

## THE HIGH COURT

[2000 No. 8528P]

BETWEEN

P. B.

PLAINTIFF

AND

A. F. AND J.P.M. F.

DEFENDANTS

**Judgment of Mr. Justice Feeney delivered on 6th day of July, 2012.**

1.1 The plaintiff as Chief Bureau Officer of the Criminal Assets Bureau seeks orders under ss. 3 and 7 of the Proceeds of Crime Act 1996 (as amended), ("the 1996 Act") in relation to certain properties and in respect of certain bank accounts in the State. It is claimed by the plaintiff that those properties and bank accounts represent the proceeds of crime of the late P. F., who is the deceased husband of the first named defendant and the father of the second named defendant. P. F., deceased, was murdered on the 10th September, 1997. The properties and bank accounts the subject matter of this application are set forth in the schedule to the general endorsement of claim in fourteen separate numbered paragraphs.

1.2 The proceedings were originally entitled F. McK. v A. F. and J.P.M. F. and an order was made on the 8th December, 2009 substituting the then Chief Bureau Officer of the Criminal Assets Bureau, P. B., for F. McK. as plaintiff in these proceedings. The first named defendant is the widow of the late P. F., deceased, and in the amended statement of claim delivered on the 29th January, 2009 it was claimed that the first named defendant as the widow of the late P. F., deceased, was sued in her personal capacity and also in her capacity as guardian *ad litem* of the estate of the late P. F., deceased, having been so appointed by order of the Court on the 15th January, 2009. It was also claimed that the first named defendant was in possession of and/or in control of all the property other than for the items at paragraphs 11 and 12 of the schedule. It was also claimed that the first named defendant was in receipt of rental income from one of the properties, namely the property identified in paragraph 8 of the schedule, that being Apartment 243, The Sweepstakes, Ballsbridge, Dublin, 4. The plaintiff further claimed that insofar as the first named defendant was not in possession of the scheduled property that she has been in control of that property as the surviving spouse of the late P. F., deceased, and as the party with priority entitlement to the extraction of administration to his estate. It was also pleaded that the first named defendant was in possession of and/or control of the scheduled property by virtue of being the guardian *ad litem* of the estate of the late P. F.. The second named defendant asserted an interest in two of the items of property the subject matter of the proceedings, being the amounts in two accounts held by the Permanent TSB (formerly Irish Permanent Plc.) in Dundalk, County Louth. Those being the items of property identified at paragraphs 11 and 12 of the schedule. A settlement was concluded between the plaintiff and the second named defendant prior to the commencement of the hearing of the action on the 8th December, 2009 and the terms of the settlement were handed in to the Court on that date. The Court ruled that the effect and consequence of the consent agreement would be revisited at the end of the case. The property the subject matter of the application consists of nine items of real property and five bank accounts, including the two bank accounts which are the subject of the consent agreement between the plaintiff and the second named defendant.

1.3 Nine items of real property are identified in the schedule in the first nine paragraphs of that schedule. Four of the items of property represent contiguous lands at Ard Kirk, County Monaghan, which lands were acquired in four separate parcels and transactions in December 1977, August 1978, March 1980 and January 1985. Those lands are identified at paragraphs 1, 2, 4 and 5 of the schedule. The properties in issue also include a separate holding of land in County Monaghan acquired in 1983 which is situated a few miles distant from the Ard Kirk property which lands were acquired in May of 1983 and is the property referred to at paragraph 7 of the schedule. The proceedings also relate to properties situated in Drumnasillagh in County Louth consisting of a derelict house known as Ravensdale Hall which was acquired in 1989 and is the property identified at paragraph 3 of the schedule together with some six acres of adjoining land which was acquired in 1987 and is identified at paragraph 6 of the schedule. The Court heard evidence in relation to the dates, circumstances and price of purchase of each of the said seven items of property covering the period from December 1977 when the property at paragraph 1 of the schedule was purchased up to and including the purchase of the property identified at paragraph 3 of the schedule in 1989. The evidence in respect of such purchases was given to the Court by Cliona Richardson and was also contained in her affidavit sworn on the 21st July, 2000 which affidavit was adopted in evidence. Two other items of real property are also included within the plaintiffs claim, namely, Apartment 243, The Sweepstakes, Dublin, 4, being item 8 in the schedule, which was purchased by the late P. F. on the 11<sup>th</sup> August, 1993. The final item of real property in issue in these proceedings is set forth at paragraph 9 of the schedule and is lands situated in County Tipperary and described in Folio 26189F of the Register of Freeholders of that County which lands were purchased in 1997 in the name of the sister of the late P. F., namely B. W. It is claimed that the true beneficial owner of the said lands was the late P. F. and that the acquisition of that property was made with funds which represented the proceeds of the late P. F.'s criminal activities and that the property was purchased with funds laundered by the late P. F.. The Court will return to this item of property later in the judgment.

1.4 The plaintiff also claims in respect of five bank accounts, three in the Irish Permanent Plc., and two in the Bank of Ireland, details of which are set forth at paragraphs 10 to 14 of the schedule. It is the plaintiffs claim that the sums lodged to those bank accounts represented the proceeds of the late P. F.'s criminal activities and further that the lodgements represented acts of money laundering and/or represented the fruits of money laundering. The evidence available to the Court in respect of those bank accounts and the transactions in question was set out in the affidavit of Clodagh Boyce, now Detective Sergeant Clodagh White, sworn on the 21st July, 2000 which said affidavit was adopted in evidence by Detective Sergeant Clodagh White on the 23rd March, 2010.

1.5 The orders sought by the plaintiff are orders pursuant to s. 3 of the Proceeds of Crime Act 1996. The plaintiff also seeks an order pursuant to s. 7 of the said Act appointing a receiver to take possession of each of the fourteen items of property or such portion of the said property as the Court might order subject to such exceptions and conditions as the Court might specify.

2.1 The constitutional validity of the Proceeds of Crime Act 1996 was considered by the Supreme Court in *Murphy v. G.M.* [2001] 4 I.R. 113. It is evident from the judgment of the Supreme Court that orders under s. 3 of the 1996 Act can be made even though it has not been shown that there was *mens rea* on the part of the person in possession or control of the property. The Court in its judgment (at p. 148) stated:

"The court is, in any event, satisfied that the submission that the establishment of *mens rea* by the applicant is essential if an order under ss. 3 or 4 is to be made, is fundamentally misconceived. Two conditions alone must be met before an order is made under those sections: that a person is in possession or control of a specified property which constitutes the proceeds of crime or was acquired in connection with such property and that its value is not less than £10,000. The orders can be made even though it has not been shown to the satisfaction of the court that there was *mens rea* on the part of the person in possession or control of the property. This is so, whether *mens rea* in this context is being used in the sense of 'a general disposition to do something that was morally wrong in the old canonical sense' or in the sense adopted in the authorities at a later stage of 'an intention to commit the particular wrong mentioned in the definition of the relevant offence'. (The distinction between the two forms of *mens rea* is helpfully discussed in *Criminal Liability* by McAuley and McCutcheon.) The fact that the person in possession or control of the property against whom the order is sought may not himself or herself have been in any way involved in any criminal activity and, specifically, may not have been aware that the property constituted the proceeds of crime, would not prevent the court from making the order freezing the property under ss. 2 or 3, unless it was satisfied that there would be 'a serious risk of injustice'. If the legislature had intended that no such order should be made unless it had first been established that the person in possession or control of the property had acquired it with a criminal intent, it would have said so. No doubt the court might decline to make the order in a case where the person in possession or control was in a position to establish that he or she had purchased the particular property in good faith for valuable consideration: it might, on the other hand, make the order in circumstances where an innocent recipient of the property had made no payment for it."

It follows from the judgment of the Supreme Court that the fact that the person in possession or control of property the subject matter of a s. 3 application was not himself or herself in any way involved in any criminal activity and might not have been aware that the property constituted the proceeds of crime does not prevent a court from making either an order under s. 2 or s. 3 of the 1996 Act. However, it is also clear that the Court would not make an order if it was satisfied that there would be a "serious risk of injustice". Later in the judgment of the Court (at p. 153) the Court held that:

"The issue in the present case does not raise a challenge to a valid constitutional right of property. It concerns the right of the State to take, or the right of a citizen to resist the State in taking, property which is proved on the balance of probabilities to represent the proceeds of crime. In general such a forfeiture is not a punishment and its operation does not require criminal procedures. Application of such legislation must be sensitive to the actual property and other rights of citizens but in principle and subject, no doubt, to special problems which may arise in particular cases, a person in possession of the proceeds of crime can have no constitutional grievance if deprived of their use."

It is evident from that statement of the Supreme Court that in considering applications under s. 3 of the 1996 Act that a Court is required to be sensitive to the actual property and other rights of citizens and that the Court must also have regard to any special problems which may arise in a particular case. By adopting that approach, the Court avoids the creation of a constitutional grievance. In considering the facts and circumstances of this particular case, the Court will later in this judgment identify the particular facts and circumstances which the Court has taken into account in considering the possibility of the creation of a constitutional grievance. The Supreme Court judgment also made it clear that the Court in considering applications under s. 3 is concerned with the right of the State to take property which has been proved on the balance of probabilities to represent the proceeds of crime and that in general such a forfeiture was not a punishment and that the procedural steps and hearing by the Court did not require criminal procedures.

2.2 The Supreme Court in *Murphy v. G.M.* also considered an argument that the 1996 Act was unconstitutional in that it permitted delays which were oppressive in their nature. In dealing with this matter the Court held in its judgment (at p. 154) as follows:

"The court, in considering this submission, finds it unnecessary to express any view as to whether the surprisingly lengthy period which elapsed between the making of the order under s. 2 in the first case and the hearing of the interlocutory application under s. 3 was wholly or in part the fault of the appellant in that case, as contended by the respondents. It is sufficient to say that the procedure under the Act is perfectly capable of being operated in such a manner as to ensure that no unreasonable delay elapses between the making of the interim order and the interlocutory order: that indeed is clearly what the Act envisaged, since under s. 2(5), the order is to lapse after the expiration of the period of 21 days from the date of its making, unless an application for the making of an interlocutory order is brought during that period. As to the claim that the period of seven years which must elapse before a disposal order is made is unduly oppressive, that rests on the misconception that the application for a disposal order can in some sense be equated to the trial of an action in respect of which the legislation earlier provides for interlocutory orders being made. That is clearly not the nature of the scheme provided for in the Act. A person who is affected by the provisions of an interlocutory order can apply at any time before the expiration of the seven year period for an order discharging or modifying the interlocutory order. The court is satisfied that the submission that the procedure is so oppressive as to be unconstitutional because of this time limitation is not well founded."

