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(subject to editorial corrections)

2004 No.33633

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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IN THE MATTER OF THE ESTATE OF JAMES JOHNSTON DECEASED

IN THE MATTER OF THE ESTATE OF CHARLOTTE ELIZABETH JOHNSTON DECEASED

IN THE MATTER OF THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) (NORTHERN IRELAND) ORDER 1979

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BETWEEN:

DERMOT JOHNSTON

PLAINTIFF;

-AND-

SINCLAIR JOHNSTON
AND
PEARL ELIZABETH McKEE

AS PERSONAL REPRESENTATIVES OF
JAMES JOHNSTON DECEASED

-AND-

PEARL ELIZABETH McKEE

AS PERSONAL REPRESENTATIVE OF
CHARLOTTE ELIZABETH JOHNSTON DECEASED

DEFENDANTS

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WEIR J

The background to the Dispute

[1] The Plaintiff who was born in 1950 is the middle child of the late James and Charlotte Johnston. ("James" and "Charlotte"). The Defendants are his siblings, Sinclair and Pearl. Sinclair is some two years older than the Plaintiff while Pearl is some two years younger. The Plaintiff did not sit the qualifying examination, worked on the farm at evenings, weekends and school holidays, left secondary school at 15 without academic qualifications and has, since 1965, worked full time and continuously on the family farm which I will shortly describe. Sinclair is, by contrast, academically gifted and, having passed the qualifying examination, attended Rainey Endowed School and Queen's University where he graduated in Civil Engineering before moving to London at the age of 22, first joining the international consultancy of Ove Aarup and later another firm before setting up his own practice in England in 1983 where, having married in 1978, he has continued to live ever since. While a schoolboy he occasionally helped on the farm at weekends and during holidays but not on term time evenings as he was busy with homework. His only significant involvement with the farm after university was that he drew up the engineering drawings for a new milking parlour to which I will later refer. He said in evidence that he had no particular interest in farming. Pearl also attended Grammar School, trained in nursing and left home in 1978 upon her marriage to another farmer and has since lived on her husband's farm at Randalstown.

[2] The farm consisted of three areas of land near Magherafelt namely Dunarnon and Motalee which are adjacent to each other and Townparks (or Mullaghboy) which lies about half a mile distant, comprising in all about 67 acres. The lands were all farmed as part of one enterprise until events which occurred in about 2001 and which affected the use of the Townparks lands. When the Plaintiff began working full time on the farm his grandfather was still alive and around the place although by then very elderly and he and his father James initially directed the Plaintiff in his activities on the farm. The grandfather died in 1973, by his will leaving the three areas of land to James absolutely. On the Dunarnon lands was the farm house which was occupied by James and Charlotte until 1978 when the Plaintiff first married whereupon they moved out to a bungalow leaving the farm house to be the Plaintiff's matrimonial home. On the Motalee lands were two cottages for one of which the Plaintiff later acquired planning permission for a replacement dwelling.

[3] The Plaintiff applied himself energetically to the improvement of the farm, both as to the buildings and the stock. Land lying convenient to the farm was taken in conacre from about 1970 and the acreage of land taken increased as convenient parcels became available. Farm buildings were erected including a silo and two cubicle houses around 1969, the new milking

parlour about 1970 or 1971 and a slatted house for young stock in 1975. The land itself was improved by schemes to take out hedges, improve drainage and fencing. Much of the work was done by the Plaintiff himself with casual help because James, though actively involved in the direction of the farm, was not by then in good physical health due to an arthritic condition for which he received invalidity benefit. In tandem with the physical improvements and the taking of the additional land the herd was both progressively increased in size and enhanced in quality.

[4] The improvements to the farm were paid for out of the farm profits and very little income was taken either by the Plaintiff or by James. Profits were accumulated and then reinvested in the business. Even after the Plaintiff married the couple received little money from the farm profits and the Plaintiff was obliged to run a small pig enterprise and a few cows on his own account to finance his living expenses. In 1982 the Plaintiff renovated the farmhouse using money from the sale of some of his own stock and some grant aid. In 1978 a formal partnership was created under which James was entitled to percentages of the profits that varied from time to time but from 1995 he was entitled to forty and the Plaintiff to sixty percent. However, the Plaintiff never took out his full share and the profits continued to be substantially reinvested in the business. In the early 1980's a farm account was opened in the Alliance and Leicester so that the Plaintiff began to have more access to money but he still drew relatively small sums. In 1983 he ceased his own pig enterprise and thereafter worked solely in the family business.

