

**THE HIGH COURT
NORTHERN CIRCUIT
COUNTY OF MEATH**

2003 66 EQ

BETWEEN

CATHERINE DOLAN

PLAINTIFF

AND

JAMES REYNOLDS

DEFENDANT

JUDGMENT of Mr. Justice Henry Abbott delivered on the 11th day of February, 2011

1. This judgment relates to an appeal by the defendant/appellant against an injunction directing him to vacate his ancestral home subject to compensation to be paid for work done. The hearing took place in Trim on the 5th and 6th October, 2009.

Background

2. Matthew Reynolds was the sole registered owner of the property described in Folio 21280 situated at Possexton, Enfield, County Meath. Matthew Reynolds died on the 22nd March 1980 and was survived by his widow, Evelyn Reynolds and five children. Matthew Reynolds died intestate. Evelyn Reynolds extracted Letters of Administration on 28th October, 1980. Under section 67 (2) of the Succession Act, 1965 Evelyn Reynolds became beneficially entitled to two thirds of the estate and the five children became entitled to the other third. The children decided to give their mother their shares in the estate. This was done by the four children who were over 21 and therefore of age through the execution of a deed of Family Settlement. The plaintiff was under 21 years of age, thus her share of the estate was valued and an amount of money representing this share was placed on deposit which the plaintiff withdrew when she turned 21.

3. No assent was ever executed by Evelyn Reynolds vesting the subject property in herself as beneficiary. Matthew Reynolds continued to be named as the registered owner. Evelyn Reynolds would, therefore, in ordinary circumstances, continue to occupy the subject property as the personal representative. Evelyn Reynolds died on 19th January 1992. She died intestate. As Matthew Reynolds was the registered owner, his estate remained unadministered at the date of Evelyn Reynolds's death. Letters of Administration *de bonis non*, in respect of the unadministered part of the estate of Matthew Reynolds, Deceased, issued from the Probate Office to the plaintiff on 11th June, 2003. Letters of Administration, in respect of the estate of Evelyn Reynolds, Deceased, issued from the Probate Office to the defendant on 5th May, 2005.

The Pleadings

4. Proceedings were commenced by the plaintiff in the Circuit Court in 2003. The plaintiff, as personal representative of the estate of Matthew Reynolds, sought to primarily recover possession of the subject property from the defendant who was residing in the subject property. The plaintiff claimed that, as she was administrator of her father's estate, she had the entitlement for the property to be sold. She also claimed that, as she was beneficially entitled to be registered as owner of the subject property, the occupation by the defendant on the property was an act of trespass. The plaintiff sought an injunction directing the defendant to leave the property.

5. The defendant claimed that he resided in the subject property since 1978 and looked after his mother after his father's death. He stated that he continued to reside there after his mother died, and remained the sole occupant since 19th January, 1992. He claimed that all the other members of the family had left the family home and none lived there after 1992. The defendant submitted that over the intervening years he had expended a large sum of money, exceeding €75,000.00, in renovating and repairing the dwelling house. He claimed that all members of his family agreed and acquiesced to the carrying out of such works. The defendant argued that the plaintiff's claim was barred pursuant to the provisions of the Statute of Limitations 1957 and the Succession Act 1965, as she took no steps to administer the estate of her father for more than twenty three years. He further pleaded that it would be unjust and inequitable to grant the reliefs sought by reason of prolonged and inordinate delay. The defendant submitted that the plaintiff was at all material times aware of the fact that he was in possession of the property and that he had carried out extensive repairs and renovations and that the plaintiff had raised no objection or expressed any interest in the property and therefore would be unjustly enriched if she was given possession of the property.

Relief Sought by the Plaintiff and the Circuit Court Order

6. The relief claimed by the plaintiff was as follows:-

(a) Damages for trespass.

(b) A mandatory injunction compelling the defendant to render forth vacant possession of the lands contained in Folio 21280 of the Register County Meath.

(c) A mandatory injunction directing the removal from the lands contained in Folio 21280 of the Register County Meath of all property belonging to the defendant his servants or agents.

(d) An injunction restraining the defendant from committing any further acts of trespass on the aforementioned lands.

7. On 3rd April, 2009, the Circuit Court made the following order:-

- (a) A Declaration that Evelyn Reynolds was entitled to be registered owner of the lands comprised in Folio 21280 of the Register County Meath.
- (b) A Declaration that James Reynolds had not acquired title to Folio 21280 of the Register County Meath by way of adverse possession.
- (c) A Declaration that James Reynolds was entitled to financial compensation in the sum of €60,000.00 for work expended on the property from 19th January, 2002, to 18th May, 2004.
- (d) That the defendant be restrained from carrying out any further work on the property.
- (e) The sale of the property and that the defendant could remain in the property pending sale.
- (f) No order as to costs.

