

**THE HIGH COURT****2007 8143 P****BETWEEN****MAUREEN MOORE****AND, BY ORDER OF THE COURT, PEGGY SARSFIELD****REPRESENTATIVE OF MAUREEN MOORE****PLAINTIFF****AND****JOHN MOORE, MARIA MOORE AND NADINE CHETTY****DEFENDANTS****JUDGMENT of Mr. Justice Roderick Murphy delivered the 10th day of December, 2010****1. Background**

The plaintiff was born on the 29th February, 1939, and died on the 16th October, 2010, after the hearing of this action. Her family were from Drogheda.

On the 14th May, 1960, the plaintiff married Eamon Russell and the parties resided for some time in the United Kingdom. The first and second named defendants believed that a decree of divorce was granted on the 22nd July, 1968 in England. The plaintiff maintains that the marriage was dissolved on the 23rd October, 1968 and that some years later on the 19th June, 1981, a church nullity was granted.

In any event the plaintiff had, in the meantime, returned to Ireland and commenced employment around 1970 with John Gabriel Moore, who was then a widower with two children. The plaintiff married Mr. Moore in 1971, when those children were aged four and two respectively.

The plaintiff and Mr. Moore ultimately lived in 100 Mount Tallant Ave., Harold's Cross, which was purchased with the aid of a mortgage from the Educational Building Society ("EBS"), in the joint names of the plaintiff and Mr. Moore. The EBS loan was for £4,800 and, it would appear, that the premises were bought for a sum of some £6,000. Title thereto is registered in Folio 30984L of the Register of Leaseholders where the parties were registered as co-owners on the 20th February, 1978.

Unhappy differences arose between the parties and on the 2nd July, 1982, the plaintiff says that, due to the violence of Mr. Moore, she was forced to leave the premises. At no stage did she receive any maintenance. She applied for and was granted a Deserted Wife's Allowance of which she was in receipt until 1988, when she moved to Antwerp. The plaintiff continued to reside in Antwerp until 2002. She suffered two severe illnesses from cancer and ultimately returned to Drogheda where she resided with her mother at 5 Laburnum Square, North Road, Drogheda, from 2002 until the date of her death on 16th October, 2010.

Mr. Moore continued residing at 100 Mount Tallant Ave, until the date of his death on the 5th January, 1996. He died intestate and was described as a widower on his death certificate. The first and second named defendants were then aged approximately 29 and 27 years respectively. The Grant of Letters of administration issued to the first and second named defendants on the 24th May, 2002, over six years after their father's death. Meanwhile, the Inland Revenue affidavit sworn by the first and second named defendants on the 12th March, 2001, described Mr. Moore as a widower. The net value of his estate was given at £56,841. The value of the Mount Tallant premises was given as £60,000 subject to a loan in favour of the EBS of £4,313. The only other asset was monies in National Irish Bank of £2,400.

By letter dated the 25th November, 1983, four months after leaving 100 Mount Tallant Avenue and over twelve years before Mr. Moore's death, the plaintiff's solicitor wrote to Mr. Moore in connection with her interest in the property. That letter stated that their client was then anxious to realise her share in the property and sought suggestions as to how this might be achieved. No reply was received to that letter.

Following the death of Mr. Moore, the defendants, and in particular the first named defendant continued to reside in and occupy the premises.

The first named defendant gave evidence of having made enquiries about the whereabouts of the plaintiff. Those enquiries included writing a letter to the plaintiff's original family home in Drogheda. Subsequently a death certificate of a Maureen Moore, aged 57 years, who died on the 21st January, 1995, was obtained.

In May 2001, the first and second named defendants made an application to the Land Registry in respect of the lands comprised in the relevant Folio in order to have the entries thereon reflect what they said was the fact that the deceased was the sole owner of the property on the date of his death on the 5th January, 1996. The affidavit was sworn by the first and second named defendant and contained the following averment:

"We say that the said Maureen Moore died on the 21st January, 1995, thus severing the joint tenancy. We beg to refer to the death certificate of the said Maureen Moore upon which we have signed our name prior to the swearing thereof."

Five months after the grant of letters of administration was issued, the first and second named defendants agreed to sell 100 Mount Tallant Avenue. Pursuant to a contract for sale by transfer for value dated the 23rd October, 2002, the premises were transferred to the third named defendant and she became the registered owner on that date.