The Supreme Court identified that the procedure under the Proceeds of Crime Act is perfectly capable of being operated in such a manner as to ensure that no unreasonable delay elapses between the making of an interim order and the interlocutory order. An interim order is an order made under s. 2 of the Act and an interlocutory order is an order under s. 3. The plaintiff in this case brought a motion dated the 21st July, 2000 seeking, *inter alia*, relief pursuant to s. 3 of the 1996 Act and when that matter came on before the Court on the 28th July, 2000 the Court heard counsel for the plaintiff and counsel for the first and second named defendants and the first named defendant by her counsel undertook not to dispose of property the subject matter of these proceedings and the second named defendant by his counsel undertook not to reduce the balance of any bank account in which he had an interest which was the subject matter of the proceedings and on that basis the motion for s. 3 relief was adjourned. Thereafter, a number of events occurred, which this Court will return to later in the judgment, which resulted in the hearing of the s. 3 application not proceeding to trial until the 8th December, 2009. In addressing the facts and circumstances of this case, the Court has to have regard to the period of time from the commencement of the proceedings to the date of the hearing of the interlocutory order under s. 3 and has to consider whether or not such period of time, when taken together with other factors, is unreasonable to the extent that a constitutional grievance would arise from such a delay. The Court also has to consider whether such delay when taken together with other factors gives rise to a serious risk of injustice.

2.3 The Supreme Court in *Murphy v. G.M.* considered an argument relating to the alleged absence of equality of arms and dealt with that argument (at pp. 155 and 156) in the following terms:

"As to the submission that there was no 'equality of arms' between the parties because evidence of opinion was permitted in the case of the applicant but not in the case of the respondents, the court is satisfied that no such inequality has been demonstrated: the respondents to an application under s. 2 or s. 3 will normally be the persons in possession or control of the property and should be in a position to give evidence to the court as to its provenance without calling in aid opinion evidence. A similar submission was advanced in respect of the extent to which the onus of proof was reversed in applications under the Act, but the court is satisfied that, having regard to its conclusion that these are civil proceedings this did not, of itself, render the provisions unconstitutional.

In this connection, the court was referred to the recent decision of the Privy Council in *McIntosh v. Lord Advocate* [2001] 3 W.L.R. 107. In that case, an issue arose as to whether certain provisions of the Proceeds of Crime (Scotland) Act, 1994, were incompatible with article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Those provisions were in somewhat similar terms to those contained in the Criminal Justice Act, 1994, which enable a court to make a confiscation order requiring a person convicted of a drug trafficking offence to pay a certain sum. Those procedures are in contrast to the procedures under the Act of 1996, where the precondition of the conviction of the person against whom the freezing order is to be directed does not exist. The court, however, would adopt with approval the following passage from the speech of Lord Hope of Craighead as to the approach a court should adopt in considering provisions of this nature, whether in the context of the Constitution or of the European Convention of Human Rights. He said at pp. 123 and 124:-

"People engage in this activity [drug trafficking] to make money and it is notorious that they hide what they are doing. Direct proof of the proceeds is often difficult, if not impossible. The nature of the activity and the harm it does to the community provide a sufficient basis for the making of these assumption [i.e. assumptions that property held by the accused could in certain circumstances be assumed to have been received in connection with drug trafficking]. They serve the legitimate aim in the public interest of combating that activity. They do so in a way that is proportionate. They relate to matters that ought to be within the accused's knowledge, and they are rebuttable by him at a hearing before a judge on the balance of probabilities. In my opinion a fair balance is struck between the legitimate aim and the rights of the accused."

In the unreported case of *McK v. F and F* (Unreported judgment of Finnegan P. delivered on the 24th February, 2003) the High Court considered the above quotation from the Supreme Court judgment at pp. 155 and 156 and applied it to the facts and circumstances in that case. Finnegan P. stated (at p. 4 of the unreported judgment) as follows:

"The Plaintiff in this action does not make the case that the property the subject matter thereof is the proceeds of a specific crime or crimes. These proceedings are civil proceedings and the onus rests upon the Plaintiff. In order to discharge that onus the Plaintiff may rely upon opinion evidence pursuant to the provisions of section 8 of the Act. As noted by the Supreme Court the Defendant should be in a position to give evidence to the court as to the provenance of any property sought to be attached. However the Act applies not alone to the person alleged to have been involved in the crime but to a person in possession or control of the property. This may make more difficult the task of the Defendant. However it is provided in section 3 of the Act that the court shall not make an order under that section if it is satisfied that there would be a serious risk of injustice and this provision represents an appropriate and sufficient protection for such a Defendant."

That statement in the judgment of Finnegan P. is of particular significance. This is a case where the plaintiff seeks to apply the Act not to the person alleged to have been involved in crimes but to defendants who are in possession or control of the property funded from such crimes. As identified by Finnegan P., if such circumstances arise, a situation can arise where a defendant is faced with a more difficult situation. In considering the nature of the task faced by a defendant, the Act provides that the Court shall not make an order under s. 3 of the Act if the Court is satisfied that there would be a serious risk of injustice. It is by that means that the statute provides an appropriate and sufficient protection to such a defendant. The particular circumstances and facts of this case include the fact that the person alleged to have been involved in criminal activities was murdered in 1997. It was almost three years later that the proceedings were commenced and it is now over fourteen years since the murder of the first named defendant's husband. It is also the case that a number of the properties the subject matter of these proceedings were acquired in the 1970s and 1980s. One of the factors that the Court has to consider is whether requiring a defendant who is not personally alleged to have been involved in crime but who is alleged to be in possession or control of property is properly or adequately able to deal with the provenance of such property and the source of funds provided by another person where such property was acquired over twenty and thirty years ago. The Court must consider the issue in this case of whether it is unjust to require the first defendant to deal with the provenance of funds which were applied so long ago.

2.4 The Supreme Court in the *Murphy v. G.M* case identified that it was unnecessary for a plaintiff in making a s. 3 application under the 1996 Act to rely upon specific crimes or to relate items of property sought to be attached by an order under s. 3 of the 1996 Act to the commission of specific crimes and held that it was open to the plaintiff to make a case by relying upon opinion evidence that the property in issue in a case constituted directly or indirectly the proceeds of crime. Under s. 8(1) of the Proceeds of Crime Act 1996, opinion evidence or evidence of belief can be admitted in evidence. As identified by Finnegan P. in the *McK v. F. and F.* case (at p. 5) ss. 2, 3 and 8 of the 1996 Act refers to "proceeds of crime" and the word "crime" is not preceded by a definite or indefinite article and that clearly indicated that it is the legislative intention of the Act that the Act should have application in circumstances where the plaintiff is unable to show a relationship between the property alleged to be the proceeds of crime and a particular crime or crimes. However, where the property the subject matter of the s. 3 application was acquired many years prior to the commencement of proceedings under the proceeds of crime legislation, the Court must take into account that fact in considering whether or not a defendant is or should be in a position to give evidence to the Court as to the provenance of any property sought to be attached. It is also a relevant fact that the person alleged to have generated the proceeds is deceased. The *McK v. F and F* judgment of Finnegan P. delivered on the 24th February, 2003 was delivered in relation to a preliminary motion within these proceedings and dealt with an application brought by the defendants seeking to have the proceedings dismissed because the plaintiff had failed to identify that each item of property the subject matter of the proceedings was acquired or funded with the proceeds or the commission of a specific offence. The judgment of the 24th February, 2003 dealt with that matter. In an earlier judgment of the 12th February, 2002 within the same proceedings of Finnegan P. had dealt with applications by the defendants that the claim within these proceedings was statute-barred and that the proceedings should be dismissed insofar as the schedule properties represent the proceeds of alleged crime committed outside the State and not contrary to Irish law. In declining the relief sought, Finnegan P. held (at pp. 5 and 6):

"In this action it is alleged that the Defendants are in possession or control of property acquired by or in connection with the proceeds of crime by one P.F. now deceased the Defendants being the widow and son respectively of P.F. This may make it more difficult for these Defendants to demonstrate the provenance of the property sought to be attached.

However the Defendants are in no different position it seems to me from the executor or administrator of an estate against which a cause of action survives. Indeed by reason of the proviso in section 3 of the 1996 Act that the court shall not make an order if it is satisfied that there would be a serious risk of injustice it is arguable that they are in a better position."

It is clear that this Court must as part of its task in considering whether or not a serious risk of injustice arises address and consider the capacity and practicality of the defendants and, in particular, the first named defendant to deal with the provenance of the property sought to be attached. The Court must do so by reference to the particular facts and circumstances of the case including the dates upon which particular items of property were acquired.

3.1. In this case the plaintiff seeks to rely on s. 8(1) of the 1996 Act and to have the Court admit belief evidence.

3.2 The Supreme Court in *Murphy v. G.M.* considered the question as to whether that Act of 1996 was an unwarranted interference with the exercise of judicial function. It was argued in that case that the procedures permitted under the 1996 Act were so unfair as to be unconstitutional. In considering that matter, the Court had regard to the provisions of s. 8 of the 1996 Act which allows for the admission of hearsay evidence. The Supreme Court specifically addressed the issue of hearsay evidence in the following terms (at p. 155):

"Nor is the provision for the admission of hearsay evidence of itself unconstitutional: it was a matter for the court hearing the application to decide what weight should be given to such evidence."

The Supreme Court held that it was satisfied that there was no substance to the constitutional challenge based upon a claim that the procedures permitted under the Act were so unfair as to be unconstitutional. The Supreme Court identified that the Court hearing a claim under the 1996 Act must act in accordance with the principles of constitutional justice and that it was a matter for the Court hearing the evidence to decide and to determine what weight, if any, should be given to hearsay evidence.

