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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

PROBATE AND MATRIMONIAL OFFICE

IN THE ESTATE OF NORMAN EDWARD THOMPSON DECEASED

2002 No.1

BETWEEN:

DAVID ROBERT THOMPSON AND PETER JOHN THOMPSON

Plaintiffs;

and

JEANNIE THOMPSON AND ANNIE E WATTON

Defendants.

GIRVAN J

Introduction

[1] The testator Norman Thompson ("the testator") was born on 6 March 1945 and died on 13 March 2001. During his lifetime he made two wills, the first on 10 June 1982 ("the 1982 will") and the second on 14 April 1999, being the will challenged in the present proceedings. The plaintiffs as executors of that will seek to propound it. The defendants, being respectively the mother and sister of the deceased, have challenged the will on a number of grounds that is to say lack of proper execution, lack of testamentary capacity on the part of the testator, want of knowledge and approval by the testator and on the ground that Harold Thompson, the father of the three Thompson boys who received shares in the testator's land, induced the testator to make the will by exercising undue influence on the deceased.

The wills

[2] Under the 1982 will the testator left all his property to his sister Annie Elizabeth Watton, the second defendant, and appointed her to be the sole executrix of the will. In this will he stated that he was not making any provision for his wife Mary Thompson for the reasons set out in the memorandum with the will. In the memorandum the testator stated that his wife had refused to reside with him and that he had endeavoured through his minister and through his solicitors to have his wife come and live a normal married life with him but she had refused to do so.

[3] Under the 1999 will the testator revoked all previous wills and he appointed David Robert Thompson and Peter John Thompson the plaintiffs to be the executors and trustees of the will. He left and bequeathed his home farm, including his dwelling house and bungalow yard and out housing to his executor David Robert Thompson. He left his farm at Ballinlea Lower, 88 Straid Road, Bushmills together with the house, yard and out-housing to his executor Peter John Thompson. He left his farmland at Gortnacapple to his executors and trustees to hold in trust for Graham Alexander Thompson who is under the age of majority. The testator bequeathed £500 to his niece Hazel and £500 to his nephew Mark and £500 to his niece Sandra Parkinson. The residue of his estate his left to his sister the second defendant.

The lawyers' evidence

[4] The 1999 will was drafted by Mr Frank McCallum a solicitor in the firm of Macauley, O'Neill and Martin. His evidence established to my satisfaction that the testator telephoned Mr McCallum on 26 March 1999 stating that he wished to make a will leaving his farm to people called Thompson who were namesakes but not relatives of the deceased. He wished to make pecuniary gifts to nieces and a nephew. He mentioned that he held £150,000 - £170,000 in a bank and wanted his sister to the get the residue of his estate. He indicated that he wanted the land to remain in the name of Thompson. Mr McCallum indicated that he would need the precise names and addresses of the beneficiaries. Mr MCcallum received notes from Mr Thompson set out at pages 2, 3 and 4 of Book B together with a map of the lands. Mr McCallum went over the terms of the proposed will with the testator on the phone to make sure that he understood what he was providing. The testator named the proposed executors, made clear that he wanted to deal with the land first and then everything else was to go to his sister after payment of legacies. Mr McCallum prepared the will and sent a letter to the testator to make an appointment to call. He called on 14 April 1999. At that time he attended unaccompanied. The will was read over to him and Mr McCallum satisfied himself that the testator understood what the will provided and that he was in agreement with the terms and provisions detailed. The testator duly executed the will in the presence of Mr McCallum and his secretary.

[5] Mr McCallum's evidence was challenged on a number of points. (Inter alia) he was criticised for failing to keep an attendance note in relation to the execution of the will, failing to check about the existence and contents of the earlier will, failing to identify the value of the land which comprised some 100 acres or so and failing to ascertain the deceased's medical history of admission to a mental hospital on a number of occasions in the 1980s. However, Mr McCallum firmly maintained that in is view the testator fully understood what he was doing and that he was satisfied of the testator's capacity. He did not know that the testator had prepared his written document on the basis of another document written by Harold Thompson setting out the names of his sons and identifying the number of acreage to be allocated to the sons. However, it is important to remember that in this probate action the court is not concerned will allegations of breaches of professional duties of care as such but rather must focus on the issues of capacity, knowledge and approval and undue influence.

[6] While Mr McCallum's evidence is not conclusive on the issues raised and does not of itself exclude the possibility of extrinsic undue influence inducing the making of the contract it is important evidence on the central issues, bearing in mind that Mr McCallum was a senior and experienced solicitor. While there are aspects of his handling of the drafting of the will which may be open to criticism (for example, in relation to the lack of advice in relation to the implications of inheritance tax) those criticisms do not really detract from the weight of his evidence as to the testator's instructions and the appearance of understanding on the part of the testator of the terms of the will as drafted by Mr McCallum in accordance with the instructions. It is clear beyond misadventure that the will was duly executed as a testamentary disposition so as to satisfy the statutory requirements. (See para 32 infra).

[7] What is also clear is that during the testator's attendance to execute the will Mr McCallum saw no evidence of drunkenness and no evidence that he was under the influence of medication calling into question his capacity to understand what was happening. Mr Joseph McLaughlin (to whose evidence reference will be later made) suggested that on the morning of 14 April 1999 the testator was suffering from sleep deprivation and had in his presence ingested large quantities of tables affecting his intellectual abilities. Mr McLaughlin's evidence was so replete with distortions, exaggerations and downright falsehoods that the court can give little credence to much of his evidence and rejects the evidence he adduced in relation to the condition of the testator on the morning of 14 April. It was not even suggested to Mr McCallum that the testator was visibly under the influence of medication and showed the signs up upset and sleep deprivation. I am entirely satisfied that when the testator attended the office he appeared to be and was in command of his faculties. Mr McCallum detected no signs of the influence of drink or drugs during the telephone conversations he had with the deceased. It is also important to bear in mind that the genesis of the will occurred over a period of at least a fortnight from the initial instructions to the date of execution, at least so far as the solicitor was concerned and was probably over a large period. The will was thus not the product

of a sudden and unconsidered decision but rather shows a considerable degree of deliberation on the part of the testator. One must also bear in mind that Mr McCallum had previous dealings with the testator as had Mr McPhillimy another member of the firm of which Mr McCallum was then a partner. Mr McCallum had been out at the testator's farm on three or four occasions and did not experience anything to suggest that the testator lacked capacity to understand his affairs and likewise. Mr McPhillimy considered that he was competent to make decisions about his affairs.

