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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

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2014 No. 9992

IN THE MATTER OF THE ESTATE OF ALBERT EDWARD RIDLEY DECEASED

IN THE MATTER OF THE ADMINISTRATION OF ESTATES (NORTHERN IRELAND) ORDER 1979

BETWEEN:

ALBERT RIDLEY AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ALBERT EDWARD RIDLEY DECEASED

Plaintiff

-and-

DEREK RIDLEY

Defendant

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HORNER J

A. INTRODUCTION

[1] The plaintiff is the son of Albert Edward Ridley deceased ("the deceased") who died on 18 February 2009 and Anne Martha Ridley ("the mother") who pre-deceased the deceased in 2007. The plaintiff brings this claim as personal representative of the estate of the deceased having replaced the defendant as the administrator of the estate of the deceased pursuant to Article 5 of the Administration of Estates (Northern Ireland) Order 1979 following the decision of Master Ellison on 9 January 2013. That decision was appealed to the Chancery Judge and on 15 April 2013 Deeny J affirmed the order of the Master and ordered that the costs of the appeal were to come out of the defendant's share of the estate.

[2] On the one side of this dispute is the defendant and on the other side the plaintiff and the other members of the family (hereinafter referred to as "the family"). The claims of the plaintiff as personal representative and the

counterclaims of the defendant relate to a number of different matters and can be summarised briefly as follows:

(i) The loss of £80,000 approximately in cash which the deceased had in his bank account and which he withdrew in three tranches before his death amounting to £76,000 so, it is claimed that he could give to each of his children (or their successors, per stirpes) £16,000 in cash each before he died ("the cash issue").

(ii) The failure of the defendant to account fully for £18,169.59 or thereabouts which was in the deceased's bank account and which was withdrawn by the defendant on 7 September 2010 and which the defendant was ordered to deliver up to the plaintiff's solicitor on or before 14 March 2017 ("the bank deposit issue").

(iii) The failure and/or refusal of the defendant to hand over the documents of title in respect of 154 Causeway Street, Portrush ("Causeway Street") owned by the deceased at the date of his death ("the title deeds issue").

(iv) The cost of the use and occupation of the garage at Causeway Street by the defendant to store his two 'vintage' cars, the repair costs of £770 arising from the alleged disrepair of the house at Causeway Street which occurred during the period when the defendant was purporting to act as executor and the loss of the deceased's military memorabilia, again which is alleged to have occurred during the period in which the defendant was acting as executor ("the plaintiff's miscellaneous issues").

(v) The defendant has counterclaimed. His first claim relates to the cash issue and which the defendant insists was distributed to the family and that they divided the cash up between themselves including £16,000 earmarked for him. I will consider his counterclaim at the same time as I consider the claim by the plaintiff in respect of the cash issue.

(vi) The defendant alleges that his mother had jewellery to the value of £15,000-£25,000 which the deceased inherited on her death. The jewellery was taken by the family, and in particular by Ann Moffatt, and must be accounted for to the estate ("the jewellery issue"). In his "Statement of Claim" of 9 March 2017 the defendant blames the plaintiff for taking the jewellery and values it at up to £25,000.

(vii) The defendant claims that various items of furniture which belonged to him amounting in total value to over £2,500 were removed together with photographs of the deceased which he describes as priceless, four new wings for a Morris Minor car valued at £1,000 and he also seeks to recover £6,000 being his costs of maintaining the front and back gardens at Causeway Street during his period as executor ("the defendant's miscellaneous issues").

I am acutely conscious that some of these issues involve serious allegations of wrongdoing. This is a civil case and the onus of proof lies on the party making the allegation. The standard is the balance of probabilities. But as Lord Carswell said giving judgment in the House of Lords in Re CD's application [2008] UKHL 33 at para [28]:

> "…the seriousness of the allegations requires no elaboration: a tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it had been established."

[3] The enmity between the family on one side and the defendant on the other was deep, longstanding and bitter. There were shocking allegations and counter-allegations levelled from both sides reflecting not only an acrimonious split between the two camps but a profound, personal animus. Many of the claims involved wanton acts of violence. There can be no doubt that such obvious mutual loathing which, as far as I could tell, has existed for many years between the two sides, was capable of distorting and warping the sworn testimonies offered to the court. I do not intend nor do I have the time to try and resolve all of the many disputes that have riven the Ridley family over the years. I only propose to deal with those that are strictly relevant to the issues in these proceedings.

B. BACKGROUND INFORMATION

[4] The deceased was described as a war hero who had survived the Normandy landings and who had been decorated for the bravery which he had demonstrated during the Second World War. The deceased returned to work in civilian life as a bricklayer. He then progressed from this manual work to become a general dealer, eventually running his own shop. His wife ran a guest house. The picture of the deceased portrayed in court was supported by independent evidence. The deceased was a hardworking, thrifty man dedicated to his wife. He rarely, if ever, went out. He did not drink alcohol or smoke cigarettes. He lived a frugal but fulfilled existence. The fact that the deceased had savings in the bank of over £100,000 before he died reflected the care with which he looked after the money he earned and the importance he placed on ensuring that those savings were available to help firstly his wife should she survive him and, if not, the next generation, that is his sons and daughters and their children.