3.3 A further claim dealt with by the Supreme Court in the *Murphy v. G.M* case concerned a submission that the procedures permitted under the 1996 Act were so unfair as to be unconstitutional in that there was no equality of arms between the parties because evidence of opinion, or hearsay evidence, was permitted in the case of an applicant but not in the case of a respondent. In dealing with that issue the Supreme Court held (at p. 155):

"... the court is satisfied that no such inequality has been demonstrated: the respondents to an application under s. 2 or s. 3 will normally be the persons in possession or control of the property and should be in a position to give evidence to the court as to its provenance without calling in aid opinion evidence."

3.4 The issue of the admission of hearsay evidence under s. 8 of the 1996 Act was again considered by the Supreme Court in the case of *McK. v. T.H* [2007] 1 ILRM 338. Hardiman J. in his judgment in that case set out the various statutory provisions in s. 8 of the 1996 Act and also quoted from the decision of the Court in the *Murphy v. G.M & Ors.* case relating to the claim of lack of equality of arms and the admission of hearsay evidence, as set out in the previous paragraph of this judgment, and went on to hold (at pp. 345/346):

"Against this background it appears to me impossible to contend that the procedures adopted and the rulings given on the admissibility of evidence in this case were in any way flawed. Any court will, of course, be conscious of the very great potential unfairness of permitting hearsay evidence and belief evidence to be given in legal proceedings. They are capable of gross abuse, and capable of undermining the ability of persons against whom they are deployed to defend himself by cross-examination. It is, accordingly, essential to ensure that the conditions under which the Supreme Court held their use constitutionally justifiable in this unique statutory context are in fact met:

'... the respondents to an application under s. 2 or s. 3 will normally be the persons in possession or control of the property and should be in a position to give evidence to the court as to its provenance ... '."

3.5 In considering a s. 3 application the Court may admit hearsay evidence under the provisions of s. 8 of the 1996 Act. Sections 8(5) and 8(7) of the Criminal Assets Bureau Act 1996 permits the disclosure of information or material obtained by a Bureau Officer for the purposes of the Act to be disclosed to another Bureau Officer, a member of An Garda Síochána, and certain other classes of person. Section 8(7) of the Criminal Assets Bureau Act 1996 provides:

"... Information, documents or other material obtained by a bureau officer or any other person under the provisions of this sub-section shall be admitted in evidence in any subsequent proceedings."

Those provisions have the effect that not only can hearsay or belief evidence be admitted under the provisions of s. 8 of the 1996 Act but that also it is open to the plaintiff in this case to seek to use or rely on evidence or information contained in the affidavits of Bureau Officers and to avail of the provisions of s. 8(5) and (7) of the Criminal Assets Bureau Act 1996.

3.6 In considering the admission of hearsay evidence in this case, the Court has regard to the ability of the person against whom such evidence is deployed to defend herself both by way of cross-examination of the persons giving such evidence and the extent, if any, of the first named defendant's ability to give evidence as to the provenance of the property in issue in these proceedings.

While s. 8 of the 1996 Act permits the introduction of hearsay evidence it is the case that that evidence is not conclusive and is open to challenge by a respondent. However, as pointed out by Hardiman J. in *McK v. TH.* in dealing with hearsay evidence under s. 8 of the 1996 Act (at p. 347):

"It must be emphasised that this belief in itself, once there were held to be reasonable grounds for it, would be sufficient to ground an order under s. 3 if there was no evidence to the contrary or if, as happened here, the second defendant's evidence to the contrary were rejected."

In recognition of the potential unfairness of admitting hearsay evidence, the courts have consistently identified that whilst permitted to do so, a court should be slow to make orders under s. 3 on the basis of hearsay or belief evidence without other corroborating evidence. This approach was emphasised by McGuinness J. in *Gilligan v. Criminal Assets Bureau* [1998] 3 I.R. 185 in her judgment at p. 243 where she stated in relation to hearsay evidence under s. 8 of the 1996 Act:

"The evidence is not, of course, conclusive and is open to challenge by a respondent but in my opinion a court should be

slow to make orders under s. 3 on the basis of such evidence without other corroborating evidence."

The real ability of a defendant to challenge hearsay evidence is a significant factor in whether the Court should rely on such evidence.

3.7 The different functions of s. 3 and s. 8 of the 1996 Act were considered by the Supreme Court in the case of *F. McK. v. G. WD. (Proceeds of crime outside the State)* [2004] 2 I.R. 470. McCracken J. in his judgment identified the procedure which a High Court trial Judge should adopt in considering the admissibility of hearsay or opinion evidence under s. 8 of the 1996 Act. The procedure was dealt with by McCracken J. in his judgment (at p. 491 and 492 in the following terms):

"It seems to me that the correct procedure for a trial judge in circumstances such as those in the present case is:-

- (1) he should firstly consider the position under s. 8. He should consider the evidence given by the member or authorised officer of his belief and at the same time consider any other evidence, such as that of the two police officers in the present case, which might point to reasonable grounds for that belief;
- (2) if he is satisfied that there are reasonable grounds for the belief, he should then make a specific finding that the belief of the member or authorised officer is evidence;
- (3) only then should he go on to consider the position under s. 3. He should consider the evidence tendered by the plaintiff, which in the present case would be both the evidence of the member or authorised officer under s. 8 and indeed the evidence of the other police officers;
- (4) he should make a finding whether this evidence constitutes a *prima facie* case under s. 3 and, if he does so find, the onus shifts to the defendant or other specified person;
- (5) he should then consider the evidence furnished by the defendant or other specified person and determine whether he is satisfied that the onus undertaken by the defendant or other specified person has been fulfilled;
- (6) if he is satisfied that the defendant or other specified person has satisfied his onus of proof then the proceedings should be dismissed;
- (7) if he is not so satisfied he should then consider whether there would be a serious risk of injustice. If the steps are followed in that order, there should be little risk of the type of confusion which arose in the present case."

That is a procedure which this Court has regularly applied and which it will follow in this case subject to the requirement to ensure that any admission of s. 8 hearsay evidence in this case is considered in the light of the particular problems which arise thereby ensuring that no unfairness or constitutional grievance would occur if hearsay evidence is admitted.

3.8 In the judgment of Fennelly J. in the same case of *F. McK. v. G.W.D.*, he dealt with the approach which the Court should take in dealing with the interaction between s. 8 and s. 3 of the 1996 Act and did so in the following terms (at p. 486):

"It appears from the judgment of the President that, once the plaintiff had given evidence of belief, which is rendered admissible by s. 8, and once he had also found that belief to be reasonable, the burden of proof was transferred *ipso facto* to the defendant. He did not advert to the opening words of s. 3(1), 'Where ... it appears to the court ...'. The section does not abrogate the fact finding function of the court. It is true that, at a certain point, the section shifts on to the defendant the burden of proving that the property does not represent the proceeds of crime. But that occurs only when the court has satisfied itself on the evidence produced of the matters specified s. 3(1)(a) and (b). It appears to me that, by stating that he 'must make the order' unless satisfied by the defendant's evidence that the premises did not represent the proceeds of crime, he abstained from making any judgment on the quality of the plaintiff's evidence. He did, of course, decide that the plaintiff's belief was evidence. That was not enough. He could not proceed, as he did, for that reason alone to transfer the burden of proof to the defendant."

3.9 Part of the process which the Court undertakes in following the seven steps identified by McCracken J. include a process by which the Court exercises its judgment on the quality of the plaintiff's evidence. The quality of the evidence will depend upon any number of circumstances including:

- (a) the extent of the personal knowledge of the witness;
- (b) the witness's involvement with the events in respect of which he or she is giving evidence;
- (c) the support or corroboration that such evidence receives or acquires from information, documents or other material available to the witness;
- (d) the time period to which such evidence relates;
- (e) the extent of the period from events detailed in the evidence to the date upon which evidence is given;
- (f) the ability of the defendant or defendants to question such evidence or to cross-examine in relation to such evidence;
- (g) any events which have occurred which impact on the capacity of a defendant or defendants to deal with or explain the provenance of the property in question;
- (h) the availability of documentation to provide context and meaning to such evidence;
- (i) the availability and significance of any documentation admitted in evidence, particularly where such document is contemporaneous to the events being considered by the Court;
- G) the consistency or lack of it as between documents and the opinion or hearsay evidence given to the Court; and
- (k) the time gap between the date upon which events relied upon occurred and the classification of such events or the

categorisation of such events as criminal.

Each of those matters are matters which this Court will consider in examining the evidence and in arriving at a determination as to the quality of the plaintiffs evidence.

3.10 As a first step, the Court must consider and determine whether the evidence given by the Member or authorised Officer of his belief is of a quality and calibre to permit it to be adduced in evidence without causing an unfairness. At the same time the Court considers the other evidence adduced by the plaintiff to ascertain whether or not there are reasonable grounds for the belief evidence. It is important in carrying out that task to consider the belief evidence and the other evidence adduced by the plaintiff at the same time. In carrying out that task, the Court must have regard to whether or not there are reasonable grounds in respect of all of the belief evidence or only part of that evidence. If the Court is satisfied that there are no reasonable grounds for all or part of the belief evidence, or that the evidence taken as a whole is not of sufficient quality, then such evidence should be excluded. After that process, the Court then proceeds, if necessary, to carry out the further steps identified in the judgment of McCracken J. set out at paras. 3 to 7 inclusive.

4.1 The second named defendant claimed an interest in two of the items of property covered by the s. 2 order. Those items were two accounts held in the Permanent TSB, formerly Irish Permanent Plc in Dundalk. They are items 11 and 12 on the schedule to the plenary summons. A settlement was reached in relation to the second named defendant's claim at the commencement of the trial. The settlement was handed into Court on the first day of the trial and the Court ruled that the consent agreement between the plaintiff and the second named defendant would be revisited when judgment was given in the case between the plaintiff and the first named defendant.

