone parents or single parents allowance.

192. She had visited the deceased's house on a regular basis whilst her mother was alive. After her mother's death she was available to look after the deceased on a full-time basis. She would get his dinner and would leave his tea for him. She did the housework, made the bed and did the washing. She would get the food for him and order the fuel. He suggested that she should give up the promotional work which she did and become a carer. This would qualify her for payment by the Government of the PRSI. She applied for a carer's allowance.

193. Before 1999 she got a job in Campbell's Supermarket. She did not meet Helena Shay in Campbell's.

194. The deceased fell in 2005 and cracked three ribs. He was admitted to hospital on 18th March, 2005, and was hospitalised for six to seven weeks. When he was discharged from hospital she lived with him for a while and she would be on call for him. She stayed in his house for three months. The first time he was in hospital she went away for a break for two weeks with his doctor's approval. She would visit him in the hospital between four to ten o'clock at night. He had a further admission to hospital during 2005. When he returned home and she continued to live with him until later in 2005. Her routine as a carer for him in late 2005 and through 2006, was to go up to his house in the morning, get his breakfast, bring up the oxygen machine from his room, take his blood, put him on a nebuliser, take out the ashes, light the fire and bring in turf. From 2000 until 2005 he used to get up in the morning, have his breakfast and go out to Derrylahan. She would have the dinner ready for him in the evening and at night time he would go to the pub. He was brought home at midnight by her.

195. Up until 1970 her recollection was the contribution made by all the children on the farm was the same.

196. She agreed that the plaintiff left school when he was fourteen years and started working for the deceased on the farm.

197. If the deceased wanted help from outside he would bring in somebody from outside.

198. Her mother asked Dr. Richie if he could do anything for the plaintiff as he had dyslexia and could not read or write. As far as she was concerned, her mother asked the plaintiff to come back to the farm as the deceased was not well. She denied that she herself was the source of the communication. She left to go to work in Dublin when he came home. She accepted that the plaintiff was working for the deceased throughout the 1970s.

199. When she came home at weekends, she did not have any involvement with the farming activity. She was not involved in any discussions in relation to the farm. Her father (on her birth certificate) died on 28th December, 1977.

200. She said that the deceased said that he had no more work on the farm for the plaintiff once the milking was finished and as a result the plaintiff got a job.

201. She said that she witnessed a conversation with her mother and the plaintiff and the deceased where he said he was finished with the milking and there would be no more work on the farm. This was about 1983.

202. The deceased complained about his stomach over many years. His biggest medical problem was a hernia which he got in the '90s. During the 80s and into the 90s the deceased was involved in assisting in calving. After her mother's death, he did less work on the farm and had less animals.

203. There were no discussions with her in relation to selling the bog to the OPW. She was not aware of the 1995 will until it was produced in connection with the proceedings.

204. In relation to the opening of non-resident accounts, she was informed on her return from Spain by the deceased that he had used her address in Spain and put her name on the account. She had no involvement in opening the account and had no involvement with the accounts. He did his own banking. In 2005, he was not able to go to the bank and he asked her to do the lodgements. He would also ask her to arrange for the withdrawals. On one occasion, a joint account was opened in her name and that of the deceased with First Active. She had declined his offer to put her name on an account for herself as it would have jeopardised her pension.

205. The first week of respite care was from 23rd November, 2005. The public health nurse had suggested it. The respite came about on a six week cycle basis. He knew that respite was for a short period and that he would be coming home and that the care unit was not a nursing home as such.

206. She would travel to Spain for one or two weeks now and again. She got assistance on three or four occasions from another woman to come in and look after him while she was away.

207. Up to 2005, he had not indicated anything to her about his will. She was aware of the 2005 will as she made the call to Mr. Lucey's office.

208. She said the deceased was advised by the doctors in 2005 when he was very sick to make a will and settle his affairs and he requested her to ring Mr. Lucey which she did on several occasions. Mr. Lucey came to the house on 30th September, 2005. Prior to this the deceased had not discussed with her his intentions. She said that she was requested by Mr. Lucey to leave the room as they were going to make the will. She denied as stated by Mr. Lucey that the contents of the will were read to her. Some time later in 2005, he said to her that he was leaving her the house (in which he was residing). He said that if he did not know whether she would have to pay tax on it or not but she could consult Mr. Egan. He asked her to inquire would a stepchild have to pay the same stamp duty as a child or would a stepchild have to pay the same as any relative. During 2006, he was regularly in respite and during that period his condition was good.

209. After 2005, the deceased said he was not very happy with what he did and he was annoyed that Mr. Lucey talked him into leaving Terry money. He said he was going to change his will and that he was not happy about his earlier will. In relation to the call by Mr. Egan to the house on 7th November, 2006, at the deceased's request she phoned Mr. Egan and said the deceased wanted him. At Mr. Egan's request she asked the deceased what was it for and he (the deceased) said he wanted to make a will. She opened the door to him when he came a day or two later. She was not aware of what transpired between Mr. Egan and the deceased. She had never heard of Carmel Kinsella-Leavy or communicated with her office.

210. She had informed the respite centre that if she was away and there was an emergency to contact other members of the family and had named Alan, Michael, the plaintiff and Terry.

211. The deceased did not tell her if provision had been made for anybody in the will in the following months. Neither did she ask him.

212. Following the respite visit in March, 2007 he fell outside the front door as he was returning with her sister-in-law and had to be moved to Intensive Care in Tullamore. His medical condition did not improve and his other medical conditions seemed to come against him and he passed away on 7th April, 2007.

213. A week after the funeral, she informed Mr. Egan that the deceased had died. Mr. Egan asked her did she know he had made a will with Ms. Kinsella-Leavy to which she replied no. He gave her telephone number to her and suggested that she should contact her. He informed the other members of the family that the will was to be read in Tullamore. Michael was the only one that showed up. He was very upset about the contents. She could not believe that the deceased had left her all that he did when the will was read.

214. Later that evening, she was rung by Helena Shea.

215. When she returned home from Tullamore, Helena Shea rang her and asked how she got on. She invited her up for a cup of tea to her house and then told Mrs. Shea what was in the will and she said to Mrs. Shea *"my god how am I going to go out and tell them that they would kill me"* to which Mrs. Shea said *"sure they wouldn't even give him a dinner"* (referring to their siblings).

216. The following day she brought a copy of the will up to Terry's house and also the plaintiffs where she gave a copy to his wife. The plaintiff's wife Frances said Willie did not get the land to which she said that was what was in the will.

217. A few days later, the plaintiff came to her house and said that he wanted the land, saying that he had worked there all his life and that he was entitled to it. She said he was not entitled to anything, and *"you have to earn it".*

218. She was not a party to the various discussions of the various witnesses giving evidence of the deceased making various promises to the plaintiff in relation to the land. These included Mr. Smith in August 2003 and again in 2004, Mr. Sullivan, Mr. Kennedy in the 1970s and Mr. Dolan in September 2001. She could not see the deceased having discussions with those persons about his business. She said that the deceased did not discuss matters of property or inheritance openly.

219. In relation to Mrs. Connelly Shea, the relationship started around 2003. She lived near her and they went for walks together. She said she did not have any discussions with Mrs. Shea about wills or land and she disagreed with her evidence. She said she only came once to the house to bring up a dinner to the deceased. She denied that she had any discussions with Mrs. Shea about the plaintiff's will and changing it or that he had willed the farm to the plaintiff. She denied that she said to Mrs. Shea that she was not happy with the will as the deceased had willed the farm to the plaintiff and that she wanted him to change it. She denied that she had any conversation with her in which she said that she was going to get another solicitor to change the will. There was no discussion about who the deceased's solicitor was or any question of dissatisfaction with Mr. Lucey.

220. She denied that around November or December prior to the deceased's death that she knew what was in the will that Ms. Kinsella-Leavy had drafted. She was not in a position to tell anyone what she got under that will. She denied saying that she told Mrs. Shea that she had got the lot. She denied that there was conversation in the presence of the deceased, herself and Mrs. Shea about the deceased's will and its contents. She denied the deceased said in the context of the will *"what about Willie"* and she said *"F… Willie"* and that she was the one looking after him.

221. The defendant said that from the making of the will in September 2005 until November 2006 she had stayed in 2005 with him for about three months after he came out of hospital. In 2006, she had moved back to her own house. The deceased was in respite care for some seven weeks during 2006 up until November 2006. When he was in respite, anybody was free to go and see him. There was no restriction on visiting him whether family or other people who visited him. The Public Health Nurse would call on a weekly or two weekly basis to his house. He also went to the hospital in Tullamore to the Diabetic Clinic and to Dr. McAuliffe and a chiropodist. He had a blood test once every two months. If he was sick, she brought him to the GP, Dr. McAuliffe. From 9th November, 2006, until he died there were two periods of respite over Christmas 2006 and again in March 2007.

222. He was in Tullamore Hospital for two weeks around 24th February, 2007.

223. She denied that she had threatened him with a nursing home if he did not do as he was told by her.

224. It was accepted by her that at the end of the plaintiff's period in primary school, he had significant reading difficulties.

225. She told Mr. Egan that she was in reality the daughter of the deceased when she went to him for advice in late December – January 2006 in relation to the different tax treatment between a child and a stepchild. She said that she first learned that she was a daughter of the deceased from her mother and the deceased. She was told this in 1995 – a date which coincided with her mother's diagnosis with cancer in 1995.

226. In the presence of the deceased her mother said that the deceased was her real father. She never had any further discussions about this with either of her parents. The only other person she told was Aidan Egan in 2003. Mr. Egan knew about this from 2003 even though it was recorded in his memorandum of January 2006. She later corrected the date when Mr. Egan knew as 2005.

227. Later, she said that she had another discussion with Mr. Egan in 2005, and was mistaken in saying it was 2003. It happened after the bogus non-resident account matter was cleared up and she went down to ask him about tax as a natural child or a stepchild and when in his office he asked why was her name put in the 1980s on the bank accounts and she told him it was because she was his natural child. She was in Mr. Egan's office twice, once in 2003 and again in 2005 when she asked him if a stepchild had the same rights as a natural child if such child were to acquire the house from the deceased.