The Law

8. Section 10 of the Succession Act, 1965 provides-

"(1) the real and personal estate of a deceased person shall on his death, notwithstanding any testamentary disposition, devolve on and become vested in his personal representatives.

(3) The personal representatives shall be the representatives of the deceased in regard to his real and personal estate and shall hold the estate as trustees for the persons by law entitled thereto."

9. After the death of Matthew Reynolds, Evelyn Reynolds, as personal representative, held the property in trust for the person(s) entitled thereto. Those entitled were herself and her five children. By virtue of the Deed of Family Settlement, dated in 1980, the four children of age transferred their interest to their mother, while the plaintiff, when coming of age, accepted a sum of money in lieu of her interest. The defendant contends, therefore, that Evelyn Reynolds held the entire residue of the estate for herself, having barred the other next of kin six years after the full administration of the estate in 1980 or thereabouts. Presumably, it was with this submission in mind that the defendant extracted grant of letters of Administration of the estate of his mother Evelyn Reynolds on the 5th May 2005 after delivery of his defence on the 20th October 2004. However, in this context it is noteworthy that the defendant admits that Evelyn Reynolds died without having completed the administration of Matthew Reynolds's estate.

10. Generally an assent or transfer is required to be executed by a personal representative to vest any interest or land in a beneficiary. Section 52 of the Succession Act, 1965 is the general empowering provision in this regard. Section 54, which is relevant in this case, states as follows:-

"54.—(1) An assent or transfer made by a personal representative in respect of registered land shall be in the form required under section 61 of the Registration of Title Act, 1964 , and shall be subject to the provisions of that Act.

(2) The Registration of Title Act, 1964 , is hereby amended by the substitution of the following subsection for subsection (3) of section 61:

'(3) (a) An application for registration made by a person who claims to be by law entitled to the land of a deceased registered full owner, accompanied by an assent or transfer by the personal representative in the prescribed form, shall authorise the Registrar to register such person as full or limited owner of the land, as the case may be.

(b) On the determination of the estate or interest of an owner who is registered as limited owner of land pursuant to such an assent or transfer, the assent or transfer shall, on application being made in the prescribed manner, authorise the Registrar to register, as full or limited owner, as the case may be, the person in whose favour the assent or transfer was made, or the successor in title of that person, as may be appropriate.

(c) It shall not be the duty of the Registrar, nor shall he be entitled, to call for any information as to why any assent or transfer is or was made and he shall be bound to assume that the personal representative is or was acting in relation to the application, assent or transfer correctly and within his powers."

11. The plaintiff submits that these provisions are mandatory, and the personal representative is duty bound to comply in full. The assent or transfer accompanying the application for registration is then treated as conclusive by the Registrar of titles who is not required to examine the will nor any deed of family arrangement or releases signed by next of kin.

12. As the personal representative of Matthew Reynolds, Evelyn Reynolds would have had to have executed an assent in writing or a transfer on the prescribed Land Registry Form in order to vest the property in the person beneficially entitled. It was submitted that the person entitled could have been, by virtue of the arrangements surrounding the 1980 Deed, Evelyn Reynolds herself. No assent or transfer was ever signed and therefore the property was never transferred to the beneficial ownership of Evelyn Reynolds. The plaintiff therefore submits that the property did not form part of her estate when she died and the property remains part of the unadministered estate of Matthew Reynolds and is thus vested in the plaintiff in her capacity as administrator *de bonis non*.

Adverse Possession

13. Section 13 of the Statute of Limitations 1957 states as follows:-

- "(2) The following provisions shall apply to an action by a person (other than a State authority) to recover land—
- (a) Subject to paragraph (b) of this subsection, no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person."

Section 18(1) of the Statute of Limitations provides:-

"(1) No right of action to recover land shall be deemed to accrue unless the land is in the possession (in this section referred to as adverse possession) of some person in whose favour the period of limitation can run."

14. Generally, time does not begin to run against the owner of land until a right of action accrues to it. There must be both a dispossession of the owner, or discontinuance of possession by him, and adverse possession by some other person. It must be proved, in each case, that there is actual possession by the squatter coupled with the intention to exclude all others. The date from which the limitation period begins to run may be postponed as a result of there being a disability, fraud or mistake.