[5] There were five children born to the deceased and his wife. They were Albert, the plaintiff and eldest, Raymond who had suffered a stroke which obviously affects his movements and his speech, Ann Moffatt who is married to Ivan and Derek the defendant. Isobel, the deceased's other daughter, had died leaving a husband and two children who are both over the age of 21 years. He had previously provided financial support for her when he had learned of her cancer. This was not an isolated incident and demonstrated a caring relationship and a desire to provide financial assistance for any members of the family when they most needed it. The deceased's relationships with each of his children were at times tempestuous if the

evidence can be believed. From a claim by the defendant that the plaintiff was thrown out by the deceased 40 years ago and that the deceased and the plaintiff only spoke in the last two years prior to this death and that the plaintiff had previously been barred from the family home to the claim that the defendant and the deceased had a major row 1-2 weeks before the deceased went into hospital for the last time and the defendant during the row had pulled the phone out of the wall. According to the testimony of Raymond the deceased had been so scared of the defendant that he had asked Raymond to stay overnight to provide protection, if required.

[6] Against that there was evidence that the defendant took the deceased on holidays, shopped for him and kept an eye on him in the years before he died. He had also helped look after his mother in the period prior to his death. It may be significant that he had no key to Causeway Street immediately prior to the deceased's death but some of the other siblings did. The picture painted by the witnesses of the family's internal dynamics is far from clear and it is simply impossible at this remove to make definitive judgments on their relationships with each other and most importantly on each of their relationships with the deceased. This is especially so where each witness sought to portray himself or herself in the most favourable light.

[7] On behalf of the plaintiff I heard evidence from the plaintiff, Valerie the plaintiff's wife, Ann Moffatt and her husband Ivan Moffatt and Raymond Ridley. I also heard evidence from Mr Dalzell, a Chartered Surveyor and Estate Agent. On the defendant's side I heard sworn testimony from the defendant himself.

[8] The first Will of the deceased was dated 19 September 1988. It appointed Anne Martha Ridley, his wife and the plaintiff as executors of the deceased's estate. It left £200 to each of his grandchildren who were alive at the date of his death. It bequeathed £15,000 to his wife and gave her the dwelling house and its contents for life, with it falling into residue on her death. It then provided that all "the rest residue and remainder of my estate of whatsoever kind and wheresoever situate both real and personal to my sons .. and my daughter as tenants in common in equal shares". It provided that should any child predecease him then their living issue should take per stirpes.

[9] The deceased then executed a codicil on 3 June 2008, that is some 20 years later, whereby he appointed the defendant as sole executor in place of the plaintiff and his late wife, who had since died in 2007. He also confirmed all the other aspects of his last Will. Both the Will and Codicil were prepared by the same firm of solicitors, Wray and Baxter who then became Macaulay Wray.

[10] At the heart of the case lies money as is so often the case. The deceased kept his savings in the Northern Bank (which became the Danske Bank). These were held jointly with his wife. The deceased withdrew the following sums in cash in the months before his death:

(a) £35,000 on 12 November 2007.

(b) £25,000 on 10 December 2007.

(c) £16,000 on 10 April 2008.

That is a total of £76,000. There is no evidence that the deceased spent any of this sum before he died.

[11] It is common case that the deceased had made his intentions clear before his death, namely that each of his surviving children would receive £16,000 and that the children of his late daughter, Isobel would also receive £16,000 to be divided between them. This effectively mirrored the Will. Presumably the deceased wanted to have the pleasure of gifting the money personally. The plaintiff says that the gifts of cash were never made because all of the recipients were never present at the one time. The plaintiff, with the support of his other brother and sister and brother-in-law, accused the defendant of taking the £80,000 for himself. The defendant responded by accusing the other family members of taking his share of £16,000 and dividing it amongst themselves. What is not in issue is that the deceased had withdrawn £76,000 prior to his death and had not spent it. All parties eventually agreed that the deceased had at least £76,000 before his death to divide up amongst his children and grandchildren although he impliedly referred to £80,000 as there was to be a gift of £16,000 to each of them. I am going to proceed on the basis of the sum of £76,000 which was clearly withdrawn by the deceased from the bank in the months before his death. Instead the dispute centred on whether the deceased had handed out the defendant's share to the family or whether the defendant had taken the cash destined for the family for himself or whether the money had been taken by a third party.

[12] There was no doubt that the defendant chose to ignore the order of this court of 7 March 2017 relating to the balance of just over £18,000 which the deceased had left in his Danske Bank account. He did not, as was required to do, hand over to the plaintiff's solicitor £18,169.59 which he had withdrawn from the deceased's bank account in September 2010. Instead he handed over £11,695.42 out of a total of £18,169.59. He had deducted £2,840.25 being the funeral and other costs and his share which he had calculated at £3,633.92. He had calculated his share incorrectly on the gross not the net figure. The sum deducted for funeral expenses was only vouched in the amount of £2459. He accepted that he had not acted in accordance with the order and he also accepted that in any event the funeral expenses should have been deducted from the full amount before his one fifth share was calculated. He blamed this error on his poor mathematical skills.

[13] The dispute about the £76,000 in cash withdrawn by the deceased in the final months of his life took centre stage and occupied considerable court time. I will return to consider this issue in some detail later on in this judgment. There are other

issues which I have highlighted which although contentious have a far more modest value.

C. THE ROLE OF THE EXECUTOR

[14] As I have stated the defendant was the executor under the Will of the deceased as amended by the Codicil. It was his responsibility to take out a Grant of Probate. The defendant did not take out a Grant of Probate. No satisfactory explanation has ever been provided for this omission. The deceased did not offer one when he gave his evidence.