228. She said that she could not remember precisely how the issue of her parentage with Mr. Egan came up.

229. In 2006, the deceased asked her to ring Mr. Egan which she did. Mr. Egan asked what did he require him for, to which the deceased said to tell him he wanted to make a will. He called out the next day.

230. In 2005, the deceased was advised by Dr. Shields that he should settle up his affairs when he was in hospital for three cracked ribs. This happened between March and May.

231. She said she never thought about telling her siblings that she was the natural child of the deceased. It was not her place to tell them if her parents wanted to tell them it was up to them to tell them not her. She could not recall whether she ever thought that some of her siblings might be the natural children of the deceased.

232. She said she was not in the house when Mr. Lucey was making the will. She denied that Mr. Lucey read the will to her or her brother, the plaintiff who was with her. She said the first she heard she was going get the house on Military Road was when the deceased told her. He had always said to her that he was going to leave her it.

233. Meals on Wheels provided him with his dinner for a short period and was then cut off in 2005. Her application as a carer was not passed until late 2004.

234. She denied what she was told by the deceased what he had put in the will. She said that prior to 30th September, 2005, she had phoned Mr. Lucey's office on a few occasions before he came up. She denied that the initial call to Mr. Lucey came from the deceased. It came from her.

235. In the Inland Revenue affidavit she described herself as a stepdaughter of the deceased and also made a declaration that the information was true to the best of her knowledge and belief. This description was consistent with the way she had normally described herself. She said she would plead ignorance about this description.

236. She contended that she did not inform the court or her siblings about her parenthood because she was never expressly asked. This was also the position in not informing Ms. Kinsella-Leavy. She said she had told her doctor about her parentage a few years before.

237. She said that the deceased and her children had always been very close from the time they were born and that they called him granddad and that her mother referred to him as granddad and herself as nanny.

238. She was not in a position to contradict the various promises made to the plaintiff allegedly by the deceased in the presence of the various witnesses. She said that prior to November 2006 (over a month or two) she made up to a half a dozen phone calls to Mr. Lucey's office but got no reply from him. She did it in response to a request from the deceased. She phoned Mr. Lucey as the deceased had said he wanted to make a will. She said that she met Mr. Lucey one day outside his office and said that the deceased had been looking for him and wanted to do something about a will. He said he was quite happy with the deceased's will. Objection was made to this evidence on the basis that it was not put to Mr. Lucey when he was giving evidence. She denied that she asked Mr. Lucey to change the will.

239. The deceased said he wanted to change the earlier will as he had left Terry money in the (2005) will. She said she informed the deceased that Mr. Lucey said the deceased had done a will and that he (Mr. Lucey) was happy with that. She tried to ring him on another two occasions, to no avail. After that the deceased asked her to phone Mr. Egan.

240. She denied that she discussed the making of a will with the deceased. He said to her that he wanted to change his will. It was put to her that the deceased never asked her to get Mr. Egan in Tullamore to make his will in the early part of 2006 that it was she who instigated it. She contended he had asked her.

241. She denied that she ever threatened the deceased that he would be put into a nursing home if he did not change his will.

242. She said she told her siblings that natural children and stepchildren had the same rights from a capital acquisition tax perspective. She later said she may not have told them and she could not recall telling the plaintiff.

243. She got advice from her solicitor after the death not to acknowledge that her siblings might have claims under s. 117 of the Succession Act. She never told her solicitor, Ms. Kinsella-Leavy, she was the natural child of the deceased.

The Evidence of Dr. Paul Shields
244. Dr. Shields is a Consultant Cardiologist and Physician attached to the Midlands Regional Hospital in Tullamore. He stated that the deceased had multiple cardiovascular and respiratory problems.

245. Dr. Shields gave evidence that the deceased's hospitalisation in 2005 marked a serious deterioration. At the Outpatients, he was bright, alert, dismissive of his illness and could converse on topical issues. As the years passed on, he had a need for more dependency. He supported the evidence of Dr. O'Keeffe. His condition was characterised by good and bad spells.

Evidence of Mr. Aidan Egan
246. Mr. Egan is a certified public accountant who joined Milne O'Dwyer in 1991 and qualified in 1996. They are registered accountants and auditors based in Tullamore. The firm had an office in Birr up to early 2000s. As a trainee accountant, he would have worked on the plaintiff's files and he took over management of the files when Tom Mille departed from the practice. He had his first meeting with the deceased around April 2001. He met the deceased 2 – 3 times a year. He prepared his accounts and completed tax returns on an annual basis. He also dealt with the tax implications of non-resident accounts. He was also involved in relation to resurrecting an application for a contributory old age pension. The deceased had substantial monies on deposit. He recalled that in May 2005, he had a meeting with the deceased to enquire had he Single Premium Insurance Products (in relation to which the Revenue were making inquiries) and he assured him they did not have such a product. In the course of the discussion with him, he asked the deceased had he a will made to which he said he had not. Mr. Egan recommended to him that he should make a will and to assist him he wrote out a list of the assets which he had, bank account details and numbers made out a schedule for the deceased and also for his own records. He reviewed the contents with the deceased who said he was going to bring it to a solicitor that week to deal with these. When asked by Mr. Egan did he require any assistance in relation to inheritance tax planning, the deceased said he did not.

247. The next occasion of contact was in November 2006 when he received a call that the deceased wished to see him. At the time, he had the 2005 accounts and tax returns drafted and he arranged to call to the deceased on 7th November, 2006.

248. He described the deceased as sitting in a chair and being connected to a respiratory aid machine. There was nobody else present during their meeting.

249. When the deceased asked him would he make the will, he said that he was neither able nor qualified to do that and suggested that he should contact his own solicitor or if he wished (he Mr. Egan) could contact his solicitor to make or change his will. The deceased said that he felt that his own solicitor would not call out to him and Mr. Egan did not bring the matter any further but got the sense that there might be some dissatisfaction with his own solicitor.

250. Mr. Egan suggested his solicitor in Tullamore by the name of Carmel Kinsella Leavy and that if he wished, he could contact her to see if she would call out to him to make or change his will, to which he agreed.

251. As the meeting had been arranged by a relative of the deceased (the defendant) he asked the deceased was there anyone placing any pressure on him to make or change his will. He replied there was not and said that the defendant looked after him or was

good to him. He believed that the deceased would have said to him that he may be going into respite for a few days following the visit.

252. He said that on the next day he probably contacted Ms. Kinsella Leavy and discussed with her the deceased's conversation with him and the request for her to call to him. She asked him some questions in relation to the deceased's health both at that time and in the past. He asked an assistant to forward a schedule of assets to Ms. Kinsella Leavy and he did not believe that he had any further meeting with the deceased. In cross examination, he said that from 2003 or 2004 onwards, that the defendant was present in the house when he had any dealings with the deceased. She was the contact person between the deceased and his firm. In the last three years of his life, the defendant would have made contact with his office on behalf of the deceased in relation to his accounts and some of the non-resident accounts that were in the joint name of the defendant and the deceased. In early 2002, Mr. Egan had various conversions with Mr. Lucey, Solicitor, in order to ascertain details of the deceased's assets and income. At no stage, to the best of his recollection, was there a question of any difficulty as between the deceased and Mr. Lucey. Mr. Egan dealt with the tax implications of a bogus non-resident account on behalf of the deceased. In a memorandum prepared by Mr. Egan in 2002, he describes the deceased who was 77 years of age as being very ill. Due to his mental and physical condition, the deceased was not in a position to assist Mr. Egan in dealing with the queries which he had in relation to bogus non-resident accounts.

253. In the accounts prepared by Mr. Egan that there was no claim for agricultural wages.

254. He spent some three and a half hours in attendance with the deceased at his home in the week ending 11th May, 2005, in preparing a schedule of assets for his will.

255. He felt that it was the deceased who told him he did not have a will and he would have suggested him that he should have. He provided him with a handwritten schedule of assets as of 11th May, 2005. He could not be certain whether the deceased had told him that he had not made a will or that he said he had made a will some ten years earlier.

256. He had a further meeting with the deceased on 12th *(sic)* November, 2006 which was the occasion when the deceased asked him to make his will. He made arrangements to see him on 7th November. When he came out to visit the deceased, he was on an oxygen nebuliser. He would not have been in a position to open the door for him. He could not recall whether Ms. Maher was in the house or not. Shortly after he arrived, the deceased said to him would he (Mr. Egan) make his will. In 2005, he had suggested to him he should make a will. He told the deceased that he was not in a position to make his will and suggested that he needed to talk to his solicitor. At the time he did not know who his solicitor was. He believes that he may have said do you want me to ring your solicitor to make an appointment for you and that the reply was in the negative and he said that he (the solicitor) will not call out to me and that there is no point or words to that effect.

257. He sensed from the deceased that he may have some level of dissatisfaction with his solicitor but he did not probe him on it or did he ask him who his solicitor was.

258. In an effort to be helpful to the deceased he suggested to him that he had some dealings both personally and professional with a lady called Carmel Kinsella-Leavy and if he wished, he could contact her to see if she would call out to him with a view to making his will. He regarded her as very professional and she came from a farming background.

259. The balances in the accounts were the actual balances as of 11th May, 2005. The 2005 accounts were used for the purpose of making the will in November 2006. As far as the witness observed, the deceased's general demeanour during their November meeting was fine. He did ask him was there anyone placing any pressure on him to make or change his will. He asked this question because Jean Maher had contacted his office for him to call to see the deceased. He said no and mentioned that Jean was particularly good to him or something like that.

260. He had no notes of the discussion he had with Ms. Kinsella-Leavy nor could he say what precisely she asked him or did not ask him. The information he sent to her was extracted from the December 2005 accounts. From his dealings with the deceased, Mr. Egan saw nothing to suggest he was not of sound mind.

