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Judgment: approved by the Court for handing down | *Delivered:* **04/03/09**
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE QUEEN'S BENCH DIVISION OF THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

BETWEEN:

CHRISTINE MEYLER AS EXECUTOR OF THE ESTATE OF JOSEPH PATRICK FERRIS (deceased)

Plaintiff/Respondent.

And

JOSEPH FERRIS

Defendant/Appellant.

Before Kerr LCJ, Higgins LJ and Coghlin LJ

KERR LCJ

Introduction

[1] This is an appeal by way of case stated from a judgment given by Hart J in which he dismissed an appeal by Joseph Ferris from a decision of His Honour Judge McFarland. In a written judgment delivered on 30 March 2007, the County Court judge had made a declaration that the plaintiff as personal representative of Joseph Patrick Ferris was entitled to seven ninths and that the defendant was entitled to two ninths of any interest that the late Charles Ferris (senior) had in the land comprised in Folio 2974 County Tyrone.

The history of the proceedings

[2] In May 1986 Bridget Ferris and Joseph P Ferris made an application to the Land Registry to be registered as joint owners of their family's ancestral home. The application later proceeded in Bridget's name alone. Charles Ferris, brother of Bridget and Joseph P and the father of the defendant/appellant, objected to the application and the matter was referred to the County Court. On 30 May 1989 His Honour Judge Babington QC heard the application at Omagh County Court. Bridget Ferris applied to the court under section 53 of the Land Registration (Northern Ireland) Act 1970, to be registered as full owner of the subject lands comprised in folio 2974 by way of adverse possession. Charles Ferris was named as objector. The application was dismissed. Bridget Ferris appealed against the Order but the appeal was withdrawn on 27 June 1990.

[3] On 7 June 2005, the plaintiff, Christine Meyler, solicitor, as personal representative of the estate of Joseph P Ferris (deceased), issued partition proceedings against the defendant by way of Equity Civil Bill. The plaintiff sought an order for sale of the property. The defendant resisted the claim and asserted that, as successor in title to his late father, Charles Ferris, he was entitled to a half share in the subject land. At Dungannon County Court the judge made the declaration that I have referred to in the opening paragraph of this judgment. The defendant's counterclaim was dismissed.

[4] The defendant appealed to the High Court from the decision of Judge McFarland. The appeal was heard by Hart J who, in a written judgment delivered on 8 April 2008, dismissed it and affirmed the orders made by Judge McFarland. The defendant applied to the High Court to state a case for the opinion of the Court of Appeal. Hart J acceded to that application and on 17 September 2008 he stated a case posing a number of questions for the opinion of this court. The appeal was heard on 2 March 2009. Throughout the proceedings, Mr Ferris has represented himself. The plaintiff has been represented by Mr Dermot Fee QC and Mr McHugh, of counsel.

Background facts

[5] The first registered owner of the subject lands was Anne Ferris. She was registered as owner on 16 March 1901. Anne Ferris died intestate, a widow, in 1925. She was survived by eight children, one of whom was Charles Ferris senior, the grandfather of the appellant. Charles Ferris senior occupied the land from his mother's death in 1925 until he died intestate on 21 November 1945. It was asserted (or accepted) by all parties at the County Court hearing before Judge McFarland that Charles Ferris senior had acquired title to the lands either under the rules of adverse possession or proprietary estoppel. Judge McFarland observed that all the siblings of Charles senior had died with issue and that they may therefore have had an independent claim to an

interest in the land. For that reason he did not make a ruling in relation to the full ownership of the land. At the appeal hearing, Hart J noted that "so far as the parties to the present proceedings are concerned, it is common case that Charles Ferris senior remained in sole occupation of the lands after his mother's death until his death in 1945".