[8] Mr McCallum Junior the son of Mr Frank McCallum who was also a solicitor in the relevant firm visited the testator at his house in 1995 when arranging for a Land Registry document to be signed. At that stage the testator's mother was also living at the farmhouse. Mr McCallum was entirely satisfied as to Mr Thompson's competence to execute the document at that stage. Following the death of the testator Mr McCallum Junior had day-to-day control of the file and visited the farmhouse and lands in connection with a valuation being carried out for probate purposes. Mrs Watton who was present was clearly emotional. Mr McCallum described the interior of the house as having a terrible smell with the kitchen being in a mess. There were a large number of pre-arranged bottles on the table and there was dog faeces on the floor in the pantry. The house looked as if it had been ransacked. In the bathroom a bible was found sitting out with religious tracks and Mr McCallum described the bible as being open at a text of a "hell fire and damnation" nature I accept his evidence on that point. Mr McCallum formed the impression that the state of the house had been pre-arranged although he accepted the house looked as though it had been dirty for a long time and the general state was poor. Mr McCallum Junior stated that if he had been drawing up the will leaving property to persons who were not relatives and knowing there was an earlier will in favour of the sister he would have asked questions. He said that inheritance tax would be payable on the house at Straid Road and on the bungalow at 66 Dunluce Road and this tax would be payable out of the residue reducing the amount available to the sister. It appears that the sister would be receiving considerably less than £200,000.00 from the estate.

[9] On the issue of capacity Dr Wee, the testator's general practitioner, considered that the testator was able to make a will. The doctor did accept that the testator had a practice of taking excessive quantities of medication prescribed for his anxiety, depression and sleeping problems. The doctor personally never saw any sign of a drink problem. He accepted that if the testator drank with the drugs in his system or if he drank when he had run out of the drugs, he could be behave bizarrely and irrationally. The testator was admitted to Hollywell Hospital on a number of occasions between 1980 and 1988 for depression and an underlying personality disorder. He remained throughout his life depressive and chronically obsessed. If deprived of his drugs he would become very agitated, shaky and anxious. Dr Wee could not comment on whether he was vulnerable to suggestion if he had too many drugs in his system. If he had taken excessive drugs he would manifest symptoms obvious to a person dealing with him. Dr Wee did note that the

testator frequently complained that the Wattons did not like him or want him at their home or want them to see his mother. He complained and was disappointed that his nephew and niece did not come to see him. The testator's perception of the way the Wattons felt, whether it was justified or fair, is a fact which helps to explain or form a background to the testator's motivation. The medical evidence while it points to an eccentric individual with underlying personality problems of obsessiveness and depression and pointing to a habit of over-use of prescribed drugs does not point to a lack of testamentary capacity if at the time the will was executed the testator was not under the influence of excessive medication and for alcohol. As noted Dr Wee considered he was competent to make a will, the defendants did not adduce medical evidence calling into question the testator's capacity.

The Evidence of Third Parties

[10] The plaintiffs called a number of witnesses who painted the picture of an individual very much in command of his own affairs who was capable of shrewd and sensible decisions. Mr Lee, an estate agent, who had dealings with him in relation to the purchase of part of his land on behalf of a builder in 1995 stated that in the negotiations the testator acted shrewdly and achieved a good purchase price for the land. He knew exactly what he was doing and was aware about the possible impact of capital gains tax. He wanted to purchase land to "roll over" his capital gain. Mr Lee described the testator as "hard as nails" who knew exactly what he was doing. He thought the deal over overnight and checked that Mr Lee was acting for whom he said he was acting. Another witness Mr Linton, an auctioneer, had dealings with him in relation to land lettings. He formed the view that the testator was "no softie" and fully aware of land values. He dealt with the Straid Farm purchase and found him to be very shrewd and capable of buying and selling land. Mr McClean had land dealings with him and considered he knew exactly what he was doing. He felt that one could not persuade him to do something he did not want to do. Mr Shirley, area manager for Pearl Assurance, was introduced to him in 1998. He visited him at his farm where they chatted at length in relation to investment of funds. While Mr Shirley found him to be a lonely eccentric man who was clearly in ill-health, though not obsessive in talking about his health. He found him to be a person with a clear grasp of money matters who deliberately decided on a cautious investment policy. He did not consider that he was living in degradation though that was suggested to him. Nothing in the farmhouse struck him as untoward. Mr Huey, a Northern Bank financial advisor, met him in January 2001 and visited him. He likewise did not find him to be living in degradation. Compared to most auctioneers, he revealed a high understanding of financial matters with a good knowledge of interest rates. He deliberately (and perhaps presciently) did not want anything to do with equities. He thought the deceased was very astute with a good grasp of land values. Mr Harold Patterson rented land from the deceased whom he described as a pleasant normal neighbour. The testator was not a bit soft to deal with and dealt shrewdly with his land. This witness found his house presentable. He was not aware of him having a drink problem. Although Harold Patterson was himself a religious man and a lay preacher, he did not think

the deceased was religious. He never initiated religious conversations. He never saw the testator at open-air services though the testator did go to Dunseverick Baptist Tabernacle on one or two occasions. William McMillen a countryside management officer in the Department of Agriculture said the decease contacted the Department about the Environmental Area Sensitive Scheme in 1994. He visited the testator and found his house fairly normal and always warm. The testator had no difficulty understand the scheme. The witness gathered that there was a strained relationship with the Wattons. Mr McCallum, a Bushmills mechanic, described the testator as "cute with money" and not a soft touch. Cyril Millar a local farmer negotiated with the testator over letting of land previously let to Mark Watton. Mr Millar gained the impression that his relationship with the Wattons was frosty. Mr Millar knew the land had been let to the Wattons for some years previously and when he pointed that out the testator said brusquely, "Mark's out. If you don't want to let it, I will let it somebody else". Mr Millar described the testator as a hard man. Another witness confirming this was Sharon Clarke a tenant in the Straid Road farm bungalow. Although called by the defence Thomas James Garvin, an unqualified accountant, who did the deceased's accounts described the testator as a reasonably intelligent thrifty individual who was strong willed and keen to maximise his income.