261. The deceased mentioned he was going to respite so he may have suggested that she could call there.

262. He quoted from a memorandum dated 5th January, 2006. The note read that the deceased had advised the defendant that she was going to inherit his PDH on Military Road, house value say €300,000. It read Jean was Michael's stepdaughter but in reality was his daughter. The nature of the query was at the time was whether a stepchild could qualify for the CAT threshold of a child. The note represented a meeting which he had with the defendant. Having sought advice from a colleague he confirmed to the defendant that a stepchild qualified as a child for the purposes of parent/child threshold for CAT.

Evidence of Ms. Kinsella-Leavy

263. She qualified as a solicitor in 1991 having earlier worked in a solicitor's office in Birr. She set up her own practice in 1994 in Tullamore. The deceased's brother John would have been a client in the practice in which she first worked. She never had any dealings with the deceased or Jean Maher prior to 2006. She recalled she got a call from Aidan Egan on 8th November, 2006. He told her that he had a client who wished to make a will who was located in Birr and asked if she would be able to go see him. He was elderly and lived alone. She was informed that he was due to go to respite the next day and was in fine form. There was no discussion about assets over the phone but he said he was going to give particulars of them to her. She asked did the man have a solicitor of his own to which he replied he did but for some reason or other, he would not go to him or he did not want him to go to him. She said she had no objection to making the will if there was nothing sinister about the matter. Details of the assets were emailed to her in the morning and an appointment was made for the afternoon of 9th November. She and her assistant, Ms. Verona Smith, travelled to Birr and went to the Birr Community Nursing Home. She explained to the receptionist that she was there to see the deceased and was brought to the room. There were two people in the room when she was introduced to one as being *"Michael Hoare".* She introduced herself and they exchanged pleasantries. He then said to her *"you are here to do a job, you are here to do my will".* She went back to the nurse's station and a room was made available. The three of them went to the room. He asked had Aidan Egan been in touch with her and had he given her details of his assets to which she replied he had. She asked him to go through the list of his assets. He told her he had made a will with another solicitor and she asked why he did not go back to that solicitor to get this will made. He said he was not happy with the will that he had made. He said he was not happy with the particular solicitor either. He said some unsavoury things about the solicitor but did not tell her who the solicitor was. From the tone of his voice, she decided not to probe any further. Prior to these questions they had a general chat about himself and his family. He chatted about farming and he said he had a farm at Derrylahan and he spoke about the price of cattle and things like that. After a period, I asked him did he want to do the will which he replied, *"Oh yes, that was the purpose that I was there for".* He told her that he had the house in Birr and the farm in Derrylahan. He was able to tell her roughly what he had in all his bank accounts. He told her that he

had sold the milk quota some years ago.

264. In relation to the loan to Mr. Terry Naylor, he did not wish to tell her too much. She took notes of his wishes, it read *"Terry not to get anything".* Opposite *"Willie"* was written *"150k".* Opposite *"Micky"* and *"Alan"* was written *"40k".* Opposite *"Jean"* is written executrix and *"Jean to get the farm and house in Rathcabin. Also to get house and contents on Military Road".* Underneath it read *"Jean Maher: Jean's daughter and sons, two lads Brian and Patrick Maher, 70k each, Eileen Maher 150,000". "Residue to stepdaughter Jean".*

265. It also read:-

"Title deeds to farm in house in Derrylahan

Deeds to Military Road

Aidan Egan has details re all accounts."

266. It then read:-

"Willie has about half of with and Mick has the other half. Grazing it himself."

267. The foregoing represented his instructions to her, which he communicated to her.

268. They had a discussion about no provision being made for Terry.

269. He told her that his stepdaughter Jean was particularly good to him and she said he emphasised this greatly. He said the title deeds to the house in Birr were in that house.

270. He identified his family as being a stepfamily and did not indicate that any of his children were his natural children. He told her that he had a few cattle at the time on about half the land and that the plaintiff used the other half.

271. The will was written out by Verona Smith who was in the room when the instructions were taken. When the will was written by Verona Smith, she handed it to Ms. Kinsella-Leavy who read it out to the deceased. The will was prepared in accordance with the deceased's instructions.

272. There was reference to my stepson *"Willie Naylor"* when it was first written by Ms. Smith. It read:-

> *"To my stepson, Willie Hoare I give, devise and bequeath the sum of 150,000 for his own use and benefit absolutely".*

This was changed to Naylor following the change to *"Naylor"* from *"Hoare"* being highlighted by the deceased.

273. She said she did a rough tot on the amounts of money he had on the day and whilst there appeared to be plenty of money, she indicated to him that if he had spent some, it would not be sufficient to pay the legacies upon his death. She would have been concerned that he might require a nursing home. He was she said adamant, he did not want to change the terms and that there should be enough money there at the end.

274. She said the will was read out to the deceased and he understood its contents and signed the will at the foot of page 2 in the presence of herself and Ms. Smith, both being present at the same time. She applied her signature to the will and saw Ms. Smith sign her signature.

275. She explained to him that the will was only effective from the date of his death and that if he wished to change it, he could have her contacted.

276. She was told to hold the will and no copy was made of it in accordance with his wishes. She believed that after the will was made that they spoke about his brother, who was a dentist in the town.

277. He told her that his stepdaughter Jean, had gone to England where one of her daughters was at the time and that the purpose of him going in for respite was to give her a break and that she was very good to him.

278. When she first met the deceased he was attached to an nebuliser but when they went to the room this was removed. From recollection, he walked to the room.

279. She prepared an affidavit of an attesting witness and it was sworn by her on 2nd September, 2008.

280. Following the execution of the will on 9th November, she had no further contact with the deceased or the defendant.

281. In cross examination, she said that Mr. Egan had told her about the deceased's breathing problem and that he (the deceased) was on a respiratory machine and required oxygen. She said that the deceased had told her that Mr. Egan was his agent, he trusted him and he told her that he (Mr. Egan) was a very good friend and accountant to him. She would not accept she got any instructions from Mr. Egan.

282. Mr. Egan had not told her anything unsavoury about the former solicitor.

283. The first she knew of the identity of the previous solicitor was when the defendant came to her office in order to have the will read.

284. In relation to the unsavoury comments that the deceased made about his previous solicitor, her recollection was that they were vulgar in nature and she said they were forcefully made. Such was his demeanour in relation to this that she did not wish to pursue the matter any further.

285. She said that Mr. Egan did not influence her in relation to the deceased's ability to make a will. He never checked with her afterwards as to whether she had made the will.

286. Mr. Egan told her the deceased had stepchildren but did not say how many. She said that when she went out to make the will she had her professional antennae up.

287. She was not made aware by Mr. Egan that the defendant was the deceased's carer.

288. She did not know whether he mentioned Mr. Egan had been in touch with her or whether she mentioned Mr. Egan's name first. She said she found it easy to converse with him and she thinks he did so also with her. The total interview took about one and half hours.

289. She said that in getting the details preliminary to the preparation of the will, she did not *"tear"* into him and say she was going to do this will at that time but she eased things along. It was apparent to her that the deceased was in fine form. He was lucid and he was the *"finest in every shape, way and form".*

290. She asked him did he wish to do the will there and then or did he wish her to go away and come back another time and he said that he wanted her to do it there and then. She did not take a note of what their preliminary and general chat was about. She knew a lot of people he knew, they had a lot in common.

291. She probably had a conversation with him about his breathing and being connected up to the oxygen. He mentioned to her he was not in great shape that he did not think he would be going too far to spend his money.

292. As a result of her conversations with him, she was satisfied that the deceased knew what he was about, knew what he wanted to do, knew what assets he had, knew what family he had, knew where he was, knew he was in respite for a short period of time while his stepdaughter was gone to England. He knew this was a fairly regular occurrence and was happy to do it. He did not see anything unusual about any of this.

293. He told her what monies he had and what banks the money were in. She mentioned to him that he had not mentioned anything about a milk quota, to which he said he did not have any milk quota.

294. She concluded that he knew what he was doing and he knew what he wanted to do.

295. In relation to the general family circumstances of his stepchildren, her recollection was that he said certain things had happened over the years which he did not tell her about, that he had given people (his stepchildren) various items but that this is what he wanted to do now.

296. She did not ask him what he had done for the stepchildren nor did she know anything about the family circumstances. There was one stepchild he did not want to leave anything to.

297. In relation to his land, he said that he had a few cattle on the land and that his stepson Willie farmed the remainder of it.

298. She said that the deceased was happy with whatever arrangement he had with his stepdaughter Jean who was the one he wanted to look after most. She could not quibble with him as to why or what the reasoning was behind that.

299. She said that if she had known that the plaintiff was his natural child as opposed to a stepchild, she would have been in a different situation advising him for the purpose of doing his will. If she had known that he was a natural child she probably have asked him are there any other natural children. She said that in relation to the children she had no reason other than to believe that they were his stepchildren. If she had known that at least one of the children was a natural child, she did not believe the deceased would have made the will any differently.

300. She said that he said he had looked after the stepchildren well during his lifetime but he was not leaving anything to Terry She never mentioned s. 117 of the Succession Act to him.

301. She said she was happy that she had established that she was not dealing with minor children and that the deceased told her that the family were all looked after and had their own places. She established from him that the milk quota was gone for a long time.

302. She said that it was obvious when the deceased changed his solicitor that he was clearly dissatisfied with his former solicitor. She did not know that the deceased had various medical complaints other than he was on an oxygen machine. In a general way, she would have known he had respiratory problems.

303. On 29th – 30th October, 2008, the defendant terminated her instructions to Ms. Kinsella-Leavy.

304. She said she felt that he should be leaving something to Terry and so encouraged him to which he said *"No, he took it himself".* She did not know the contents of the previous will, save he had told her he had a will and was not happy with it.

305. She agreed that undue influence can be subtly exerted. She was happy that the will reflected the deceased's instructions and his intentions. In her opinion, there was no element of undue influence affecting the deceased on the day. The deceased did not present himself as being under any pressure. Whilst the deceased was 82, he was frail but not vulnerable.

306. She repeated that the deceased told her he had looked after the lads that they all had their own places, they all had their own way in life, or whatever. She could not remember what the wording was. The defendant was particularly good to him and her family were particularly good to him and this was what he wanted to do.