[15] An executor is a personal representative appointed under a deceased's Will. It is the executor's responsibility to administer the estate. This is discussed in detail by Williams, Mortimer and Sunnucks in Executors, Administrators and Probate (20th Edition) at 48-01 to 48-27. The executor in administering the estate has responsibilities which extend from making arrangements for the disposal of the deceased's body to ensuring that the inheritance tax account is filed in respect of the estate and any due payment of inheritance tax is made. But it is also the duty of an executor to collect and preserve the deceased's estate which requires careful consideration. The executor must:

(a) Gather in the real and personal estate of the deceased.

(b) Administer that estate according to the law.

> "The duty to administer according to the law carries with it a duty to preserve and prove the estate once it has been collected and got in. In performing these duties, a representative must act with due diligence".

If there is a delay of more than the executor's year in gathering in the assets, the onus is on the personal representative to explain the delay: see Grayburn v Clarkson (1886) 3 LR Ch App 605.

[16] Article 35 of the Administration of Estates (Northern Ireland) Order 1979 states:

> "35-(1)The representative of a deceased person shall be under a duty –
>
> (a) To collect and get in the estate of the deceased administered according to the law;
>
> (b) When required to do so by the High Court and to exhibit on oath in that court a full inventory of the

estate when so required render an account of the estate to that court;

(c) When required to do so by the High Court, to deliver up the grant of representation to that court."

[17] Article 39(1) relates to misapplication of assets. It states:

> "If any person, to the defrauding of creditors without full valuable consideration, obtains, receives, administers or holds any part of the estate of the deceased person or effects the release of any debt or liability due to the estate of the deceased person, he shall be charged to the executor in his own wrong to the extent of the estate received or coming to his hands, or the debt or liability released …"

[18] Personal representatives can also be liable in devastivit. This occurs where there is a failure to administer the estate properly and in accordance with the law and this has caused financial loss to the estate: see 12.147 of Succession Law in Northern Ireland by Sheena Grattan.

[19] Furthermore, there is a fiduciary duty owed by the personal representative to the beneficiaries. Wylie's Irish Land Law (2nd Edition) at paragraph 16.26 states:

> "Personal representatives hold the estate of the Deceased person on trust for the persons entitled under the will or law of intestacy or as creditors and are generally liable as express trustees."

[20] Of course no one is obliged to take on the role of the executor, but if anyone does accept that office, which is an onerous one, then they can be expected to act promptly in accordance with the law. The deceased's property vested in the executor at the date of the deceased's death. An executor over 18 years of age can act before the Grant of Probate. However, an executor requires a grant if he is to either make title, if required, or if he issues proceedings and he wants to have the action heard in court: see Webb v Adkins [1851] 14 CB 401.

[21] If the executor does not obtain a grant then a citation can be issued from the Probate Office, under the seal of the court, requiring the person cited to enter an appearance and take the necessary steps described therein.

[22] The conduct of the defendant as executor in this case is instructive:

(i) The defendant never took any proper steps to gather in the assets of the estate, to realise them or to distribute the estate of the deceased.

(ii) The defendant's claim that he "sold" the house at Causeway Street is fanciful. He told the court that he approached a few prospective bidders, whose names he cannot remember. He swears that he had an offer from a Mr McIntyre or a Mr McCauley. He gave different names at different times. Although there was only one person who had agreed to purchase the property, the defendant remained unsure about the surname of the prospective purchaser. He wrote to the court to tell it that he had the house sold "with in one year of his passing away, when the sale was blocked by the Plaintiffs" (sic). When questioned he had no idea who this potential bidder was, whether he was McCauley or McIntyre, whether he had any assets, whether he was paying cash or whether he required a loan the defendant failed to give satisfactory or convincing answers. I have no hesitation in concluding that the defendant did not attempt to sell Causeway Street as he was required to do. Instead he attempted to mislead the court by suggesting otherwise. His claim that he had sold Causeway Street was demonstrably false. This was a clear example of the defendant being content to lie in a most brazen fashion if it suited his circumstances.

(iii) The deceased did extract a sum of just over £18,000 from the bank account of the deceased in September 2010 but made no attempt to share this as required by the Will until he was ordered to pay it to the plaintiff's solicitors on 7 March 2017. No satisfactory explanation has been provided to the court by the defendant for his failure to pay over this money until ordered to do so by the court. Furthermore, no satisfactory explanation was provided to the court as to why he chose to ignore the terms of the order and retain a share of it for himself.

(iv) The defendant in a document which he filed in court for probate purposes provided values for various assets that were owned by the estate. There was cash in the bank, which was just over £18,000 (see above), the house at Causeway Street which he valued at £115,000 and household goods which he valued at £500.

[23] These statements in a court document were contradicted by subsequent claims of the defendant that, for example, the deceased had jewellery which had belonged to his wife with a value of between £15,000 to £25,000. The deceased alleged that Ann Moffatt had taken some of this jewellery. He also made claims that he owned various items of furniture, including a new leather suite valued at £950 which he claimed as his own. However when he swore his affidavit on 18 December 2012 he referred to items within the dwelling house but did not claim personal ownership of, for example, the leather suite. He denied in court that the deceased had any medals but swore in this affidavit in 18 December 2012 that the deceased

had medals from the Second World War. The defendant's case was often contradictory, inconsistent and incredible. This did not appear to trouble the defendant.