The evidence of the Ramages

[12] The plaintiff called George and Noel Ramage who ran a hardware store in Bushmills. The evidence of George Ramage was that he had known the deceased for some 30 years. He described him as a very happy going man (though that was not a description that appeared to fit with the description of other witnesses). Mr Ramage formed the impression that the deceased knew all about land values and farming. He was always looking for a bit of discount. According to this witness, the deceased came to the store in his own car. George Ramage he was in the testator's house on a number of occasions and rejected the suggestion that he was living in degradation. One day the testator came into the shop for a dog chain and there was a conversation to the effect that the testator had been removed from the Wattons' home when he had gone to visit his mother, mentioning something about being pushed down stairs. George Ramage said this was discussed about a year and a half before his death. On another occasion the testator asked the witness for information about Harold Thompson's son saying "Isn't David the one at home?" He said he was going to leave within the farms saying that they were not relatives but the land would stay in the Thompson name. Mr Ramage gave him the name of the four sons, Peter the oldest, Alastair, David and Graham. Mr Ramage knew the Harold Thompson family well. He heard about the will some short time after the funeral. Noel Ramage gave evidence that one day he was up stairs and the deceased was up there paying a bill when he asked Mr Ramage for the name for Harold Thompson's sons. Noel Ramage did not know the names of the sons and told him to speak to George Ramage downstairs. The testator went downstairs and asked for the names and Noel Ramage heard the testator saying words to the effect his solicitor needed details for the will.

[13] The evidence of the Ramages, if correct points to the deceased thinking about leaving the lands to Harold Thompson's sons for a period of time before he actually gave instructions for the making of the will. When listening to the evidence of George Rammage I was initially sceptical as to its accuracy for why would the testator talk about his will to a mere acquaintance? George Ramage in giving evidence appeared to be uncomfortable in the witness box. However, his brother corroborated his evidence and I cannot believe that the Ramages conspired together to commit perjury for the benefit of Harold Thompson. Furthermore Mr Harding's evidence showed that the testator could on occasion be very open and indiscreet about his financial affairs. On a balance of probabilities I am satisfied that a conversation did take place in Ramage's shop along the lines indicated by George Ramage.

[14] Mr Harding, a local veterinary surgeon, gave what appeared to be a balanced description of the testator's character and personality. He described the testator as a very intelligent but an eccentric and erratic person not always very stable or calm who could one day present as aggressive and the next day would appear quite different. He could converse about politics and farming and with views about everything. One day he could have a very fixed view on some point (for example something affecting the health of livestock) and the next he could turn round and say the opposite. An example given was of an incident when a calf suffered from lead poisoning. The testator totally rejected Mr Harding's diagnosis and rejected the idea that the animal had been poisoned by a lead battery. The following day he took a diametrically opposite view and blamed Mr Harding for not diagnosing or treating the lead poisoning. Mr Harding stated that this sort of behaviour was not a "one-off". Mr Harding's firm's nickname for the testator was "nutty Norman". At times he could be violent to his animals and throw implements about. Mr Harding recognised that he had mental problems. He was fickle and changeable describing recent visits by the Wattons and then shortly after saying that they never came near him. He had frequent gripes about neighbours and seemed to feel people were ganging up on him. He was indiscreet with Mr Harding talking about his financial affairs causing Mr Harding to feel uncomfortable. He felt he might be open to being used by other people and he felt he was vulnerable. He seemed to want Mr Harding to get involved in his affairs. He could develop very fixed and strange views about people and then change his views. Mr Harding considered he could bring the testator round by manipulation and by planting suggestions in his mind to accept his viewpoint on vetinary matters. Mr Harding considered that while some people have to be handled in that way the testator was an extreme example of that sort of person. Mr Harding had many opportunities to assess the testator seeing him regularly seven or eight times a year between 1984-1993 and thereafter less frequently but about once a year. He did appear to Mr Harding to have a fixation against Brian Watton who he seemed to think was trying to do something on him. He had a very negative view of everybody who felt were going to get him at some point and were trying to get his money.

[15] Mr Henry who was a witness called by the defence was a self-employed electrician who had frequent dealings with the testator. He did work for him from time to time and also drove him about frequently. He also drafted advertisements for the testator for insertion in the Lonely Hearts Column of the local press. He did not think he treated his mother very well being short and bad tempered with her on occasions. The testator in his opinion gave the appearance of trusting nobody and showed no affection and didn't treat people with respect. He was not, in Mr Henry's view a happy person. Mr Henry recalled buying drink for him on occasions. While he never made any complaints about Annie Watton he complained about Brian Watton who he thought was trying to take the farm off him. Mr Henry gained the impression that he had a very bad relationship with Brian Watton. He said Brian Watton did not like him and he seemed "not too enamoured with Mark Watton either". His reference to Brian Watton not liking him seems to have been a frequent topic of conversation and he led Mr Henry to believe that the last thing Mr Watton wanted was for Brian Watton to get his hands on the lands. The testator never mentioned Harold Thompson though Mr Henry saw him at the house on one occasion and the testator never discussed Harold Thompson's son with him.

The evidence of Harold Thompson and his sons

[16] Harold Thompson said that he met the testator through buying potatoes from him in the 1970s and helping him do some cattle de-horning. Later he provided a service in filling in IACS agricultural forms. The testator came to Harold Thompsons house on occasions, about five times a year. Harold himself would have been in the testator's house on a couple of occasions. He said the testator telephoned him quite regularly. He denied advising the testator in relation to the sale and letting of land they was involved mapping outland that the testator had sold. Harold Thompson had formerly worked in the Ordnance Survey Office and accordingly was familiar with mapping. Harold Thompson was aware the testator was on medication but he denied ever seeing him drunk. According to Harold Thompson the testator had a unique manner. He was very capable of conducting land dealings and knew about land values and prices. He never had any cause to doubt his ability to manage his affairs. He knew all about interest rates and matters like that. Harold Thompson asserted that Norman Thompson had quite a close relationship with his children. He said he thought the testator did not have a good relationship with the Wattons and seemed to be annoyed about a letting agreement involving the Wattons. He complained about not being able to see his mother who had moved to live with Annie Watton. In 1997 the testator asked Harold Thompson for details of the names of his children. Harold Thompson did not give him those details at the time and the testator did not say why he wanted them. The testator repeated the request in 1997 and he said on the phone that he wanted to leave his land to the boys telling him not to worry because the Wattons would be getting £200,000.00 He received a later phone call from the testator who said he would be calling out to see him to get the names from him which he asked Harold Thompson to write down. Mr Thompson wrote out the full names and addresses of his sons on an A4 piece of paper. The document, as written out by Harold Thompson did not