Evidence of Ms. Verona Smith

307. She qualified as a solicitor on 24th January, 2006 and stayed with Ms. Kinsella-Leavy till June/July 2007 when she set up her own practice. She was first asked by Ms. Kinsella-Leavy on 8th November, 2006 would she accompany her to Birr Hospital to make a will on 9th. Her evidence was similar to Ms. Kinsella-Leavy insofar as their arrival at the hospital, their introduction to the deceased and the layout of the rooms which they visited. She identified the will as being in her handwriting.

308. She recalled the mistake that was made on p. 2 of the will where she wrote *"Hoare"* instead of *"Naylor".* She contemplated rewriting the page but it was decided by all three of them to change the name *"Hoare"* and replace it with *"Naylor".* The deceased was happy to sign or initial it. She confirmed that the will was signed in her presence by the deceased and that the changes from *"Hoare"* to *"Naylor"* was signed in her presence by the deceased and that Ms. Kinsella-Leavy was present at the same time. She

recalled the deceased being an elderly man but very strong willed, possibly abrupt if he did not want to answer a question but very likeable. He was a very strong willed gentleman albeit his breathing and his body might have been a bit frail.

309. It would have taken her some 15 – 20 mins to write the will. The deceased gave a list of the Christian names of the members of his family.

310. Ms. Kinsella-Leavy asked him for a list of his assets. They were the same as was on the list that had been provided by Mr. Egan and as a result she did not note them down. She recalled Ms. Kinsella-Leavy asking him about a milk quota to which he said there was none. The deceased was able to give details of the institutions in which he had deposits and he was able to give the approximate figures of such deposits. He said he banked with First Active, Bank of Ireland and ICS. He made it very clear that all the information was held by the accountant, Mr. Egan. She recalled the deceased mentioning the loan that he had with Terry Naylor. The deceased went through with them what he wished to do with his assets.

311. She confirmed that the list of assets which he mentioned corresponded with the list that Mr. Egan had provided except for the milk quota.

312. She recalled him saying there was stepchildren and by this title she referred to them in the will.

313. In relation to a previous will, she recalled hearing that he had such a will and that he was not happy with it nor was he happy with the solicitor. She said that Ms. Kinsella-Leavy and the deceased had a good rapport and they seemed to have a lot in common.

314. In her opinion, the deceased was able to give very clear instructions and was capable of dealing with his estate. He knew the extent of his estate. He knew exactly what he was doing.

315. She recalled that the deceased said that the defendant was his stepdaughter and was very good to him. She recalled him clearly saying that she would be surprised at the contents of the will and he added, *"I don't always let her know how much I appreciate her".* This was not recorded in her notes, but she recalled it as clear as day.

316. She did not get the impression of any kind of pressure. In her opinion, it was clear that the will was being amended to reflect the fact that the defendant and her children were very good to him.

317. She agreed that had they known that the stepchildren were the biological children of the deceased it would have changed their approach.

318. She said she got the impression that the defendant did not know he was making the will.

Evidence of Thomas Walsh
319. He is aged 65 and has been working in building and maintenance of buildings throughout his life. He knew the deceased from the mid 1980s or earlier. He knew the deceased as he did some work on the farm over the years starting around the mid 1980s. The deceased asked him to go to put slates on the dwelling house. He put slates on the sheds and re-roofed some of the sheds. He also did some fencing and farming for the deceased. Sometimes he would be up every evening during the week and again he might not be up for months. He observed the deceased in the fields and walking with the cattle. He saw a Mr. Pat Smith putting out manure and spraying weeds. Mr. Hoare paid him for his work by cash and sometimes by cheque. He was last up in the lands in 2003/2004 to replace old gates or replace slate. By 2004, he could see nothing wrong with the deceased although he was a bit bad on the breathing.

320. From time to time he met the plaintiff on the lands. The work he did was done in the evening after his day job.

Evidence of Angela Lambe – Public Health Nurse
321. She has been a Public Health Nurse since 2005. Her first involvement with the deceased was in September 2005 when she did a house visit. He had shortness of breath, a diabetic and his general health was poor. She would visit him on need. She understood his carer to be the defendant, his daughter. From time to time she met the defendant at the house.

322. She said that he liked to be at home. He did not express any concerns to her in respect of the defendant. There was one occasion when he did not wish to go to respite and the defendant told her this. She visited him and discussed with him the fact that he might lose his place in respite if he did not avail of it as there was a big demand for it. The following day, the defendant contacted me to say he was going into respite.

Evidence of Mr. Richard Rea
323. He is an agricultural scientist and having been in private practice since 1975. He was called as a witness on behalf of the defendant to give evidence on the use value of the lands from 2007 onwards, the value of the lands at the time of death or the date of trial and thirdly in order to assess the farming operations that would have been carried out on the land from 1983 onwards. This was an objective exercise taking account of the information from his counterpart and also some evidence that he heard.

324. He gave evidence in relation to the licence of 45 acres. It was subject to a €5,000 licence fee and was for six years starting on 1st January, 2005 and should have expired on 1st January, 2011.

325. In relation to the balance of the lands which was approximately 72 acres, he discounted it by 10% to 65 acres as marketable. If it were rented for four years one would expect a rent of €125.00 per acre. You would expect to get €65 for 65 multiplied by 125 for four year which would be €32,500.00. He would also expect that the estate to have leased or rented the single farm payment to the tenant and he valued that at 80% which would give an income to the estate of €54,364.00. It was for the period 2008 to the end of 2011.

326. The next scenario he looked at was the prospect of the estate farming the lands. He valued the farm profit if the estate was farming the lands 50% of the rental value which would be €62.00 an acre. In that situation he took the view that the estate would collect 100% of the single farm payment. He took this for three years at €18,000.00. He also took the view that the estate could have obtained 100% of the Disadvantaged Area payment.

327. The final scenario he took was if the estate had leased the lands for a longer period than a year which would mean that the lands could not be sold for this period and the use value of the lands would be in the region of €54,000.00.

328. In relation to the valuation of the lands he referred to the valuation of Mr. Rigney at date of death the farm may have been worth about €1.2m.

329. He considered that the valuation of Mr. Rigney (for the plaintiff) was low at €10,000.00 an acre and he would consider a figure of €12,000 - €13,000 an acre more appropriate for 2007. In his opinion the value was between €1.55m and €1.6m. He considered that land prices would have fallen by about 50% but in 2011 land prices were increasing.

330. A farmer would need to have some 60 – 70% of the capital in order to finance the purchase of the lands in the present market.

331. He said in his opinion it was possible to look at the farming activity that can be carried out on a particular farm and to calculate the amount of work required to run such a farm. In order to do this calculation one refers to a livestock unit ("LU"). The LU enables one to convert all animals back to the standard animal e.g. a cow. One then calculates the labour input in running a particular type of LU involves, namely, so many man hours or so many man days. One calculates the total labour requirement on a farm based upon the rates of pay published by the Agricultural Wages Board. He worked out how many week equivalents would be required for the level of livestock that he had calculated.

332. The farm had a capacity to carry 73 or 74 livestock units up to some time in the 90s.

333. He estimated the farm to have suckling cows, suckling calves and cattle. He also took into account a falling off in activity for the period 1995 to 1999.

334. He said that each animal had a number of standard man days allocated and this was divided by 225 to get the number of standard labour units. He referred to the rates of pay published by the Agriculture Wages Board.

335. In cross examination he said it was quite clear that the deceased was involved in the management of the farm. Equally, a farm worked has to have a management decision making ability. The rate for a farm manager would be higher than for a standard farm worker. He felt that a fulltime farm manager with full responsibility for everything would get double the standard rate applicable to a farm worker.

336. He said that a cattle operation such as had existed for the last ten years and had a much lower labour requirement than if the operation had 25 suckling cows.

337. He accepted that there was a very substantial amount of work done by the plaintiff between 1972 and 1983.

338. He said that the sum of €162,000.00 represented the amount of labour input of the plaintiff calculated by him in the manner described. It was based on the level of stock that he calculated as best he could. There would have to be a downward adjustment if some of the land was rented out. Furthermore, he said there would have to be a deduction of the payments which he received in the period 1983 to 2006 if he was indeed paid.

The Plaintiff's Submissions in Relation to Proprietary Estoppel

339. It was submitted that the core of the plaintiff's case is to be found in paras. 1 and 2 of the relief sought which seeks an order that the defendant is estopped from denying that the plaintiff is entitled by oral agreement made between him and the deceased to an interest in the lands and that the court should direct the specific performance of such agreement. Alternatively, an order is sought that the deceased held the lands in trust for the plaintiff.

340. The plaintiff submitted that the decision in *Thorner v. Major* [2009] 1 WLR 776, a decision of the House of Lords sets out the current principles governing proprietary estoppel. It was submitted by Ms. Margaret Nerney S.C. on behalf of the plaintiff that the plaintiff had established the essential three criteria to establish a claim of proprietary estoppel, namely:-

(i) An assurance or representation made to the person invoking the estoppel;

(ii) That person must have reasonably relied on the assurance, and

(iii) The person must have suffered detriment as a result of the reliance on the assurance.

341. Reliance was made on the decision of the Supreme Court in *McCarron v. McCarron* (Supreme Court, Unreported, 13th February, 1997) where the court found an agreement reached by the parties in rural areas could be achieved by a meeting of minds, although it may not be accompanied by as detailed discussion as might be necessary elsewhere.

342. It was submitted that there was ample evidence both from the plaintiff and his neighbouring witnesses as to the representations or assurances given by the deceased to the plaintiff in relation to his succession to the lands of the deceased. Furthermore, there was reliance by the plaintiff on the said agreement.

343. It was submitted that the plaintiff had suffered detriment as a result of his reasonable reliance on the deceased's assurances. Such detriment did not have to be confined to the expenditure of money or the erection of premises on the lands and could be satisfied by the provision of labour or services in relation to the lands as was suggested by Murphy J. in the *McCarron* case.

344. If the court found that the plaintiff had not established a claim in proprietary estoppel, it was submitted that the defendant holds the lands on a constructive trust for the plaintiff. This was the conclusion of Lord Scott in *Thorner v. Major*.