5.1 At the time of the commencement of these proceedings, the then Chief Bureau Officer, F. McK., swore an affidavit. In the affidavit he expressed the belief that pursuant to the provisions of s. 8(1) of the Proceeds of Crime Act 1996, that the property the subject matter of these proceedings constituted directly or indirectly the proceeds of crime and/or were properties that were acquired in whole or in part with or in connection with property that directly or indirectly constitutes the proceeds of crime. He identified his grounds for such belief and relied on the facts and averments set out in the affidavits of Detective Garda Cliona Richardson, Detective Garda Clodagh Boyce and Detective Sergeant Samuel Sittlington which were sworn in these proceedings. Those affidavits were admitted in evidence at the trial of the action. Those three persons also gave oral evidence. The Chief Bureau Officer of the Criminal Assets Bureau at the date of the trial, Detective Chief Superintendent P.B., gave oral evidence, as the last witness for the plaintiff. He had been appointed Chief Bureau Officer on the 1st October, 2009. He gave evidence, pursuant to s. 8 of the 1996 Act that it was his belief that all the properties which are the subject matter of these proceedings were directly or indirectly derived from the proceeds of P. F.'s criminal activities. (Transcript 7, p. 67). He based his opinion or belief on knowledge and information he had gleaned in working as a senior investigator in An Garda Síochána. He also based such belief on the oral evidence given by the witnesses called by the plaintiff. A summary of the matters he relied on was set out in fifteen lettered paragraphs in paragraph 23 of the plaintiff's written submissions. (Appendix 'A').

5.2 P. F. purchased a number of properties without requiring such purchases to be funded by mortgages and details of those properties are set out in paragraph 6 of the affidavit of Detective Garda Cliona Richardson sworn on the 21st July, 2000. The first item of property was purchased in 1977 in County Monaghan and another portion of land was purchased in County Monaghan in August 1978. Further property was purchased in Monaghan in 1980 in Castleblayney. There was also the purchase of further properties in Ardkirk in 1985 and in Ravensdale in County Louth in 1987 and in Dundalk in 1989. In 1993 P. F. purchased and became the registered owner of a small portion of land in Corracloghan in County Monaghan. A further item of property which was the subject matter of the proceedings was a property of some 20.337 acres in the townland of Clonbrick in County Tipperary which was claimed to be beneficially owned by the late P. F. even though the property was registered in his sister's name, that is in the name of B. W. That property was registered in her name on the 18th April, 1997. There was evidence before the Court that B. W. had confirmed that the property was not hers but that it was purchased in her name with cash funds provided by P. F.. The final item of real property which was the subject matter of these proceedings was Apartment 243, The Sweepstakes, Ballsbridge, Dublin, 4. Four of the items of real property represent contiguous lands at Ardkirk, County Monaghan which were acquired at four separate times in 1977, 1978, 1980 and 1985. There was also the separate holding of land in County Monaghan which was acquired in 1983. One of the properties known as Ravensdale Hall is a property in County Louth which was acquired in 1989.

5.3 The apartment at No. 243, The Sweepstakes was purchased with cash by P. F. in August 1993 for a sum in excess of IR£100,000 without any loan or mortgage being required. P. F. entered into a sale agreement for the purchase of the site in the sum of IR£34,000 on the 11th August, 1993 and a contract for the build of the apartment on the same day for IR£100,950, totalling together IR£134,950. It is claimed by the plaintiff that P. F. purchased The Sweepstakes from the proceeds of crime. Subsequent to its purchase the property was mortgaged and the interest of P. F. and A. F. became the subject of a mortgage with Irish Permanent. After the death of P. F., A. F. re-acquired the full equity and interest in the property by discharging the mortgage.

5.4 The affidavit of Detective Garda Clodagh Boyce, now Detective Sergeant Clodagh White, was adopted in evidence and she also gave oral evidence. The plaintiffs case is that the lodgments to the various accounts identified in that affidavit and which are the subject matter of these proceedings represented the proceeds of the late P. F.'s criminal activities and that the lodgments to those accounts constituted acts of money laundering.

6.1 The first step in the seven stage procedure identified by McCracken J. in *F McK v. GWD* is that the trial Judge hearing the s. 3 application in considering the admissibility of hearsay or opinion evidence should consider the evidence given by the Member, that is the Chief Bureau Officer, of his belief and at the same time consider any other evidence which might point to reasonable grounds for that belief. Part of that process requires the Court to make a judgment on the quality of the plaintiffs evidence, and also whether there are any special problems with such evidence and that process requires not only consideration of the evidence relied upon in support of the Chief Bureau Officer's belief, but also an examination of the value, attributes and nature of the evidence adduced by the plaintiff and relied upon by the Chief Bureau Officer in forming his opinion or belief.

6.2 The quality of the evidence sought to be relied upon by the Chief Bureau Officer must be viewed against the facts and circumstances of the particular case. There are a number of factors in this case, which, when taken together and when considered cumulatively, lead the Court to the conclusion that the quality of the evidence relied upon by the Chief Bureau Officer and upon which he bases his opinion is not of sufficient strength or effect which would permit the Court to conclude that the plaintiff has established reasonable grounds for the Chief Bureau Officer's belief or opinion evidence. There are also special problems present in this case which leads the Court to the same conclusion. It follows that such evidence should not be admitted under s. 8 of the 1996 Act. In arriving at that conclusion the Court has taken into account a number of factors and the aggregate effect and interconnection between those factors giving rise to a situation where special problems particular to this case can be said to arise. It is the combined effect of those factors when considered in the light of the potential unfairness of permitting hearsay evidence which leads the Court to the

conclusion that the s. 8 opinion evidence tendered on behalf of the plaintiff should not be admitted. When all the factors are taken together, this Court is of the view that to permit the proposed hearsay or opinion evidence in this case would be to create an unfairness.

6.3 The factors which the Court has taken into account in arriving at its conclusion concerning the admissibility of hearsay evidence are numerous and the most salient of those are set out hereunder. The Court has had the opportunity of considering the oral evidence adduced by the plaintiff and the nature of such evidence, the antiquity of the events being recounted, the personal knowledge, if any, of the witness, the availability of documents, the capacity of the defendant to test or question such testimony and the knowledge and cogency of the witnesses' evidence in relation to the matters on which they were giving evidence. The most important matters which the Court has had regard to are detailed in the following paragraphs by reference to the evidence given to the Court.

6.4 The s. 3 application relates to the specific items of property and deals with a claim that those items of property were acquired in whole or in part from assets which represent the proceeds of crime. It follows that a court must consider the factual position as of the date of the acquisition of the items of property. In this case the items of property consist of nine items of real property and five bank accounts and the acquisition of the items of real property and the establishment and use of the bank accounts cover a period from December 1977 up to the date of death of P. F. in September 1997. In relation to the bank accounts, it is the plaintiff's case that the lodgments to those accounts represent the proceeds of crime and a further claim that the manner in which they were operated represented and constituted acts of money laundering. It is now over fourteen years since the death of P. F. and over thirty four years since the first item of real property was acquired. The courts have long recognised that in considering the passage of time from the events being litigated to the date of the hearing that the court must have regard to the general proposition that with the passage of time, memories fade and become less reliable. The courts have consistently acknowledged the frailty of human memory and the effect that the passage of time has on memory. The recollection of witnesses of events which occurred many years previously can be significantly enhanced if the witnesses' memory can be assisted by documentary evidence. In this case, the passage of time from the acquisition of the properties in issue or the dealings with the bank accounts is of such duration that the testing of the evidence in relation to the source of funding has become a difficult task. That is all the more so on the facts of this case where the witnesses relied upon by the plaintiff to give evidence as to the source of funding rely not on their own actual recollection of events, but rather on information received from unnamed third parties. The passage of time and the absence of documents make the testing of such evidence an onerous task. The Court has therefore had regard to the passage of time from the acquisition of the real property and the use of the bank accounts to the date of the hearing in considering the quality of the evidence and the appropriateness of admitting such evidence.

6.5 The second significant factor which the Court has taken into account in considering the quality of the evidence relied upon by the plaintiff is the extent of the personal knowledge of the witnesses of the matters in respect of which the witnesses gave evidence. Where matters recounted in evidence stem from the personal knowledge of that witness, the capacity to test and question that witness is greater than where the witness relies on information communicated by unidentified third parties or from documents which are not available to the Court. An overall consideration of the evidence of the witnesses relied upon by the Chief Bureau Officer in support of his opinion results in the conclusion that in relation to the source of funds and the claim that such funds represent the proceeds of crime, that such evidence is almost in every instance not based upon personal knowledge or observation but based upon information from third parties and from documents which are not available to the Court. That of itself does not result in such evidence being of no value but it does result when taken together with the passage of time in such evidence having to be viewed in a vigilant manner.

6.6 Superintendent Jim Sheridan gave evidence in relation to the late P. F.. The Superintendent had joined An Garda Síochána in 1977 and was in the Dundalk Station from that time for almost the entire of his service up until 2009. He had worked in many different capacities starting as a guard, then as a sergeant, a detective garda, a detective sergeant, a detective inspector and finally, as a superintendent. He gave evidence that he had known the late P. F. since the early 1980s and identified in his evidence that P. F. was involved in both criminal and smuggling activities over many years. His evidence covered the period from the early 1980s up until P. F.'s death. He gave evidence that P.F. was a significant player in the importation and distribution of illegal drugs into this jurisdiction. In cross-examination Superintendent Sheridan explained that his evidence in relation to P. F. emanated from his work associations and contact with people and that there were contacts between P. F. and known drug dealers. Superintendent Sheridan did not give evidence of any particular or precise event and relied on information gleaned during his work and from his associations and contact with third parties. Superintendent Sheridan also gave evidence that there was no documentation available to him to support such evidence. No documentation was available which would allow his evidence to be tested. The imprecise nature of Superintendent Sheridan's evidence is demonstrated by the evidence he gave concerning the allegation that the late P. F. was involved in cigarette smuggling. In cross-examination (Day 2, Transcript p. 133) Chief Superintendent Sheridan was asked about his information that P. F. was involved in smuggling cigarettes into the Republic and replied that that was correct and he was then asked, would that have been in what year, is this over many years? and he responded "Well that was the information that was available, but again as I say we didn't, at the time there were, ... terrorism was our main priority in Dundalk and we weren't overly concerned in relation to smuggling at that time". Later in cross examination (at p. 134) Chief Superintendent Sheridan said in relation to cigarette smuggling, that he couldn't say where the cigarettes came from or who carried the cigarettes or who bought them and that he was not in a position to answer such a question and that the information that was available to him at the time would be available generally about a number of people in the border area. It was also the case that for a number of years from the mid-1980s, P. F. was based outside Ireland and lived in London.