include the dates of birth or the acreage of the lands to be given to each of the boys. The testator did call out and Harold Thompson gave him the document but the testator looked at the document and said it was not enough information. He said that the solicitor said to make it clear the amount of the land to be given to each of the boys. The testator said he wanted David to have the home place and Harold Thompson at the testator's dictation wrote down the acreage as 85 acres. In relation to Peter who was a veterinary surgeon the testator said he might need a bit of land and he dictated the reference to 30 acres of land at the Straid farm. In relation to Alastair who was a medical doctor the testator said he would not need any land and his name was crossed out at some stage but Harold Thompson denied crossing it out himself. In relation to Graham the testator said to write down 25 acres. He also said the solicitor wanted the date of birth of the boys which Harold Thompson gave to the testator and wrote down. Subsequently Norman Thompson told Harold Thompson that he had done what he said he was going to do and on another occasion he showed Harold Thompson the will which Harold Thompson read and gave back to the testator. The will was never mentioned again. After the death of the testator, Harold Thompson's sons received a solicitor's letter about the will and the witness and his sons David and Graham went to the land. According to him when they were there, Mrs Annie Watton, who was very cross, accused them of trespassing. Referring to the will she said that if she had known that this was going to happen she would have left the testator to lie in his own blood. Harold Thompson denied putting any pressure on the deceased to make the will in favour of his sons. In cross-examination Harold Thompson denied being a preacher or having preached to the testator. He said that he mentioned relation on an occasion but denied constantly mentioning the testator's soul and his need for salvation. I am satisfied that Harold Thompson did not use his religious influence to induce the testator to make the will. He asserted that the testator did chat to his sons at Harold Thompson's house. He claimed that he did not know that the testator's land was valuable. I accept that the words "less or more" on the A4 sheet were written in the testator's handwriting not Harold Thompsons. Harold Thompson said that as far as he was concerned the testator did not say he wanted to keep the land in the Thompson name. In relation to his medical history the witness said that the testator had been in Hollywell but not for how long and he didn't know he suffered from a depressive condition. While he knew he attended the doctor he did not know he was an ill man. I am satisfied that Harold Thompson did appreciate that the testator was quite an ill man. Harold Thompson said he did not ask or tell the testator to write out instructions for the solicitors. I accept that evidence. Though Harold Thompson said that it was not apparent to him that the testator would have difficulty putting a document together I consider that Harold Thompson must have appreciated that. Harold Thompson said that a month or so before he died the testator said he was worried that the Wattons might get the land. He denied advising the testator about rollover relief. It was suggested to him that Harold Thompson at the meeting on the farmyard on the Saturday after the deceased's death had suggested that the first time he had heard about the will was in Bushmills after the testator's death. His case was that he said he was saying that everyone in Bushmills was talking about it and that he was not trying to suggest he had not been

aware of the will before. He said that Robert Sharpe in Bushmills had mentioned to him on the Wednesday that he had heard about the will though this was evidence that Mr Sharpe contradicted. Mr Sharpe, called by the defence said that he had no recollection of saying such a thing). Having replied to questions posed by the court Harold Thompson said he did think it was unusual and abnormal for the testator to want to leave his lands to Harold Thompson's sons but he thought the testator was a strong-minded man. Harold Thompson did sort the moral issues out in his mind and did not think he was doing anything under hand. He had some reservations about it and did not give his sons full names on the first two occasions when the testator asked for them. On the third occasion the testator indicated that he was displeased about the way the Wattons behaved over the land letting. He stated he definitely wanted Harold Thompson's sons to get the land, the Watton's would be getting £200,000.00 anyway. At that stage Harold Thompson thought Norman Thompson really wanted to leave the land to his son and so did not think there was anything wrong in his sons getting the land. I am satisfied that Harold Thompson did have grave misgivings about the testator leaving the land to his sons though that does not of itself establish that he so misused his position to bring the will about that he was guilty of undue influence.

[17] David Thompson described how the deceased on occasions came to their house and he spoke to him whenever he was there. He recalled one long phone call when the deceased spoke to him. David Thompson described the deceased as a jokey sort of person, which was not a picture that fitted the description of the deceased by other witnesses although Peter Thompson also described him as a jokey person who would have had a laugh about things.

The Evidence of the Wattons

[18] Mrs Annie Watton said that the Testator as a child was never sociable, he was quiet and withdrawn and educationally backward having difficulty with reading and writing. He farmed with his father but then developed pains in his back and legs. He developed a depressive illness which required his admission to Tobernaveen at Hollywell Hospital. She took the defendant in and out of hospital and visited him when he was there. He married in 1980 but the marriage was not successful. He made a will leaving the land to her, the testator telling her that his wife was going to get nothing. He developed a form of agoraphobia and also developed intermittent animosity to his mother though at other times he got on well enough with her. He began to take excessive quantities of tablets and overdosed on them. Whenever she told him to go easy on that he did not like it. Their mother took a stroke in 1995 and moved to live with her since the testator could not look after her. He visited her at Annie's home but on occasions could be abusive when visiting or telephoning her. When fit to do so their mother continued to go up and down to the farmhouse and spent time there. After 1995 Annie Watton said that she continued to visit her brother regularly but noted that the condition of the house deteriorated with piles of unwashed dishes, dirty cups and ash on the kitchen floor. She tried her best to clean up after him. She noted that he became more unkempt

and drank excessively particularly when he ran out of tablets. She took him to medical appointments and tried unsuccessfully to discuss his condition with Doctor Wee. The testator frequently telephoned her and the family spending long periods of time rambling on the phone. When drunk he would preach over the phone. He talked obsessively about his health. She was not told of the making of the second will, she was aware he knew Harold Thompson but she did not know him herself. The deceased referred to Harold Thompson as filling in his farm forms, he told her that Harold Thompson said to him that Baptists were far better than the Presbyterians and when he was preaching the phone he said he was copying Harold Thompson. She felt that Harold Thompson was asserting influence over him because she said that she and her mother were advising Norman Thompson against buying the Straid Farm but the testator said that Harold Thompson told him it was up to him to do what he wanted with his money and he went ahead and bought the Straid Farm. (When Mrs Thompson gave evidence she did not say that she advised Norman against buying the farm and she had said and thought it was a matter for him to decide). Mrs Watton said that Norman would say that Brian Watton her husband "hasn't a clue what he is talking about, Harold Thompson knows better". In her evidence in chief she mentioned some matters that caused friction between the deceased and the Wattons. Brian Watton sometimes reprimanded Norman Thompson for things that went wrong on a particular occasion Brian Watton gave off to Norman at allowing his dog to be loose and threatened to report it to the Police. In relation to the land let to the Wattons from 1993 to 1996 that in 1996 there was a bit of a row about Mark Watton her son, who was the tenant of the land, taking a sum of Norman's slurry. Norman accused Mark Watton of stealing and reported the matter to the police. There was another conflict over an IACS form which the testator wanted to have signed with some inaccurate acreage mentioned and which Brian Watton did not want to sign. In relation to the meeting at the farm on the Saturday after he died she said that Harold Thompson said that he had nothing to do with the will. He was a Christian man and had a clear conscience. She denied vehemently that she had said that if she had known what Norman Thompson had done she would have left him to lie in his own blood.