[5] The milk quota scheme was introduced in 1984. Around 1990 James signed forms to transfer his interest in the herd and quota into the sole name of the Plaintiff and thereafter more milk quota was purchased with money from the farm account as it was required to cover the growing milk production arising from the steadily increasing size of the dairy herd. The milking parlour was refurbished on a couple of occasions during the 1990's with the labour again provided by the Plaintiff aided by casual labour and the farm machinery was constantly being upgraded.

[6] By the early 1980's the two cottages on the Motalee lands had become vacant and the Plaintiff believed that he could obtain planning permission to replace one of them with a modern dwelling. He approached his father who told him that if he could obtain the permission he could have the site. Outline permission was obtained and later renewed until ultimately full permission was obtained and the Plaintiff laid in the sub floor, paying for the materials himself and carrying out the work with some help.

[7] In 1983 James transferred the lands at Townparks to Charlotte together with his interest in their jointly owned bungalow. The Plaintiff says that he was told by James that this was in order to save tax on his estate and that his

mother would pass the lands to the Plaintiff after her day. Whether or not this was the idea behind the transfers the evidence at trial that they would in fact have achieved a tax saving for their estates on death was less than clear with rival contentions by two firms of accountants. In any event Charlotte did in fact make a will on 24 January 1983 leaving her newly-acquired lands to the Plaintiff and repeated that bequest in subsequent wills of 18 February 1993 and 20 September 1995.

[8] In October 1995 the Plaintiff separated from his wife Elizabeth and entered into a new relationship with Fiona. It is now clear that this event was a source of very considerable upset and annoyance to James and Charlotte and was the cause of a significant change in their attitude to the Plaintiff, the full extent of which only became apparent to the Plaintiff following their deaths when the contents of their last wills became known. Matters were made worse when, in order to finance the purchase of a house for himself and Fiona, the Plaintiff withdrew almost £30,000 from the Alliance and Leicester farm account. According to the Plaintiff, James was displeased when he discovered the purpose for which the money had been used.

[9] Up until this point all previous wills of both parents had between them left the three parcels of land comprising the farm to the Plaintiff absolutely. With the failure of the Plaintiff's marriage that quickly changed. On 9 November 1995 Charlotte made a will leaving the Townparks land to Sinclair and Pearl. By her last will of 11 December 2000 Charlotte again left the Townparks land to Sinclair and Pearl. James also altered his dispositions, although less drastically, by making his last will on 11 January 2001 in which, in place of the earlier outright gift of the Dunarnon and Motalee lands to the Plaintiff, he substituted a life interest in favour of the Plaintiff with remainder to Gareth, the Plaintiff's son by Elizabeth. It was about that time that the Plaintiff's divorce from Elizabeth was in the process of being finalised and it seems likely that James intended by this change to protect the future position of Gareth since the Plaintiff was then in his new relationship with Fiona and has since had a second family with her.

[10] In 2002 the opportunity arose to purchase land belonging to the Searson family that was adjacent to Dunarnon and which the Plaintiff and James had always felt would make a useful addition to their farm. When the Plaintiff told James that the land was for sale James was keen that it be bought. In an affidavit sworn by the Plaintiff in these proceedings on 11 June 2004 he says at paragraph 10: "He (James) agreed that the purchase was to be funded by the sale of the Motalee building site owned by him". Something was sought to made in the course of the hearing of the fact that the Plaintiff described the building site as "owned" by James when according to the Plaintiff James had long since given it to him but this was explained on the basis that the legal title had remained with James and I do not consider the point to be one of significance. In February 2003 the purchase of the Searson

land was agreed at £71,000 and the Motalee building site attracted an offer of £87,000. The Plaintiff arranged bridging finance in the name of James and himself in order to cover the period between the completion of the Searson purchase and the site sale completion..