The Plaintiff's Submissions in Relation to Duress, Undue Influence and Unconsionability

345. It was submitted that duress is no longer confined to the old common law conception of threat to life or limb, but encompassed a broader category of lawful pressure which overlapped, to a large extent, with undue influence. It was submitted that the courts have drawn a distinction between cases of actual undue influence, on the one hand, and presumed undue influence, on the other.

346. Reliance was placed on the decision of the Supreme Court in *Carroll v. Carroll* [1999] 4 I.R. which concerned a transaction *inter vivos*. In that case the Supreme Court held the presumption of undue influence arose as the donor had not obtained independent legal advice. It was contended similar principles applied by analogy.

347. It was submitted that the 2006 Will constituted an unconscionable or improvident transaction and that the 2006 Will was not a "righteous transaction". Reliance was placed on the decision in *Fulton v. Andrew* [1875] L.R. 7HL 448, which it was submitted was

followed by the Supreme Court in the cases of *Re Begley (Begley v. McHugh)* [1939] I.R. 479, and *Leahy v. Corboy* [1969] I.R. 148. Applying the principles set out in such cases to the facts of the present case, it was submitted that if the defendant was not instrumental in the actual making of the 2006 Will in the sense that she was not present when the Will was executed by the deceased, there was sufficient evidence of her indirect involvement in the procurement of the 2006 Will and of the substantial benefit which accrued to her as a result of this involvement to place the onus on the defendant to show the righteousness of the transaction. Furthermore, the vulnerable position of the deceased was a factor for the court to consider.

The Defendant's Submissions in Relation to Claim for Promissory Estoppel

348. Mr. Cormac Ó Dúlacháin, S.C., on behalf of the defendants submitted that promissory estoppel only arises out of a representation or promise that is clear or precise and unambiguous. He submitted that a claimant must establish detriment and that this approach was accepted by Costello J. in his judgment in Re: *J.R.* [1993] ILRM 657. He referred to the decision of the Supreme Court in *McCarron v. McCarron*, and submitted that usually monetary expenditure was required to establish the doctrine of promissory estoppel. The statement by Murphy J. that the plaintiff may suffer a severe loss or detriment by providing his own labours or services in relation to the lands of another which would equally qualify for recognition in equity was he submitted, *obiter*.

349. He referred to the judgment of Robert Walker L.J. in *Gillette v. Holt* [2001] CH 2 11. He stated that Robert Walker L.J. stated that the detriment need not consist of the expenditure of money or other quantifiable financial detriment, as long as it is something substantial. This requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances.

350. He submitted that in viewing what constitutes a detriment, there has to be a degree of establishment where one is taking a life decision to move in a particular direction. He submitted that little was known as to what would have happened if the plaintiff had stayed in Dublin. Whilst he was holding three jobs, he was not pursuing an identifiable career or profession.

351. He submitted that in relation to the plaintiff returning from Dublin to work on the farm, what happened between 1972 and 1983, could not be viewed as acting to his detriment when he came back in circumstances where he got married, received significant assistance from the deceased in the purchase of a house and had been given land to use on his own (albeit it was not legally transferred). He submitted if there was a promise given to him by the deceased that he would get the farm that the plaintiff had not indicated what he specifically undertook in respect of that promise.

352. He submitted by the time the dairying operations ceased in 1983, the plaintiff had received renumeration in respect of the eleven years to 1983 in which he was so engaged. He received from the defendant weekly cash payments. He had been assisted by the deceased with a loan to purchase a home with the benefit of some £3,000 which had been cleared for him within a short period. He had been provided with some animals and with some land by the deceased to use for his own purposes.

353. He submitted that a new phase started in 1983 and continued until 2007 following the dairying activities being terminated. There was no precise evidence as to the distinctive farming activity of the deceased and of the plaintiff at Derrylahan. What the plaintiff undertook to do was vague.

354. It was submitted that the sale of the bog to the Office of Public Works and the sale of the house and two acres of land to Peter Madden by the deceased were totally inconsistent with the findings the deceased was holding the land under a future obligation to convey same to the plaintiff.

355. It was submitted that if the deceased was intent on honouring his obligations to the plaintiff, this could have been dealt with in 1998/1999 when the ownership of the 49 acres was being regulated at a time when the deceased was scaling down his farming operations.

356. In viewing the input of the plaintiff, it was important to bear in mind that there was evidence of contracting services being provided in the 1970s in respect of grass cutting and silage making and off farm calving services being provided by Mr. Patrick Smith from at least 1995.

357. If there was an equity that has to be satisfied by the estate, the court should have regard to the only evidence of labour value which was the evidence of Mr. Rea, Agricultural Consultant.

358. The defendant relying on the decision of Robert Walker L.J. in *Gillette v. Holt*, submitted that the court's aim should be to determine the minimum required to satisfy the plaintiff's equity to the lands which had been established.

The Defendant's Submissions to Challenge to the Will

359. The defendant referred to the challenge the Will based on the deceased being not of sound disposing mind at the date of execution of the Will. Shortly before an earlier hearing the plaintiff through his solicitor withdrew the claim of testamentary incapacity. Following a change of solicitor by the plaintiff, there was an application to reinstate the issue of capacity which application was refused by this Court.

360. The defendant referred to a plea in para. 17 of the statement of claim where it was asserted that the Will was not a righteous transaction. The defendant submitted this was not a legal plea and relied on the decision of *Fuller v. Strum* [2002] 1 WLR 1097 at p. 1107.

361. It was a test followed by the courts when considering the question of whether the testator knew of or approved the contents of the Will. It did not create or shift the burden of proof onto the defendant in respect of an allegation of undue influence. Reference was made to *Craig v. Laoureux* [1920] 1 A.C. 349 and *Scammell v. Farmer* [2008] EWHC 1100 (Ch).

362. In relation to the plaintiff's plea that the Will was procured by the duress and/or undue influence of the defendant, the defendant referred to *Keating on Probate* (3rd Ed.), paras. 11-20 to 11-23 and *Williams on Wills,* (9th Ed.), para. 5.9. It was submitted that the following principles are applicable:-

(a) The burden of proof rests on the party alleging undue influence.

(b) Undue influence is concerned with the issue of whether the testator has been induced to make dispositions which he really did not intend to make.

(c) The possibility of undue influence may be higher in the case of a testator in failing health.

(d) Undue influence means coercion to make a will in particular terms.

(e) Reliance was made on the principle as stated by Sir J.P Wilde in *Hall v. Hall* LR 1 P & D 481:-

> "Persuasion is not unlawful, but pressure of whatever character if so exerted as to overpower the volition without convincing the judgment of the testator, will constitute undue influence, though no force is either used or threatened."

(f) The proof of motive coupled with opportunity and with actual benefit to the exclusion of others is not sufficient proof of undue influence.

(g) There must be positive proof of coercion overpowering the volition of the testator.

363. Relying on the decision of Murphy J. in the *Lambert* case, he submitted that in this jurisdiction there is no presumption of undue influence in relation to a Will.

364. He submitted that Mr. Aidan Egan, the accountant was not the agent of the defendant notwithstanding the fact that she (the defendant) went to him for advice on two occasions.

365. He emphasised the open access members of the family had to the deceased when he was in respite or at home and members of the family could call on him. This is to be contrasted with the actual situation in the case of *Lambert v. Lyons.*

366. Whilst it was accepted that the deceased's physical condition was deteriorating in November 2006, there was no indication of any diminishing in his mental powers.

Conclusions

367. The plaintiff relied on the Supreme Court in *Carroll v. Carroll* [1999] 4 I.R. 241, where the Supreme Court setting aside a conveyance held that the presumption of undue influence arose as the donor had not obtained legal advice such as would rebut the presumption. It was contended that by analogy such principles applied in the instant case. In *Carroll*, the transaction was a conveyance *inter vivos* and has to be distinguished on the principles applicable to a gift made by will. This matter was touched upon by Murphy J. in *Lambert v. Lyons* [2010] IEHC 29 where he said at 139:-

> *"The difficulties in respect of the remedies potentially available in the case of undue influence in respect of a will and in respect of a transaction inter vivos may provide another justification for this distinction: see, for example, the reference to remedies in the legal submissions of the plaintiff. The plaintiffs ask the Court, in the event of a finding of undue influence, to set aside "any undue gift and to allow the same to fall into the residuary estate". The plaintiffs seek an order striking down the Will of 21st August, 2003 and the codicil of 21st May, 2004.*
>
> *Irish law, accordingly, recognises a distinction between the proof of undue influence in the context of wills and in the context of transactions inter vivos. In the case of undue influence in the context of wills, the burden of proof is on the plaintiffs and there is no presumption of undue influence arising from special relationships.*
>
> *Undue influence in the context of probate – because it does not have the special probative rules which apply in other contexts – is more closely aligned to common law duress (where the burden of proof rests squarely on the plaintiff at all times).*
>
> *Nevertheless, if this conclusion is wrong and there is no distinction between undue influence in the context of wills and transactions inter vivos, does the relationship between the deceased and the first defendant give rise to a presumption of undue influence? If so, it falls to the defendant to rebut that presumption.*

368. In *Lambert,* the court continued the judgment by an examination of the rebuttal of the presumption of undue influence if such were to arise having regard to the relationship between the deceased and the first named defendant in that case.

369. In this Court's opinion, it is not necessary to embark upon such analysis. However, the court is satisfied that the deceased knew and approved the contents of his will. It was he who initiated the request to have a will and sought the advice of Mr. Egan in relation thereto. In a totally detached manner and having regard to the instructions which he had got from the deceased, namely that he did not wish the previous solicitor to prepare the will, Mr. Egan without any communication to the defendant recommended Ms. Kinsella-Leavy as a solicitor suitable to prepare a will and subsequently got in touch with her and gave her details of the assets. Mr. Egan's failure to inform Ms. Kinsella-Leavy that the defendant was the natural daughter of the deceased whilst unfortunate does not create or given rise to the presumption of undue influence in the preparation of the will.

