

THE HIGH COURT

[2009 No. 7858 P.]

IN THE MATTER OF THE ESTATE OF JAMES GARTLAN, DECEASED

BETWEEN

GERARD FINNEGAN

PLAINTIFF

AND

MARGARET HAND

DEFENDANT

JUDGMENT delivered by Mr. Justice Michael White on the 10th day of March 2016

1. The plaintiff has issued proceedings against the defendant who is the administratrix of the estate of James Gartlan, (hereinafter called the deceased), seeking to enforce the doctrine of proprietary estoppel or, in the alternative, a constructive trust in respect of agricultural lands, farm buildings, fixtures, stock and machinery, the property of the deceased. In the alternative he claims monetary compensation based on quantum meruit.

Undisputed Evidence

2. The deceased was born on 6th October, 1933, and died on 12th March, 2009, aged 79. He was a bachelor who lived with his mother, Bridget, who died in 1984. He was an enterprising farmer who owned and farmed approximately 76 acres at Broomfield, Castleblayney, Co. Monaghan. The farm enterprise was primarily a dairy farm with some dry stock breeding.

3. The home farm on Folio 526 Co. Monaghan, was registered in the deceased's name on 20th July, 1970 containing 3.4145 hectares or 8.44 acres. Folio 253F Co. Monaghan was registered in his name on 5th January, 1975, containing 7.1073 hectares or 17.6 acres. Folio 2806 Co. Monaghan was registered in his name on 23rd November, 1978 containing 11.1162 hectares or 27.5 acres. Folio 4539F Co. Monaghan was registered in his name on 29th December, 1983, containing 2.959 hectares or 7.3 acres. Folio 1411F Co. Monaghan was registered in his name on 26th January, 1978 and finally, Folio 126F Co. Monaghan was registered in his name on 26th July, 1985, containing 3.7307 hectares or 9.2 acres.

4. On his death he was survived by one brother and four sisters. Only one family member, the defendant, lived nearby at Lough Egish, Castleblayney, Co. Monaghan. Eugene Gartlan, his only brother, lived in England. His sister, Rosie O'Driscoll lived in Cork, another sister, Bridget Walker lived in Australia and another sister, Kathleen Culleton lived in England.

5. The farm was well run with good quality farm buildings.

6. The plaintiff was born on 25th September, 1959, and is married with three sons. He is from a family of thirteen children raised on a small farm and was a neighbour of the deceased. The plaintiff worked part time for the deceased from the age of eleven. He then left school at twelve years of age and began to work full time on the deceased's farm to the deceased's death on 12th March, 2009, and for a couple of months thereafter.

7. The plaintiff lived in a dwelling house in substandard condition on his father's family farm, near the deceased's farm. The plaintiff was never the owner of that property which was situated at Clonavogy Broomfield, Castleblayney. He applied to Carrickmacross Urban District Council for housing for himself, his wife and two children on 15th January, 1987 and was offered a dwelling house at 65 Cloughvalley, Carrickmacross but refused the offer.

8. In 1998, the deceased gifted the plaintiff and his wife a site on his lands part of Folio 1411F. The plaintiff and his wife, Nora Finnegan were registered as owners on 10th July, 2001 on Folio 11444F Co. Monaghan. The plaintiff and his wife constructed a dwelling house on the site and procured a loan from Irish Life and Permanent plc. There was no consideration paid by the plaintiff and his wife for the site but there was a consideration noted in the deed of transfer of £2,000. The agreed value of the site is €10,000.

9. Subsequent to the death of the deceased's mother, Bridget, the deceased was a regular visitor to the plaintiff's family home for Sunday lunch and on special occasions such as Christmas. Up to commencement of full time employment by Nora Finnegan, in 1995, she regularly cooked a meal for the deceased during the week and had it brought to him.

10. There was an allegation in the pleadings that the deceased lived in fear of the plaintiff. The evidence revealed a strong friendship between the deceased and the Finnegan family.