6.7 Detective Sergeant Fergus Treanor gave evidence that he was a Detective Sergeant working from Carrickmacross Station. He gave evidence of the alleged criminal activities of the late P. F.. Sergeant Treanor identified that that evidence was as a result of his investigative work with the Garda Anti-Racketeering Unit in the 1990s and his involvement with a multi-national and multi-agency investigation operation known as "Madronna" which was an investigation into P. F.'s criminal activities which involved the police in England, Northern Ireland and Ireland. The evidence of Sergeant Treanor centered on his involvement with the "Madronna" investigation, which was an investigation into P. F., and was referred to in the two letters of the 29th March, 1994, one to a Detective Chief Superintendent in the Investigation Section in An Garda Síochána from Inspector Reid of the RUC, and the other from Detective Garda Treanor to Inspector Reid. The letters concerned an RUC operation code named "Madronna" which was scheduled for the 19th April, 1994 in Northern Ireland and Great Britain. Those letters are of assistance to the Court in relation to its consideration of the evidence relied upon by the plaintiff in that they are contemporaneous documents which are available for scrutiny by the Court and which are also available for use in the testing of Sergeant Treanor's evidence in cross examination. In one of the letters of 29th March, 1994, it was stated by Inspector Reid of the RUC, who was the author of the letter, that P. F. moved to this jurisdiction (Republic of Ireland) in early 1993, after protracted investigation by Northern Ireland Inland Revenue and RUC investigations. The letter also stated that "recently, due to Inland Revenue pressure, P.F. has begun to transfer his resources to the Republic in the form of real estate". In the section of the letter dealing with Garda knowledge of P. F. it was stated "Although P.F. has only recently established himself in this jurisdiction, it would appear that the subject has made extensive connections in the crime and drug sub-

culture in the Dublin and border areas. However, P.F. has still maintained links with top subversives in the Republic". Sergeant Treanor gave evidence of the late P. F.'s association with known criminals within this jurisdiction and those persons involvement in drug trafficking. Sergeant Treanor's evidence also extended to the late P. F.'s use of the same address as that of a named criminal associate who was involved in the theft of cars and the fact that P.F. went bail for that person in 1993. There was documentation available from Sergeant Treanor from 1994 dealing with P.F.'s alleged subversive connections and the identity of those persons. The documentation was identified as being based upon intelligence information. The one definite incident in respect of which Detective Sergeant Treanor gave evidence was in relation to a criminal offence which occurred in London. Detective Garda Treanor was a witness in that case and it involved the trial in England of George Houston in relation to the possession of illegal drugs. Sergeant Treanor gave evidence of the registration of the vehicle in which the drugs were found, which was identified as a vehicle which was both owned and driven by P. F. but which was insured in the name of Mr. Houston and was being used by him when illegal drugs to the value of some £300,000 Sterling were found. Detective Sergeant Treanor gave evidence that Mr. Houston was convicted in England (see Transcript 3, p. 12). The only identifiable incident or crime in respect of which Detective Sergeant Treanor gave evidence was that of a crime which was committed in England in April 1994 (see Transcript 3, p. 10). Detective Sergeant Treanor sought to rely on an association between the late P. F. and George Houston in support of his claim that P.F. was involved in illegal drugs. The incident identified was a crime committed in England. Detective Sergeant Treanor in cross-examination identified that his knowledge in relation to P. F.'s alleged involvement in drug trafficking in this jurisdiction came from "extensive inquiries with all of the specialised units in Southern Ireland and An Garda Síochána and obtained from them what they knew about P. F.". (see Transcript 3, p. 53). Detective Sergeant Treanor acknowledged in cross-examination that the late P. F. was dealing in motorcars in the United Kingdom to a significant extent and that he was also involved in buying and selling properties in London (see transcript 3. pp 58 and 59). It was also apparent from Detective Sergeant Treanor's evidence that he was relying on information provided by the London and Northern Ireland police that the late P. F. was a very substantial smuggler of drugs into the Republic of Ireland and the claim that there was use of an identified transport company. That information emanated from discussions and meetings which were held between members of the Gardai including Detective Sergeant Treanor and officers from the RUC, including their lead investigator, Inspector Reid. All of the occasions when the named transport company was allegedly involved in the importation of drugs, other than for one at Rosslare, related to incidents which took place in England or Northern Ireland. The alleged connection between the late P. F. and the transport company was as a result of information which Detective Sergeant Treanor received from Scotland Yard and the RUC. When Detective Sergeant Treanor was cross-examined in relation to what had been identified as the Newry/Drogheda drug run, which was an alleged transport corridor for the illegal importation of drugs into the Republic of Ireland, he responded in answer to the question "You're not suggesting that P.F. was involved in this Newry/Drogheda run, are you?" He answered "I had no information of that nature that he was actually running that link up". (See transcript 3, p. 156).

An overall consideration of Detective Sergeant Treanor's evidence demonstrates that other than for his involvement in the trial in England where Mr. Houston was convicted and the alleged connection between Mr. Houston and the late P. F., that all his other evidence concerning the late P. F.'s alleged involvement in criminal activities and drug smuggling was based upon information gleaned from the RUC and the London Police and from inquiries and discussions within An Garda Síochána and other agencies. The information which Detective Sergeant Treanor received included the information that the late P. F. had recently begun to transfer his resources to the Republic of Ireland. P. F. was said to have moved to this jurisdiction in early 1993. Detective Sergeant Treanor only became involved in inquiring into P. F. after he returned to Ireland in 1994. It is also the case that the document that Detective Sergeant Treanor prepared dated the 29th March, 1994 in response to the request from the RUC which dealt with his inquiries into P. F. and identified that the late P. F. had kept associations with what was stated to be the criminal fraternity in the Dublin area and that those criminals were mainly involved in the importation of drugs. There was no reference to past activities in this jurisdiction. In a further memo from Detective Sergeant Treanor to the RUC Inspector controlling the operation, namely, Inspector Reid, dated the 6th April, 1994, the extent of the matters identified were to the effect "Inquiries into his (P. F.) activities have revealed a close network of people who are controlled by P.F. It is imperative that the services of the Surveillance Unit are obtained in order for Operation Madronna to achieve a satisfactory conclusion". In a final undated memo under the heading of Associates, which post-dated the memo of the 6th April, 1994, it was stated that P. F. was well known in the criminal network and had come under the notice of An Garda Síochána on several occasions and that he had been linked to several investigations and his associates within the same were then identified. No other information was provided as to any particular incident or criminal activities which it was claimed were being carried out or had been carried out by P. F..

The evidence sought to be relied upon by the plaintiffs of continuous involvement by the late P. F. with the illegal importation of drugs into Ireland in the period up to 1993/1994 is to a considerable extent inconsistent with the letter from Inspector Reid of the RUC of the 29th March, 1994 which identified that P. F. had only recently established himself in the jurisdiction of the Republic of Ireland and had begun to transfer his resources to the Republic due to pressure from the U.K. Revenue.

6.8 Detective Inspector Cliona Richardson gave evidence in relation to the purchase of the apartment at 243, The Sweepstakes and also in relation to the purchase of the Tipperary property. She became involved in the investigations concerning the late P. F. after his death and her investigation related to his assets. She did not give any evidence in relation to the source of funds but rather dealt with the circumstances in which assets were used.

Detective Inspector Richardson in response to a question in cross-examination relating to the alleged criminal activity of P. F. in this State was asked, apart from what Detective Sergeant Treanor said, did she come across any serious evidence that P. F. was involved in criminal activity in the State and she replied (at Transcript 4. p. 61):

"... the information that we would have had was that he was a criminal and that he was involved in drug trafficking; he was involved in smuggling; and was involved in other activities that were mentioned in relation to the ringing of cars. He had no legitimate income that we could see. That's the information that we would have had".

It was apparent from her evidence that Detective Inspector Cliona Richardson was relying on information which she had received from other members of An Garda Síochána in relation to the alleged criminal activities of P. F. in this State and that she was not in a position to give any direct evidence in relation to the source of funds and that her evidence was limited to the use of funds and that she had become involved in investigating P. F.'s assets after he was dead.

6.9 The Court also heard evidence from retired Detective Inspector Sam Sittlington of the PSNI. As with other witnesses who had sworn affidavits within the proceedings, his affidavit was admitted in evidence and was adopted as part of his evidence to the Court. Mr. Sittlington gave evidence that he was a member of the then RUC Drugs Squad prior to becoming a member of the Economic Crime Bureau at the RUC's National Financial Investigation Unit. A focus of his investigation was the alleged drug trafficking activity of P. F.. Mr. Sittlington gave evidence of the late P. F.'s association with a named person who it was alleged was involved in the transportation of drugs. The context of Mr. Sittlington's evidence was that prior to becoming a member of the Economic Crime Bureau that he was a member of the Drugs Squad in Northern Ireland from 1994 to 1998 and that he was aware of P. F. and his alleged activities at that time and that there was a major push from his office to stop the flow of drugs into Northern Ireland and to arrest P.