370. The court accepts the evidence given by Ms. Kinsella-Leavy and her assistant, Ms. Verona Smith, in relation to the instructions given by the deceased to Ms. Kinsella-Leavy and the manner in which the deceased interacted and conversed with Ms. Kinsella-Leavy and her colleague. The court is satisfied that Ms. Kinsella-Leavy acted in an independent manner. It was quite clear on the instructions communicated to her by the deceased that he wished to treat the Naylor children as his stepchildren. Subject to other statutory rights which such persons may have, it was his decision to instruct Ms. Kinsella-Leavy in the manner in which he did and she in turn acted on the basis of such instructions.

371. In the *Lambert* case, the court in referring to the "righteousness of the transaction" stated at p. 145:-

> *"The Court in the present case is satisfied as to the 'righteousness' of the transaction. (See Hegarty v. King 5 L.R. Ir. 249). That it established, not only by showing that the testator knew of and approved this will but also by the thoroughness of his instructions recorded in his solicitor's attendances and the explanations and reasons given to his solicitors in respect of the changes made from his previous Will."*

372. This Court has been asked to look at the righteousness of the transaction by adopting the principles set out by Lord Hatherley in *Fulton v. Andrew* [1875] L.R. 7 H.L. 448. These principles it was submitted were adopted by the Irish Courts in In *Re Begley; Begley v. McHugh* [1939] I.R. 479 and In *Re Corboy; Leahy v. Corboy* [1969] I.R. 148.

373. In the *Corboy* case the facts were significantly different from the present case. The testator was a very sick man who had difficulty in speaking and expressing his wishes. It was difficult to know how much he understood of what was said to him although he had been an able businessman. A legatee who was named in the will of the testator, and who had been living with and looking after

the testator prior to his death, drafted a codicil to the will for the purpose of increasing the legacy bequeathed by the testator to her. When the codicil was read to the testator he was asked whether that was what he wanted and he nodded. He executed a codicil by making his mark. It was held by the Supreme Court that the heavy burden of proof which the law imposed on the legatee named in the codicil had not been discharged and in particular there was no satisfactory evidence to show that the changes to be effected by the codicil emanated from the mind of the testator. In the course of his judgment, Budd J. at p. 164 stated:-

> *"The judgments I have cited from clearly indicate that the circumstance that Miss Healy prepared this codicil and procured its execution was a circumstance that ought to excite the suspicion of the Court, and that the Court should be vigilant and jealous in examining the evidence in support of the codicil. The Court should not pronounce in favour of the codicil unless the suspicions are removed and it is satisfied that the codicil expresses the true wishes of the testator. Miss Healy is not in the position of other ordinary legatees in whose case it is sufficient if the will is read over to a testator of sound mind and memory who is capable of understanding it. She has been instrumental in obtaining this codicil benefiting her and must show the righteousness of the transaction. The Court, for its part, must be vigilant and jealous in assessing the evidence which has been called with the object of dispelling suspicion. There is no room for indulgence in reviewing and weighing up the evidence. These are the guiding principles as to how the consideration of the evidence in this case should be approached."*

374. The facts in this case are immediately distinguishable from those in the *Corboy* case and the same test does not apply.

375. In *Fulton v. Andrew*, Lord Hatherley said at p. 471 (which was adopted by the Supreme Court):-

> *"There is one rule which has always been laid down by the Courts having to deal with wills, and that is, that a person who is instrumental in the framing of a will, as these two persons undoubtedly were, and who obtains a bounty by that will, is placed in a different position from other ordinary legatees who are not called upon to substantiate the truth and honesty of the transaction as regards their legacies. It is enough in their case that the will was read over to the testator and that he was of sound mind and memory, and capable of comprehending it. But there is a farther onus upon those who take for their own benefit, after having been instrumental in preparing or obtaining a will. They have thrown upon them the onus of shewing the righteousness of the transaction. Now, how did these persons discharge this onus in the present case? They only discharged it by themselves giving evidence before the jury of the reading over of the will, and they were the only persons who did give that evidence. It would not have been difficult for them to have had other persons present when the reading over of the will took place; but that does not appear to have been done."*

376. Again, the facts in this case are distinguishable from *Fulton* by the persons who stood to gain have been instrumental in the framing of the will and obtained a bounty under that will. The court concludes that in the present, the defendant was not instrumental in preparing or obtaining the will of November 2006.

377. The evidence of the solicitors who gave evidence has to be assessed in the context of the background and circumstances in which the deceased gave instructions. The deceased under no sign of apparent duress or undue influence requested Mr. Egan to nominate a solicitor who would make his will other than his previous solicitor. Contact was made by the defendant with Mr. Egan on the instructions of the deceased. The deceased acted upon Mr. Egan's choice of solicitor. Ms. Kinsella-Leavy other than her general knowledge of the Hoare family had no previous engagement or familiarity with the deceased. The defendant did not know Ms. Kinsella-Leavy and had no part to play in the selection and nomination of Ms. Kinsella-Leavy by Mr. Egan as the solicitor to prepare the will of the deceased. There was no evidence that the defendant knew the time and date at which Ms. Kinsella-Leavy was to attend at the Birr Community Centre for the purpose of making the will. There is no evidence that the defendant had been in contact with the deceased immediately prior to the making of the will. Whilst, Ms. Kinsella-Leavy noted that the deceased was an elderly and frail man, she was satisfied that he had the legal capacity to make a will and in doing so to instruct her. Ms. Kinsella-Leavy could only act on the instructions she was given. It was the prerogative of the deceased to give as much information as he wished to Ms. Kinsella-Leavy in the preparation of the will. Mr. Egan had been told by the defendant that she was the natural child of the deceased and not his stepdaughter. This was a detail that Mr. Egan could have communicated to Ms. Kinsella-Leavy. She accepted that if she had been supplied with this information she would have given advices to the deceased or sought to get further information. Equally, it is true that the prime person in possession of this information was the deceased himself. He described to Ms. Kinsella-Leavy his children as *"stepchildren"* and it was on this basis that she approached her task.

378. I accept the evidence given by Ms. Kinsella-Leavy and her colleague Ms. Verona Smith, both solicitors. It is unnecessary for me to recite once again their evidence. There are some details to which I will refer. Firstly, it is clear from the instructions that Ms. Kinsella-Leavy discussed with the deceased what provision he had made in relation to his *"stepchildren"* as he described them and he answered that provision had been made for each of them. He did not, however, wish to benefit Terry in the will, to whom he had made a loan which had not been repaid. Secondly, he appears to have been most alert in asserting that a mistake had been made in relation to the surname of his stepchildren and as a result *"Naylor"* was substituted for *"Hoare".* Thirdly, he gave evidence the defendant had been good to him. Finally, no evidence was given by Ms. Kinsella-Leavy or Ms. Smith which would suggest that he was unduly or improperly influenced in the preparation of the will or in giving instructions to Ms. Kinsella-Leavy. There is no evidence of the deceased acting as someone who had been coached in giving his instructions.

379. In relation to the evidence of Mr. O'Connor, he said when consulted out of the blue, he would like to consult with the previous solicitor with the testator's consent. This was not possible in the instant case having regard to the instructions of the deceased. Mr. O'Connor referred to the guidelines in relation to duress and undue influence. It was recommended that the solicitor should ensure that the client was seen alone. This was complied with. Furthermore, general details were obtained in relation to the situation of the deceased by Ms. Kinsella-Leavy. He suggested that where a will is done on the spot and in an emergency, the solicitor might come back for a second visit. This recommended course was not feasible in the instant case. Having regard to the instructions given to Ms. Kinsella-Leavy the deceased wished to make a will, there and then on the day of her visit to him.

380. On occasions, his practice would be to take instructions to draft a will to send out the instructions to the client and then to consult with the client. If he were to be instructed by an accountant to call out to see a particular client, he would be on his guard and would need to ask more questions from the testator. The approach adopted by Ms. Kinsella-Leavy did not differ materially from that to the extent that she was informed by the accountant of details of the assets of the deceased. This was confirmed to her subsequently by the deceased himself.

381. He said a family tree should be drawn to see why someone being included and being excluded. On the basis of the limited instructions available to her, Ms. Kinsella-Leavy obtained details of the *"stepchildren"* to the extent that the deceased wished to give particulars of same.

382. Mr. O'Connor's opinion there was not sufficient instructions taken by Ms. Kinsella-Leavy to make an assessment and this left open the issues of vulnerability and undue influence. On the basis of the willingness of the deceased to make disclosures to Ms. Kinsella-Leavy of his circumstances, his family members and assets, I consider that Ms. Kinsella-Leavy obtained sufficient instructions in the circumstances.

383. He concluded that it was extraordinary that Ms. Kinsella-Leavy was able to make an assessment of capacity from one visit without having met the client before and without having the benefit of external evidence by way of attendance from the previous solicitor or doctor. This view, he said, equally applied in relation to the solicitor satisfying herself on the issue of undue influence and duress. He considered that the solicitor should approach the matter further with the deceased as to why the identity of the previous solicitor was not forthcoming. Ms. Kinsella-Leavy and her colleague were alone with the deceased for almost one and a half hour. During that period, they did not experience anything to suggest that the testator had been *"coached"* as to the manner in which he gave instructions or appeared to be under the influence of duress or undue influence of another party. I am satisfied that Ms. Kinsella-Leavy asked sufficient questions about the identity of the previous solicitor but that the deceased was not prepared to disclose the name for whatever reason known to him.

384. He said that when taking instructions from a person who was in a care unit for a week's respite, the solicitor should obtain details of the living conditions and carers if such a person was a particular beneficiary under the will. Ms. Kinsella-Leavy did ask such questions and received replies from the deceased, such as he wished to give.

385. Mr. O'Connor accepted that a testator had no legal obligation under s. 117 to stepchildren. This was also accepted by Ms. Kinsella-Leavy.

386. Whilst Mr. O'Connor noted that the question of duress or undue influence can happen subtly and without one's knowledge and as a result he would not take instructions without knowing the testator or knowing the reasons why he was being instructed, Ms. Kinsella-Leavy did within the narrow range of instructions which she obtained, ascertain the reasons why she was being instructed. The deceased did not want to go to his former solicitor. She cannot be faulted for implanting the deceased's instructions to her.