D. HISTORY OF PROCEEDINGS

[24] There was a general point blank refusal by the defendant to provide information to the beneficiaries under the deceased's Will about the estate of the deceased. Letters were regularly ignored. The defendant failed to instruct solicitors apart from a short period of time when he did instruct Anderson and Co. He collected the Will and Codicil from Macaulay and Wray on 15 February 2010. On 8 September 2010 the plaintiff asked about the defendant's intentions in relation to the estate. There was no response. As I have recorded a caveat was lodged on behalf of the plaintiff on 10 September 2010. This was followed by a citation being lodged on behalf of the plaintiff on 7 January 2011. The defendant attempted to extract a Grant of Probate on 3 March 2011 by lodging an oath for executor. Master Ellison made an order that the defendant was only permitted to extract a grant upon providing instructions to a firm of solicitors to act on his behalf. On 18 August 2011 the plaintiff's solicitors wrote to the defendant making it clear that if he failed to instruct solicitors within seven days an application would be made on behalf of the plaintiff for a grant of representation on behalf of the estate. Again there was no response to this correspondence. A summons was issued on behalf of the plaintiff seeking a grant of representation in relation to the estate and this was served on the defendant on 16 day of August 2012. It was grounded by an affidavit sworn by the plaintiff on 7 February 2012. The summons was heard before the Master on 10 September 2012. The defendant had advised the court that he had done everything he could to administer the estate and that it could take up to 30 years to administer it. The Master directed affidavits.

[25] At a review on 8 October 2012 of the application, the Master advised the defendant that there was an order of March 2011 in which a Grant of Probate would issue to the defendant but he had to instruct solicitors in order to administer the estate. The defendant advised the Master that he intended to instruct solicitors but refused to indicate which firm he intended to instruct. The application was then listed for hearing on 9 January 2013 before Master Ellison. The defendant had still failed to instruct solicitors in relation to the administration of the estate of the deceased. He had instructed Anderson and Co in the course of the application and they had filed an affidavit on behalf of him but they had declined to formally come on record on behalf of the defendant. Following submissions the Master granted letters of administration with will annexed to the plaintiff.

[26] The defendant filed an appeal in relation to the said order of 9 January 2013. The defendant's appeal was heard by Deeny J on 15 April 2013 and as already recorded the appeal was dismissed. The costs of the appeal are to be paid from the defendant's share of the estate. It cannot be denied that defendant felt the decision to permit the plaintiff to act as a personal representative was a gross injustice. It was

not at all clear what the basis of his upset was, given his previous behaviour and his refusal to take any steps to ensure that the assets of the estate were gathered in and realised and the assets distributed according to the last will and testament of the deceased. It was against this background that the missing title deeds have to be considered. The same applies to the deceased's failure to remove his "vintage" cars from the garage. Further, the poor condition of the home at Causeway Street as described by Mr Dalzell was consistent with his failure to carry out his duties as an executor.

[27] On 31 May 2013 the plaintiff extracted a grant of representation. The plaintiff then assumed control of the house at Causeway Street. New locks were fitted. The defendant was denied access. The plaintiff will say that the property which had been under the control of the defendant from early 2009 was in very poor condition and required repair work to be carried out. There was no cash present on the property, and in particular the £76,000 withdrawn before the deceased's death could not be found. The title deeds to the property were also missing. The inside of the house was described as resembling a car boot sale and photographs taken of the inside of the house support this observation. The plaintiff through his solicitor sought to gather in the assets of the estate. On making enquiries with the Danske Bank, the plaintiff discovered that the defendant had removed the credit balance in the deceased's bank account being just over £18,000 and had then closed the account.

[28] On 26 September 2013, 2 October 2013, 13 December 2013, 23 December 2013 and 6 January 2014 the plaintiff through his solicitor sought delivery up of, inter alia, the balance of the Northern Bank account, the cash assets and the title deeds. The defendant responded in writing not by dealing with the issues raised in the correspondence, but instead by making his own claims against the plaintiff.

[29] The plaintiff put the house at Causeway Street on the open market for sale. An offer to purchase the property was accepted by the plaintiff. The defendant was out of the country. When he returned, the defendant visited the selling agent to object to the sale and the administration of the estate and made comments which led the selling agent to believe that the defendant had the title deeds to the property. The sale did not complete due to the absence of the title deeds. Unsuccessful efforts were made to recreate the deeds. The defendant did not return them.

[30] On 28 January 2014 the plaintiff issued a writ of summons claiming various matters of relief relating to the alleged cash held by the deceased at the date of his death, the damage which had occurred to 154 Causeway Street, Portrush during the defendant's period of executorship and an order that the defendant be compelled to deliver up the documents of title relating to 154 Causeway Street. There was no memorandum of appearance entered. A statement of claim was served on 23 April 2014. The defendant wrote advising he would out of the jurisdiction from May to July 2014. The plaintiff's solicitors advised the defendant that they would enter judgment against the defendant if a defence was not entered on 6 May 2014 and 30 July 2014. The defendant responded with correspondence dated 8 August 2014,

15 August 2014 and 19 August 2014 which in the view of the plaintiff's solicitors did not constitute a valid defence (or counterclaim) to the Statement of Claim in accordance with the Rules of the Court of Judicature (Northern Ireland) 1980. By letter of 28 August 2014 the plaintiff's solicitors advised the defendant that if he did not serve a proper defence, then judgment would be sought in default. On 30 September 2014 the plaintiff's solicitor applied to have the matter set down for hearing on an undefended basis.

[31] The action was referred to the Master for directions and listed for hearing before him on 21 October 2015 and 11 November 2015. The defendant did not attend on either occasion and the matter was adjourned. The plaintiff made application to the Master to have the defendant's correspondence of August 2014 struck out as disclosing no cause of action. This application was listed for 8 December 2015. The defendant did not attend and the said correspondence was struck out as not disclosing a defence.