[6] Charles Ferris senior was survived by his wife Bridget and their five children, Charles (father of the appellant), Joseph P, Mary, Ellen and Bridget. Charles Ferris senior's widow lived on the lands until she died intestate on 6 April 1962. Their daughters, Mary Ferris and Ellen Ferris, died intestate in 1975 and 1982 respectively. Neither had any children. Bridget (junior) and Joseph P Ferris claimed that, after their mother's death in 1962, they occupied the lands and on 12 December 1985, letters of administration were granted to them in respect of their father's estate.

[7] In May 1986 Bridget and Joseph P made a joint application to the Land Registry to be registered as owners of the lands. Later Joseph P allowed the application to proceed in Bridget's sole name. Their surviving sibling, Charles Ferris, (the appellant's father) objected to the application and, as I have set out at paragraph [2] above, the matter was referred to Omagh County Court where the case, based on Bridget's assertion that the lands had passed to her by adverse possession, was dismissed. Legal representatives present during the hearing in 1989 gave evidence at the later hearing in 2007 that the case had been dismissed because Judge Babington was not satisfied that Bridget had been in sole possession of the lands for the necessary 12 years. The lands had also been occupied during this time by her sisters Ellen and Mary.

[8] After the case was dismissed, negotiations took place between Bridget's solicitor, Christine Meyler and Charles Ferris' solicitor, James Montague. On foot of the discussions a proposed agreement was drawn up by Ms Meyler in the following terms:

> "It is hereby agreed between the parties that the lands in Folio No 2974, County Tyrone, be registered in the names of both Bridget Ferris and Charles Ferris in the following shares as tenants in common:
>
> (a) Bridget Ferris as the owner of 7/9 of the lands;
>
> (b) Charles Ferris as the owner of 2/9 of the lands;

(c) Joseph Ferris withdraws any claim to be registered as owner of any portion of the said lands."

[9] The agreement was dated 20 June 1989. Ms Meyler gave evidence both before Judge McFarland and Hart J that it had been signed by Bridget Ferris and Joseph P in her presence. Mr Montague gave evidence that his client, Charles Ferris, had signed it in his presence on 22 June 1989. The two solicitors agreed that the 7/9 and 2/9 split was based on the 1/3 ownership of Bridget and the equal inheritance from their deceased sisters Ellen and Mary. Bridget, Joseph P and Charles were entitled to 1/3 each from the estates of Ellen and Mary. This enhanced Bridget's share to 5/9. Joseph P gave his share to Bridget which increased her share to 7/9. The terms were negotiated by the solicitors as a settlement of the issues raised by the County Court case and the appeal.

[10] Mr Montague testified that on 21 June 1989 he had written to Charles Ferris and asked him to attend the office to execute a Form of Consent in relation to the registration of the lands which were the subject of the dispute. The following day, Mr Montague sent a letter to Ms Meyler enclosing the agreement which had been signed by Charles Ferris. The letter stated that the agreement was forwarded on the undertaking that Bridget's Notice of Appeal would be withdrawn.

[11] On 26th May 1994 letters of administration in the estate of Anne Ferris were granted to Bridget and Joseph P Ferris who had applied to be appointed as personal representatives. By an Assent dated 31 May 1994 Bridget Ferris and Joseph P Ferris, as personal representatives of Anne Ferris, assented to the vesting in Bridget Ferris of a 7/9 share and Charles Ferris of a 2/9 share of the land in Folio 2974. On 15 December 1994 Bridget Ferris transferred by way of gift, her 7/9 share to Joseph P. Ferris. On 16 September 1997 Charles Ferris transferred his 2/9 interest in the land to his son Joseph Ferris, the appellant. On 15 May 2000 Joseph P died and by his will, appointed Christine Meyler as his executor. He bequeathed his 7/9 share in the lands to his children in equal shares.