Further Conclusions on Plaintiff's Submission
387. The facts and decision in the *Thorner v. Major* are relevant.

388. The claimant, David Thorner was a farmer who had undertaken substantial work without pay on the farm of his father's cousin, Peter Thorner, for 30 years and who had been encouraged by Peter for at least 15 years to believe that he would inherit the farm, although ultimately, Peter died intestate. David claimed that, by reason of the assurance given by Peter upon which he had relied, the estate of Peter Thorner was estopped from denying that he had acquired the beneficial interest in the farm. In the course of his judgment in *Thorner v. Major* at p. 779, Lord Hoffmann, in dealing with the date when an assurance became unequivocal, said:-

> *"I do not think that the judge was trying to pin point the date at which the assurance became unequivocal and I think it would be unrealistic in a case like this to try to do so. There was a close and ongoing daily relationship between the parties. Past events provide context and background for the interpretation of subsequent events and subsequent events throw retrospective light upon the meaning of past events. The owl of Minerva spreads its wings only with the falling of the dusk. The finding was that David reasonably relied upon the assurance from 1990, even if it required later events to confirm that it was reasonable for him to have done so."*

Later, at p. 780, he said:-

> *"I agree with my noble and learned friends . . . that changes in the character or extent of the property in question are relevant to the relief which equity will provide but do not exclude such a remedy where there is still an identifiable property. In the present case, I see no reason to question the judge's decision that David was entitled to the beneficial interest in the farm and the farming business as they were at Peter's death."*

At p. 786, Lord Walker stated that whilst there was no definition of proprietary estoppel that was both comprehensive and uncontroversial, most scholars agreed that the doctrine was based on three elements, although they express them in slightly different terms: a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance.

389. Lord Newberger, at p. 804, stated:-

> *"It would represent a regrettable and substantial emasculation of the beneficial principle of proprietary estoppel if it were artificially fettered so as to require the precise extent of the property the subject of the alleged estoppel to be strictly defined in every case."*

390. I accept the foregoing decision as persuasive authority relevant to this case.

391. The Supreme Court visited this matter in *McCarron v. McCarron* (13th February, 1997). In that case the plaintiff, who was a first cousin of the deceased, claimed that the deceased entered into an agreement to remunerate him for the work which he did on the farm by devising to him all of his lands, that is to say, the home farm and the outside place. It was contended that the agreement was confirmed or extended by a further agreement made between the deceased and the plaintiff in 1984. The claim was brought for specific performance or alternatively on the basis of proprietary estoppel. For a sixteen-year period, the plaintiff worked virtually fulltime for the deceased. Later on, he worked for another local farmer. He also had use of land from his father. Murphy J. at p. 9, referred to the context in which such agreements or arrangements can come into existence, stating:-

> *"What is noticeable from the transcript, and in particular the evidence of the plaintiff, was that natural courtesy (which John Millington Synge associated with the west of Ireland) which often results in an unwillingness to pursue discussion to a logical and perhaps harshly expressed commercial conclusion. In other parts of Ireland the concept of a person working long hours over a period of four years before any discussion takes place in relation to remuneration or reward might be unthinkable. Even less likely would be agreement or an expression of satisfaction at that stage that the question of compensation could not be overlooked. I would merely conclude that in some, particularly rural areas, a meeting of minds can be achieved without as detailed discussion as might be necessary elsewhere. The trial judge would have some advantage in ascertaining what expressions conveyed to the persons to whom they were addressed in the circumstances of the dispute."*

392. The court found that the judge was entitled to hold that there was a sufficient degree of certainty that a contract came into existence and it was appropriate for the court to grant specific performance of the contract. The comments of Murphy J. are also apt in the present case to set the background and meeting of minds which took place between the plaintiff and the deceased.

393. Murphy J. so referred to the alternative basis of claim, namely, in proprietary estoppel. Having referred to various Irish cases which concerned persons spending money on the erection of premises on lands owned by the defendant, Murphy J. at p. 12, stated:-

> *"In principle, I see no reason why the doctrine should be confined to the expenditure of money or the erection of premises on the lands of another. In a suitable case, it may well be argued that a plaintiff suffers a severe loss or detriment by providing his own labours or services in relation to the lands of another, and accordingly, should equally qualify for a recognition in equity."*

I accept the foregoing dicta of Murphy J.

394. *Halpin and Another* [1997] 2 ILRM 38, is a High Court decision of Geoghegan J. where the judge decided to protect the equity arising in favour of the plaintiff from the expenditure of monies by making an order directing a conveyance to him. The court emphasised that it was at large as to how best it will protect the equity in favour of the claimant where it arises.

395. The Court of Appeal decision in *Gillett v. Holt* [201] Ch. 210, is also instructive. In that case, the plaintiff spent his working life as farm manager and as a friend of the first defendant, a landowner of substantial means, who made repeated promises and assurances over many years that the plaintiff would succeed to his farming business including the farmhouse in which the plaintiff had lived for 25 years. In 1992, relations between the plaintiff and the defendant deteriorated rapidly. The plaintiff was dismissed and the first named defendant made lifetime dispositions to the second defendant in whose favour he also altered his will, making no provision for the plaintiff. In allowing the appeal, the Court of Appeal held that the fundamental principle that equity was concerned to prevent unconscionable conduct permeated all the elements of the doctrine of proprietary estoppel; that although the element of detriment was an essential ingredient of proprietary estoppel, the requirement was to be approached as part of a broad enquiry as to whether repudiation of an assurance was unconscionable in all the circumstances; that, where assurances given were intended to be relied on, and were in fact relied on, it was not necessary to look for an irrevocable promise since it was the other party's detrimental reliance on the promise which made it irrevocable. When ascertaining whether promises and assurances repeated over a period of many years as to future rights over property were sufficient to have found a successful claim for equitable relief, it was necessary to stand back and look at the claim in the round; and on that on the facts, the defendant's conduct had given rise to an estoppel.

396. Counsel for the plaintiff relied on the decision of the Supreme Court in *Carroll and Carroll v. Carroll* [1999] 4 I.R. 241. This was a case in which the court in a family transaction had set aside the conveyance holding that the presumption of undue influence arose and that the donor had not obtained independent legal advice as would rebut the presumption. It was further held that it was an improvident transaction. Denham J. at p. 253, quoted from the decision of the House of Lords in *Allcard v. Skinner* [1997] 36 Ch.D 145. There, the question was raised as to whether the case fell within the principles laid down by the Court of Chancery setting aside voluntary gifts executed by parties who, at the time, were under such influence, as, in the opinion of the court, enabled the donor afterwards to set the gift aside. Such decisions could be divided into two classes, namely, firstly where the court had been satisfied that the gift was the result of an influence expressly used by the donee for the purpose, and secondly, whether the relations between the donor and the donee have at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence over the donor.

397. In my opinion, this authority is not of assistance in the matters to be considered by the court.

398. Contrary to the submissions of the plaintiff, I do not accept that the principles set out in *Grealish v. Murphy* [1946] I.R. at p. 35 apply in this case. That case concerns a situation where equity comes to the rescue of the parties to a contract who have not met upon equal terms. It deals with *inter vivos* gifts, voluntary settlements and assignments for a money consideration. These principles are different to those examined by the courts in *Leahy v. Corboy.*

399. The plaintiff, in relying upon the unconscionability of the transaction submitted, the court should deem a constructive trust in favour of the plaintiff. For that submission to be accepted and to carve out a constructive trust in favour of the plaintiff would involve accepting the legal position under the 2006 will. I do not believe that such legal principles apply in this case.

400. I also reject the submissions of the plaintiff that the fact that the plaintiff disliked the prospect of being put into a nursing home was sufficient to draw an adverse conclusion against the 2006 will. The periods of respite were for one week at regular intervals and I do not find that the deceased was coerced by the defendant into attending or availing of such respite facilities.

401. Furthermore, any intermingling of their financial affairs was, I believe, done at the instigation, primarily of the deceased. I find no improper connection between the deceased and the defendant in this regard.

402. Whilst the defendant consulted Mr. Egan on one or two occasions on her own account, I find these were on isolated occasions. There was no ongoing professional relationship with Mr. Egan and none immediately before the 2006 will was made.

The Plaintiff's Claim to the Lands

403. I accept the evidence of the plaintiff which by its nature covered the greater part of his life. His evidence primarily extended to his claim to the deceased's farm as he had no direct involvement in relation to the will of 9th November, 2006. His evidence was not exaggerated, but controlled. Due allowance must be made by the court for his youth and age at all material times and his poor school attendance record coupled with his reading and writing difficulties. I find that his evidence was truthful.

404. From the outset I find that he did more than his fair share of work prior to going to Dublin in 1972. He had a natural aptitude at farming and this was availed of by the deceased who did little manual work on the farm from the 1970s onwards. The plaintiff in going to Dublin in 1972 was not doing so for a short period but is likely to have had an open mind in pursing a career in Dublin or away from the family home and farm. The plaintiff when in Dublin worked diligently and was most resourceful in the jobs he obtained and in the income he made. Even though he was young at the time, the plaintiff is likely to have had the capacity to succeed in non-farming careers as he had commenced to show.

405. When the plaintiff's brother indicated he was going to leave the family farm, the plaintiff's mother or the defendant (it does not matter who) contacted the plaintiff and asked him to return home. I conclude this was done on the expressed wishes of the deceased, who required the plaintiff's assistance to run the farm. The plaintiff had increased his earning capacity by the various jobs he did. In contrast, when he returned home the income he got from the deceased was small and significantly lower to what he was

getting in Dublin. Whilst it may be considered strange that a youth of 17/18 years would assume the opportunity to return to the early family farm at such a young age it must be remembered it was the Ireland of the 1970s where job mobility was not common. I accept his evidence that a short time after his return the deceased promised or represented to the plaintiff that the lands would be his upon the deceased's death. This promise or representation was repeated on various occasions by the deceased to the plaintiff. The context in which the promises were made have to be appreciated including the deference and respect afforded to the deceased by the plaintiff.