[32] The defendant then applied for the action to be listed before the Master to allow him to be heard. On 20 April 2016 the defendant made submissions to the Master, but the Master declined to review or amend his earlier order. The Master directed that the matter be listed before the Chancery Judge for directions for a hearing. The case was listed before the Chancery Judge for directions on 9 September 2016 and the matter was listed for an undefended hearing on 19 September 2016.

[33] The plaintiff sought a new date as he was out of the jurisdiction on 19 September 2016. He indicated that he wished to defend the action. He was directed to file an application for an extension of time to file an affidavit to be heard on 19 September 2016. On that date he filed a summons without an affidavit seeking an extension of time to serve a defence and the application was heard that day. On 20 September 2016 the court was to give its decision but the defendant did not attend. On 22 September 2016 the court gave the following directions:

(a) The defendant was to serve a defence by 31 January 2017 to take into account the fact that the defendant was out of the jurisdiction.

(b) The plaintiff was to reply within 21 days.

(c) Any notices were to be issued within 14 days and to be replied to within 14 days.

(d) Lists of documents to be exchanged by 7 March 2017.

(e) Mutual inspection was to take place.

(f) There was to be a joint consultation by 21 March 2017.

(g) The practice direction was to be complied with in relation to skeleton arguments.

(h) There was to be a hearing on 2 and 3 May 2017.

[34] On 24 October 2016 McCartan Turkington and Breen wrote advising the plaintiff's solicitors that they had arranged an appointment with the defendant in December. However, on 19 December 2016 McCartan Turkington and Breen advised the plaintiff's solicitors that they would not be coming on record for the defendant. On 31 January 2017 no defence had been served by the defendant and there had been no requests for an extension of time. On 2 February 2017 the plaintiff's solicitors wrote to the defendant asking the defendant to remove two cars from the garage of the property to facilitate its sale. On 14 February 2017 the defendant wrote asserting that the plaintiff's solicitor's letter contained a false statement, that it made various allegations against the defendant and advised that he would be seeking the court's adjudication in these matters on 2 and 3 May 2017. Still there was no defence. On 14 February 2017 the defendant wrote to the plaintiff's solicitor seeking copies of the deceased's bank account statements. At the review hearing on 20 February 2017 the defendant was directed to file a defence by 2 March for the review on 7 March. On 3 March 2017 a defence was received by the plaintiff's solicitors wherein the defendant admitted removing the cash balance of £18,000 approximately from the Northern Bank account and also, although the pleading is somewhat ambiguous, removing the title deeds for the property. At the review on 7 March 2017 further directions were provided. These provided, inter alia:

(a) The defendant was to deliver up the title deeds to 154 Causeway Street to the plaintiff's solicitors on or before 14 March 2017.

(b) The defendant was to deliver up to the plaintiff's solicitors the balance and receipts of the Danske Bank account in the sum of £18,169.59 on or before 14 March 2017.

(c) The case was to be listed for review on 4 April 2017 at 9.45 am.

(d) Directions were also given for service of skeleton arguments for the hearing on 2 May 2017.

[35] At the review of 4 April 2017 the defendant had still not filed a list of documents nor replied to the notice for particulars. He complained that he had not been able to recover the "vintage" motor vehicles he had left on the Causeway Street premises. Directions were given that arrangements be made for the defendant to recover his vehicles.

[36] On 30 March 2017 the defendant provided a note of how he had calculated the £11,695 left at the plaintiff's solicitor's offices in response to the court order that he lodged the full sum of £18,169.59. He had deducted funeral expenses of £2,840.25

and had then divided the sum by five. He has still not lodged the correct amount in court and remains in breach of the order. This type of behaviour typifies what seems to have been the defendant's dual approach to this litigation. He has obstructed and obfuscated in the hope, I conclude, that he would wear the family down both financially and emotionally.

E. GENERAL IMPRESSIONS OF THE WITNESSES

[37] The plaintiff struck me as straightforward and truthful. He made concessions when pressed. He admitted that he had been convicted of drunken driving all of 40 years ago. He told the court his relationship with the deceased in the past number of years had not been good. He blamed this on the influence of the defendant whom he detested. He admitted when pressed to having had a fist fight when he employed the defendant many years ago at his shop. He was forced to dismiss the defendant and from then on takings increased and he never looked back. He claimed not to have spoken with the defendant since. He regarded him as corrupt. The plaintiff had admitted that he had limited contact with the deceased until the two years before his death.

[38] His wife Valerie and his sister Ann seemed to be reasonable people trying to do their best to tell the truth. Raymond clearly struggled in the witness box. He was in poor health, he was obviously partially paralysed and had some difficulty speaking clearly. There was a difference between his affidavit evidence and his evidence on oath. In his affidavit he claimed that the £80,000 cash was kept by the deceased in a cupboard under lock and key. When he gave oral testimony he did not refer to the cupboard or to any lock and key. He made no attempt to cover up this inconsistency. I felt that he tried to do his best in difficult circumstances given his obvious health problems and was not wilfully trying to mislead the court. Ivan's evidence was restrained. He did not attempt to maximise the damage to the defendant when he explained that the defendant had been dismissed by the Council from a job he was instrumental in helping the defendant to find. He claimed that the defendant had been dismissed for stealing alcohol from the Lord Mayor's parlour. The defendant claimed that he had no recollection of his career with the Council ending in such ignominy. This is not the sort of termination of employment one is likely to forget.