Deceased Persons' Estates

15. The limitation period in respect of estates of deceased persons was 12 years, with 6 years for recovery of arrears of interest on a legacy. These periods have since been reduced to 6 years and 3 years respectively. However, the courts have held that these provisions apply only to claims against a personal representative, but not to claims by a personal representative to recover the assets of the deceased's estate from a person holding adversely to the estate, where the normal 12 year period applies (*Gleeson v. Feehan* [1993] 2 I.R. 113. *Gleeson v. Feehan* [1997] 1 ILRM 522).

16. A next-of-kin entitled to a share in an intestate's estate may bar the rights of other next-of-kin by adverse possession. (Wylie, *Irish Land Law*, 3rd Ed., 1997). Wylie continues at p. 1097 to state: "However, if one of the next-of-kin was in possession at the date of death of the owner, it would appear that his possession is adverse to the holder of the *legal title*, i.e. the President of the High Court, and not adverse to the other next-of-kin, because at that stage they have no equitable or other interest vested in them. No interest vests in them until, at the earliest, a grant of representation is made in favour of administrators vesting the legal title in them and they complete administration of the estate, so that the net estate is available for distribution to the next-of-kin as intestate successors. This was the view of the Supreme Court in *Gleeson v. Feehan* [1997] 1 ILRM 522".

17. Before his death, Matthew Reynolds was the registered owner of the property. The plaintiff submits that at no time before his death can the defendant claim to have been in adverse possession as the owner was occupying the premises. The period from 22nd March, 1980 to 19th January, 1992 cannot, according to the plaintiff, be recognised as adverse possession as his mother was in actual occupation as personal representative, and therefore the defendant did not have exclusive possession. He also signed the Deed of Settlement which recognised his mother's entitlement to the total estate. Evelyn Reynolds died on the 19th January, 1992. It is the contention of the plaintiff that 12 years did not pass even if the defendant was in adverse possession, as these proceedings were commenced on 11th November, 2003. The plaintiff submitted that under Order 11 Rule 3 of the Circuit Court rules, the proceedings were commenced when they were deemed to be issued when the equity Civil Bill was presented to the Office sealed and marked with the appropriate record number by the appropriate officer on the 11th November, 2003.

Assents

18. A personal representative is a person who is responsible for the administration of a deceased person's estate. Where the deceased died intestate, the court may authorise a person to administer the estate (an administrator) by granting it letters of administration. After the initial grant of representation, a further grant, a grant *de bonis non*, may be required in respect of the same estate, for example where an administrator dies without having administered the entire estate.

19. Generally an assent or transfer is required to be executed by a personal representative to vest any interest or land in a beneficiary. In *Re King's Will Trusts* [1964] Ch 542, 547, Pennycuik J. defined an assent as 'the instrument or act whereby a personal representative effectuates a testamentary disposition by transferring the subject-matter of the disposition to the person entitled to it.' The form of the assent depends on whether the land is registered or unregistered. In the case of unregistered land, section 53 of the Succession Act, 1965 requires that an assent should be in writing and signed by the personal representatives. Section 54 of the 1965 Act provides that an assent or transfer by a personal representative in respect of registered land must be in the form required under section 61 of the Registration of Title Act 1964. Section 52 of the 1965 Act provides that '...the personal representatives may at any time after the death of the deceased execute an assent vesting any such land in the person entitled thereto...' A personal representative, if beneficially entitled, may make an assent in his own favour. A case which deals with this issue is the case of *Mohan v. Roche* [1991] 1 IR 560. In this case Michael Roche died intestate in 1967. Letters of Administration were granted to his widow Mary Bridget Roche in 1968. The nine children granted, released and conveyed their interest in a dwelling-house, which was part of the estate of Michael Roche, to their mother, Mary Bridget Roche. Mary Bridget Roche died in 1989 and appointed her son Thomas Roche to be her executor. Thomas Roche extracted a Grant of Probate of the will of Mary Bridget Roche and entered into a contract to sell the house. The purchaser of the house refused to complete the sale, arguing that the title was defective as no assent had ever been executed by Mary Bridget Roche. The purchaser stated that he would only complete the sale if such defects were cured by a grant *de bonis non* to the estate of Michael Roche and by the due execution of an assent and its registration in the Registry of Deeds. Keane J refused the purchaser a declaration that the vendor had not shown good marketable title to the premises in accordance with the terms of the contract. Keane J held that where a property had devolved and was vested in the personal representative and was to be distributed to him or he became beneficially entitled to it, then an assent was not required.

20. The Law Reform Commission in its report on Land Law and Conveyancing Law, 1998, has stated that *Mohan v. Roche* only applies in limited circumstances. In the case of intestacy, it is limited to where the administrator is beneficially entitled to the entire of the estate and all the liabilities have been discharged or have become statute barred. However, the Commission does state that in the great majority of cases it would be much more satisfactory if assents were to be completed. It would be good conveyancing practice to execute an assent and this is suggested in the judgment of Keane J who acknowledged that a personal representative executing an assent in his own favour signals that he no longer acts as personal representative charged with completion of administration of the estate and makes it clear to prospective purchasers and others contemplating entering into dealings with him that he has become the full beneficial owner.