[11] However before that second completion could occur James changed his mind, apparently following discussion with Sinclair who told the Plaintiff that the capital gains tax implications of selling the site were unacceptable and that his father should not be involved at his age in the debt of the bridging loan (although of course it would only have been temporary). It is interesting to note here the progression of James' testamentary thoughts in relation to the building site. It is first mentioned as an entity separate from the other Motalee lands in his first will following the Plaintiff's matrimonial breakdown dated 10 October 1996 which left "my lands at Motalee together with the building site" to his daughter-in-law Elizabeth, the Plaintiff's recently-estranged wife, for life with remainder to Gareth. It will be noticed that this bequest was not merely of the building site but of all the Motalee lands. In his next will of 24 September 1999 Elizabeth was no longer a beneficiary, the Motalee lands were left to the plaintiff for life remainder to Gareth and the building site was left to Gareth absolutely. However six days later, on 30 September 1999, James made a further will substituting Sinclair for Gareth as the recipient of the building site. What prompted that sudden change is not known but if Sinclair was aware in 2002, at the time of discussing with the Plaintiff what he said were the reasons for the change of heart by his father with regard to the sale of the building site, that he was and had been since September 1999 the intended recipient of it under the terms of James' wills he did not mention that fact to the Plaintiff. It seems likely that at least by that stage in their parents' declining years the three siblings were each playing their cards close to their chests.

[12] The Plaintiff though disappointed at this change of mind as to the means of funding the Searson land purchase accepted it. He did not at that time assert that he had already acquired ownership of the building site although he did pay the fees of the estate agents who had been handling its aborted sale. He instead proceeded to finance the purchase of the Searson land in the names of himself and Fiona by himself borrowing the necessary funds. When he later complained to James that the latter's change of heart in relation to the sale of the building site had left him with a resulting debt James eventually gave him £10,000 to help with the purchase and the Plaintiff says he "let it rest".

[13] In 2001 James and Charlotte were unable to continue living in their own home and were admitted to a nursing home. Charlotte's affairs were then administered by Pearl and from that point relations between the Plaintiff and his siblings began to become more overtly strained. Pearl required the Plaintiff to pay a rent for the Townparks land which he did for a period under

protest before declining to pay any more and giving up that land. There were debates about the financing of the parents' nursing home fees. Pearl knew what had been done in Charlotte's various wills made from 1995 on and in James' from 1999 but her evidence was that she did not tell the others. Exactly what Sinclair knew during this period is unclear but his evidence was that he did not know of the contents of his parents' wills until after their deaths. The Plaintiff agreed that for his part he had not told his siblings of promises he had had concerning the lands from his grandfather, father and mother. His explanation for this was that had he done so his siblings might have persuaded his father to make changes. James died on 22 April 2003 and was followed by Charlotte on 31 October in the same year.

The nature of the litigation

[14] The relief claimed in the pleadings in this matter fell under four broad headings:

1. An order that reasonable financial provision be made for the Plaintiff from the estates of James and Charlotte.

2. A declaration that the Plaintiff is entitled to be registered as the fee simple owner of the Dunarnon and Townparks lands including the approved building site.

3. A declaration that the Plaintiff is entitled to 60 per cent of the balance remaining in the Alliance and Leicester farm account.

4. An account of monies paid by the Defendants from the farm account in discharge of the nursing home fees.

During the course of the hearing Mr. Michael Lavery Q.C. who appeared with Mr Good for the Plaintiff, was able to inform the court that he was not pursuing the Family Provision application and that an account had been taken between the parties in relation to the third and fourth areas of dispute resulting in an agreed sum of £66,519 being due by the Plaintiff to the Estate. So far as the Dunarnon lands other than the building site were concerned, agreement had been reached between the Plaintiff and his son Gareth whereby they are to become tenants in common on an agreed basis. The effect of these agreements and concessions is that the two principal questions remaining for decision were whether the evidence establishes that the Plaintiff has established an entitlement to the Townparks land or to the building site by reason of the principles of proprietary estoppel? The answers to those questions necessarily involves an examination of the evidence as to the conduct and words of James, Charlotte and the Plaintiff particularly in the period between 1965 and 1995 to which I therefore now turn.