## **2. Pleadings**

The plaintiff's summons issued on the 22nd November, 2007, in which she sought a declaration that upon the death of the said John Moore, deceased, she was entitled to register it as full owner of the premises and also sought a declaration that the first and second named defendants wrongfully converted the title deeds to the property to their own use and benefit by the purported sale of the property; that good title did not pass to the third named defendant; that the first and second named defendants were unjustly enriched by the purported sale of the property and held the proceeds of the property in trust for the plaintiff.

An amended defence of the first and second named defendants was delivered on the 13th January, 2010.

In that defence the defendants say that if the plaintiff is the lawful widow of the deceased, which was not admitted, the defendants contend that in or about the summer of 1981, that she left and abandoned the premises and discontinued possession thereof and continued to be out of occupation and possession for upwards of twelve years or thereafter. The deceased was in sole and exclusive beneficial occupation and possession for upwards of twelve years with no acknowledgement made by him in respect of the plaintiff's title to the premises. By virtue of the Statute of Limitations 1957, and in particular ss. 21 and 24 thereof, the plaintiff's title was extinguished. The defendants further denied that at the time of the death of the deceased, the plaintiff was joint owner of the premises. Any claim that the plaintiff may have had to the estate of the deceased was statute barred prior to the institution of the proceedings herein under s. 126 of the Succession Act 1965.

The amended defence further pleaded that if on the death of the deceased on the 5th January, 1996, the plaintiff had any estate or interest in the premises, that the purchase with the aid of a loan from the EBS secured a charge on the premises. Following the departure of the plaintiff from the premises in 1982, the deceased continued to repay monies and so acquired an additional equitable estate or interest. The first and second named defendants, in paying and discharging the balance to the EBS are entitled to credit without prejudice to their denial that the plaintiff had no estate or interest. Moreover, the first named defendant and his family were in occupation of the premises and carried out works and improvements and is entitled to any sum out of the estate of the deceased in respect thereof.

The defence of the third named defendant was delivered on the 3rd June, 2008. The third named defendant says that she is the registered owner of, but does not presently reside at the premises and is a stranger to the allegation that the plaintiff is the lawful widow of the deceased.

The third named defendant admitted that at the time of the death both the deceased and the plaintiff were registered as joint owners, but denied that upon the death of the deceased, the full legal and beneficial interest in the property vested in the plaintiff. That defendant denied the allegation that the first and second named defendants had not title in the property or that "title did not vest in the third named defendant". The title of the plaintiff in the property had been extinguished and the plaintiff was not entitled to the relief claimed or to any relief.

Issue was joined in the reply of the plaintiff dated the 14th October, 2008. It was denied that the third named defendant had absolute title; that the defendants had been in possession adversely to the plaintiff. The plaintiff maintained that the first and second named defendants were estopped from raising a claim of adverse possession or from maintaining that the claim to the proceeds of sale is statute barred.

The plaintiff also, on the 14th October, 2008, joined issue and denied that the third named defendant and her predecessor in title held the property for more than twelve years prior to the January 1996, or prior to the institution of the proceedings or that the plaintiffs title had been extinguished.

By amended reply on the 10th February, 2009, the plaintiff pleaded that the first and second named defendants obtained a death certificate which they knew or ought to have known was not the death certificate of the plaintiff. Relying on the same, these defendants sought to amend the register so as to reflect a false position whereby the said John Moore was shown as at the date of his death having been the sole person beneficially entitled to the said premises, thus enabling them as the personal representatives to deal with the property and dispose of the same to the third named defendant, notwithstanding the interest of the plaintiff.

The amended reply was copied into an amended statement of claim of the 11th May, 2010. An amended defence of the first and second named defendants to the amended statement of claim was delivered on the 26th May, 2010, denying that they knew or ought to have known that the copy death certificate was not that of the plaintiff; that they were guilty of any fraudulent act or fraudulently relied on the death certificate or were guilty of deceit or fraud in the conversion of the property and, in any event that the title of the plaintiff had become statute barred prior to the date upon which they had obtained the death certificate.

The amended reply of the 8th June, 2010, pleaded estoppel.

## **3. Plaintiff's Submissions**

The plaintiff submitted that the averment that Maureen Moore died on 21st January, 1995, without severing the joint tenancy was an acknowledgement that the first named defendant did not have any interest in the share of the plaintiff's joint tenancy. The Inland Revenue affidavit sworn on 12th March 2001, maintained that stance.

The sale by the first and second named defendants to the third named defendant was on the basis that the former were the personal representatives of John Moore, as last surviving joint tenant, who, at the date of his death, was absolutely entitled to the property.