21. Coughlan states that it is unlikely that *Mohan v. Roche* can be read as having any application to registered land (Coughlan, *Property Law*, 2nd Ed p 429.). Section 61(3) of the Registration of Title Act 1964, as inserted by s. 54(2) of the 1965 Act, suggests that an assent or transfer by the personal representative is a prerequisite to registration of the person entitled to the deceased's land as owner, regardless of whether that person is also a personal representative.

Schedule of Works

22. The defendant submits that he made the following repairing and refurbishment works to the subject property:

- In the late 1970's a 600 sq. ft. extension comprising kitchen, bathroom and two bedrooms were added to the dwelling house. At the same time the existing dwelling house was refurbished and a septic tank and water supply installed. The estimated cost of materials for this was £15,000.00.

- In the 1990's the existing extension to the dwelling house was refurbished and PVC windows and central heating were installed. A front porch was added to the dwelling house. New floors were installed throughout the house which was insulated. The outside of the house was replastered. The works were completed in 2003 and the estimated cost of materials was €25,000.00.
- In 2004 external works were commenced comprising the installation of new paths, yard and fencing. Brick and stone walls were added around the house together with timber fencing and gates. The estimated cost of materials was €20,000.00.

All the above works were carried out by the defendant and no provision has been made for his labour costs.

23. In relation to the works carried out in the 1970's, the plaintiff claims that this claim is barred by virtue of s. 9 of the Civil Liability Act, 1961 which reads as follows:

"9. (1) In this section "relevant period" means the period of limitation prescribed by the Statute of Limitations or any limitation enactment.

(2) No proceedings shall be maintainable in respect of any cause of action whatsoever which has survived against the estate of a deceased person unless either-

(a) proceedings against him in respect of that cause of action were commenced within the relevant period and were pending at the date of his death, and

(b) proceedings are commenced in respect of that cause of action within the relevant period or within the period of two years after his death, whichever period first expires."

As the proceedings were not pending at the date of Matthew Reynolds death, the plaintiff contends that under s. 9(2)(b) the defendant had two years from 22nd March, 1980, in which to commence proceedings against the estate and did not do so. The plaintiff also submits that the defendant does not plead that this work was done under any agreement with the Deceased, or that the Deceased made any promise that the defendant would in some way benefit on his death. By entering into the Deed of Settlement, the plaintiff argues that the defendant is estopped from maintaining this part of his claim.

Estoppel

24. When a person makes a representation, whether by words or by conduct, of an existing fact which causes another party to incur detriment in reliance on this representation, the person making the representation will not be permitted to act subsequently in a manner inconsistent with that representation. As Edward Nugee QC (sitting as a High Court judge) stated in *Re Basham* [1986] 1 W.L.R. 1498 'Where one person, A, has acted to his detriment on the faith of a belief which was known to and encouraged by another person, B, that he either has or is going to be given a right in or over B's property, B cannot insist on his strict legal rights if to do so would be inconsistent with A's belief.' Therefore there must be assurance, reliance and detriment and it is important to note that the fundamental principle that equity 'is concerned to prevent unconscionable conduct permeates all elements of the doctrine' *Gillet v. Holt* [2001] Ch 210, 225 per Robert Walker L.J.

25. In relation to the works carried out in the 1990's, the plaintiff claims that there was no encouragement of this expenditure on the part of Matthew Reynolds other next of kin. It is for the defendant to prove that he relied on their silence or acquiescence. If he did not place reliance, but simply did these works for his own benefit as occupier, it was submitted that he cannot succeed in his claim for proprietary estoppel or unjust enrichment. The plaintiff also submits that the defendant was benefiting from these works and was not paying any rent.

26. In relation to the works carried out in 2004, the plaintiff submits that all these works have been carried out after these proceedings were issued and served, and at a time when the defendant knew that his father's estate was seeking to restrain his trespass. Therefore, they were technical trespasses and unlawful acts. The plaintiff contends that the works after 2004 were clearly not encouraged and acquiescence cannot be said to arise as proceedings were in being, of which the defendant was aware. The plaintiff also argues that as the defendant has no receipts or invoices in respect of the materials purchased the maxim he who claims equity must come with clean hands should apply to exclude this claim.

Trespass

27. The plaintiff claims damages for trespass, and she submits that the estate is entitled to a fair sum representing *mesne rates* for a period of six years prior to the institution of proceedings up to the present time.