Summary of the evidence on behalf of the Plaintiff relevant to the claim grounded in proprietary estoppel

[15] The Plaintiff adopted the contents of his affidavit evidence and proceeded to give the following (summarised) account of the matters relevant to this claim. He said that he was always interested in farming and had been encouraged in that direction. While at school he had worked on the farm during evenings and holidays for which he had received no money. Upon leaving school and entering full time upon the farm's work he had been assured by both his grandfather and father that if he stayed at home and worked the farm it would go to him. The land had then passed to his father absolutely upon his grandfather's death. He readily agreed with Mr Shaw Q.C. who appeared with Mr Dunford for the first and second Defendants, that the family tradition was that the land passed from one generation to the next. At the kitchen table some two weeks after his grandfather's death James told him that the farm was now his and that if the Plaintiff continued to work on the farm then it would be his at the end of the father's days. His mother had said on that same occasion that Sinclair was going on in his education, had no interest in the farm and that if the Plaintiff stayed and worked on the farm it would come to him. The Plaintiff relied upon these assurances and he did stay and work the farm on the basis that some day the farm would be his. Similar things were said from time to time down the years. For example, when he married in 1978 and the parents left the farmhouse to make way for the new couple, in 1980 when James initially thought that he might have to then transfer the farm to the Plaintiff in order to qualify for retirement pension, in 1982 when James told him that if he could get planning permission for the building site on the Motalee lands he could have it, in 1983 when James was transferring the Townparks lands into the name of Charlotte who thereupon made a will leaving those lands to the Plaintiff, in 1990 when, prompted by Elizabeth who was understandably concerned about her position should anything happen to the Plaintiff, he broached the topic of succession and says that he was told words to the effect that the farm was his, what more did he want? and that he would get it at the end of James' days. He said that he had reported this latter conversation to Elizabeth. In all, such assurances had been expressly given on six or seven occasions and less specific references to the same general effect were made many times over the years. The last occasion when the matter was mentioned between James and he was in 2002 when the latter said, much as he had in 1990, "what more do you want, the farm's yours ". This of course was not at that time the true position as by then James had altered the Plaintiff's prospective inheritance of Dunarnon and Motalee to a life interest and Charlotte had left the Townparks land to his siblings. Assuming that words to this effect were spoken by James in 2002, it is impossible now to judge whether by that late stage in his life he still appreciated what had been done in the way of altered wills over the years since the Plaintiff's marriage breakdown to erode his intended

inheritance or whether he was at that time deliberately deceiving the Plaintiff.

[16] The Plaintiff supported his account by pointing out that among the testamentary scripts of Charlotte there is a significant attendance note taken by her solicitors prior to the making of her will of 9 November 1995 that throws light upon the question of the parents' intentions in relation to the farm prior to the Plaintiff's marriage breakdown and the change in those intentions that resulted from it. I set out so much of the attendance note as is material:

> "Mrs Johnston wants to change her Will.
>
> Read her last Will to Mrs Johnston
>
> 1. ……
> 2. ……
> 3. Mullaghboy to Sinclair and Pearl in equal shares.
>
> *James agrees with this but is sorry to have to do it." (emphasis supplied)*

The Plaintiff relied upon this note as indicating a change of mind on the part of Charlotte from her previous intention regarding the succession of the Plaintiff to the Townparks land and reluctant acquiescence by James, both changes in attitude being due to their strong adverse reaction to the marriage breakdown.

[17] There was other credible support for the Plaintiff's case from a Mr Cummings and from a Mr Brown who had both done work on the farm at various times. Mr Cummings had worked as a part – time farm labourer for about two years although since about 1994 has been a textile merchant. On one occasion while he was drilling holes on the farm there had been a minor accident to James while the latter was watching the witness work. There had followed a short conversation in which the witness remarked that the farm was a credit to them to which James had replied "some day it will all be Dermot's". He also confirmed the evidence that the Plaintiff had put in the foundations at the Motalee building site and said that he had helped him with that and with building the big cattle shed. As he put it "Dermot did most of the work" and later "I didn't work with James as he wasn't fit to work. He would follow me about the farm."

[18] Mr Brown is an agricultural contractor who had known James and the Plaintiff as he grew up. He had helped them with their silage after he left school and on one such occasion in the early eighties had told James he was

thinking of becoming an agricultural contractor as his family farm was too small to support both he and his brother. He asked for advice, "I was testing the market". James told him that he would need to talk to Dermot and made it quite clear that Dermot was getting the farm. He had later become a contractor and among his seventy or eighty customers was the Plaintiff whose work was worth between ten and fifteen thousand pounds per year to him. He said that he had no social connections with the Plaintiff nor did they see each other at church.