F. (see Transcript 4, p. 71). He confirmed that he was talking about 1996/1997 and that he was not aware of P. F. prior to that date. His investigations in relation to drug dealing dealt with 1996 and 1997. Insofar as he became aware of P. F.'s background in 1996, his knowledge of P. F.'s alleged criminal activities prior to 1996 was obtained from the RUC's Special Branch sources. Mr. Sittlington gave evidence as to P. F.'s associates and of his connection with named persons who it was alleged were involved in criminal activity. He referred to information about lorry seizures where drugs were found. It was suggested that P. F. was associated with persons operating the Lorries and details were given by Mr. Sittlington in evidence (Transcript 4, p. 76). The incidents all related to seizures in France, England and Northern Ireland other than for one seizure of cannabis resin on the 10th March, 1997 at Rosslare. Mr. Sittlington also gave evidence in relation to Mr. Houston's conviction in England and his sentence in November 1995 for possession of Class A drugs and of the alleged association between Mr. Houston and P. F.. Mr. Sittlington also gave evidence concerning his knowledge of an operation carried out at the Dromad Bureau de Change and he gave evidence of the use of that facility for the purpose of money laundering. Mr. Sittlington gave evidence that P. F. had an account with Dromad in the name of P. F. and he gave evidence as to an account in the name of A. H., the maiden name of the first named defendant, being opened in 1997 and that the sums in the P. F. account were thereafter transferred to the A. H. account in the Bureau. In cross-examination Mr. Sittlington indicated that after he commenced to investigate P. F. that he viewed certain files and that one of the intelligence documents that he viewed related to seizures of drugs in 1992 which indicated that P. F. was involved in importing drugs into the North and South of Ireland from outside of Europe. Mr. Sittlington gave limited evidence in relation to P. F.'s financial dealings in the United Kingdom but indicated that he was relying on U.K. Revenue records but that he did not have authority to bring those records with him. Those records variously described P. F. as being involved in car dealing and the property development business. It is again the case that the direct evidence that Mr. Sittlington gave as to P. F.'s alleged criminal activities is limited due to the fact that P. F. did not become the subject of his investigation until 1996 and that, prior to that date, his knowledge of P. F.'s alleged criminal activities was based upon intelligence reports from unidentified sources. The evidence which Mr. Sittlington gave in relation to the criminal activities of P. F. was limited and, insofar as it related to any events prior to 1996, was based upon information which he received from unidentified sources and from documents which were not available in court. Insofar as the Court has to consider the circumstances in which P. F. accumulated funds at various dates prior to 1996, the evidence of Mr. Sittlington was substantially based upon information received from third parties and from documents which were not before the Court which meant that the capacity to question or cross-examine him in relation to such evidence was limited and minimal.

6.10 Detective Sergeant Clodagh Sergeant White, attached to the Money Laundering Unit at the Garda Bureau of Fraud Investigations, gave evidence on the 6th day of the trial. Her evidence related to the multi-agency search of persons and premises connected with P. F. in November 1994 and her involvement with the investigation into the operation of the Bureau de Change at Dromad. She gave evidence in relation to the seizure of documents and of the conviction of the person who operated the Dromad Bureau de Change, namely, Kieran Byrne, who was convicted of a breach of the s. 32 of the Criminal Justice Act 1994 relating to the failure to take proper identification of customers and also of a count of money laundering, contrary to s. 31 of the Criminal Justice Act 1994. Her evidence did not relate to the alleged criminal activities of P. F. which enabled him to accumulate funds. It was therefore of no assistance in supporting the belief evidence of the Chief Bureau Officer concerning P. F.'s alleged crimes leading to the accumulation of funds.

6.11 The evidence of Social Welfare Officer No. 19 and Revenue Bureau Officer No. 42 identified that there were no employment details or records of any social welfare claims in relation to P. F. nor was there any record of P. F. making tax returns in this jurisdiction or of having been registered for tax. There was no evidence before the Court in relation to P. F.'s Revenue dealings in the United Kingdom notwithstanding that the Court had evidence that it was pressure from the Revenue that had caused P. F. to relocate to this jurisdiction in 1993/1994. The absence of those records resulted in there being a void when the Court came to consider the interconnection between the alleged criminal activities of P. F. and his financial position as disclosed by the availability of funds. The absence of disclosed or apparent earnings in this jurisdiction could lead to no conclusions about the source of funds given the lack of any real detail from England or Northern Ireland. The Court could draw no adverse conclusions about the source of funds when it came to consider the admissibility of the Chief Bureau Officer's opinion evidence.

6.12 Detective Sergeant Vincent Byrne gave evidence on the sixth day of the trial and stated that it was on his return to the Criminal Asset Bureau in July of 2007 that he was assigned to take responsibility for the management of the Bureau's investigation into P. F.. He gave evidence in relation to the late P. F.'s previous convictions as recorded in the Garda PULSE System and also gave evidence in relation to various other arrests and charges made against P. F. which did not lead to any conviction. Part of Detective Sergeant Byrne's evidence was that he had obtained information from confidential sources of P. F.'s close association with well known drug traffickers and he named those persons and he also detailed P. F.'s alleged association with IRA members. Detective Sergeant Byrne gave evidence that his confidential information was to the effect that P. F. was a "Mr. Big" in the importation and distribution of drugs into Northern Ireland and into the Republic of Ireland. Insofar as Detective Sergeant Byrne gave evidence concerning the alleged criminal activities of P. F. in relation to the generation of funds, rather than the use of funds, it was apparent that such evidence was based upon information that he had received in confidence from third parties. It is a well established exception to the admission of hearsay evidence that such evidence can be admitted based upon the principle of informer privilege, that is information supplied to a member of An Garda Síochána by a confidential informer. See *Clarke v. Governor of Cloverhill Prison* [2011] 2 I.R. 742 and also *McKeon v. Director of Public Prosecutions* (Unreported, Supreme Court, 12th October, 1995). Whilst Detective Sergeant Vincent Byrne could give admissible hearsay evidence in relation to information supplied to him as a member of An Garda Síochána by a confidential informer and while such evidence can be properly admitted, notwithstanding that it is hearsay, the circumstances of this case were such that there was no real possibility of testing or questioning such evidence insofar as it mainly related to incidents which were not identified and therefore could not be said to be hearsay in respect of a particular crime and it also related to a person who was deceased as of the date of the Court hearing.

6.12 Bureau Forensic Accountant No. 1 gave evidence in relation to the bookkeeping system maintained by the Dromad Bureau de Change and the dealings with that institution by P. F./P. F. and the subsequent transfer of funds from that account to the account of A. H./A. F.. He gave no evidence in relation to the source of income. The absence of an identifiable legitimate source of income in this jurisdiction, must be viewed against the background that the Court had no evidence in relation to the Revenue returns or declared income of P. F. in the United Kingdom notwithstanding that he resided there for a substantial number of years and that the plaintiff was aware that it was claimed that he had left the United Kingdom as a result of pressure from the Inland Revenue. There was also limited evidence that P. F. was involved in dealings with property and cars whilst residing in England but no evidence was led by the plaintiff as to P. F.'s financial history or records for the ten years up to his return to this country.

6.13 The last witness called by the plaintiff was the then Chief Bureau Officer, Detective Chief Superintendent B.. The Chief Bureau Officer gave evidence that he was directly involved in the investigation into the late P. F.'s affairs as a Detective Inspector with the Criminal Assets Bureau. The main matters he relied on in relation to the criminal activity of P. F. are set forth in sub-paragraphs (a) to (n) of the written submissions of the plaintiff, details of which are appended to this judgment (in appendix 'A'), and the Chief Bureau Officer sought to rely on those details in support of his opinion evidence. Examination of those details identifies that in relation to the alleged criminal activity within this jurisdiction that in effect all matters after the year 1985 are based upon intelligence reports

relating to P. F.. That is apparent both from the written submissions of the plaintiff and from an examination of the oral evidence of the Chief Bureau Officer given on day seven of the trial. Other than for his evidence concerning an alleged statement by a named drug dealer on the 7th August, 1997 implicating P. F. as a supplier of illegal drugs in Ireland, no source of the intelligence is given. Evidence sought to be adduced based on undisclosed sources of information places the Court, in the circumstances of this case, in a position where the capacity to test, consider, weigh or evaluate such evidence is limited. The matters referred to were in most instances not specific either by date or facts but were of a generic nature based upon intelligence and relate to events that occurred fifteen years or more in the past and in circumstances where the person alleged to have been involved in those criminal activities is dead. There is an absence of contemporaneous documents and insofar as there are any such documents, they tend to indicate that the criminal activities in respect of which P. F. was involved were outside of this jurisdiction rather than within this jurisdiction. The evidence which was given by the then Chief Bureau Officer and other witnesses on behalf of the plaintiff concerning how P. F. dealt with his funds within this jurisdiction and how those funds were dealt with by the first named defendant after his death to establish that those funds were being dealt with in a manner consistent with such funds having been obtained from criminal activity does not of itself support or lead to a conclusion that crimes were committed within this jurisdiction or funds were generated from criminal activity in Ireland or elsewhere. There is an absence of real, tenable or verifiable evidence as to P. F.'s alleged criminal activity within this jurisdiction prior to him obtaining the assets the subject matter of these proceedings. It is also the case insofar as there is evidence it is in a format which makes it difficult to test or evaluate due to the passage of time, its lack of detail, and the death of P. F..

The support or corroboration which the opinion evidence of the Chief Bureau Officer receives from other witnesses is in this instance limited. It is limited due to the hearsay nature of such evidence. The quality of such evidence, based upon information from unidentified sources and documents not before the Court, must be tested by the Court in the light not only of the passage of time but also the absence of personal knowledge, the absence of any relevant criminal convictions on the part of P. F. and the absence of any contemporaneous documentation. Those factors taken together affect the quality of the evidence. The Court has to have regard to the requirement that in fairness a defendant can test such evidence. In this case, the testing of the evidence takes place in circumstances where, because of the death of P. F., he is unable to give evidence as to the provenance of funds. All of these factors combine to create a situation where there are special problems present in the plaintiff's evidence.

6.14 No allegation is made against the first named defendant in relation to any criminal activity on her part in relation to the generation of the funds and the complaints made against her relate to how the funds were dealt with after the death of her husband. Where the person alleged to have generated the funds in the form of the proceeds of crime is deceased, the capacity of that person's widow to deal with the provenance of funds is diminished. It is not necessarily diminished to the extent that it would necessarily be unfair or unjust to require the widow of a person who is alleged to have generated funds from the proceeds of crime to explain the provenance of funds. However, in this case where there is a considerable passage of time from the date when the assets were acquired to the date of the trial and where the assets allegedly funded from the proceeds of crime were originally acquired fifteen, twenty five and thirty five years in the past, the ability to explain the source of the funds is slender.