[19] In cross-examination she said that the first time she heard of Harold Thompson giving advice was about the Straid Farm. The testator's bizarre religious calls included one which he purported to be a doing a burial service for his own mother. In relation to his ability to manage his affairs, she said it depended on his form on the day. Personally she did not think he was fit ever even to make his first will (though in this action he seeks to propound that will). He probably could understand the significance of making a will if it was properly explained to him. In her view if he had a lot of drugs in him or if he had drink taken he could not make a will. She accepted that he was competent to make decisions about investments. She recalled getting him leaflets from Building Societies and Banks. He did keep up to date with investment rates and land values and had no difficulty with figures. In relation to the sale of seven acres of land she accepted that he had got a good price. He was sufficiently able to look after himself that Annie Watton did not consider he needed a home help. He could order in his own food and cook for himself though

on occasions she saw him eating raw meat. She was not saying that Harold Thompson advised him to sell the land he sold, though she knew he marked a map. She did not suggest it was Harold Thompson who had put the testator off selling land that Mr Garvin had offered to buy. Mrs Watton described how Norman Thompson could become violent during mood swings damaging parts of the house and throwing implements. In relation to his drugs he overdosed and got additional tablets from the local dentist. In relation to a water dispute with a neighbour she said he became obsessive about the dispute and telephoned her a lot about it. Norman Thompson said that Harold Thompson had given him advice about it and she considered that Harold Thompson was putting pressure on Norman Thompson over the dispute (though this point was not put to Harold Thompson in cross-examination). She could not say that Harold Thompson had preached to Norman Thompson but got the impression that he had. She considered that the testator was easily led.

[20] Brian Watton in his evidence said that Norman Thompson had disposed of his stock in 1980 and received compensation. He did little farming in the 1990s. Mrs Thompson, his mother, did all the paperwork. In 1993 Mark Watton, then aged 18 took land from the testator. Although Brian Watton asserted that Mark Watton was doing the negotiations I am satisfied that Brian Watton played a major role in the negotiations. The agreement lasted three years and there was solicitors' correspondence about the arrangement. It was originally envisaged that it would be a three year term but the testator's solicitors envisaged some problems in relation to the 19th century agricultural tenancies legislation which might give rise to security of tenure and ultimately the arrangement was a conacre arrangement over a three year period. The deceased appears for some reason to have taken the view that the Wattons were trying to take advantage of him and trying to get a three-year term followed by security of tenure and this appears to have rankled with him. The solicitor's 1993 letter referring to the point was found in the deceased's papers after his death with a number of copies attached. Although no such point had ever been put to Harold Thompson, Brian Watton said that Norman Thompson had told him that Harold Thompson had made the copies, had told the testator the Wattons were trying to get his land and had advised Norman Watton to show the document to his neighbours. Brian Watton asserted that at the time there had not been friction about the matter. He said that Norman Thompson on occasions drank to excess, consuming alcohol straight from the bottle. He became irrational when he took tablets at will. He challenged the testator about this at times. Brian Watton described the deceased as having no sense of humour and never said thanks for anything done for him. He gave evidence of a number of matters which he said showed Harold Thompson had a malign and over-powering influence on Norman Thompson. Harold's name came up frequently, always in the context of showing that he was influencing the testator against the Wattons. Brian Watton said he had to remonstrate with Norman Thompson about Harold Thompson's advice. He referred to the copying of the 1993 solicitor's letter about the land letting. He said Norman telephoned him about the matter in 1996 when the Wattons had left the land. He said Harold Thompson was telling Norman to watch the Wattons as they

were after his land. Norman Thompson mentioned Harold Thompson in the context of advising him about grant forms, religion, rollover tax relief, tax, changing accountants and purchasing the Straid farm. Brian Watton formed the impression Harold Thompson was a "nosey busy body" and Brian Watton told Annie Watton about these matters although Annie Watton in her evidence painted a less much sinister picture of Harold Thompson's actions and did not refer to many of these items. He also asserted that it was Harold Thompson who told Norman Thompson to ask for £50,000.00 for the piece of land which Mr Garvin had offered to buy for £25,000.00. Both Annie Watton and Brian Watton thought that Harold Thompson had a grand strategy to get Norman Thompson to buy the Straid Farm and leave all his land to the Thompson boys, though such a case was not put to Harold Thompson. According Brian Watton Norman Thompson was frequently saying that Harold Thompson was telling him to beware of the Wattons. Harold Thompson was instigating that McElnea dispute in Brian Watton's view.

[21] Brian Watton described Norman Thompson as frequently acting irrationally making and breaking things about the place, failing to keep the house in good shape and rambling on the phone when drunk although he could have normal conversations. He threatened suicide on three or four occasions. Brian Watton claimed that his relationship with the deceased was "very good". He did not think Brian Watton needed a controller, he did not think he was able to manage his affairs without family advice. When challenged about Mr Garvin's evidence as to the competence of the deceased, Mr Watton said that he was "economical with the truth". He did not think it was fair to suggest the deceased was living in a state of degradation.

<u>The Evidence of Joseph McLaughlin</u>

[22] Mr Joseph McLaughlin was called on behalf of the defence as already noted. His evidence was so riddled with inconsistencies, distortions and exaggerations that the court could put little weight on any of his evidence. His description of the deceased on the morning of the day he made the will as exhausted looking with his eyes bulging and taking a large quantity of tablets, was wholly at odds with the evidence of Mr McCallum to whom no such points were put. Mr McLaughlin alleged that he had told to Annie Watton that many of the circumstances of the day Norman Thompson had made the will and what happened thereafter, but Annie Watton had no recollection of much of what Mr McLaughlin allegedly told her. Brian Watton on the other hand, no doubt in an attempt to bolster and give verisimilitude to Mr McLaughlin's evidence, claimed that McLaughlin had told him everything that McLaughlin had mentioned in court. I did not believe that evidence which is at odds with Annie Watton's evidence and having seen and heard Mr McLaughlin and heard him being cross-examined I regarded much of his evidence as dishonest or distorted. Mr McLaughlin claimed that he was not able to drive the deceased to Coleraine the day that the testator made the will because he was taking a number of members of the security forces out fishing on a charter boat. It subsequently transpired that the weather conditions on that day would have made

any such outing so hazardous that I cannot believe Mr McLaughlin's evidence on that point. I am satisfied he was deliberately lying on that and many other matters in his evidence.