At the time of the completion of that sale, in October 2002, the plaintiff had already returned to the jurisdiction, even though she did not seek to trace the said John Moore until 2006 when she said she contacted John Moore's brother who informed her that John Moore had died on 5th January, 1996.

The plaintiff's case was that there was no basis for believing, either in 1996 or in 2001, that the plaintiff had died. The first and second named defendants knew the address of the plaintiff's home, having written a letter to that address in 1996. They also knew the address of the plaintiff's former solicitor. The first two defendants were at least careless as to whether the Death Certificate related to the plaintiff.

It was not pleaded by the first two defendants that a severance had taken place after the death of the Maureen Moore who died on

21st January, 1995. The plaintiff, as surviving joint tenant, would have been entitled to the entirety of the premises on survivorship, subject to the mortgage then due to the EBS. A period of twelve years did not elapse between the death of John Moore, on 5th January, 1996, and the issue of proceedings on 2nd November, 2007, a period of over eleven years, just short of twelve years.

The plaintiff claimed, accordingly, to be entitled to rectification of the Register, pursuant to the provisions of s. 31 of the Registration of Title Act 1964. The court has to consider the defence of the third named defendant in that regard.

The first and second defendants rely on the provisions of s. 55 of the Registration of Title Act 1964 whereby the registration operates as a conveyance free from all rights. It is submitted that this is subject to the provisions of s. 31, which provides for the conclusiveness of the register.

The second basis of the claim is that the interest of the plaintiff in the premises was statute barred from the time she left the premises in 1982 up to the time of the date of death of John Moore in 1996.

However, the plaintiff's evidence was that she was forced to leave the premises and was subsequently in receipt of a Deserted Wife's Allowance and accordingly, the statute could not run against her.

The affidavit of May 2003 acknowledged, that the joint tenancy was valid and subsisting as of 21st January, 1995. In the course of their role as personal representatives of their father, the defendants had sold the premises to the third named defendant. Accordingly, the premises should have passed by way of survivorship to the plaintiff. There could be no sale by these defendants in the course of administration of the estate.

Moreover, any claim in respect of the Statute of Limitations 1957, would be defeated where there existed fraud, which, it is alleged, was present in the actions of the first and second named defendant.

Adverse possession must be acquired other than by way of force, stealth or consent.

The uncontested evidence of the plaintiff was that she had to leave the premises as a result of the cruelty and violence of the co-tenant. There was constructive desertion. The acknowledgment by the first and second named defendants in relation to the non-severance of the co-tenancy is inconsistent with adverse possession.

Those defendants did not proceed on the basis that either John Moore or themselves had statute barred the plaintiff's interests. Both these defendants are estopped from alleging that the plaintiff had been statute barred. Estoppel is when one is precluded and forbidden in law to speak against his own act or deed. These two defendants' evidence in relation to what contradicted what they averred to in 2001 and 2002 should be disregarded by the Court.

The first and second named defendants described their father as a widower at the time of his death in 1996. No explanation is available as to why they assumed that, as of that date, the plaintiff, who would have then been fifty-nine years of age, had, in fact, pre-deceased the said John Moore. No attempts were made to enquire from family or friends. Maureen Moore, who died on 21st January, 1995, was described as a married woman with an address at Kilmacud in Dublin. The defendants could have made enquiries. There was a discrepancy between the Marriage Certificate of the plaintiff with the deceased from the age of Maureen Moore of Kilmacud. No step was taken to verify the accuracy of the Death Certificate.

The third named defendant was on notice that the Death Certificate referred to someone who died at an entirely different address, notwithstanding that the statutory declaration indicated that the plaintiff and the deceased had resided in the premises as man and wife. No attempt was made to clarify that issue.

While the third named defendant does not, in her defence, rely on the provisions of s. 55 of the Registration of Title Act 1964, the first and second named defendants seek to do so. However, the third named defendant was on enquiry and with reasonable enquiries could have ascertained the true picture.

#### **4. First and Second Named Defendants Case**

The defendants pleaded that the plaintiff's title was extinguished by virtue of s. 21 of the Statute of Limitations 1957.

That section provides that a tenant who is in exclusive possession, after 1833, is not deemed to possess on behalf of his co-owners. The order of common law that the unity and possession among co-owners meant that if one co-owner occupied the whole of the land then that, by itself, did not constitute adverse possession. That rule was abolished by s. 12 of the Real Property Limitation Act 1833, the position is now set out in s. 21 of the Statute of Limitations 1957. This provides that if one co-owner is in possession of "the entirety or more than his or their undivided share or shares of such land for his or their own benefit", then such possession shall not be deemed to have been possession of the persons not in possession.