Allegation of Sexual Abuse

11. A difficult aspect of this case is an allegation by the plaintiff that he was sexually abused by the deceased from the age of thirteen in 1972 up to 20 years of age in 1979, when the alleged abuse stopped. The plaintiff alleged this was a frequent occurrence over the seven year period which caused the plaintiff great distress. The first time the allegations were made was during the currency of these proceedings when pleaded in the statement of claim served on 31st August, 2009.

12. The first reference in correspondence seems to be a letter of 20th August, 2009 from the plaintiff's solicitors to the defendant's solicitors, claiming that a reference to the sexual abuse in the statement of claim was publicised by the defendant. I can only presume that a draft statement of claim was furnished to the defendant's solicitors prior to formal service.

13. The serious difficulty for the defendant is that the alleged sexual abuse was only disclosed by the plaintiff subsequent to the death of the deceased rendering it extremely difficult for the defendant to adduce any evidence to defend the allegation. The matter

is further complicated by the plaintiff's allegation that the deceased promised to give him his whole farm if he did not tell the gardaí.

14. The plaintiff stated the abuse stopped and the deceased felt sorry it had ever happened and that subsequently, they grew close and he trusted the deceased after that and developed a great friendship. The court heard evidence from Dr. Ann Leader, a consultant psychiatrist, in respect of this matter and the court was furnished with a report from Dr. Leader of 15th February, 2011. She assessed the plaintiff on 30th January, 2012.

15. The plaintiff stated in evidence that the abuse had no bearing on the subsequent relationship between him and the deceased from 1980 until his death in 2009. I do not consider it appropriate to rely on this aspect of the evidence to determine the plaintiff's claim of proprietary estoppel, as I would consider it unfair to the defendant, who was a stranger to these allegations, and is not in the position to defend them. To make these allegations has not been easy for the plaintiff, and it has not undermined his credibility.

Disputed Evidence

16. The court heard the following witnesses, the plaintiff, Nora Finnegan his wife, Martin O'Sullivan, an agricultural consultant Dr. Ann Leader, Michael Finnegan, the plaintiff's son, Donal McDaid, a neighbouring farmer who also had extensive experience in farm organisations and local cooperatives; Barney McMahon, the nearest neighbour to the deceased who was also a farmer; Pat Cunningham, agricultural contractor, and Patrick Finnegan the plaintiff's brother.

17. Margaret Hand, Mr. Ronald McArdle, Raymond Murtagh a local farmer and Tom Ryan, the deceased's accountant, gave evidence in defence.

18. Before dealing with the kernel of this dispute whether the deceased made any promises to the plaintiff, there is other evidence which is in dispute.

19. The first matter in dispute was the degree of commitment of the plaintiff to the farming enterprise of the deceased, the amount of time he spent working there, and also the role he played in the farming enterprise.

20. I consider the evidence of Mr. Donal McDaid, Mr. Barney McMahon and Mr. Pat Cunningham to be both independent and cogent and prefer it to the evidence of Raymond Murtagh. I am satisfied that the plaintiff devoted an extraordinary amount of time to his work on the deceased's farm, working seven days a week from early in the morning to late in the evening and played a very significant part in the work of the farm.

21. The deceased also played a very active role in the management of the farm, was responsible for all financial matters and was a very active worker himself up to his death.

22. In 1987, when the deceased was 54 years of age, he suffered an accident on the farm when his leg was fractured and unfortunately, the fracture was not repaired properly.

23. There is controversy about the effect on him of this injury.

24. The court prefers the evidence of Mr. McMahon. The deceased was a great farmer and a great worker but the accident did affect him and he could not do heavy work after the accident and confined himself to light work. To the court that is logical because at the time of his injury, the deceased was 54 years of age while the plaintiff was 28 years of age, obviously much more capable of heavy work on the farm.