406. Promises were made by the deceased in the context of low income being paid by him to the plaintiff and the deceased being anxious to secure reliable long term assistance in the management of the farm. Such a long term aspiration of the deceased would be totally consistent with the lifelong farmer (the deceased) endeavouring to secure within the extended family, a permanent and trusted labour supply to assist in the management and working of the farm. This promise or commitment by the deceased becomes more understandable against the background of the plaintiff being acknowledged by the deceased as his stepson and even more so with the plaintiff now acknowledged as the natural child of the deceased, a fact now known to the surviving members of the family.

407. I also accept the evidence of the witnesses called on behalf of the plaintiff who recalled promises, utterances or statements made by the deceased that the land would be the plaintiffs; by virtue of the plaintiff's contribution to the deceased's farming activities.

408. Whilst the plaintiff was likely to have been a teenager when the first of these promises was made, the court concludes these promises/representations were intended by the deceased to be relied upon by the plaintiff and were in fact relied upon by the plaintiff. It was also reasonable for the plaintiff to so rely.

409. The plaintiff in coming back from Dublin and in working on the farm from then onwards acted to his detriment. This ongoing and lifelong commitment by the plaintiff constituted a serious and substantial detriment for him. Furthermore, the nature or effect of the promises/representations made by the deceased did not change in the early 1980s when the deceased changed his method of farming. The plaintiff continued to do the work of whatever character and however arduous the deceased required of him.

410. Furthermore the work done by the plaintiff does in the court's opinion constitute a detriment suffered by the plaintiff. When required the plaintiff was also willing to expend monies (however small, on behalf of the deceased).

411. The defendant has urged on the court to measure in some equitable manner, the input/contributions of the plaintiff in the management of the farm. I do not think such evaluation is appropriate in this case. I have already set out my findings on the nature of the promises/representations to the plaintiff and the intended and actual reliance on same. The commitment of the plaintiff to the defendant was lifelong and was not altered by a change or reduction in farming methods or in the advanced age of the deceased. The court does not adopt the method of compensating the plaintiff as suggested by Mr. Rea. Such measure is inappropriate and does not do justice to the plaintiff. The court also prefers the valuations placed on the land by Mr. Rigney (to the extent, if any, it is relevant).

412. It has also been submitted that the court should have regard to the lands given by the defendant to the plaintiff in his lifetime and to the fact that some of the land was sold to third parties and that the farm unit has been reduced from the original size when the promise was first made. The court is satisfied it can and will implement the promise in respect of the remaining lands and in this respect, it relies on the judgments adopted in this judgment and the facts as found by the court.

Conclusions on Duress and Undue Influence

413. It is an exceptionally difficult task for the court to know what was exchanged between the defendant and the deceased behind closed doors and where no one else was present. The defendant was the sole permanent carer of the deceased in his latter years. It is inevitable that there were discussions about wills and inheritances in the past two years, at least, of the deceased's life. By that time, the relationships as between the deceased on the one hand and the defendant on the other hand was greater than that between the deceased and any other siblings.

414. It was also to be remembered throughout this period, the deceased regularly availed of respite care at the community centre in Birr. During those periods, the court is satisfied that there was free access to him available to family and friends alike. Equally, there was access available to his family and friends to his own house and the court is satisfied that the plaintiff and his immediate family did visit the deceased and on occasion brought meals to him. There has been no direct evidence, nor has anything been recorded in the notes of the centre to suggest that he was the subject of pressure or undue influence. Of course, this does not answer the claim by the plaintiff but it is significant.

415. The issue remains as to whether duress and/or undue influence was exercised as against the deceased by the defendant in the preparation of his will of 9th November, 2006.

416. Great stress has been made of the conversations between the defendant and Mrs. Connolly-Shea and her companion. The court accepts that it is likely that there were certain statements made by the defendant to Mrs. Connolly-Shea in relation to her expectations of getting the farm in the deceased's will and her subsequent expression of pleasure in that the deceased in his will was going to leave her the property at Derrylanhan. The court does not interpret her remarks as meaning that she exercised undue influence or duress in the preparation of the will of 9th November, 2006.

417. The court accepts the detailed evidence of Ms. Kinsella-Leavy and her colleague, Ms. Verona Smith. Neither of these persons recorded anything which would suggest that the deceased had been prompted or schooled by any third party in the manner and detail in which he gave his instructions. The court is of the view that an experienced solicitor such as Ms. Kinsella-Leavy would have noted, if during her interview and preparation of the will there was any statements or conduct from the deceased which would suggest that he had been in any way manipulated or unduly influenced, by any person and in particular by the defendant. The court is satisfied that if there was any evidence of this that it would have been fully investigated by Ms. Kinsella-Leavy before the will was executed. Ms. Kinsella-Leavy had also indicated the deceased was told he could change the terms of the will in the future should he so wish. It is also to be noted that there was no copy made of the will and the original will was taken by Ms. Kinsella-Leavy to her office in Tullamore. The court is satisfied that its contents were not revealed by Ms. Kinsella-Leavy to the defendant prior to the deceased's death.

418. Turning to the particulars of duress and undue influence as pleaded by the plaintiff, the court is not satisfied that at the date of execution of the will of 9th November, 2006 that the deceased was under the dominion and control of the defendant. Neither is the court satisfied that the will was made at the behest and instigation of the defendant although of course it is likely that the defendant was aware that the deceased intended making his will.

419. Whilst the deceased was known to be in frail health by the defendant, the court is not satisfied that the defendant was aware that the deceased did not wish to change his will of 30th June, 2005. The court is not satisfied that a new solicitor was procured for the purpose of executing the will at the instigation and behest of the defendant.

420. The court is not satisfied that the deceased was beholden to the defendant and that it was necessary for him to comply with requests and demands and that there were grounds for believing that if he did not execute the will in the terms thereof for the benefit of the defendant, he would be cut off from the love and affection of the defendant and put in a home.

421. The court is not satisfied that the defendant was instrumental in the procurement of Ms. Kinsella-Leavy as solicitor to draft the will of 9th November, 2006. Mr. Egan nominated Ms. Kinsella-Leavy and the deceased was free to accept or reject such persons as the solicitor.

422. The court is not satisfied that the said will was the product of requests and/or demands made of the deceased by the defendant and that the deceased was in fear of not complying with the said requests. In conclusion, the court is not satisfied that duress and/or undue influence was exercised on the deceased by the defendant in the execution of the will of 9th November, 2006.

Bequest to Plaintiff under 2006 Will
423. This will contained a bequest in favour of the plaintiff for the sum of €150,000.

424. The defendant had submitted that the court had extensive powers to do what it thought was just in all the circumstances of the case. The court has already concluded that the plaintiff is entitled to succeed in respect of his claim to have the balance of the lands at Derrylahan owned by the deceased transferred to him as a result of the promises and commitments made by the deceased to him.

425. The question further arises should the bequest to the plaintiff still stand. In the course of her evidence, Ms. Kinsella-Leavy stated that the deceased informed her that he had made provision for all the other stepchildren other than Terry Naylor. Whatever, disposition/gifts he may have made to the other siblings, it is clear that his promises/commitments to give the farm to the deceased were not fulfilled at the time of his death (excepting the lands that were transferred to him indirectly by the deceased), although he told Ms. Kinsella-Leavy that such provision had been made.

426. The court is not aware of any basis for excluding the plaintiff from the benefit of the bequest in whole or in part. This remains the conclusion of the court. The unfulfilled commitment and obligation of the deceased to the plaintiff pursuant to the various commitments made by him, is a matter and entitlement that is separate from the bequest.

Assessment of the evidence
427. In relation to the evidence of Mrs. Connolly-Shea, I find there was undoubtedly conversations from time to time between her and the defendant. The defendant is likely to have discussed her wish to inherit the deceased's lands with her and the defendant is likely to have discussed with her after the 2006 was made, the deceased had made such a will and under it she was to get the lands. Mrs. Connolly-Shea's evidence in itself is insufficient to ground a claim of undue influence by the defendant. Firstly, she never witnessed any such conduct in relation to the making of a will by the defendant. Secondly, she does not know what form or when such undue influence took place or was exerted on the deceased. Thirdly, and most importantly, it would be an unwarranted inference of her evidence to conclude that it proved the exercise of undue influence on the deceased by the defendant. Fourthly, her evidence has to be weighed in the context of the clear evidence of Ms. Kinsella-Leavy and Ms. Smith which I accept and from which I have concluded that there was no apparent signs of any person in exerting undue influence on the deceased when he was making the will and giving his instructions to Ms. Kinsella-Leavy. Fifthly, members of the family and friends had open and unrestricted access to the deceased and no such evidence was given by them as to support a finding of undue influence.

428. The evidence of the defendant extended over many days. I found her evidence and demeanour to the court as a whole uncooperative and calculated to confuse the court. Her evidence as to why she did not tell the plaintiff that the deceased and her mother told her she was the natural child of the deceased was unimpressive. If she had, it would have given the plaintiff the opportunity to follow up the matter with the deceased during his lifetime. This attitude was further compounded by her continued denial in the pleadings case and in correspondence between the plaintiff and her legal advisers after the contents of the will were known following the deceased's death. I find she knowingly sought to misinform the true character of her relationship with the deceased in the Inland Revenue affidavit wherein she described herself as stepdaughter of the deceased. Equally, she ought to have informed Ms. Kinsella-Leavy when she was instructing her in relation to the administration of the deceased. Were it not for the fortuitous manner, counsel for the plaintiff obtained the information from Mr. Egan at the end of a lengthy cross examination, the court would have been left in blinkers as to this critical information.

429. Furthermore, on many occasions in the course of her evidence, she gave evidence which was never put to the plaintiff. This included statements made, she claimed, by the deceased in 1983 that he was giving up farming and that there would be no further work for the defendant. I find such statements were not made. Furthermore, I find she was informed of the 2005 will by Mr. Lucey. There was no credible evidence to suggest Mr. Lucey in 2006 said to her he was happy with the 2005 will.

430. In summary, the court finds the plaintiff's claim to the lands established, and that the plaintiff has failed to establish that the 2006 will should be declared invalid on grounds of duress and undue influence.