Reference was also made to the judgment of Laffoy J. in *Tracey Enterprises, McAdam Limited v. Thomas Drury* [2006] IEHC 381, and judgment of Clarke J. in *Dunne v. Iarnród Éireann and CIE* (Unreported, High Court, 7th September, 2007).

#### **5. Decision in relation to first and second named defendants**

The first two defendants submitted that the title of the plaintiff to any estate or interest in the premises was statute barred on 5th January, 1996, when Mr. Moore died. At that point they say that there was no question of fraud.

Section 71 of the Statute of Limitations 1957, is an express provision postponing the date of the accrual of the cause of action in cases involving fraud to the date when the fraud was, or could with reasonable diligence have been, discovered. The statute provides that where the action is either "based on" or "concealed by" the fraud of the defendant, the limitation period does not begin to run until the plaintiff either discovered the fraud or could, with reasonable diligence, have discovered it.

The classic statement on the meaning of fraud is attributed to Lord Evershed M.R. in *Kitchen v Royal Air Force Association* [1958] 1 W.L.R. 563, 572 – 573, which was in the context of s. 26(b) of the Limitation Act 1939, that it was by no means limited to common law fraud or deceit. In that case there was concealment from the plaintiff by the second named defendants who were acting as her solicitors of what was being proposed to the plaintiff "a necessary consequence, the concealment".

"A necessary consequence of the concealment (as the second defendant must have realised, if they had given any thought to the matter at all) was a concealment also from the plaintiff of the real effect of their having thrown away - and I use that word deliberately - any case which she might have possessed under the Fatal Accidents Acts in May 1946. Does, however, that concealment amount to fraud? There is no finding, and no justification for any finding of dishonesty as that word is ordinarily understood. It is now clear, however, that the word 'fraud' in s. 26(b) of the Limitation Act 1939, is by no means limited to common law fraud or deceit. Equally it is clear, having regard to the decision in *Beaman v ARTS Ltd* [1949] 1 All E.R. 465, that no degree of moral turpitude is necessary to establish fraud within the section. What is covered by equitable fraud is a matter which Lord Hardwicke did not attempt to define two hundred years ago, and I certainly shall not attempt to do so now, but it is, I think clear that the phrase covers conduct which having regard to some special relationship between the two parties concerned, is an unconscionable thing for the one to do towards the other."

Has there been a fraud or concealment? If so who concealed what from whom? Was there a special relationship between the defendants and the plaintiff? It is easier to answer the latter question in the affirmative: the first and second defendants as personal representatives of their father did have a special relationship with the plaintiff.

What did they aver? That there was no severance of the tenancy before the death of the other Maureen Moore? Did they conceal thereby that the plaintiff was possibly alive?

While fraud has been alleged it has to be examined in terms of two letters in 1996, from the first and second named defendants' solicitors to Vincent Hoey and P.C. Moore seeking the address of the plaintiff. Furthermore, there was a letter to nursing homes and to whom the first and second named defendants made enquiries.

The Court agrees that the plaintiff's cause of action was not based on the fraud of the defendants. Moreover, the cause of action was not concealed by the fraud of any such person. The plaintiff could, at any time, by using any reasonable diligence have ascertained years earlier that the said John Moore was dead.

I am satisfied from the evidence that they did attempt to ascertain the whereabouts of the plaintiff. They may have been less than thorough in identifying the Maureen Moore who died the year before their father with the plaintiff, their foster mother. Notwithstanding, there was no evidence of fraud or concealment.

The fraud alleged, which is against the first and second named defendants in relation to the procurement of the death certificate of the Maureen Moore who died on the 21st January, 1995, is accordingly, not established.

The first and second named defendants contended that the title of the plaintiff to any estate or interest in the premises was statute barred long before they located the death certificate. There was no issue of fraud before obtaining the death certificate.

The plaintiff had left and remained out of upwards of twelve years from the premises and, accordingly, s. 21 of the Statute of Limitations 1957, applies.

The plaintiff says that her dispossession of the property was caused by the conduct of the deceased. She was acknowledged as a deserted wife.

Moreover, the plaintiff submits that the first and second named defendants are estopped by their conduct in relation to the averments in the Inland Revenue Affidavit, that the joint tenancy was not severed until the death of the other Maureen Moore.