The legal challenge to the will

[23] In the defence and counterclaim as amended the defendants challenge the will on the grounds that it was not properly executed, that the testator lacked testamentary capacity, that the testator did not know and approve the contents of the will and that the testator was acting under the undue influence of Harold Thompson. In their written submissions counsel for the defendants appear now to base their challenge on the grounds of want of knowledge and approval and undue influence. I am entirely satisfied that the will was duly executed in accordance with the statutory provisions set out in Article 5 of the wills and Administration Proceedings (Northern Ireland) Order 1994 so that issue can be easily disposed of.

The Guiding Legal Principles

[24] In relation to testamentary capacity Lord Cranworth in Boyce v Rossborough (1857) 6 HLC 2 at 45 in words redolent of Victorian attitudes to mental illness spoke of testamentary capacity thus:

> "On the first head the difficulty to be grappled with arises from the circumstances that the question is almost always one of degree. There is no difficulty with the case of a raving mad man or drivelling idiot in saying that he is a person incapable of disposing of property; but between such an extreme case and that of a man of perfectly sound and vigorous understanding there is every shade of intellect, every degree of mental capacity. There is no mistaking midnight for noon but at what precise moment twilight becomes darkness is hard to determine."

The classic test as to the validity of a will where doubt has been cast on the testator's mental capacity is set out in the judgment of Cockburn CJ in Banks v Goodfellow (1870) LR 5QB at 256.

> "It is essential that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect and with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposition of it which, if the mind had been sound would not have been made."

Thus there are three things in particular that the testator must comprehend, namely (a) the nature of the act and its effects, (b) the extent of the property of which he is disposing and (c) the claims to which he ought to give effect.

[25] As pointed out in Grattan on Succession Law in Northern Ireland an excellent and useful guide to the Northern Ireland law, there is only a very limited overlap between what constitute unsoundness of mind for the purpose of will making and what is classed as mental abnormality to bring the sufferer within the scope of the Mental Health (Northern Ireland) Order 1986. Some patients detained under that Order will still have testamentary capacity to make a will while others who have never been near a mental institution do not. Neither is it conclusive to a sound disposing mind that the testator was capable of understanding complicated business or following his professional calling. Mere eccentricity or irrationality are not in themselves enough to deprive someone of the ability to make a valid will. It is still the case, family provision claims apart, that "every testator is free to adopt his own nonsense" (per Shadwell VC in Vaughan v Mark of Headfort (1840) 10 SIM 639 at 641)". The sound mind does not mean a perfectly balanced mind. It may be the case that a testator has formed an unduly harsh assessment of his relative's character which is not the result of delusion and the testator is free to exclude that relative from his bounty. Eventually the point may be reached where the aversion is itself evidence of unsoundness of mind.

[26] The legal burden of proving that a testator was of sound mind is on the person propounding the will. The evidential burden may shift in the course of the case. If a will is rational on its face there is a presumption that the testator had testamentary capacity. This can be rebutted by evidence to the contrary. If there is evidence of prior mental illness or unsoundness of mind, there is a presumption that this state was continuing when the will was executed. The presumption is rebutted if it can be established that the will was executed and in a period of continuing lucidity or after recovery from the illness.

[27] A testator must know and approve the contents of his will, a requirement which derives from the fact that a person's will must be the act of his own intelligence and volition. To delegate completely to another the task of making a will is not permitted but it is of course possible to delegate the role of drafting to give to the testator's wishes and a person can be taken to know and approve the contents of his will executed even though he is ignorant of their legal effect. The introduction of the third party draftsman opens a possibility of insertions or omissions of which the testator was not truly aware. If a testator executes a will knowing and approving the words used the words cannot later be struck out because he has taken a view on their legal effect which turns out to be mistaken. As stated by Salter J in Re Beech [1923] p 46:

> "The contention is that if a will does not have the effect intended the testator cannot be said to have known and approved its content. I think that that contention is fallacious and based on a

> confusion between the terms and the effect of the document. A testator cannot give a conditional approval to the words which had been put in his intended will by himself or by another for him. He cannot say "I approve those words if they shall be held to bear the meaning and have the effect which I desire, but if not I do not approve them". He must find, or employ others, to find apt words to express his meaning; and if knowing the words intended to be used he approves and executes the will then he knows and approves the contents of his will and all the contents even though such approval may be due to a mistaken belief of his own or to honestly mistaken advice from others as to their meaning and legal effect: Morrell v Morrell 7PD 68".

[28] The evidence required to prove knowledge and approval where it is necessary to this varies with the circumstances of the case. One form of proof is to establish that the will was read over to or by the testator when he executed it. However reading over must be more than the mere literal physical fact of reading. It must affect the consciousness of the testator.

[29] The usual presumption that the testator had knowledge and approval of his will does not apply if any suspicion as to the execution of the will exists. Whenever a will is prepared and executed under circumstances which raise the suspicion of the court that the will ought not to be proved unless the person propounding it adduces evidence to remove the suspicion and satisfies the court that the testator knew and approved it . The most obvious suspicious circumstances arise when a person instrumental in the execution of a will takes a benefit under it. As stated in Barry v Butlin (1838) 2 Moo PC 480 at 482:

> "If a party writes or prepares a will, under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion the court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed".

Viscount Simonds in Wintle v Nye [1959] 1WLR 284 at 291 said:

> "It is not the law that in no circumstances can a solicitor or other person who has prepared the will for a testator take a benefit under it. But that fact creates a suspicion that must be removed by the person propounding the will. In all cases the court must be vigilant and jealous. The degree of suspicion will vary with the circumstances of the case. It may be slight and easily dispelled. It may, on the other hand, be so grave that it can hardly be removed".