Delay

28. During the course of the hearing of the appeal, counsel for the defendant/appellant argued that even if the plaintiff is held to have the paper title and in law is entitled to possession of the property, the court should not grant an injunction for the recovery on the basis that an injunction is an equitable relief and is subject to the overall restraint of the equitable maxim "delay defeats equity". In "*Equity and the Law of Trusts in Ireland*" Hillary Delaney (2nd Ed.) p. 26, the relationship between limitation periods provided for in the Statute of Limitations and this maxim is stated as follows:-

"The only exception to the principle that equitable considerations will have no application to cases to which the Statute of Limitations 1957 applies, is the reasoning employed by Henchy J. in *ÓDomhnaill v. Merrick* [1984] I.R. 151, based on the constitutional right to fair procedures to the effect that in certain circumstances 'inordinate and inexcusable delay' will bar a claim brought within the relevant limitation period where this will place an unfair burden on the person sued. The principle in *ÓDomhnaill* was applied by the Supreme Court in *Toale v. Dignan (No.2)* [1991] ILRM 140, where Finlay C.J. said that the courts have an inherent jurisdiction to dismiss a claim in the interests of justice where the length of time which is left between the events out of which it arises and the time when it comes for hearing is in all the circumstances so great that it would be unjust to call upon a particular defendant to defend himself. However, as Keane (*Equity and the Law of Trusts in the Republic of Ireland* (1988)) at p. 35-36 has pointed out, these principles are likely to only apply in a small number of cases, namely those relating to personal injuries claims by minors, in which the limitation period may be particularly long, and the recollection of witnesses of considerable importance."

He who seeks Equity must do Equity

29. Delaney in the 2nd Ed., p. 17, sets out the principles applying to the maxim "He who seeks Equity must do Equity" as follows:-

"Equity will only grant relief on terms which ensure that a defendant is treated fairly and to obtain equitable relief, a plaintiff must be prepared to act in an honourable manner. This maxim has many different applications and reflects the fact that equitable remedies are discretionary in nature. It is one of the few maxims that can be interpreted fairly literally as Magher, Gummow and Lehane (*Equity Doctrines and Remedies* (3rd Ed. 1992) p. 77) point out 'there are many illustrations of and almost no exceptions to the maxim' it is, in a sense, compliments the maxim that 'he who comes to equity must come with clean hands' and while the latter principle focuses on the past conduct of the parties seeking the intervention of the court, the maxim that 'he who seeks equity must do equity' is concerned with his likely future conduct.

The effect of the maxim is noticeable in the approach of equity towards the granting of remedies and is a feature of equitable jurisdiction which distinguishes it from the common law. An illustration of this is the manner in which equity approaches a claim for rescission of a contract. Rescission will be granted to a plaintiff on such terms which the court considers just and relief of an unconditional nature may not achieve this aim so in *Cheese v. Thomas* an elderly plaintiff who had given the defendant, his great nephew, approximately half the purchase price of a house on the understanding he would live there until he died, sought to have the transaction set aside on grounds of undue influence. Nicholls V.C. ordered that the property should be sold and that both parties should bear the loss on the sale in the same proportions that they had contributed to the purchase price. He pointed out that the court was concerned to achieve practical justice for both parties and not for the plaintiff alone and stated that the 'plaintiff is seeking the assistance of the court of equity and who seeks equity must do equity'."