The Defendants' evidence relevant to the proprietary estoppel claim

[19] The evidence on behalf of Sinclair and Pearl was given by them and by Elizabeth, the Plaintiff's first wife. A striking feature of it was the extent to which in large measure it agreed with that called for the Plaintiff. I record here the further unusual feature in a case of this type that all the witnesses on both sides gave their evidence in a restrained and dignified fashion without attempt at deliberate exaggeration. I am satisfied that such variations as emerged between them were for the most part the result of genuine differences of recollection, probably due to the passage of time. Elizabeth gave evidence that the Plaintiff had never ever said to her that he had been promised the farm but "he always assured me not to worry, it wasn't a big issue, it was his hope and expectation that he would get the land." She recalled expressing concern about her own position, although she thought that was before 1990, and that again the Plaintiff had said not to worry. At the time of their marriage breakdown she and the Plaintiff were discussing a settlement and the topic of the Mullaghboy land was mentioned in the course of which the Plaintiff had said that he didn't know who would get that land and that Philip McKee (Pearl's son) could get it as he was farming. The Plaintiff had added that if he did not get that land he would fight for it, she took it in the courts. She added that it was clear to her that the Plaintiff did not then know the contents of his parents' wills. Elizabeth had remained on friendly terms with James and Charlotte following her separation from the Plaintiff and had some information about the parents' altered attitude to the farm succession. Around 2001 at the time of the impending divorce Charlotte had first told Elizabeth that Dermot would never get Mullaghboy Hill. She agreed with Mr Lavery Q.C. that she assumed that the farm would be the Plaintiff's when James died and said "I just don't know whether Dermot had been promised the land" as the Plaintiff always talked to his father on his own.

[20] In his evidence Sinclair confirmed his educational, professional and family history as set out above together with his lack of interest in and involvement with the farm. Following his marriage he had visited home every two years when he took a holiday house at Portstewart. He kept in weekly telephone contact with his parents who were interested in his children and he corresponded with his mother. With Pearl he had less contact and less

again with the Plaintiff with whom "our relationship was distant, perhaps cool." He said that he knew nothing about where the farm would be going except that in November 1995 after the undeclared withdrawal of the money by the Plaintiff from the Alliance and Leicester account he had been told of that by his mother and that the farm would not be going to the Plaintiff. He had then spoken to his father by telephone who had been upset and angry, regarding the withdrawal of the money for the Plaintiff's own purposes as a breach of trust as it was farm money and should not have been withdrawn without agreement. It will be recalled that it was at that time that Charlotte changed her will to leave the Townparks land to Sinclair and Pearl in place of the Plaintiff.

[21] Sinclair said that the Plaintiff had never told him of promises that he was to have the farm. Indeed he said that he only knew of these alleged promises when he heard the Plaintiff give evidence of them. He was however reminded by Mr Lavery Q.C. that in August 2003 he had received a letter from solicitors for the Plaintiff concerning his parents' then ongoing nursing home fees which contained the following passage:

> "As you know your father promised that Dermot would inherit the farmlands on his demise. Our client has no knowledge of the terms of his father's will to verify (that) his anticipation of inheritance on which he has based his occupation of the farm and working on The farmlands from the age of seventeen (sic) when he left school and more particularly since his father retired from active farming on invalidity benefit in the early seventies."

A similar letter had been sent to Pearl and to the solicitors for James and Charlotte. Plainly the Plaintiff was at that point publicly nailing his colours to the mast. However, this failure in recollection aside, Sinclair candidly said "I would say that Dermot played a vital role in building up the farm and "one might infer that Dermot might expect to get the farm". He also agreed that the Mullaghboy land was farmed as part of the overall farm until the differences that arose in 2001. Sinclair said that if he had been asked in 1994 who would get the land he would have said that the Dunarnon and Motalee lands would probably have gone to the Plaintiff. I presume his reason for excluding the Townparks land from that assessment was the fact of its earlier transfer to Charlotte but that is to ignore the signal fact that subsequent to that transfer, in 1983, 1993 and again in September 1995 Charlotte had consistently left the Townparks land to the Plaintiff by her wills and only changed that disposition in November 1995 after the Plaintiff had begun to live with Fiona in the October of that year. Indeed Sinclair, when asked whether what caused the change in the disposition of the farms was the upset that occurred in 1995, frankly replied "by and large yes".