[30] The law in this field was recently considered by the Court of Appeal in Fuller v Strum [2002] 1WLR 1097. Longmore LJ at paragraph 78 stated:

> "Some of the older cases say that the onus on a person who takes a benefit under a will which he has been instrumental in preparing or obtaining is 'the onus of showing the righteousness of the transaction'. (See for example Fulton v Andrew (LR 7HL 448, 471-472 per Lord Hatherly). This is not, to my mind, a separate onus from that of dispelling the suspicion that the testator may not have known or may not have approved the contents of the will; it is merely a more grandiloquent way of expressing exactly the same concept. The vigilance and jealousy of the court is directed to being satisfied that the testator did know and approve the contents of his will; no less but also no more".

[31] Where, as in the present case, undue influence is relied on by the defendants, the onus of proof lies upon them to prove the allegation. The doctrine of undue influence in probate suits is narrower than that developed by the Courts of Equity to protect parties in an inter vivos transaction. Undue influence cannot be presumed because a special relationship exists between the testator and the beneficiary (such as solicitor and client or religious advisor and follower). "Influence may be degrading and pernicious and yet not undue influence in the eyes of the law" (per Lord Macnaughten in Baudains v Richardson [1906] AC 169 at 184). Even a morally reprehensible use of influence falling short of undue influence does not amount to behaviour which justifies the court in setting aside the will. Sir JP Wilde in Hall v Hall (1868) LR 1P&D 481 stated the law thus:

> "Importunity or threats, such as the testator has not the courage to resist, moral command asserted and yielded to for the sake of peace and quiet, or of escaping distress of mind or social discomfort, these, if carried to a degree in which the freeplay of the testator's judgment, discretion or wishes is overborne will constitute undue influence, though no force is either used or threatened. In a word a testator may be led but not driven and his will must be the off-spring of his own volition and not the record of someone else's".

Determination of the Issues

[32] I consider on the evidence that it has been established that the testator had testamentary capacity at the time he made his will on 14 April 1999 and that he knew and approved its contents. I am also satisfied that the defendant have failed to prove that the will was vitiated by undue influence on the part of Harold Thompson.

Reasons

[33] As I already noted the testator instructed his solicitor to make the will by giving his telephone instructions and written instructions and by attending at the execution of the will which the solicitor read over to him. The solicitor was familiar with the testator having had dealings with him in the past in relation to legal matters and had the opportunity to form a fair and clear view as to his competence to understand the significance of legal transactions relating to his lands and property including making a will. I am fully satisfied that when the testator attended his solicitor on the day of execution he was in a fit state and showed no signs of being affected by alcohol or medication. The gap in time between the initial telephone instructions on the day of execution showed that this was not a rushed or sudden decision on the part of the testator but a deliberate act which he had been thinking about. The will and its structure were ex facie entirely rational in the sense that the testator deal with his main assets the land, provided for pecuniary legacies and dealt with his residue. The wording indicated that the testator had thought about what he wanted to achieve. Mr McCallum's evidence as to the legal competence of the testator was supported by the evidence by Mr McPhillimy his former partner and also by the independent witnesses called by the plaintiff who established a degree of shrewdness and acumen on the part of the testator, which was borne out by the evidence of defendant's witnesses Mr Garvin and Mr Henry.

[34] The medical evidence furnished by Dr Wee did not point to lack of testamentary capacity and indeed Dr Wee considered that he was fit to make a will. It is true that the testator was prescribed a cocktail a drugs to deal with his various physical and mental complaints and that on occasions he overindulged in such drugs combining drugs with alcohol and on occasions using alcohol to excess in place of drugs of which he had run out. It is also true that he was an in-patient in Tobernaveen at Holywell Hospital on a number of occasions in the 1980s undergoing treatment for his depressive illness and personality problems. Even if he may have lacked capacity to make a will when under the influence of excessive drugs and alcohol the medical evidence adduced did not show that he would have lacked testamentary capacity if he executed the will at a time when he was not under such influence. On the evidence as adduced by the plaintiffs and the defendants the court could not conclude that the effect of his misuse of drugs and alcohol on albeit relatively frequent occasions was to so distort and poison his mind that in the periods when he was not abusing drugs and alcohol he would have lacked testamentary capacity. To make that jump would have required medical evidence which was not before the court. The medical evidence which was before the court pointed to him having capacity at the relevant time. The medical evidence must also be considered in the light of the solicitor's evidence and in the light of the independent witnesses.

[35] The evidence called by the defendants to challenge the testator's mental capacity when analysed did not really point to lack of capacity. As noted in the written submissions the defence does not appear to persist in that case. Mrs Watton

accepted that the testator understood about land lettings, land values, investment rates and had a good head for figures. He was able to look after himself albeit that she regarded his living conditions as unsatisfactory. Her view was that he was easily led and susceptible to manipulation and needed the family's advice on transactions. The picture emerging from the totality of her evidence, points to the conclusion that the testator was an eccentric individual, that his capacity to form proper relationships with relatives and acquaintances was dysfunctional, that he was suspicious and capable of forming possibly unjustified judgments about people but that he could manage his own affairs and understood business matters. I have little doubt he abused drugs and abused alcohol on occasions and that he could behave bizarrely at times when under the influence of drugs and alcohol. I am, however, satisfied that he was fit to manage his own affairs and to make reasoned decisions about his property, including making a will.

[36] On the issue of knowledge and approval the defence argue strongly that Harold Thompson was instrumental in formulating the will, drawing up the initial document which was used for the purpose of drawing up the instructions which led to the drafting of the will in the form in which it was ultimately drafted. The defence argue that this brings into play the principles of law relating to the making of a will under suspicious circumstances.

[37] The circumstances of the making of the will and its content do excite the suspicion on the court and the court must and does look with a great care that the circumstances to see whether it can be satisfied that the testator knew and approved the contents of the will. This case is not a classic case of a will actually drafted by a beneficiary. Here the beneficiaries were the sons of Harold Thompson not himself though I consider that that circumstance would not be enough to bring the case outwith the "suspicious circumstances" rubric. Secondly and more significantly while Harold Thompson prepared the A4 document containing the names of his sons and inserting in his writing the acreage to be given to them the testator wrote out words "less or more" pointing to an understanding and approval of the document, wrote out instructions for the solicitors including details of pecuniary legacies not in the A4 document and the actual will was drafted not by Harold Thompson but by an independent solicitor who read the will over to the testator and satisfied himself that the testator knew and intended to execute that document. I am satisfied that the suspicions as to the lack of knowledge and approval because of Harold Thompson's involvement in the preparation of the A4 document have been dispelled and I hold accordingly that the testator knew and approved the contents of the will.