[39] However, as I have observed earlier, all the witnesses harboured a dislike of the defendant which they each found difficult to conceal. I was especially alert to their animosity colouring their testimony.

[40] The defendant was aggressive and gratuitously rude. He called the plaintiff a tramp, his sister-in-law was "the biggest prostitute in Coleraine", he said of his brother Raymond, who is obviously in poor health, that he deserved a stroke and "has worse coming". He said that his sister Ann had hit, bitten and scratched the deceased. In general he accused his brothers and sisters of brutalising his parents and shortening their lives. He described them all as "low lives" and "money

grabbers". He did tell the court in an unguarded moment when asked about the money in the deceased's bank account at the date of the deceased's death that "possession was nine tenths of the law. I had the money. I owned it." I believe that this unguarded comment provides an insight into the defendant's thought process. He genuinely seems to have felt that if he possessed something as of right, then even if it was in his capacity as executor he could act as though he was the legal and beneficial owner. This also chimed with a comment made by the plaintiff in his evidence who said that following the deceased's death the defendant "treated his father's property and mother's jewellery as if it was his own".

[41] I formed a poor impression of the defendant and much more favourable ones of the plaintiff and his witnesses. I thought that the plaintiff and his witnesses were trying to tell the truth as they remembered it. The defendant on the other hand appeared to have no compunction in telling the easy lie if he thought it would assist his defence.

F. THE ISSUES

(i) The Cash Issue

[42] In respect of this issue there are fortunately a number of matters on which both sides are in agreement. These are:

(i) The deceased was a man who was careful with his money. He did not indulge himself in any way. He led a quiet, restrained, parsimonious existence.

(ii) The deceased had withdrawn £76,000 shortly before his death and the irresistible inference is that he wished to divide it out, giving to each of the members of his family their share according to his will before he died and thus have the pleasure of seeing their delight. It is likely that he had this money hidden in his house.

(iii) Following the deceased's death £76,000 has not been located despite diligent searches of the Causeway Street property.

[43] It seems to me that there are three possible explanations:

(a) The plaintiff and the other family members apart from the defendant took the £76,000 and divided the defendant's share up amongst themselves.

(b) The defendant took the £76,000 and retained it for his own purposes.

(c) A third party entered the deceased's house found the £76,000 and stole it.

[44] The last explanation is a possibility but highly unlikely. The premises were locked. There was no sign to suggest that anyone other than the family and the defendant had entered the house before and after the deceased's death with the exception of the Minister, the undertaker and his assistant. There is no suggestion that any of these persons were responsible for the removal of any cash. The overwhelming likelihood is that the cash was moved either by the defendant or the family.

[45] The circumstantial evidence against the family other than the defendant included:

(a) They had access to the cash and were able to divide the defendant's share amongst them.

(b) The deceased was most unlikely to have kept such a cash sum on the premises because of the risks of theft.

(c) The deceased would not have gone into hospital without distributing the funds, because the doctor had told him according to the defendant that he had only 5-6 days to live, even if they had not all been present.

(d) Raymond had lied. There was a marked difference between the affidavit he had sworn in which he claimed that the cash was in cupboard under lock and key and that the deceased had the key. Raymond in his sworn evidence omitted to mention the money was kept in a locked cupboard.

(e) The deceased set out in his will how his estate was to be distributed. Why would he divide out his cash savings before his imminent death?

[46] The circumstantial evidence against the defendant includes the following:

(i) There was a complete failure on the part of the defendant to administer the estate and distribute the shares to his siblings. The defendant made no attempt to explain why he had wholly failed to fulfil his responsibilities as an executor.

(ii) However, it was very much in the defendant's interest to refuse to administer the estate according to his father's will and testament if he had control of, inter alia, the cash reserves. He had access to all the assets and could use these for his own benefit. At the time he was only receiving £135 per week as a pension that is just under £7,000 per annum.

(iii) The defendant had been accused of being dishonest by the Council for stealing alcohol from the Mayor. He denied this. In response to the allegation that he was dismissed for theft he said "that is not the way I remember it". This was a very strange way in which to deny a very serious allegation.

(iv) He told me that he had been trying to sell the house after the deceased's death and that he had an offer. He gave different names for the offeror, he never had a written offer, he did not know if the proposed purchaser had any money, he did not know the name of solicitor acting for the proposed purchaser and there was no corroborating evidence whatsoever to support any suggestion that anyone had agreed to buy the house at Causeway Street. As I have recorded earlier I concluded that the defendant was lying and the suggestion that the defendant had sold the property was a figment of his imagination.

(v) He was told on 18 August 2011 by the plaintiff's solicitor that the deceased had withdrawn £76,000 from a bank account but not only did he do nothing about it, he never replied to the letter. He claimed he did not check with the bank. It is inconceivable that an executor on being told that £76,000 had been withdrawn shortly before the deceased's death did not check to see whether this was true and try and find out where the money had gone. If the defendant had believed that the family had his share, the defendant would not have been slow to do something about it. The most likely explanation is he did not need to check because he already knew what had happened to the cash.

(vi) It was difficult having the case listed because the defendant was out of the jurisdiction for long periods of time. It transpired that the reason for the defendant's absences were that he was on vacation in Florida. The defendant told the court that:

(a) He had a town house in Kissimmee, Florida.

(b) He took two holidays each year for a total, he claimed, of 90 days as that was all he was allowed. (However I understand that a tourist will be restricted to 90 days on each visit. But a tourist is still able to visit again that year but the further stay is limited to a 90 day period. However this is not important to me in reaching my decision.)