[22] Pearl's evidence was that after 1995 she became more involved in her parents' testamentary affairs. She went with her father to the making of his fifth, sixth and seventh wills and knew the contents of her mother's wills from 1995 onwards. However she said that she did not pass on her knowledge to anyone else. She agreed that up until the breakdown of his first marriage she thought there was "a strong possibility" that the Plaintiff would get the farm. She said however that her mother had told her in the early nineties that the Townparks lands had been given to her in order to make sure she would have something in her old age adding given "I wouldn't have taken it for granted that my mother would have given her land to [the Plaintiff]". This assertion ignores the fact, previously commented upon, that Charlotte did exactly that in each of her three wills made in the years between the transfer of Townparks to her and the marriage breakdown and also that Charlotte had a house of her own in Portstewart and some investments and was therefore not unprovided for. The house in Portstewart was in fact sold in Charlotte's lifetime for £41,000 of which Charlotte gave Pearl £30,000 which she and her husband used to buy more land for their own farm. The balance was placed on joint deposit in the names of Charlotte and Pearl and withdrawn by Pearl following Charlotte's death.

The Parties' submissions on the legal principles and on the facts

[23] I have earlier observed that there was little significant difference in the evidence called on either side in relation to the salient facts and happily the same can be said about the parties' approaches to the applicable legal principles. Where, unsurprisingly, there was variance was in relation to the conclusions that ought to be drawn from a proper consideration of the facts in the light of the principles. I therefore propose to deal with the competing submissions as they apply to each of the elements of proprietary estoppel and state my conclusions on each. The helpful provision of detailed written submissions following the conclusion of the evidence will enable me to do so in shorter compass than might otherwise have been possible.

What if any "promise" was made to the Plaintiff?

[24] I am entirely satisfied that the Plaintiff was expressly and repeatedly promised by James and by Charlotte (and indeed by his Grandfather) that if he stayed and worked the farm he would inherit it after his father's day. I accept the Plaintiff's evidence in that regard and am confirmed in that conclusion by the following principal circumstances: (1) that pattern of transmission was the family tradition as the farm had passed to James in precisely this way on the death of the grandfather; (2) James and Charlotte both made their pre-October 1995 testamentary dispositions in a manner consistent with the existence of such a promise (3) Sinclair had made a successful life and career in England and had little or no interest in farming

while Pearl had married and lived on a farm elsewhere. The Plaintiff who displayed an aptitude and enthusiasm for the farm from his teenage years was the only candidate to succeed. I am satisfied that express promises were made in order to attract him to and keep him there. (4) Apart from the promises, the consistent conduct of James over the years in, for example, giving the Plaintiff a free hand to develop the place and the business, in bringing him into partnership in the business at no cost to the Plaintiff and agreeing to the increase in the Plaintiff's share all must have reasonably encouraged the Plaintiff's belief that the promises were meant. Nothing was ever said to the Plaintiff, before or after 1995, to indicate any alteration in that settled and long – standing arrangement. (5) The comment of James recorded by the Solicitors at the attendance prior to the alteration of Charlotte's will to leave Mullaghboy to Sinclair and Pearl is clear and independent evidence of James' prior mind; it is plain that until that point the intention had been to leave Mullaghboy to the Plaintiff even though it was by then registered in Charlotte's name. If that was true of Mullaghboy it must equally have been true of the home farms at Dunarnon and Motalee.(6) The comments that I am satisfied were made by James to Mr Cummings and Mr Brown to the effect that the Plaintiff would be getting the farm are further confirmation of the unambiguous promise made to the Plaintiff and repeatedly re-affirmed by word, by deed and by silence. I find that in all the circumstances there can have been no other possible expectation on the part of the Plaintiff than that James and Charlotte were irrevocably committed to the "bargain" that if the Plaintiff did what he agreed to do on the farm (and there is no suggestion that he did not) that he would succeed to the farm.