The Evidence

30. The plaintiff gave evidence in relation to her entitlement as personal representative DBN to the deceased, Matthew Reynolds, and of the folio concerned from which it was clear in an earlier version thereof that the site concerned was provided with a house thereon subject to the payment of a purchase annuity for the house. The defendant gave evidence of the expenditure of money in providing an extension to the house, which was a basic County Council house without significant services, prior to the death of his father, the said Matthew Reynolds, deceased, on foot of a promise he alleged his father made that he could "have" the house after his life on foot of the work carried out, and subject, of course, to the right of his mother, the said Evelyn Reynolds, to reside therein. He stated that after the death of his father he continued to execute works and had an expert prepare a detailed estimate of the work carried out since the death of his father, the said Matthew Reynolds. He stated that the children of the said Matthew Reynolds executed a release of their claim on the intestacy of his father to his mother, the said Evelyn Reynolds, and admitted that he was a party to this Deed of Release and that the plaintiff herself, not being of full age, was catered for by the payment of a sum (it seems to be less than £1,000) into an account held by her on behalf of Evelyn Reynolds. He agreed that no formal assent was executed by Evelyn Reynolds in respect of the lands in the said folio. He stated that his mother and the other siblings were aware of his continuing to execute work on the dwelling house after the death of his father, and he produced documentation and correspondence including an undertaking by his mother's solicitor which he claimed were for the purpose providing security for credit afforded to him to complete certain works on the house. He claimed that his possession of the house was adverse to the other members of the family, including his mother, by reason of the promise of his father and his agreement with his father to take care of his mother. He agreed in cross examination that certain steps were taken to investigate and apply for planning permission for a second dwelling house in the site of the said folio for the benefit of the plaintiff, and that when the plaintiff sought to have some material deposited on the site that he resisted this on the basis that she had no entitlement thereto, and that shortly after this spat the proceedings were initiated by the plaintiff. He stated that he was unemployed and was of an age where he might not obtain employment and it would be a hardship on him to vacate the dwelling house on the site. Equally, he conceded in cross examination that the plaintiff herself had experienced some hardship in her life and that his other siblings were not well off. He disputed the suggestion made in cross examination that the other siblings could come and go to the home as they pleased, and asserted that such visits were only occasions social visits and on his invitation. The plaintiff gave evidence in relation to her continued interaction with the defendant in regard to the possibility of building a second house on the site and taking steps in the planning process to effect such an objective. She said that none of the family were excluded from the family home, either by her mother, the said Evelyn Reynolds, or by the defendant and that his possession was not exclusive of any member of the children of Matthew Reynolds and Evelyn Reynolds.

Conclusions

(I) Adverse Possession of the Defendant

A. The defendant clearly was not in adverse possession in relation to his late father, Matthew Reynolds, as he did not reside on the lands to the exclusion of his father's family, i.e. his later mother and siblings. Also, his evidence was that his father requested him to carry out the extension for him and there was no suggestion that this work was an exercise of the defendant in the exclusion of the father.

B. Neither was the defendant in adverse possession as against the mother insofar as he was not in possession to the exclusion of other persons, especially the mother and his siblings, although as time went on the siblings were coming and going on a less frequent basis. The dealings admitted by the defendant to have taken place between himself and the mother, such as the Deed of Release of 1980 and the action taken by the mother to provide security for a loan to the defendant from a financial institution to enable him to carry out works, is overwhelming evidence to indicate that there was no exclusion by the defendant of the mother either in her own right or in her capacity as personal representative of his late father, Matthew Reynolds.

C. Neither did the defendant exclude the plaintiff or other members of the family from the premises insofar as he participated to a certain extent in the endeavour of the plaintiff to provide housing for herself on the site of the lands, and it was only late in the day when a spat arose over the placing of material on the lands on behalf of the plaintiff that an adverse claim commenced to be asserted.

(II) Statute of Limitations

31. As the defendant was not in adverse possession of the lands and did not have exclusive occupation thereof as against either his father or his personal representative and did not have the requisite period of time from the death of his mother to the commencement of proceedings by the plaintiff to establish title by adverse possession as against the estate of the mother, I find that the plaintiff is not statute barred from claiming possession of the lands and is, therefore, entitled to an injunction in this case subject to such

further equitable considerations as arise.

(III) Delay

32. I accept the statement of the law in Delaney quoted above in relation to the general non-applicability of the defence of delay to cases governed by the Statute of Limitations. The principles referred to are all the more applicable in a case such as this where registered land is involved, insofar as the jurisprudence arising from *ÓDomhnaill v. Merrick* and other following cases is not relevant to the situation of a person seeking to establish a right to the lands which would constitute a burden without the necessity for registration under s. 71(1)(p) of the Registration of Title Act 1964, which deals with rights of persons acquiring or in the course of being acquired under the Statute of Limitation by way of adverse possession. It seems to me that the disqualification from asserting a right as envisaged by *ÓDomhnaill v. Merrick*, such as the inability to establish a defence, is anathema to the positive acquisition of a right envisaged under s. 72(1)(p) or for that matter, establishing a right as a person in actual occupation as envisaged by s. 72(1)(j) of the 1964 Act. While I note that consideration of a case of delay under *ÓDomhnaill* and related cases involved the balancing of conduct including delay on the part of a person in the defendant's position, I consider that the delay caused by the defendant in this case by not accepting service of proceedings and subsequently tardiness in replying to a notice for particulars necessitating, in both cases, remedial applications to the Circuit Court, while being relevant in relation to consideration of various aspects of the case later on, would not tip the balance against the defendant even if he were to get some advantage or defence on the basis of *ÓDomhnaill* principles.