(c) A return flight to Florida was approximately £450.

(d) The property tax for his town house in Florida was approximately £1,000.

[47] The defendant's explanation as to how he afforded to run two houses (because he has his own house in Portrush), pay rates and taxes on two properties, pay two return fares and enjoy at least 3 months' vacation in the United States on an income of £135 per week was that "he could live more cheaply in Florida than in Portrush". I gave him ample time to explain his finances because on the face of it the figures do not add up. The defendant was well aware of the real problem he had in explaining how he managed to finance this lifestyle on £135 per week. But he remained defiantly unapologetic and refused point blank to provide any explanation for a lifestyle which appeared wholly inconsistent with someone existing on a modest pension.

[48] Further I was not impressed with the defendant's demeanour in the witness box. He was aggressive, quick to interrupt and even quicker to hand out offensive insults, the more offensive the better, against other witnesses. He appeared to be a dishonest blusterer who thought he could intimidate the rest of his family. It is my conclusion that on the balance of probabilities it was the defendant who took the £76,000 and that explains why he made no attempts to administer the estate and how he can continue to fund his stays in Florida.

(ii) The Bank Deposit Issue

[49] There can be no question that the defendant failed to comply with the order of the court of 7 March 2017 by failing to pay over the £18,169.59 in the deceased's bank account. He has to account for the full sum in accordance with the order. However, on the evidence adduced he is entitled to receive £2459 which he expended as executor on the deceased's funeral expenses. However, he was not entitled to deduct his share of £3,633.92 which he incorrectly calculated on the gross sum. The defendant's share cannot be determined until his liabilities are assessed.

(iii) The Title Deeds Issue

[50] Having considered all the evidence relating to this issue and listened in particular to the defendant give his oral testimony, I am satisfied that the defendant retained the title deeds of Causeway Street and failed to hand them over because he thought that this would thwart the sale of the house which the plaintiff as personal representative had agreed. I am satisfied on the expert evidence that the agreed price negotiated by Mr Dalzell represented the market value. In the circumstances the defendant should be responsible for reimbursing the estate for the costs of reconstructing the title deeds, namely £440.

(iv) The Plaintiff's Miscellaneous Issues

[51] I also conclude that the defendant thought that by having his "vintage" cars in the garage at Causeway Street that this would also prevent the sale because the estate of the deceased could not offer vacant possession. The more difficult issue is in assessing what payment, if any, should be made by the defendant for his use and occupation of the garage.

[52] The defendant claimed to keep Causeway Street in pristine condition. Certainly it is common case that it was in good repair at the date of the deceased's death. There is a report from Mr Andrew Dalzell, Chartered Surveyor. This establishes, and Mr Dalzell was never challenged on this, that on 19 June 2013 shortly after the plaintiff acquired possession from the defendant and the date of Mr Dalzell's inspection:

(a) There was a vast amount of furniture and other personal effects on the property. It seems that these were brought onto the premises by the defendant. Most of them appear of poor quality and could be classified as junk.

(b) There were signs of leakage from the bathroom to the kitchen area.

(c) There were signs of damp throughout the property.

(d) The photographs of the property indicated that it was in want of proper repair.

The cost of carrying out repairs to the premises was assessed at £775.

[53] The defendant under oath denied that the deceased had any medals and accordingly that he had no responsibility for handing them over. But in an affidavit sworn on 18 September 2012 during the short period when he had solicitors, namely Anderson & Co, acting on his behalf he said "I confirm I have my father's medals from the second world war". Changing his story when it suited him, as I have already noted, caused the defendant no concern whether or not he had sworn an oath. Indeed, it was difficult not to gain the impression that he did not feel constrained by the rules when giving oral testimony and that the requirement to give truthful evidence applied to others but not to himself.

(v) The Jewellery Issue

[54] The family denied that the deceased or his wife had jewellery of any value at the date of their respective deaths. The defendant claimed that his mother had left the deceased jewellery following her death with a value of up to £15-25,000. He claimed, inter alia, that the deceased had:

(i) Three necklaces.

(ii) Four rings.

(iii) Three gold wristwatches.

(iv) A wedding ring.

(v) Unspecified number of broaches.

(vi) Two ankle-chains.

(vii) A quantity of silver ingots and pendants.

[55] The defendant specifically alleged that Ann had some of this jewellery.

[56] The other members of the family deny that there was any jewellery other than a wedding ring, gold watch and another ring. There was evidence of there being ring boxes in the deceased's bedroom but that these were empty. Again there was a diametrical conflict in the evidence of the plaintiff and his witnesses on the one hand and the defendant on the other. The problem with the defendant's claim is that it is wholly inconsistent with the documents lodged by the defendant in court. The plaintiff's solicitor has inspected the probate file and ascertained that for the purposes of extracting probate the defendant had evaluated the household goods as having a worth of £500 in total.