25. The court is also satisfied that the deceased developed a very close relationship with the plaintiff's family. I accept that the deceased had good relations with his brothers and sisters, and that the defendant was a regular visitor to the deceased. However it does not seem that the Hand family were actively involved in working the farm or helping the deceased out on the farm but the Finnegan sons did help out on the farm. To the extent that the plaintiff is making the case that the deceased had a difficult relationship with his siblings, I do not accept that.

26. In respect of the remuneration paid to the plaintiff, the court has had the benefit of the evidence of Martin O'Sullivan, an agricultural expert and Tom Ryan the deceased's accountant. Mr. O'Sullivan and Mr. McDaid who had experience in farming organisations described the plaintiff's role as that of a farm manager, although accepting employing a farm manager on that size of a farm would not be economically viable.

27. I have not designated the plaintiff as a farm manager, but he was much more than a farm labourer. He was actively involved in managing the stock on the farm and carried out remedial construction work and general improvements to the farm. He worked much longer hours than the normal week for an agricultural labourer fixed at 39 hours per week by statutory instrument and worked weekends.

28. It is difficult to decide what contribution, if any, the plaintiff made to the deceased's ability to buy more land. All the lands were acquired by the early 1980s when the plaintiff was a very young man, and while the underpayment to the plaintiff for his work during this period of time would have contributed to the ability of the deceased to save funds and to acquire extra land, I am satisfied that the acquisition of the lands was primarily the work of the deceased and his mother.

29. The plaintiff made a significant decision to his detriment in 1987 when he turned down the social housing in Carrickmacross. That meant that his family lived in substandard accommodation for a further fourteen years until the transfer of the site to them and the construction of the new house. I accept the evidence of the plaintiff that the deceased pleaded with him to stay close to the farm. This was of significant benefit to the deceased and to the detriment of the plaintiff and his family.

30. I accept the defendant's evidence that the working environment suited the plaintiff who loved farming and was close to his original family home. However, that does not cancel out the detriment to him of very long working hours, low pay and substandard accommodation until 2001.

31. The court has to rely on the evidence of the plaintiff and to a lesser extent his wife, Nora, and Brother Patrick as to the alleged promises the deceased made to the plaintiff to leave the farming enterprise to him after his death.

32. Throughout the years the plaintiff worked on the farm, it is alleged the deceased made numerous promises to him, which led him to believe that the deceased would favour him in his will. Many of the alleged promises were indirect or oblique, but a few were allegedly direct promises.

33. Most of the alleged conversations were between the plaintiff and the deceased only and some oblique references in the presence of Nora Finnegan and another oblique reference allegedly in the presence of Patrick Finnegan.

34. The court is not relying on the alleged promise made by the deceased to the plaintiff when he was aged seventeen or eighteen years of age, in the context of an allegation of sexual abuse.

35. The extract from the evidence in the plaintiff's submissions setting out these particular alleged promises, follows:-

- In or about 1997, when the deceased was about to go on holidays to Australia, he told the plaintiff that "if the plane falls out of the sky, you have nothing to worry about as I have all straightened up".
- In or about 1999, the plaintiff told the deceased that he could no longer remain working fulltime for the deceased (the plaintiff's sons having suggested to the plaintiff that he should move to the construction industry in Dublin where they were earning large wages), and the deceased said words to the plaintiff to the effect that "This will be yours after my day. The money in the Bank will be for my family".
- In or about 2005/2006, the deceased said words to the plaintiff to the effect that "When I give you this farm, you will have to pay the Government about IRE300,000".
- The deceased often said to the plaintiff "If you ever leave me, I will die." The deceased used to refer to "our cattle", "our field", etc.
- In or about 2008, the deceased contacted Patrick Finnegan with a view to getting leave from Patrick Finnegan to lawfully use some of Patrick Finnegan's lands, for the purpose of spreading slurry on same, having told Patrick Finnegan that the deceased intended to erect a slatted shed. Patrick Finnegan asked the deceased whether he did not have enough sheds already, to which the deceased replied (in the presence of the plaintiff) that same was for "Gerry here" indicating the plaintiff.
- In or around 2008, the deceased said to the plaintiff words to the effect that the plaintiff would have the farm when the deceased would go, and that the plaintiff would end up paying for the slatted shed.
- In respect of each time the deceased indicated to the plaintiff that the deceased would leave the deceased's farm (machinery and stock) to the plaintiff, there was a witness present only on one occasion in 2008 when the deceased indicated that the slatted shed was for the plaintiff, and that witness was Patrick Finnegan.