6.15 When one stands back from the oral evidence and considers the original documentation upon which this case was commenced, it is apparent that the plaintiff viewed the primary focus of P. F.'s criminality as being outside of the jurisdiction. Whilst there is reference in documents to a claim that P. F. was involved in certain criminal activities within this jurisdiction, there is no doubt that contemporaneous documentation indicates that the focus of the criminality issue in this case was in Northern Ireland and Britain. This is confirmed in the memo of then Detective Sergeant Paul O'Brien of the Criminal Assets Bureau dated 20th April, 2000, which was in evidence before the Court, which concluded at paragraph 5.1 in relation to P. F., deceased, that:

"The criminality in this case is based on the investigation into P. F. which was carried out by the Royal Ulster Constabulary. In order for this case to be a viable POC (Proceeds of Crime) it will be necessary for the RUC to confirm the criminality of P.F. by means of a sworn affidavit, likewise the fact that he had no legitimate income."

That conclusion set out in writing in 2000 is indicative that the plaintiff in this case was as of the year 2000 proceeding on the basis that the evidence available which was central to the proceeds of crime case that P. F. was involved in criminal activity was of events outside of the Republic of Ireland and would come from the RUC. A memo of a joint meeting between CAB and the RUC from Detective Superintendent McKenna dated 15th February, 1999, also recorded that P. F.'s "criminality" was dealt with by an RUC officer. Whilst there are some limited references to P. F.'s alleged criminal activity within this jurisdiction, it would appear that those references took on greater emphasis and became more significant after the Supreme Court had ruled on the 17th May, 2004 that the Act of 1996 had no application to the proceeds of crime committed outside the State (see *F. McK v. GWD (Proceeds of Crime outside the State)* [2004] 2 I.R. 470). That ruling resulted in the proceeds of crime legislation being amended by the Proceeds of Crime (Amendment) Act 2005. It has been accepted by the plaintiff that the amendment to the 1996 Act applying the scope of the Act to proceeds of crimes committed outside the jurisdiction does not apply in this case. However, what is apparent to the Court from an overall consideration of the available documents and papers which were in existence prior to May 2004 is that up until that time the central focus of the plaintiff's case in relation to the source of P. F.'s proceeds of crime was directed to crimes committed outside the State. The Court is satisfied that that was the true position. That finding is entirely consistent with the conclusion in Detective Sergeant Paul O'Brien's report of the 20th April, 2000 where he concluded that a viable proceeds of crime case would be based upon the RUC confirming P. F.'s criminality. The re-focus on P. F.'s alleged criminal activity within this jurisdiction after the Supreme Court decision in May 2004 has the consequence that the capacity of the defendant to be aware of and address such a change of focus directed to alleged criminality within the State did not occur until a number of years after the death of P. F. and a number of years after the commencement of the proceedings. That is a further factor which this Court has taken into account in testing the quality of the evidence given as to alleged crimes within this State and the capacity of the defendant to deal with such allegations.

The Court has also been placed in the situation that there is a lack of contemporaneous documentation available to the Court and there is almost no documentation in relation to P. F.'s financial position in the United Kingdom prior to his returning to Ireland in 1993/1994 which was almost ten years after he had left the jurisdiction. This makes it very difficult for the Court to evaluate and test the evidence upon which the Chief Bureau Officer seeks to rely and reduces the quality of that evidence and places the Court in a situation that it cannot draw adverse conclusions from the manner in which the funds were dealt with. It is the admission of hearsay or belief evidence in relation to the generation of the proceeds of crime by the late P. F. within the jurisdiction which the Court must address in the first instance and in the light of the matters identified in the previous paragraphs, this Court is satisfied that the quality of the evidence upon which the Chief Bureau Officer seeks to rely on in support of his opinion evidence and the nature and circumstances in which such evidence must be viewed renders the quality of that evidence such that the opinion or belief evidence should not be admitted in evidence. The Court is not satisfied that there are reasonable grounds, established in evidence, for the belief. In those circumstances the Court cannot conclude that the evidence adduced by the plaintiff constitutes a *prima facie* case under s. 3 and the onus of proof does not shift to the defendant.

6.16 It is the cumulative effect of the various factors which the Court has identified which has led to the Court's conclusion not to admit opinion evidence. Those factors are:

- (a) the extent of the personal knowledge of the witnesses, or the lack of it,
- (b) the witnesses' involvement in the events in respect of which such witness gave evidence,
- (c) the availability of contemporaneous documentation, (d) the time period to which such evidence relates,
- (e) the extent of the period from the events detailed in evidence to the date upon which evidence was given,
- (f) the ability of the defendant to question or test such evidence,
- (g) the death of the person alleged to have been involved in the criminal activity,
- (h) the lack of any documentation from the United Kingdom in relation to the late P. F.'s financial position within that jurisdiction, and
- (i) the alteration of focus from crimes allegedly committed by the late P. F. outside the jurisdiction to within this jurisdiction after May of 2004;
- (j) the fact that a court must be slow to admit hearsay evidence without other corroborative evidence and where there is a limited amount of such evidence in this case.

All of those factors taken together lead the Court to conclude that the quality of the plaintiffs evidence is not such that it would be safe to admit opinion evidence under s. 8 of the Act of 1996. Without such evidence being admitted, the Court cannot conclude that the funds available to the late P. F. represent the proceeds of crime within this jurisdiction and the persuasive evidence as to the covert manner in which the funds were dealt with by both P. F. and the first named defendant after such funds were generated does not of itself lead to the conclusion that those funds represent the proceeds of crime.

6.17 The Court has already ruled at an earlier date that these proceedings should not be dismissed due to delay. The fact that the Court did not strike out the proceedings for delay in no way takes away from the Court's obligation to test the quality of the evidence relied upon at the hearing including having regard to the length of time from the events given in evidence to the date of the trial. In considering the application to strike out, the Court had regard to the reason and cause for the various delays and was satisfied that it was the conduct of the defendants which had contributed to a significant extent to the delays. However, in considering the quality of the evidence relied upon by the plaintiff and particularly the quality of such evidence in relation to the admissibility of s. 8 opinion evidence, the Court takes into account all matters and the passage of time is only one of those matters. The chronology of dates of the significant events in the proceedings within this case is set forth in Schedule B to this judgment.

6.18 As indicated above, the fact that cogent and credible evidence was given as to the covert manner in which the funds available to P. F. were dealt with does not of itself lead to the conclusion that the quality of evidence relied upon by the Chief Bureau Officer is sufficient to allow opinion evidence to be admitted. The class and calibre of such evidence is a factor which the Court has taken into account in evaluating the other evidence available to the Chief Bureau Officer and in considering whether there are reasonable grounds for his belief. Given the significance of the other factors which taken together lead the Court to the conclusion that the quality of evidence in this case is such that opinion evidence under s. 8 should not be admitted, the existence of cogent evidence in relation to the covert use of funds does not of itself amount to a sufficient or reasonable ground on which to base opinion evidence. The manner and content of the evidence given by the first defendant in relation to the use of funds by her after the death of her husband is a factor which prolonged this case and is a matter which this Court can address in relation to the issue of costs.

6.19 The plaintiff also made a claim for relief under s. 3 of the 1996 Act based upon a claim that P. F. was guilty of money laundering. There is cogent evidence, in particular from the Bureau Forensic Accountant No. 1, that the funds of P. F. were dealt with in a covert manner and in a way consistent with a desire to hide or conceal either or both the origin or existence of such funds. However, before the Court could conclude that the plaintiff had established that money laundering occurred, the Court would have to be satisfied that such funds were known to be the proceeds of crime and were dealt with in a manner and for the purpose of avoiding prosecution. A starting point for a finding of money laundering is the Court being satisfied that the funds being allegedly laundered are the proceeds of crime. Absent the opinion evidence of the Chief Bureau Officer, and given the hearsay nature of the evidence sought to be relied upon in corroboration, and the almost total absence of any financial information or tax details relating to P. F.'s affairs in the U.K., the Court cannot be so satisfied. The Court cannot conclude that the funds dealt with in the covert manner established in evidence were funds representing the proceeds of drug trafficking or other criminal activity and without that conclusion, the Court could not hold that money laundering has been established.

7.1 In considering the first of the seven stage test identified by McCracken J. in *F. McK v. GWD*, this Court has considered the position under s. 8 of the Act of 1996 and the Court has considered the evidence given by the Chief Bureau Officer and the belief evidence given by him and has at the same time considered the other evidence given on behalf of the plaintiff and upon which the Chief Bureau Officer relied and the Court has determined that, given the full circumstances of this case, that the quality and nature of such evidence is such that the Court cannot conclude that there are reasonable grounds established in evidence for the belief or opinion evidence. There are real, special and unique problems with the evidence which also leads to the exclusion of the belief evidence. The evidence relates to matters of such antiquity, and is based on such unspecific events, and is so lacking in crucial financial and tax information from the U.K., and is so dependent on hearsay, that those matters taken in the round create special problems. Absent belief or opinion evidence, the Court does not have sufficient evidence that the assets which are the subject matter of these proceedings represent the proceeds of crime committed within this State. The Court has also concluded that it has not been established, on the balance of probabilities, that money laundering has been established. It is also the case that if the Court had come to address the question of "real injustice" as a separate question that the unique and cumulative facts of this case would have resulted in the Court holding that the making of a s. 3 order would create a real risk of injustice. It follows that the s. 3 order sought by the plaintiff is refused as is the s. 7 order sought which is conditional on the Court being prepared to grant as. 3 order. The Court will address the issue of the settlement concluded between the plaintiff and the second named defendant after the parties have had time to consider this judgment and the Court at that time will also consider all ancillary matters.