[57] There is no mention of any jewellery, never mind jewellery to the value of up to £25,000. I cannot understand how on the one hand the defendant can claim that the family robbed the deceased's estate of jewellery to a value of £25,000 and yet file legal documents in court in his capacity as an executor which makes it clear that there must have been no jewellery to any value and which corroborates the evidence of the plaintiff and his witnesses. Certainly the defendant offered no explanation for this obvious inconsistency. I can think of no reason why the defendant would want to mislead the court when seeking probate, especially if members of his family had been responsible for taking jewellery which had been in the possession of the deceased at the date of his death. The only rational explanation is that this allegation of the deceased having jewellery is an invention of the defendant designed to cause the plaintiff and the other family member's maximum embarrassment. There is some support for this conclusion. The deceased was obviously, as I have recorded, careful and thrifty. It is highly unlikely I infer from my understanding of the deceased's habits and behaviour that he would fail to insure jewellery to the value to £25,000 which he did not wear himself and which would have been present in the family home. This jewellery would have been insured under the contents section of a household policy of insurance. At no time did the defendant suggest that the deceased had the jewellery insured or that it was covered under the contents section of a household insurance policy. The absence of evidence of any jewellery being insured is because the claim that the deceased or his wife owned jewellery of a value

up to £25,000 was an invention of the defendant designed yet again to cause maximum embarrassment to the other members of his family.

(vi) The Defendant's Miscellaneous Issues

[58] The defendant claims that the family have taken his personal possessions which were at Causeway Street and which included:

(a) A leather suite comprising a two and three seater sofas: £950.

(b) Two inlaid drawers chests: £500.

(c) Vintage fly fishing reels and fishing gaff: £350.

(d) Household ornaments: £150.

(e) Items of garden equipment: £150.

(f) Small drop leaf table: £95.

(g) Bust of Jesus: £85.

(h) Photographs of late father: priceless.

[59] These claims were beset by inconsistency and contradictions and also by my assessment of the defendant as being an unreliable witness who gave testimony which I did not believe.

[60] The defendant produced no evidence of ownership of any of these items. There was not a single invoice. The valuations appear to have been plucked from thin air, being unsupported by any estimates or quotations. The defendant made no attempt to give sworn testimony as to when he purchased them and for what price. I note, for example, that when he swore his affidavit on 18 December 2012 he was not alleging, for example, that the cream leather suite belonged to him: see Exhibit DR2. Significantly, the claim that his belongings in Causeway Street had been taken looks to be made for the first time on 31 December 2013 but the order that the plaintiff should act as personal representative was made in early January 2013 and confirmed on appeal on 15 April 2013. I cannot understand why the defendant did not demand the immediate return of his possessions shortly after the date of appointment, if his claims are true. I observed the defendant answer questions about these belongings which he alleged the family had taken from Causeway Street. His answers and explanations were unconvincing. I simply did not believe him when he claimed that these items of furniture and personal belongings were taken by the plaintiff and/or other members of his family.

[61] The defendant also claims for the loss of four wings for a Morris Minor which he had stored in the garage at Causeway Street, for his maintenance of the gardens at Causeway Street and for funeral and other associated expenses.

[62] There was no evidence adduced by the defendant that he had purchased four wings for a Morris Minor nor was there any evidence of what they were worth. No invoices or estimates or quotations have been produced to the court. I am not satisfied on the evidence that the defendant either stored the wings in the garage or if he did, that they had a value of £1,000.

[63] It is not disputed that the defendant cut the grass at Causeway Street and maintained the lawns during his period as executor. I have not been provided with any estimate as to how long this work took or what a reasonable payment for such work should be. There cannot be any sense in sending such a matter to the Master for an account and inquiry especially when it is the defendant's failure to lead such evidence before this court that makes such an exercise necessary.

[64] I am satisfied that the defendant was entitled to be reimbursed (and has been reimbursed) in the sum of £2,840.25 comprising funeral and other associated expenses which he paid in respect of the funeral of the deceased.

CONCLUSION

[65] Accordingly, I conclude that:

(a) The defendant is in breach of his legal and statutory duty as an executor and has been guilty of devastivit in carrying out his role as executor of the estate of the deceased. He obtained £76,000 in cash belonging to the deceased which the deceased had intended should be split equally amongst his children (or their heirs). This sum will carry interest.

(b) The defendant is in breach of a court order and has failed to pay £3,633.92 being what he claims to be his share of the money lodged in the deceased's bank at the date of his death. The defendant was ordered to pay this to the plaintiff's solicitors by order of 7 March 2017 and has failed to do so. The defendant has discharged the funeral and other expenses of the deceased in his role as executor which he has vouched in the sum of £2459 and does not have to account for this sum. The total sum due from the defendant is therefore £4015.17. Again this sum will carry interest.

(c) The deceased failed to hand over the title deeds to Causeway Street. He stored "vintage" cars in the garage without the permission of the plaintiff after he became personal representative and he failed to keep the premises at Causeway Street in proper repair. Against that the defendant maintained the garden at Causeway Street during his period as executor and is entitled to be compensated for that. Taking what must necessarily be a broad brush

approach on evidence that is less than compelling on each side about the various costs, I conclude that any claim by the plaintiff in respect of the title deeds, the storage of the vintage cars and the damage to Causeway Street is set off by the counter claim of the defendant in respect of his maintenance of the garden.

(d) I am unable to make any assessment of the value of the deceased's military medals which have been lost or stolen during the defendant's executorship because of lack of evidence.

(e) The defendant has failed to prove to the court that the family in general and Ann Moffatt in particular had taken jewellery with a value of up to £25,000 belonging to the deceased at the date of his death

(f) The sums due by the defendant including the previous order for costs made by Deeny J and any costs awarded against the defendant in these proceedings will be off set against the defendant's share in the estate of the deceased.

[66] I will hear the parties on the issues of costs when the defendant returns from Florida and everyone has had time to digest this judgment and on the appropriate rate and period for interest on the sums which I have found to be due.

[67] Finally I propose to refer this judgment and the court papers to the PSNI for investigation given my findings