[25] According to the Plaintiff, the promise in relation to the potential building site arose differently. It might on one view be thought that there was no need for any discussion about this at all because the Plaintiff had been promised the land on which the potential site stood. However it must be remembered that that promise related to what would happen after James' day whereas the proposal for the building site was something that was to happen in his lifetime and would therefore require a transfer by assignment if it were to be disposed of. I am satisfied that the Plaintiff was told by James that if he could get planning permission for the site he would give it to him. By way of confirmation, it was only after the events of 1995 that the site emerged in James' wills as a separate entity from the Motalee farm. The initial motive for the change seems to have been a desire to provide for Elizabeth and, after her, for Gareth in the aftermath of the marriage breakdown.

Did the Plaintiff act to his "detriment" in reliance upon the promise?

[26] The nature of "detriment" was neatly explained by Robert Walker LJ in *Gillett v Holt* [2000] 2 All ER 289 at 308c:

> "The overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable detriment, so long as it is something substantial. The requirement must be approached as part of the broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances."

No doubt the Plaintiff was not hard to persuade to accept the initial proposal for his heart has always been in farming and he clearly has an aptitude for the work. But the promises relied upon do not have to be the *sole* inducement, it is sufficient if they are *an* inducement and I have no doubt that the promise to this teenage Plaintiff of succeeding in due course to a moderately large farm must have been a considerable inducement to enter upon the enterprise. Thereafter and throughout his long working life on this farm he has undoubtedly put his back into it. It is not disputed that he has transformed it and the farming enterprise from a traditional Ulster farm into a modern farm business and has done so very largely by his own labour and acumen down the years. His ability and preparedness not merely to do farm work but to personally carry out the substantial works of construction required to develop and expand this business and in the process saving for it the considerable costs involved in employing contractors has likewise not been disputed. It is plain that for the Plaintiff this was never a "nine to five" job.

[27] Counsel for the second Defendants contend that there is no proof of detriment as the Plaintiff gave no evidence as to what else he might have done. The short answer may be that that was because he was never called upon to consider what else he might have done since it was never expected by anyone that he would do anything else except work towards ultimately inheriting the farm. However he said "I am sure that I could have made a career outside the farm" and in that I am satisfied he is plainly correct. From the evidence it is clear that he would have been well able to work on his own account as, for example, an agricultural contractor (like Mr Brown), as an erector of farm buildings or as a farm or stock manager or he could have leased or purchased land and farmed himself or carried on any combination of these activities or other practical occupations. Importantly, he would not have been tied to this farm, to Magherafelt or indeed to Northern Ireland had he chosen to go elsewhere. He could have moved to England as Sinclair had done and in any event been able to choose where he wanted to work, whether for himself or others, during what hours and on what terms. He would not have been inescapably bound to this farm and its activities by the bond of the promise of its future inheritance. The Defendants pointed to the evidence that he was able for a time to conduct his own small business. However they omitted to recall that he did that in order to try to generate more money for

himself because he received very little for himself and his family from the farm profits that his work was increasingly generating because most of the money was being ploughed back into the farm and that after some time he gave up his pig business to concentrate entirely on the farm.

[28] Furthermore over the years, as the Plaintiff grew in knowledge and skill whilst James became physically unable to do much work, an increasing share, perhaps the bulk, of the profits must have been earned as a result of the Plaintiff's progressive improvements to the farm and herd. Nonetheless he continued throughout to share the profits on bases that gave James a substantial proportion for little or no involvement on the latter's part. James was really in effect a sleeping partner for many years prior to his death but his continuing disproportionately large share of the profits did not reflect that reality. It is impossible to suppose that the Plaintiff would have suffered that situation to continue down the years or have born the shortage of ready money while he was bringing up his first family had he been told at any point that an important and potentially valuable part of the farm that he had built up was to be left to his siblings despite their having lived their own successful lives well away from the farm and that the building site that he had conceived of, obtained permission for and commenced the development of so as to preserve that permission was instead to be given to Sinclair. I conclude on all the evidence that the Plaintiff has unquestionably suffered detriment both in relation to the farm and to the Motalee building site