The hearing before Judge McFarland

[12] The first – and, as he found, principal – issue before Judge McFarland related to the agreement of 20 June 1989. The dispute about the agreement that emerged in the County Court hearing had two aspects. The first of these concerned the circumstances in which it was made. The second aspect related to the effect of the agreement. The judge introduced his consideration of the first aspect in paragraph 8 of his judgment: -

> "[8] It is clear that these terms [of the agreement] were negotiated by the solicitors as a settlement of the issues raised by the County Court case [before Judge Babington], and the subsequent appeal. Correspondence from Mr. Montague clearly refers to the agreement in that context. The document was prepared by Ms. Meyler and sent to Mr. Montague. On the 21st June 1989, Mr. Montague wrote to Charles Ferris in the following terms:
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> > 'Could you possible (sic) call with us on Thursday to execute a Form of Consent in relation to the registration of the lands the subject of the dispute? It is important that you try to see us on Thursday as the Judge will be sitting on Friday but will then be absent for a number of months until the start of the new session in September'
>
> Although the document bears the date the 20 June 1989, it is clear that this must have been the date when it was typed rather than executed, as the 20th was a Tuesday. No issue is taken about the date, but there is a substantial dispute as to what happened in Mr. Montague's office on the Thursday."

[13] Before Judge McFarland, as indeed before Hart J and this court, the appellant contested vigorously the suggestion that his father had signed the agreement on 22 June 1989. This is how Judge McFarland described the evidence given on this subject: -

> "[9] As far as Ms. Meyler is concerned, she negotiated the terms, engrossed the document, and sent it on for signature. She received it back without comment, and [had] no reason to believe that there was anything untoward about the settlement. Mr. Montague was handicapped by the fact that he had sent his file to the Charles Ferris's new solicitors, Patrick Fahy & Co., and had to rely on his memory and sight of documents produced at the hearing. (Not a lot turned in this case on the absence of the file, although it has to be acknowledged that Mr. Montague's file passed from his possession into the possession and control of Charles Ferris and his then new

solicitors. No satisfactory explanation was given to the court about its whereabouts, although Mr. Joseph Ferris did tell the court that Patrick Fahy & Co had told him that they did not have the file.)

[10] Mr. Joseph Ferris said that he attended the offices of Mr. Montague with his father. He said that his father had not been aware of any negotiations, and as soon as he was advised of the proposed settlement he immediately rejected it. Mr. Montague then asked him to sign the document as an acknowledgment that he had been told of the offer and had rejected it. He remembered that his father did sign some document and he believes he may have, or Mr. Montague may have, put a line through the document to signify rejection. The original document bears no such line or similar mark. Mr. Montague remembered the meeting. He remembered Charles Ferris signing the document, and at the same time expressing satisfaction at the resolution of the matter. He described Charles Ferris's satisfaction as a clear and abiding memory that he had of that meeting. He rejected the suggestion that Charles Ferris had refused the offer, and that he had procured the signature to the document as some form of acknowledgement of being advised of the offer and its rejection. He also confirmed under cross-examination that he would have explained the nature and implications of the document to Charles Ferris before he signed it. Two of Charles Ferris' children gave evidence about their understanding as what had transpired at that time. Brian Ferris said that his memory was that his father had been unhappy about the dispute at the time. He had heard his father say that "there would be another day". Another son, Charles Ferris (Junior) , said that his father told him that he had "never signed", although he did remember him saying, at or about the time of the court hearing that he had made a comment along the lines – "I thought I got my share" , this being made in the context of Bridget and Joseph P's share."

[14] Judge McFarland painstakingly analysed the relevant evidence in relation to the signing of the agreement and the subsequent events which touched on the circumstances in which it was signed and the motivation of those who wished to either assert or challenge its existence or validity. In a series of propositions set out in paragraph [15] of his judgment, he has explained why he came to the unequivocal conclusion that Charles Ferris signed the agreement having full knowledge of its contents and its implications.