The Law

36. The law is helpfully set out in *Equity and the Law of Trusts in Ireland* by Hillary Delany (5th Ed.) at p. 759 which states:-

"The basis of the doctrine of proprietary estoppel is to prevent a person from insisting on his strict legal rights where to do so would be inequitable having regard to the dealings which have taken place between the parties. It developed as an exception to the formalities required for the creation of interests in land and the rationale behind the doctrine could be said to be the prevention of unconscionable behaviour. It should be noted at this point while proprietary estoppel is almost exclusively invoked in the context of rights in or over land, it can extend to other forms of property."

37. As Lord Walker commented in *Thorner v Major* [2009] 1 WLR 776 at 786 the doctrine of proprietary estoppel is based on three main elements: 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. 'However as Robert Walker LJ made clear in the course of delivering his judgment in the decision of the court of Appeal in *Gillett v. Holt*, [2001] Ch 210 at 225, the doctrine cannot be treated as if it can be 'subdivided into three or four watertight compartments'. As he stated 'the quality of the relevant assurances may influence the issue of the reliance' and 'reliance and detriment are often intertwined'. While it must also be borne in mind that the doctrine of unconscionability has come to play an increasingly significant role.

38. Dealing with the extent of the remedy at p. 784, Delany states:-

"It has been recognised that of all doctrines equitable estoppel is surely one of the most flexible and that the court must look at the circumstances of each case in order to determine how the equity which arises can be satisfied. It is also important to appreciate that the raising of an estoppel does not give rise to a particular form of remedy and that the remedy required to satisfy an equity varies according to the circumstances of the case. One of the most striking features of proprietary estoppel is the wide range of responses open to the court. An examination of the case law demonstrates that the remedies granted by the courts range dramatically and can extend to the conveyance of the fee simple interest or be limited to a licence to occupy property for life. In other cases, the equity has been held to be satisfied by the granting of a right of way or by the mere denial of the legal owner's claim to possession. Clearly, flexibility is a hallmark of relief based on estoppel so, where appropriate, a fee simple interest in remainder has been granted or a conveyance of the fee simple ordered subject to the payment of compensation."

Constructive Trust

39. Delaney in Chapter 8, p. 215 of *Equity in the Law of Trusts in Ireland* (5th Ed.) defines constructive trust:-

"As one which arises by operation of law and which ordinarily comes into being as a result of conduct and irrespective of the intention of the parties. In general terms, it can be described as a trust which is imposed by equity in order to satisfy the demands of justice and good conscience and to prevent a person deriving profit from fraudulent conduct or taking unfair advantage of a fiduciary position. As Deane J. stated in the Australian decision of *Muschinski v. Dodds* (1985) 160 CLR 583 at p. 614:-

"Viewed in its modern context, the constructive trust can properly be described as a remedial institution which equity imposes regardless of actual or presumed agreement or intention (and subsequently protects) to preclude the retention or assertion of beneficial ownership of property to the extent that such retention or assertion would be contrary to equitable principle."

The Remedial Constructive Trust

40. Delaney at p. 285 states:-

"Traditionally the courts in England and in this jurisdiction have labelled the constructive trust as a substantive institution although there have been some signs recently of a willingness to regard it as a more remedial concept. The institutional approach involves treating the constructive trust as a device which arises in certain defined situations, e.g. where there is a breach of fiduciary duty or the wrongful assumption of trust duties by a stranger to the trust."