## **APPENDIX 'A'**

- (a) May 1976- Involvement in aggravated burglary at Kill, Co. Kildare which included the hijacking of cars and the holding of uniformed members of An Garda Síochána at gun point;

- (b) 25th February, 1978- P. F. appearance at Portadown District Court charged with larceny of 4,000 denim shirts, working with operatives from the UVF;
- (c) November 1978- Abduction and assault of Thomas Grimes at Castleblaney, with intelligence as to intimidation being exercised on witnesses following the arrest of P. F. for the crime;
- (d) November 1982- Close association with David Glass, and involvement in "ringing" cars and providing cars for criminal enterprises on both sides of the border. Cars were stolen in Tipperary and moved to Monaghan for distribution. Cars were being stolen to order for P.F..
- The CBO gave evidence of intelligence from confidential sources as to a plot to break P. F. out of Cork Prison (during a time when he was detained there with Domnick McGlinchy), including discussions of the possible murder of a Garda Sergeant. When Domnick McGlinchy was later arrested in March 1974, he had in his possession the book of evidence in relation to the car ringing offences of P. F..
- (e) April 1984 - P. F. meeting with Larry Dunne and Christy Bronco Dunne, two major drugs criminals, with P.F. acting as suppliers, and supplier of logistics, for the import of heroin for the Dunne family into Dublin.
- (f) October & November 1984- P. F. involved in hijacking of petrol tanker and spirits trucks, and the hijacking of a meat container at Geenore Port valued at approximately IR£2,000.
- (g) 4th December 1984- 8 days after the hijacking of the meat container at Greenore Port, P. F. was arrested and brought to Dundalk Garda Station along with Pat Doyle, a close criminal associate of P. F. Each had IR£2,500 in cash in their possession without any explanation as to the income.
- (h) 1985 & 1986 - Intelligence relating to various criminal actions of P. F., including his association with Rossi Walsh and a hijacking in Armagh in December 1986 of £40,000 worth of spirits, and his involvement in attempts to dispose of the Beit Paintings.
- (i) P. F. was photographed in the company of Tommy Coyle in relation to a meeting concerning the disposal of the Beit Paintings to members of the UVF. The CBO gave evidence that Tommy Coyle was personally known to him as a person involved in serious criminal activity in both drugs and fraud and who had an INLA connection.
- (j) October 1991- The CBO gave evidence of intelligence that P. F. and Ronald Smith were involved in a conspiracy to import drugs into the Republic of Ireland. Ronald Smith was subsequently arrested in Malaga, Spain in possession of 300kg of drugs and was convicted of possession of drugs with intent to supply in that jurisdiction.
- (k) The CBO gave evidence of intelligence that P. F. was the organiser of a shipment which led to the arrest of Daniel Phillips in possession of some 1.8 tonnes of cannabis resin.
- (l) The CBO gave evidence as to intelligence in the context of Operation Madronna and his belief that P. F. was at that time "very actively involved in the importation of controlled drugs into Ireland".
- (m) The COB gave evidence of Pat Doyle travelling to the USA in August 1997 to make arrangements for P. F. to move his business to the USA. On 7th August 1997, Roy Coddington, a drug dealer from Drogheda who was subsequently murdered in a drugs dispute admitted to Gardaí that his supplier of drugs in the Republic of Ireland was P. F..
- (n) On 8th September 1997, (2 days before P. F.'s death) intelligence suggesting that P. F. was involved with activity in relation to money laundering in Amsterdam and through book-makers, in an association with John Gilligan.

## **APPENDIX 'B'**

### **CHRONOLOGY OF MAIN EVENTS**

- 5th March, 1948 Birth of P. F.
- 15th July, 1954 Birth of A. H.
- 20th December, 1977 Purchase of property at Ardkirk, County Monaghan.
- 28th August, 1978 Purchase of further lands in Monaghan, being part of the property described in Folio 3753.
- 31st March, 1980 Purchase of further property in County Monaghan described in Folio 6630F, County Monaghan.
- 25th January, 1985 Purchase of plot of ground at Ardkirk, County Monaghan.
- 1st August, 1987 Marriage of P. F. and A.H..
- 1985- 1993 P. F. and A.H. reside in Northern Ireland and in London.
- 1987 Purchase of property described in Folio 2266, County Louth at Ravensdale.
- 1989 Purchase of property known as Ravensdale Hall.
- November 1991 First documentation in relation to external U.K. current account with Bank of Ireland, Carrickmacross bearing account No. 42674687.
- 24th March, 1993 Account opened with Bank of Ireland, Carrickmacross, being deposit account No. 32345839.

18th May, 1993 Purchase of property at Corracloghan, County Monaghan, being the property described in Folio 9218F of the Register of County Monaghan.

11th August, 1993 Sale agreement for purchase of site at The Sweepstakes apartments in Dublin.

11th August, 1993 Building agreement for the construction of apartment at The Sweepstakes, Ballsbridge, Dublin.

8th February, 1994 Sterling deposit account opened with Irish Permanent - account No. 023-02-10891.

16th November, 1994 Account with Irish Permanent Plc, Dundalk Branch, account No. 2382062437 opened

January 1995 to October 1996 Documentary records in relation to P. FIP. F.'s account with Bureau de Change at Dromad, County Louth.

18th April, 1997 Purchase of property at Clonbrick in the County of Tipperary, described in Folio 26189F of the Register of County Tipperary in the name of B. W.

10th September, 1997 Murder of P. F.

5th February, 1998 Mortgage on apartment 243, The Sweepstakes, Ballsbridge, discharged.

20th July, 2000 Plenary summons issued in these proceedings together with issue of notice of motion seeking s. 3 relief.

26th July, 2000 Appearance of first named defendant.

28th July, 2000 Order of the High Court and undertaking not to dispose of or reduce assets.

21st September, 2000 Appearance of the second defendant.

7th November, 2000 Motion for legal aid by second defendant returnable to the 10th November, 2000,

8th December, 2000 Notice pursuant to Order 60, rule 1 issued on behalf of the first named defendant challenging the constitutionality of the provisions of the Proceeds of Crime Act 1996.

13th December, 2000 Motion to dismiss statement of claim.

26th January, 2001 Order of the Court refusing the application to dismiss the plaintiffs claim.

16th March, 2001 Order 60, rule 1 notice of the second named defendant.

12th April, 2001 Notice of appeal in respect of the order of the High Court of the 26th January, 2001.

3rd July, 2001 Motion to stay proceedings pending the appeal of the second defendant.

25th September, 2001 Notice of appeal by the second named defendant from judgment and order of the High Court delivered on the 2nd April, 2001 refusing particulars and discover.

20th November, 2001 Notice of appeal by first named defendant against High Court order refusing particulars and seeking a stay on the s. 3 application pending the determination of the application relating to the Statute of Limitations.

30th January, 2002 Judgment of the Supreme Court in relation to the second named defendant's claim- appeal relating to the statement of claim.

26th March, 2002 Notice of motion by second defendant seeking to dismiss claim for failure to deliver statement of claim.

5th April, 2002 Statement of claim.

27th June, 2002 The first named defendant's notice of motion re: particulars.

28th June, 2002 Order of the High Court refusing the second named defendant's application to dismiss the proceedings for failure to deliver a statement of claim and striking out the second named respondent's application for admission under the *ad hoc* legal aid scheme as the second named respondent had been granted a legal aid certificate.

2nd December, 2002 Motion by first named defendant seeking particularisation of alleged criminality.

12th December, 2002 Notice of appeal by second named defendant against order of the High Court of the 28th June, 2002 refusing an order to cross-examine.

28th January, 2003 Order of the High Court pursuant to s. 2 of the Proceeds of Crime Act 1996 in respect of the fourteen items of property set forth in the schedule to that order.

24th February, 2003 Judgment and order in *McK v. F. & F.* of the President of the High Court.

15th May, 2003 Notice of appeal on behalf of both defendants in respect of the High Court order of the 24th February, 2003.

29th June, 2004 Motion on behalf of the first named defendant seeking to dismiss the proceedings insofar as they related to proceeds of crimes committed outside the State together with other relief.

23rd February, 2005 Judgment of the Supreme Court in *F. McK v. F. & F. & Anor.* and in *F. J. McK v. E.H*

16th March, 2005 Motion by first named defendant for an order that the Proceeds of Crime (Amendment) Act 2005 did not apply

retrospectively.

20th June, 2005 Order of the High Court striking out the first named defendant's motion relating to the retrospectivity and extraterritorial ambit of the Proceeds of Crime (Amendment) Act 2005 and disapplying s. 11(7) of the Statute of Limitations Act 1957.

27th June, 2005 Motion by second named defendant seeking payment out of funds.

25th July, 2005 Order of the High Court granting payment out of sums to the second named defendant.

3rd March, 2006 Motion for discovery by first named defendant returnable to the 14th March, 2006.

19th March, 2006 Defence and counterclaim of first named defendant.

3rd April, 2006 Order of the High Court in relation to discovery.

31st May, 2006 Motion by first named defendant seeking to dismiss the claim for failure to make discovery.

24th July, 2006 Order of the High Court refusing application to cross-examine.

31st July, 2006 Reply to defence of first named defendant and to defence and defence to counterclaim.

8th March, 2007 Defence and counterclaim of the second named defendant.

3rd April, 2007 Motion by second named defendant seeking payment out.

30th April, 2007 Reply to defence and defence to counterclaim of the first named defendant.

22nd June, 2007 Rejoinder and reply to defence and counterclaim by second defendant.

16th July, 2007 Motion by first defendant seeking order dismissing the plaintiffs claim for want of prosecution.

23rd July, 2007 Order of the High Court granting disbursement of funds to second defendant.

10th October, 2007 Judgment of the High Court in relation to application to dismiss for delay.

7th January, 2008 Motion by plaintiff pursuant to s. 27(1) of the Succession Act 1965 granting administration to the estate of P. F. limited to the defence of these proceedings.

3rd April, 2008 High Court hearing of the motion to dismiss.

28th May, 2008 Order of the High Court granting limited administration of the estate of the late P. F..

9th June, 2008 Motion seeking a grant of administration to the estate of the late P. F. to his son, the second named defendant.

15th July, 2008 Order of the High Court granting the plaintiff liberty to serve notice of concurrent originating notice of motion.

31st July, 2008 Order of the High Court granting the plaintiff liberty to serve notice of the originating notice of motion out of the jurisdiction.

15th January, 2009 Order of the High Court pursuant to s. 27(1) of the Succession Act that administration of the estate of the late P.F. be granted to A. F., the first named defendant.

29th January, 2009 Amendment statement of claim.

11th March, 2009 Amended defence of second named defendant.

12th March, 2009 Amended defence of first named defendant.

13th November, 2009 Motion by first named defendant dismissing the proceedings on the grounds of excessive and unreasonable delay together with an application for discovery brought by the first named defendant.

8th December, 2009 Consent agreement between the plaintiff and the second named defendant.

December 2009 to

October 2010 High Court hearing.

October 2010 Closing submissions.