However, the defendants say that the plaintiff is a stranger to the estoppel in the declaration. It is not a statement of fact communicated to the representee which determined a change of position by the plaintiff.

There was no acknowledgment by the deceased of the plaintiff's rights in or over the house such as to apply s. 55 of the Statute.

Adverse possession by spouses would appear to be in a different category from adverse possession by others, including squatters. *Keelan v Garvey* [1925] 1 I.R. 1 is authority for the rule a person cannot be in adverse possession to his or her spouse, even where there has been desertion.

In that case, the plaintiff had inherited lands from his father in 1896, and had married in 1897. Following quarrels with his wife, left the farm later that year and did not return until 1923 after the death of his wife. His wife had continued to reside at and manage the farm until her death. She had an agreement for the purchase of the holding under the provisions of the Irish Land Act 1903. In 1909 the holding was vested in her by *fiat* of the Land Commission and she was registered in the Land Registry as owner and fee simple, subject to equities which were later, on her application, cancelled.

His wife had, by her will, devised and bequeathed the farm to her brother. The plaintiff claimed to be beneficially entitled to the farm.

The Supreme Court (Kennedy C.J., O'Connor and FitzGibbon JJ.) held that the plaintiff never ceased to be in possession of the farm, that his wife never entered into possession adversely to him; that she was provided with the residence and with support on his farm in fulfilment of his marital obligations; and that the Statute of Limitations never ran against him. Accordingly his wife's executor was the trustee of the legal estate for him. It was held that the register should be rectified accordingly.

In that case, Mrs. Keelan was not a joint tenant. Her only entitlement was to right of residence. Before she died she was in occupation as spouse and not as a joint tenant.

*Keelan v. Garvey* was considered almost twenty years later in *Re. Daily* [1944] N.I. 1 and both cases are commented on by Lyall, "Land Law in Ireland" 3rd Ed. 2010.

The owner of registered lands lived on the lands with his wife and two children until 1928, when, owing to disagreements with his wife, he left with her approval and lived elsewhere without making any claim or without any acknowledgment of right.

The Court of Appeal held that but for the provision of the Local Registration of Title (Ireland) Act 1891, the right of the registered owner would be statute barred.

In the present case the plaintiff was joint tenant. Her husband could not have been in adverse possession to her legal entitlement.

Moreover, the first and second defendants are estopped from denying that the joint tenancy had severed. While there was no evidence of fraud or concealment there was clearly a mistake as to the identity of the Maureen Moore who died the year before their father. The court is satisfied that within a year after the plaintiff became aware of her husband's death, when she was so informed by his brother in 2006, she commenced proceedings.

It is then necessary, absent fraud or concealment, to examine the effects of the first and second named defendants' mistake.

"Section 72 of the Statute of Limitations 1957 states as follows:

72(1) Where, in the case of any action for which a period of limitation is fixed by this Act, the action is for relief from the consequences of mistake, the period of limitation shall not begin to run until the plaintiff has discovered the mistake or could with reasonable diligence have discovered it.

(2) Nothing in subsection (1) of this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake was made."

Wylie (Fourth Edition) at 23.25 comments on s. 72 of the Statute of Limitations as follows:

". . . the general rule is that mistake does not stop time running (*Re Jones's Estate* [1914] 1 I.R. 188) and squatter's rights are often acquired by such means, e.g., where neighbouring landowners make a mistake as to where the boundary lies between their adjoining lands. However, where the action in question is for relief from the consequences of mistake, time does not run until the plaintiff discovers the mistake, or could have done so with reasonable diligence. (Statute of Limitations 1957, s 72(1)). In the case of land, relief for mistake usually involves an application for *equitable relief*, i.e., rescission or rectification, and as such is not subject to the statute of limitations anyway. Like all *equitable relief*, on the other hand, it is subject to the doctrine of laches."

Brady & Kerr at pages 196 – 198:

"Time does not begin to run until the plaintiff has discovered his mistake or could have discovered it with reasonable diligence. The language of s. 72(1) is narrower in scope than that in s. 71(1) and it is the fact of a mistake and not its concealment which gives rise to the equitable relief. Caselaw suggests that the mistake must be an essential ingredient to the cause of action."

While Brady and Kerr refer to the *plaintiff's* mistake, nothing in the provision would suggest that it is restricted to a mistake on the part of the plaintiff.