41. The following explanation of a remedial constructive trust has been provided by *Piciocco* [1989] 68 Can Bar Rev 315:-

"A plaintiff who requests a remedial constructive trust seeks a declaration that he has a beneficial interest in specific property owned, or in the possession of a defendant who has been unjustly enriched by that ownership or possession. If successful, the relief that the plaintiff obtains is proprietary in the sense that it gives the successful plaintiff rights in the specific property which are good, not only against the defendant, but also against most others, including especially the general creditors of the defendant."

42. The distinctions between the institutional and remedial constructive trust have been explored by Tipping J. in the decision of the New Zealand Court of Appeal in *Fortex Group Limited v. McIntosh* [1988] 3 NZLR 171 at p. 172. He stated that an institutional constructive trust is one which arises by operation of the principles of equity and whose existence the court simply recognises in a declaratory way, whereas a remedial constructive trust is one which is imposed by the court in circumstances where before the order of the court, no trust of any kind existed. The difference between the two types of trust in his view is that the former arises upon the happening of the events which bring it into being and its existence is not dependent on any order of the court whereas the latter depends for its very existence on such an order.

43. The plaintiffs counsel has opened in detail the House of Lords decision of *Thorner v. Majors & Ors* [2009] UKHL 18. This is an important decision from this court's perspective as it deals with alleged assurances which were inexact and oblique in respect of future bequests, and also the overlapping nature of the remedies of proprietary estoppel and constructive trust.

44. Lord Hoffman at para 2 of the judgment stated:-

"Such a claim, under the principle known as proprietary estoppel, requires the claimant to prove a promise or assurance that he will acquire a proprietary interest in specified property. A distinct feature of this case (as Lloyd, L.J. remarked in the Court of Appeal (at paragraph 65), was that the representation was never made expressly but was "a matter of implication and inference from indirect statements and conduct. It consisted of such matters as handing over to David in 1990 an insurance policy bonus notice with the words "that's for my death duties" and other oblique remarks on subsequent occasions which indicated that Peter intended David to inherit the farm. As Lloyd, L.J. observed (at paragraph 67) such conduct and language might have been consistent with a current intention rather than a definitive assurance. But the Judge found as a fact that these words and acts were reasonably understood by David as an assurance that he would inherit the farm and that Peter intended them to be so understood."

45. At para. 3 Lord Hoffman stated:-

"The Court of Appeal said, correctly, that the fact that Peter had actually intended David to inherit the farm was irrelevant. The question was whether his words and acts would reasonably have conveyed to David an assurance that he would do so. But Lloyd, L.J. accepted (at paragraph 66) that the finding to what Peter would reasonably have been understood to mean by his words and acts, was a finding of fact which was not open to challenge. That must be right. The fact that he spoke in oblique and allusive terms does not matter if it was reasonable for David, given his knowledge of Peter and the background circumstances, to have understood him to mean not merely that his present intention was to leave David the farm, but that he definitely would do so."

46. At para 14 of the judgment Lord Scott stated:-

"One of the features of the type of cases of which the present case is an example is the extent to which proprietary estoppel and constructive trust have been treated as providing alternative and overlapping remedies and, while in no way disagreeing with my noble and learned friends' conclusion that David can establish his equity in Steart Farm via proprietary estoppel, I find it easier and more comfortable to regard David's equity as established via a remedial constructive trust."