[15] On the effect of the agreement, Judge McFarland was equally emphatic. He held that it was binding on Charles Ferris and his successors and assigns. He therefore made a declaration that the plaintiff as personal representative of Joseph Patrick Ferris was entitled to seven ninths and the defendant to two ninths of any interest the late Charles Ferris (senior) had in the land comprised in Folio 2974 County Tyrone.

[16] A secondary issue on the hearing before Judge McFarland related to the oath for administrator which had been sworn by Bridget Ferris and Joseph P. Ferris on 18 May 1994 in order to extract Letters of Administration in the estate of Anne Ferris. There was a factual error in the oath. It recorded that the children of Anne Ferris, save for Charles, died without issue. Anne Ferris in fact was survived by several grandchildren at the time Bridget and Joseph P swore the oath. The appellant argued that the oath was 'fraudulent and pejorative'. The judge decided that this claim had no direct relevance to the proceedings before him but, in any event, he concluded that the misstatement in the oath was "certainly not fraudulent".

The hearing before Hart J

[17] Much of the ground that had already been extensively traversed before Judge McFarland was lengthily revisited in evidence before Hart J. He came to the same conclusions on all issues as had the judge at first instance and he dismissed the appeal. Again, a meticulous examination of the material evidence was undertaken and equally firm conclusions to those arrived at by Judge McFarland were reached. At the request of the appellant, however, Hart J agreed to state a case for the opinion of this court on the following questions: -

> 1. Was I correct in finding that the agreement of June 1989 was binding upon Charles Ferris and therefore that he was only entitled to a 2/9 share in the lands?
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> 2. (i) Were the errors in the oath sworn in support of the application for a Grant of Letters of Administration in the estate of Anne Ferris capable of being regarded as fraudulent?

(ii) If so, what if any effect would such a finding have upon the order I made dismissing the appeal?

(iii) Even if the errors were not fraudulent, were they capable of affecting the validity of the subsequent assent?

3. Was Charles Ferris as the eldest son of Charles Ferris Senior, entitled by operation of law to the lands upon the death intestate of his father on 1 November 1945?

Discussion

[18] The central theme of these proceedings has been the validity and effect of the agreement of 20 June 1989. Two experienced judges have comprehensively considered all relevant evidence relating to the circumstances in which that agreement came into existence. They have both concluded that the evidence in support of an agreement having been made in the terms that the solicitors described in their evidence was overwhelming. We have reached the same unmistakable conclusion. It is wholly unnecessary to rehearse the powerful analysis undertaken by each judge to support the conclusion that both reached. The scrutiny of the evidence in paragraph [15] of Judge McFarland's judgment and paragraph [17] of Hart J's judgment is a model of thoroughness. No conclusion other than that which they reached was possible.

[19] The effect of the agreement is equally unmistakable. It was as found by both judges and as is reflected in the declaration that Judge McFarland made. The suggestion that there had been fraud in the preparation of the oath of administrator was entirely incidental to the legal position of the parties based on the effect of the agreement but, in the event, this was a preposterous suggestion with no obvious incentive for anyone who might be accused of having perpetrated the avowed fraud.

[20] It is highly doubtful whether the first question posed in the case stated gives rise to an issue of law since its answer depends on an analysis of the evidence rather than the resolution of any legal principle. There can be but one answer, however, and that is that Hart J was unquestionably correct in reaching the conclusion that he did. We therefore answer the first question 'Yes'. We doubt whether the second question has any legal significance whatever in this case but, again, we are so utterly convinced that the circumstances in which the erroneous declaration was made are so far removed from any question of fraud, that we will content ourselves by

answering the question 2 (i) 'No', question 2 (ii) 'Does not arise' and question 2 (iii) 'No'. We consider that the third question is not relevant to the respective legal positions of the parties as they require to be considered in the context of this appeal and we decline to answer that question.

Conclusions

[21] None of the arguments advanced by the appellant has succeeded. With regret, we feel bound to say that all were doomed to inevitable failure. This appeal should not have been brought and it is now dismissed.