[29] It is clear from a further passage in the judgment of Robert Walker L.J. in *Gillett* at p.308e that the issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. In the case of the actions of James and Charlotte that means the various dates beginning in November 1995 as they proceeded to erode the entitlement which they had long promised the Plaintiff. As the Lord Justice put it: "Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded – that is, again, the essential test of unconscionability." I have no hesitation in answering that question in the affirmative. While subjectively it is not difficult to understand why the icy wind of parental disapproval of the marriage breakdown, blowing perhaps more strongly from Charlotte's quarter than from James', should have altered the parents' view of the Plaintiff, objectively it ought not and could not have affected the "bargain" that they had first made with him some thirty years previously and that he for his part had honoured to the full in the intervening years. Their distaste for the Plaintiff's actions in his personal life had nothing relevant to say to the arrangements for the farm. It is interesting and rather disappointing that neither James nor Charlotte appears to have felt able to tell the Plaintiff anything about their attempted unilateral repudiation of their arrangement but rather allowed him to continue in the belief that what had been agreed still stood. It is understandable that Pearl, who by that stage knew well that a warm breeze

was now unexpectedly blowing in the direction of Sinclair and herself, should keep her knowledge of developments to herself in case the Plaintiff might take some step to once more alter its direction towards him. It was however unfair for James and Charlotte to act, and act in secret, with the object of partially disinheriting the Plaintiff. This was a flagrant and wholly unwarranted attempted breach of their long-standing agreement with him. Meanwhile he continued in ignorance of what had been happening to work the farm as he had always done whatever the state of his matrimonial affairs which were quite outside and irrelevant to the "bargain". I find that to act as James and Charlotte purported to do was in the highest degree unconscionable. Accordingly I find that the Plaintiff has convincingly established his claim to equitable relief.

Satisfying the Equity

[30] The authorities establish that the task is to look at the circumstances of the case to decide in what way the equity can be satisfied. The object is to achieve the minimum equity required to do justice to the Plaintiff. I only add to this that it must be no less than the minimum needed to achieve that result. In this case the promise was that the Plaintiff would receive the farm after the death of his parents. James had received the farm from his father in fee simple and I infer both from that and from the absolute gifts effected by all the pre-October 1995 wills that the promise by him to the Plaintiff of the farm after James' day was intended to comprehend a similar interest. I certainly see nothing to support the proposition that a life interest would satisfy the equity and the fact that James, mistakenly, believed that the absolute nature of his interest enabled him to renege on his promise to the Plaintiff (which of course had he only had a life interest with remainder to the Plaintiff he could not) confirms me in the view that the minimum equity required is a transfer to the Plaintiff of the three parcels that always comprised the farm as absolute owner of each. The compromise between the Plaintiff and Gareth in relation to the Dunarnon and Motalee lands makes it unnecessary for me to make any order in relation to them. The fact that the Townparks land, lying as it does close to the development limit of Magherafelt, may have potential value for development is in my judgment irrelevant. It is in the nature of farmland that at any point in time it may have or acquire development potential for the exploitation of individual building sites or more comprehensive development but that cannot alter the extent of the land subject to the present promise. Similarly I judge it to be irrelevant that the Townparks lands are physically separate from the others; they were at all times farmed as part of the farm until the actions of Pearl in demanding a rent on behalf of Charlotte from 2001 lead to an interruption in that settled situation. The "bargain" was not, as Counsel for the Defendants argued, that the Plaintiff would get *a* farm but rather that he would get *the* farm which undisputedly contained all three parcels including Townparks. I therefore judge, contrary to their submission, that it is necessary that the Plaintiff receive Townparks as well as Dunarnon

and Motalee absolutely if he is to receive "the farm" that was promised to him. He is also entitled to receive absolutely the Motalee building site.

Conclusion

[31] I recognise that Sinclair and Pearl will naturally be disappointed that the windfalls that appeared to be coming their way following the disaffection for the Plaintiff that unexpectedly arose on the part of their parents due to the matrimonial events of 1995 will not now after all accrue to them. However I hope that they will find it possible to understand and accept that this outcome merely reflects the reality of an arrangement that had been in place since it was first entered into between the Plaintiff and his parents some forty years ago and, of which whether expressly or implicitly, they had always been well aware and had arranged their own lives elsewhere accordingly.

[32] I shall be glad to have submissions on the appropriate form of order and on any issues as to costs.