47. At para 20 Lord Scott stated:-

"But cases where the relevant representation has related to inheritance prospects seem to me difficult, for the reasons I have given, to square with the principles of proprietary estoppel established by the *Ramsden v. Dyson and Crabb v. Arun District Council* line of cases and, for my part, I find them made easier to understand as constructive trust cases. The possibility of a remedial constructive trust over property, created by the common intention of understanding of the parties regarding the property on the basis of which the claimant has acted to his detriment, has been recognised at least since *Gissing v. Gissing* [1971] A.C. 886 (see particularly Lord Diplock at p. 905). The inheritance cases of which *Gillett v. Holt* [2001] Ch 210, *In Re Basham* [1986] 1 WLR 1498 and *Walton v. Walton* (1994 CA Unreported) and, of course the present case are good examples, are, to my mind, more comfortably viewed as constructive trust cases. Indeed I think Mr Edward Nugee QC, sitting as a High Court judge in, *In re Basham*, was of the same opinion. After stating the proprietary estoppel principle (at p1503) he went on (at p. 1504). But in my judgment, at all events whether the belief is that A is going to be given a right in the future, it is properly to be regarded as giving rise to a species of constructive trust, which is the concept employed by a court of equity to prevent a person from relying on his legal rights where it would be unconscionable for him to do so.

And at p. 1505E, he referred to the detriment:-

"that the plaintiff must prove in order to raise a constructive trust in a case of proprietary estoppel". For my part I would prefer to keep proprietary estoppel and constructive trust as distinct and separate remedies, to confine proprietary estoppel to cases where the representation whether express or implied on which the claimant has acted is unconditional and to address the cases where the representation are of future benefits, and subject to qualification on account of unforeseen future events, via the principles of remedial constructive trusts"

48. The dicta in *Gillet v. Holt* and *Thorner v. Major* are important.

49. The promise or promises may not be exact and to the point, but can be indirect and oblique. The promises are revocable until the person who has been promised acts to his detriment which has to be substantial. It is only then the assurances or promises become irrevocable.

50. The House of Lords decision in *Thorner v. Major* would suggest that it is open to the court where it has concerns about the uncertainty of the promise or promises in particular to a future promise of a bequest in a will, to hold that a constructive remedial trust arises.

51. There is no requirement in a claim for proprietary estoppel or constructive trust to have any note or memorandum in accordance with the statute of frauds.

52. The court has not relied on the quantum meruit claim, so the issue of the plaintiff's claim for loss of earnings being statute barred does not arise.

53. I accept that the claims of proprietary estoppel and constructive trust on the one hand, and the monetary claim based on quantum meruit are mutually exclusive.

54. Laffoy J. in *Coyle v. Finnegan*, delivered on 25th October, 2013, regarded the English decision in *Gillet v. Holt* [1998] 3 All E.R. 917; (CHD) [2001] Ch. 210; [2000] 3 WLR 825; [2000] 2 All E.R. 289, as an evolutionary process in the development of the doctrine of proprietary estoppel. Although *Thorner v. Major* [2009] 1 WLR 776, is referred to in the judgment, it is not considered in any detail. This Court would consider the decision of *Thorner v. Major* a further evolutionary step in the development of proprietary estoppel and, in particular, its overlap with constructive trust or constructive remedial trust.

Conclusion

55. The plaintiff has some credibility problems. The court considered Ronald McArdle a reliable witness. He stated that his father, Gene who was the administrator of the estate of his brother John McArdle, had an exchange with the plaintiff which he overheard. The plaintiff said to Gene McArdle that John had promised him a field for some work done. Ronald McArdle stated that his father gave the plaintiff €120 and asked him not to come back.

56. There was also a claim in a letter of 26th November, 1998, from Corrigan Coyle Kennedy McCormack Solicitors which named the plaintiff as a person giving instructions. It was alleged that his father had made him a promise in the following terms:-

"Not to worry this place will be yours after my day."

57. The letter does not refer to the farm but the dwelling house and buildings and a small area of ground around the house in which the plaintiff and his wife and children had lived since their marriage in 1980 and which was the original family home of the plaintiff. The plaintiff in his evidence doubted that he had given specific instructions in relation to that matter. Mrs. Finnegan was adamant in her evidence that the house was in such bad condition that the family did not want to stay there.