[38] It is contended on behalf of the defendants that the testator did not know and approve the contents of the will because if he had known that the residue was going to be considerably less than what he believed it would be inheritance tax being payable on part of the lands devised he would not have made the will in the way in which he did. Furthermore his belief that the lands would remain in the Thompson names was misconceived since the beneficiaries could dispose of the land. On the

latter point Mr McCallum said that he explained to the testator that the Thompson boys would be free to dispose of the land. Mr McCallum considered that the testator appreciated that fact. The points raised by the defence do not assist the defendant in the light of these propositions of law set out in Re Beech (see para 27 above). It is necessary to distinguish between the terms of the will and the effect of the will. Frequently testators may think that their residue is bigger or smaller than it actually turns out to be and the size of residue may be affected by unforeseen and unforeseeable circumstances. The fact is that the testator decided to leave the lands to the Thompson boys and subject to the payment of small pecuniary legacies to leave the rest of his estate to his sister. I am satisfied that he knew and approved the terms of his will as drafted by Mr McCallum based on his instructions.

[39] On the issue of undue influence again the circumstances excite suspicion. One must however bear in mind that the onus of proof lies not on the plaintiffs to dispel suspicion (as it does on the issue of knowledge and approval) but upon the defendants to make good the allegation by adequate proof. The testator's decision to leave the bulk of his property away from his sister who benefited under the first will does on the face of it represent a highly unusual provision particularly bearing in mind that the testator was leaving the property to the sons of a person with whom he merely had business dealings and a somewhat limited relationship, the sons being persons with whom he had no close relationship. It is, of course, true that testators can be eccentric in their testamentary dispositions and can be motivated by various motives including motives of spite and ill will towards those who might reasonably be expected to be the natural recipients of the estate.

[40] In looking at the question of undue influence one must bear in mind that whether the degree of coercion, moral command asserted or distress of mind caused by the alleged influencer that will lead to a finding of undue influence will depend upon the circumstances pertaining to the individual testator. What may not constitute undue influence in the case of a person of strong will or ordinary fortitude may lead to a finding of undue influence in the case of a susceptible or easily led individual.

[41] Differing pictures are painted as to the strength of will and character of the testator by the witnesses. On the one hand the Wattons paint a picture of a person who was easily led and susceptible to pressure. Mr McLaughlin, whose evidence I found so unsatisfactory for the reasons set out above alleged the deceased used words at the time indicating that he was under pressure to make the will from Harold Thompson. Mr Harding painted the picture of a person who could fluctuate between strong minded views on a topic to a diametrically different view which could be brought about by planting an idea in his mind and letting him arrive at the right view indirectly. Other independent witnesses including the lawyers, accountant and land agents, however, described a hard-nosed and strong willed individual very much in command of his own powers of decision-making who could not be forced into a decision he did not like.

[42] On my analysis of the evidence I am not satisfied that the testator said anything to suggest that he was under undue pressure from Harold Thompson or under his moral command. The testator probably did indicate to the Wattons on occasions that he thought more highly of the advice of Harold Thompson in certain matters but that must be seen in the light of his relationship with the Wattons particularly with Brian Watton whose evidence that he had a very good relationship with the testator I do not accept. I am satisfied that the relationship between Brian Watton and the deceased was considerably more fraught than either Mr or Mrs Watton was prepared to concede. Even on their evidence it was apparent there were matters of discord between them (for example over the land letting, over the slurry incident, over the purchase of the Straid Farm, over the Watton's criticism of the testator's misuse of prescription drugs and over the testator's dog and also over Mark's later failure to visit the testator). Many or most of these causes of friction may well have been attributable to the testator himself. He was probably ungrateful for everything his sister did for him and failed to appreciate the extent of the Wattons' help and support. The fact that he made a provision for her in the will leaving her a significant sum by way of residue did indicate that he felt some moral duty to her. Mr Henry's description of him as an ungrateful individual incapable of real affection and who used people without reciprocating feelings was no doubt apt. This was doubtless an aspect of his personality contributed to by his medical history and condition, though I do not consider on the evidence that his attitude to Brian Watton was of itself evidence of unsoundness of mind. It is a sad but true fact of life that frequently individuals show their worst aspect to members of their own family showing a somewhat different face to outsiders. There is little doubt from the totality of the evidence that the testator made clear to outsiders his negative attitude about Brian Watton and his desire to ensure that the land did not fall into Brian Watton's hands. I am satisfied that this was one of the motivations and probably the predominant motivation that led him to decide to leave the land away from his sister. Once he was intent on leaving the property away from Brian Watton he had to decide where it was to go. While not close because the testator was not capable of a close relationship, he had a relationship of sorts with Harold Thompson's family which provides an explanation of sorts why he decided to leave the lands to Harold Thompson's sons.

[44] The suggestion that Harold Thompson was using religious influence over the testator I reject. I accept that Harold Thompson did not preach as such though he may have spoken at a service attended by the testator. The testator was not a religious person as such. He did not attend his own church and indeed had a poor relationship with his minister. When drunk he does appear to have "preached" over the phone in a rambling way. There was no evidence to satisfy me that Harold Thompson was using religious pressure to bring about the making of the will. Harold Thompson indicated that he was himself a religious man but I accept his evidence that he did not force religious views down anyone's throat. The bible and religious tracts found in the house after the death on the day the valuers attended were, I am satisfied, placed where they were after the testator's death to create an effect, as were the empty bottles in the kitchen.

[45] For the reasons already indicated I have rejected Mr McLaughlin's evidence suggesting pressure by Harold Thompson in the making of the will and Brian Watton's evidence of Harold Thompson's malign influence was entirely unsatisfactory for the reasons given.

[46] There is no concrete evidence of *undue influence* by Harold Thompson who may or may not have directly or indirectly used *influence* direct or indirect to lead the testator to the decision to make the will which he did. As the cases show, however, influence or persuasion of their own do not constitute *undue* influence. I do not accept that Harold Thompson was entirely frank with the court in relation to his involvement in the preparation of the will. I am satisfied he knew well the true value of the land. I consider that he and his sons did know and discuss the contents of the will before he died. He may have used his influence to suggest the making of the will or at least planted the idea on his mind, but I do not consider undue influence has been proved. The picture I have formed from the totality of the evidence was that the testator was not the type of person who could be driven into making a will he did not really want or intend himself. I do not consider that the defendants have proved that the freeplay of the testator's judgment, discretion or wishes was overborne by Harold Thompson.

[47] In the result I shall grant probate in solemn form in respect of the 1999 will.