In *Phillips-Higgins v Harper* ([1954] 1 QB 411) it was held that the equivalent English provision is limited to cases where mistake forms part of the cause of action, but does not extend to cases where the plaintiff was mistaken as to, or ignorant of, his rights (*Canny, Limitation of Actions* at 10-23). The mistake of the first and second defendants was the receipt and use of a death certificate of a different person by the name of Maureen Moore in or around 2001 / 2002. The joint tenancy was not severed by the time the other Maureen Moore died on 21st January 1995, it was still not severed by the time Mr Moore died in 1996.

Would s. 72 of the Statute of Limitations have applied in these circumstances? Brady and Kerr in "*The Limitations of Action*" (2nd Ed. 1994) state that the mistake must be an essential ingredient to the cause of action. As a result of the receipt and use of the incorrect death certificate, the Folio was changed and the property sold after the Grant of Letters of Administration was obtained. This prevented the plaintiff asserting her rights (s. 72(2) also supports this), because of the right of the third defendant and that of her bank.

A consequence of the first and second defendants' mistake was that the plaintiff was not located and contacted on her late husband's death. The first and second named defendants acknowledge in the Inland Revenue Affidavit (sworn on the 12th March 2001) that the plaintiff was his spouse. However in pleadings they refer to her "alleged widowhood" and state that they do not admit that she was his widow and that they require proof of same. If those defendants had not made the mistake in relation to the death certificate, and had located the plaintiff, she would have been able to attempt to assert her rights at that stage.

The court is satisfied that the joint tenancy was not severed by the time Mr Moore died, twelve years have not passed from the date of his death because time has ceased to run on the 11th year with the issuing of the summons.

There were two consequences of the mistake: the Folio was amended, and the plaintiff was not told about her estranged husband's death. The plaintiff would have been the party to take out the grant of letters of administration, or alternatively to renounce her right to do so. There is no indication in the papers before the court as to what the personal representatives (the first and second defendants) swore in the Oath of Administration Intestate, which is the document setting out the correct history of entitlement of the applicant to extract the Grant.

If the plaintiff was not statute barred, the defendants' mistake resulted in the plaintiff not getting the property which was the subject of the joint tenancy on survivorship, because severance had not occurred. However, if she was statute barred, the joint tenancy was severed and it was solely Mr Moore's, the property would go into his estate and she should become entitled to her legal share of his estate under the Succession Act 1965, as he died intestate. Therefore the defendants' mistake resulted in the plaintiff not being able to take out the grant of letters of administration and she did not get her legal share of her late husband's estate (the property having gone back into his estate by reason of her having become statute barred and the joint tenancy being severed). For this reason it would seem that there might be an entitlement to damages and costs.

Personal representatives are not only obliged to perform their duties but to perform them diligently or at least prudently. The duty of diligence that a personal representative owes to creditors and beneficiaries commences from the date of the grant, and continues while gathering in and preserving the assets and when administering and distributing the estate among the persons entitled. (See Keating on *Probate* at 17 -01)

## 6. The Position of the Third Named Defendant

Even if the first and second named defendants were estopped from raising the Statute of Limitations against the plaintiff, no estoppel arises against the third named defendant who is entitled to rely upon the Statute.

Moreover the register is conclusive evidence of title. If the plaintiff sustained loss as result of fraud then the plaintiff may be entitled to compensation under the provisions of s. 120 of the Registration of Title 1964.

The plaintiff is not entitled to any order under s. 31 of the Registration of Title Act 1964, rectifying the register in circumstances where the third named defendant was a bona fide purchaser for value without notice of the alleged fraud

Moreover, the present registered charge holder, Ulster Bank Ireland Limited, is also a bona fide purchaser for value without notice of the alleged fraud.

The court is satisfied that estoppel cannot apply, particularly in relation to the third named defendant, but also in relation to the first and second named defendants as the plaintiff is a stranger to the estoppel in that no communication was made to her.

In relation to the third named defendant the registration of title is, pursuant to s. 31(1) of the Registration of Title Act conclusive evidence of the title of the owner to the land as appearing on the register. This is further strengthened by the provisions of s. 55, which deems the instrument of transfer to operate as a conveyance by deed within the meaning of the Conveyancing Acts.

Moreover, the repudiation of a contract is impossible where third parties have intervened and acquired rights thereunder for value. As a bona fide purchaser for value, the third named defendant had charged the property to Ulster Bank Limited, who is not a party. The charge held by the bank cannot be rescinded or removed.

The court refuses the plaintiff's claim as against the third named defendant.

The court will hear the parties regarding the issue of damages resulting from the mistake which deprived the plaintiff of her interest.