58. I am satisfied that Nora Finnegan was a reliable and truthful witness. She stated in her evidence that, the deceased had made a number of oblique references in her company to the land. She described the substandard accommodation they were living in when they were offered the house in 1987 by Carrickmacross Urban District Council. She stated that they were very poor and they had no money. She stated that there was no internal water supply to their existing home. She stated she was very upset and cried for weeks when Jim persuaded Gerry not to move.

59. The court's duty is to look at the evidence in the round and to look for some corroboration.

60. The plaintiff started to work full time for the deceased when he was a child of twelve years of age. He was bright at primary school but uneducated having missed out on any form of second level schooling. He was an excellent worker who worked long hours for the deceased which included weekends. He was substantially underpaid and was seriously exploited by the deceased in that regard. He worked full time on the farm from 1971 to 2009, 38 years in total. I am satisfied that the deceased relied heavily on the plaintiff and his family who were generous with their time.

61. The plaintiff and his wife declined social housing on 15th January, 1987 in Carrickmacross when living in substandard accommodation in the plaintiff's family home. This was a significant imposition on the family as they were not in a position to move to new housing until 2001 when the deceased had previously provided a site on the lands in or around 1998.

62. I am satisfied that the plaintiff declined the social housing in Carrickmacross at the request of the deceased.

63. The objective evidence is that he worked on the farm for 38 years to an extent way beyond that required of an employee, that he was substantially underpaid and made a significant sacrifice in giving up social housing in 1987.

64. Despite some problems with credibility I accept his evidence that on different occasions, the deceased both directly and obliquely led the plaintiff to believe that he would, at least, name the plaintiff as a beneficiary in his will.

65. The court is satisfied that the plaintiff thought that he had assurances that he would benefit under the deceased's will and relied on those assurances to his substantial detriment.

66. There was a lack of certainty in relation to the proposals made by the deceased. No exact lands or folios were identified. There was no evidence of active efforts to make a will. To the contrary, the deceased's discussions with Mr. Ryan would suggest if he made a will, he intended to favour his nieces and nephews.

67. I rely on the House of Lords decision in *Thorner v. Major & Ors* [2009] UKHL 18, which I have already referred to, where the court found that a constructive remedial trust arose, notwithstanding that representations were never made expressly but were a matter of implication and inference from indirect statements and conduct.

68. When the evidence is examined in its totality, I have little doubt that the deceased was quite prepared to make promises which he did not necessarily intend to keep to ensure that the plaintiff continued to work for him, and that he enjoyed the comfort and companionship of the plaintiff's family.

69. I accept the evidence of the defendant that the deceased remained an active farmer up to the date of his death, involved in the affairs of the farm, running all the financial management aspects of it and carrying out all types of work on the farm to 1987 and thereafter because of an injury and advancing years lighter work.

70. Because of the behaviour of the deceased in holding out to the plaintiff that he would be rewarded in the future with an interest in the farm which led to the plaintiff devoting a very substantial part of his adult life to work on the farm and also suffering the inadequate facilities of a substandard home for fourteen years, it would be unconscionable that the estate would accrue in its entirety to the blood relations of the deceased. While the court can hold that proprietary estoppel arises, because of the uncertain nature of the promises made as to the future intentions of the deceased, the court is of the opinion that a constructive remedial trust arises.

71. The court has discretion on the remedy to be provided to the plaintiff. The plaintiff should obtain a share in the farm, stock and machinery. As it is an equitable relief, I am not bound to transfer all the estate to the plaintiff as requested by him. That would be an injustice to the next of kin of the defendant.

72. The appropriate remedy is that the plaintiff be awarded half that portion of the estate which includes the farmlands comprised in all the Folios, half the value of the stock and machinery and miscellaneous items sold. Any money that was resting in bank accounts at the date of death should go to the next of kin rather than the plaintiff. The plaintiff should give credit to the defendant for the gift of the site which is valued at €10,000.

73. The court is not prepared to consider a claim for *devastavit*.