(IV) Absence of Assent

33. As transactions in relation to registered land are governed in detail by Statute and the rules made thereunder, the courts should be reluctant to interfere with such an extensive scheme which has had and continues to have the effect of greatly simplifying the complexities of conveyancing. Hence, I am very reluctant to accept that the solution proposed in the judgment of Keane J. in *Mohan v. Roche* in the case of the absence of an assent of non-registered land, should be followed as it would fly in the face of the principle of the conclusiveness of the register and the express provisions of s. 72 of the 1964 Act specifically listing burdens which may affect registered land whether those burdens are or not registered. To concede an extension of the *Mohan v. Roche* principle to registered land would be for the courts to create an additional burden affecting land of a type outside s. 72 and would constitute an unwarranted usurpation of the powers of the Oireachtas.

(V) Compensation for Work

34. The defendant is clearly statute barred in respect of any claim for works done on behalf of his father, Matthew Reynolds deceased. While his counsel did attempt to argue that the performance of works by the defendant for his late father should give rise to an inference that there was an agreement expressed or implied by the father to grant an interest in the lands corresponding to the proportionate value of the works to the defendant, this argument has no credence in the light of the dealings which the defendant had with his mother in relation to the Deed of Release and undertaking of mother through her solicitor to hold title deeds as security for a loan (even though the formal title to the lands in question was not perfected by reason of the absence of an assent). The plaintiff did not really contest the entitlement of the defendant to the sum of €60,000 awarded by the learned Circuit Court Judge in respect of works carried out during the life of his mother and after the death of his father up to the 18th May, 2004. Similarly the question arises whether the carrying out of such extensive works which, combined with the works done during the life of his father, fundamentally altered the footprint and image of the house would carry with it by reason of the court holding that there was an implied agreement that an interest would pass proportionally to the defendant in the lands, I can say that there was no course of dealing evidenced between the mother and son such as would indicate such an agreement express or implied. The case is, therefore, one where the defendant should be compensated for the work done after the death of his father on the basis that to grant an injunction without further compensation would be to unjustly enrich the estate of the deceased and the other beneficiaries.

(VI) Entitlement of the Defendant to remain in Possession

35. While counsel on behalf of the plaintiff prevaricated on the matter during the course of the appeal, it is clear that it is contemplated that the plaintiff, as personal representative of the deceased registered owner, will sell the property and administer the estate as was stated on her behalf by her solicitors in the preliminary letter sent to the defendant prior to the commencement of the proceedings herein. Indeed, on the basis of *Gleeson v. Fehan* above, to do otherwise than sell the lands and administer the estate for distribution to the next of kin or their personal representatives would be to create from these proceedings an incorrect interpretation of the commendation of the Statute of Limitations and the Succession Act as an engine of fraud. Therefore, I consider that the order of the Circuit Court in para. E that the sale of the property be subject to the defendant remaining in the property pending sale is inappropriate as such a provision would not only jeopardise the sale of the property, but could well lead to further disputes and litigation in a family already damaged by such events.

(VII) Treatment in Equity

36. As the plaintiff could, having regard to this judgment, have brought proceedings by way of ejectment on the title which might not be amenable to the flexibility and fine tuning of the same relief being obtained by way of an injunction, and the defendant has eloquently prayed for equitable relief to temper the severity of any order for possession by way of injunction, it is appropriate in the interests of justice and this family that the court would temper the injunction with the following terms:-

- A. That the defendant is not entitled to payment of the sum of €60,000 compensation until he administers the estate of his mother and pays the next of kin their appropriate shares.
- B. That the plaintiff proceeds forthwith to administer the estate of Matthew Reynolds, deceased.

Summary

37. The court discharges the order of the 3rd day of April, 2009, and substitutes therefore the following order:-

- A. A declaration that the plaintiff, as administrator of the estate of Matthew Reynolds, is entitled to possession of the lands comprised in folio 21280 of the Register of County Meath.
- B. A declaration that James Reynolds, the defendant/appellant, has not acquired title to Folio 21280 of the Register of County Meath by way of adverse possession.

C. A declaration that the defendant/appellant is entitled to financial compensation in the sum of €60,000 for work expended on the property from the 19th January, 2002, to the 18th May, 2004, such compensation to be paid on condition of compliance with the conditions for payment of same as described in this judgment.

D. That the defendant/appellant be restrained from carrying out any further works on the property.

E. A mandatory injunction directing the defendant/appellant to forthwith vacate the lands contained in Folio 21280 of the Register of County Meath and give up possession thereof, including all keys, utility bills and all matters for the effective handover of the property to the plaintiff.

F. That the plaintiff/respondent proceed with the proper administration of the estate of Matthew Reynolds, deceased, upon receipt of possession of the property and lands contained in Folio 21280 aforesaid in accordance with the preliminary letter herein.

38. The court invites the parties to make submissions in the light of the foregoing judgment and amended order in relation to the costs of the parties and how the costs of these proceedings should be dealt with (if at all) in the administration of the relevant estates.

Hearing of the 22nd February, 2011

39. Counsel for the parties addressed the court in relation to the details of the order proposed to be made herein and the costs issue as invited on the 22nd February, 2011. Counsel for the defendant/appellant sought a stay on the order for possession to enable the defendant to take steps to find alternative accommodation, and I find that a stay on possession to the 1st September, 2011, is appropriate. Such reasonable course was not resisted by counsel for the defendant/appellant.

40. Counsel for the defendant/appellant argued that the defendant would be penalised disproportionately in relation to a family dwelling where he had resided for most of his life and that have to carry all the costs of complex litigation would be disproportionate to the compensation of €60,000 which he expected to receive as a result of the judgment. The court indicated that the failure of the defendant in the appeal should be marked by some penalty but that the court was prepared to measure a sum in respect of costs to be paid by the defendant representing approximately half of the costs. These were estimated to be €10,000 by counsel for the defendant and €20,000 by counsel for the plaintiff exclusive of VAT, and that in any event that there should be a stay on the payment of €6,000 costs by the defendant to the plaintiff until such time as the plaintiff pays to the defendant the said sum of compensation subject to such set off. It was agreed that the preliminary letter of the 7th July, 2003, from the plaintiff's solicitors to the defendant would be appended to the order on the basis that the proceedings were necessary to recover the lands and selling them in accordance with the demand of the preliminary letter of the 7th July, 2003. I certify for senior counsel in both courts and as a guide for taxation that the costs would bear a reasonable relationship to the level of costs indicated by the sum measured in respect of half the costs for which the defendant is liable herein. Accordingly, for the purpose of clarity, the summary indicating the form of order set out in para. 15 of the judgment herein should be replaced by the following:-

A. A declaration that the plaintiff, as administrator of the estate of Matthew Reynolds, is entitled to possession of the lands comprised in folio 21280 of the Register of County Meath.

B. A declaration that James Reynolds, the defendant/appellant, has not acquired title to Folio 21280 of the Register of County Meath by way of adverse possession.

C. A declaration that the defendant/appellant is entitled to financial compensation in the sum of €60,000 for work expended on the property from the 19th January, 2002, to the 18th May, 2004, such compensation to be paid on condition of compliance with the conditions for payment of same as described in this judgment.

D. That the defendant/appellant be restrained from carrying out any further works on the property.

E. A mandatory injunction directing the defendant/appellant to vacate the lands contained in Folio 21280 of the Register of Freeholders County Meath on the 1st day of September, 2011, and give up possession thereof, including all keys, utility bills and all matters for the effective handover of the property to the plaintiff and that the defendant, his servants or agents allow access for the plaintiff's engineer, architects and for local authority personnel to inspect the premises and do such minimal excavations as are necessary to examine the septic tanks and services of the property for the purpose of presenting a retention application to the planning authority and allow prospective purchasers to visit and inspect the property.

F. That the plaintiff/respondent proceed with the appropriate administration of the estate of Matthew Reynolds, deceased, upon receipt of possession of property and lands contained in Folio 21280 of the Register of Freeholders aforesaid in accordance with the preliminary letter herein dated the 7th day of September.

G. Liberty to apply to the Circuit Court in relation to the enforcement of this order.

H. The plaintiff is entitled to recover her costs out of the estate for the Circuit Court case on the lowest equity scale with a certificate for senior counsel, his fees being tied to the scale of junior counsel.

The plaintiff is entitled to recover half her costs of the appeal against the defendant measured on the lowest equity scale with a certificate for senior counsel, these costs being measured at €6,000.00 for the appeal would be recoverable from the estate.

The plaintiff shall be entitled to set off the sum of €6,000.00 against the defendant's compensation of €60,000.00 ordered herein and the payment of such sum of €6,000.00 shall be stayed until such time as the payment of such compensation subject to such set off has been paid by the plaintiff.

Appendix Hereinbefore Referred To

"We act for your sister Catherine Dolan the administrator of your late father's estate, Mr. Matthew Reynolds. We enclose herewith a copy of the grant of administration in the said estate.

Our client proposes selling your late fathers property at Posseckstown comprised in folio MH21280 and dividing the proceeds equally among the beneficiaries i.e. your good self and your siblings.

In the circumstances, we would ask you to provide us immediately with a set of keys to the dwelling house on the said property so that we can arrange for viewings at times convenient to your good self. We also require you to vacate the premises within 28 days of the date hereof, failing which we will be compelled to take legal proceedings against you. We strongly recommend that you pass this letter on to your solicitor."