Neutral Citation no. [2007] NICh 7 | Ref: **HIGF5842**

Judgment: approved by the Court for handing down
*(subject to editorial corrections)** | Delivered: 24/05/07

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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Between:

WILLIAM JAMES LITTLE (Junior)

Plaintiff;

-and-

ROSE ELLEN MAGUIRE AS PERSONAL REPRESENTATIVE OF WILLIAM LITTLE (Deceased)
PATRICK LITTLE

Defendants;

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HIGGINS LJ

[1] This is a case of alleged proprietary estoppel in which the plaintiff claims his father was estopped from disposing of the family farm at Corrany in County Fermanagh. Not unusually, the events with which the claim is concerned span a number of decades and it is necessary to deal with many of them in some detail. I will set out first the major events and the undisputed matters in chronological order together with my findings in relation to some of them in order to set the context of the plaintiff's claim. Then I will set out the plaintiff's evidence in support of his claim and the claim itself. I will record my findings in relation to the claim and deal with the applicable law.

[2] The plaintiff is an unemployed farmer and resides at 2 Aghadrumsee Park, Rosslea, County Fermanagh. He was born on 21 May 1949 and is now aged 57 years of age. He is the third child of William and Kathleen Little who had eight children. Kathleen Little died 12 February 1992 and William Little on 12 June 2002. The first defendant is the younger sister of the plaintiff and personal representative of her father. The second defendant is the younger brother of the plaintiff. The first defendant and Mr F J McManus, Solicitor, Lisnaskea, are the named executors of the Pretend Will of the deceased

bearing the date 18 July 1997, probate of which issued out of the High Court on 22 July 2002. The eight children born to the deceased and his wife were Mary (born 1946), Francis (born 1947), William (the plaintiff, known as Liam born 1949), Kathleen (born 1951), Patrick (the second defendant, born 1956), Rose Ellen (the first defendant, born around 1958) Michael (born 1960) and Eamon (born around 1966). The last child Eamon died in tragic circumstances in 1980 when he was almost 14 years of age.

[3] The family home was a farm situate at and known as Gorteen, Corranny, Newtownbutler, County Fermanagh. The farm comprised four parcels – a farmhouse on Folio FE 8047, 29 acres and three roods in Folio 5668, 29 acres and twenty perches in Folio 5669 (from which two and a half acres were transferred out later) and 40 acres of bog land, which was unregistered. The deceased was registered as owner of the three folios on 28 December 1949 and was the owner of the unregistered bog land. The farm was known variously as the Home Farm or Gorteen lands but I will refer to them, including the farmhouse, as Gorteen or the Gorteen lands.

[4] Life for the Little family in 1950s and 1960s was typical of the era and the location. There was no electricity and little in the way of transport facilities. William Little Senior (the deceased) kept a suckling herd and pigs. As each child grew up they attended the local primary and secondary school and left around 15 years of age. Kathleen Little was a quiet woman who was greatly affected by Eamon's death. The deceased was a private serious man of few words and soft spoken. They were caring parents who worked hard for the family. The deceased was strict about family obedience and probably disciplined his children in the manner of the times. The farm was his life, as was his family. He was a determined man and a good farm manager who sought to improve the farm when he could afford to do so. The plaintiff described him as hot tempered. I suspect this was only when he was 'sorely tried'. Typically after school and during school holidays the children were expected to help around the farm and each had chores to do. The plaintiff was described as better at giving orders to others than getting on with it and was regarded as a bit of a 'skiver' with a sense of humour and a good turn of phrase. After each left school they sought employment though some worked on the farm for periods. Mary became a nurse but later married and lives in County Louth. Frank worked about the farm after school and then went to a farm in County Down for a year and then returned home to help out when his father had a heart attack. He took up cattle haulage and but continued to help out at the farm. He later married and moved to Roslea, County Fermanagh where in 1991 he bought a farm and built up his cattle haulage business. Kathleen after working in a factory married and now lives in Newtownbutler, County Fermanagh. Patrick worked about the farm and then went to London where he married. He is now settled in England but returned home regularly. He still lives in London and is a building and maintenance contractor running his own company. Rose Ellen married at 18 and left home but lived close by

in Lisnaskea. Michael after school worked on the farm. He then went to England where he worked with Patrick for a while and then returned to the farm where he lived and worked as a digger driver. He married in 1983 and after a short period in the family house moved to live in a mobile home on the farm where he remained until 1987/88. He then returned to London where he remained until 1996. He then returned to Fermanagh in circumstances I will mention later. With the exception of Patrick all the children live either in County Fermanagh or County Louth.

[5] After leaving school the plaintiff worked first in a grocery store. He had various jobs and said he could try anything. He worked for an undertaker and cut turf for another. He worked for a man named Cunningham or Coynyngham laying water mains. This he said this was during 1980 – 1984. In December 1983 he went to London where he worked for his brother Patrick and lived with his sister Mary. This may have been for about six months. For reasons which will appear later these dates may not be correct. After leaving school the plaintiff lived at Gorteen, apart from when he lived in London. He was the only child to remain permanently at the family home though Michael lived there for a period and then in the mobile home. However the other children were in frequent contact and often about the farm.

[6] In 1967 a new farm at Dernabackey was purchased by the deceased. This had been in Mrs Little's family and it was farmed along with Gorteen. On 11 March 1983 the deceased made a will. He appointed Michael as his executor. He left the farm at Dernabackey to the plaintiff and the Gorteen lands to his wife for her lifetime and thereafter to Michael. He expressed the desire (but not to create a legal obligation) that should the plaintiff, Patrick or Francis wish to build a dwelling on the Gorteen lands that Michael should provide them with a suitable building site. Michael was married on 16 March 1983 but moved away about 5 years later, for reasons that will appear later. He said that when he married that his mother told him that the Gorteen lands would be his. In 1991 the deceased and his wife moved out of Gorteen and into a pensioner's bungalow at Aghadrumsee Park, Corrany, Roslea. This was several miles from Gorteen, though the deceased according to Rose Ellen would walk out to it most days. In 1992 his wife died and some time thereafter the plaintiff moved into the bungalow. In 1995/96 a farm with 13 acres became available. The deceased persuaded Michael to purchase it with his assistance and said he would give him the farm at Dernabackey. Together with his father Michael purchased the farm and Dernabackey was transferred to him. The deceased's herd number was also transferred to him. On 6 March 1996 the deceased made another will and revoked the previous will. He was then 81 years of age. He appointed Rose Ellen and his solicitor Mr F J McManus of Lisnaskea as his executors and bequeathed all his lands to the Plaintiff. He expressed the desire that the plaintiff should not sell the lands in his life time and to bequeath them to a member of the family.

[7] Some time after this there were rumours that the local publican in Corrany was expressing interest in the Gorteen lands. In particular Michael was subjected to what he described as some 'bold questioning' by the publican as to whether the Gorteen lands had already been transferred to the plaintiff. The publican had already 'snapped up' several other farms. Michael informed his father about what the publican said to him. His father was very concerned because by this time and for some years already the plaintiff had become a chronic alcoholic and the farm and farmhouse had fallen into disrepair and disuse. Not only was his father concerned that he would drink himself to death, but that the Gorteen lands would fall out of the Little name and control and that all his hard work would have been for nothing. The deceased asked Michael to speak to the other members of the family. A meeting was arranged and a date fixed to suit Patrick who was coming over from London. It took place in late February or early March 1997 and was held in the bungalow. The plaintiff was not told of the meeting in advance and alleged he was deliberately kept out of the way. Peter Smith who is married to Mary and Patrick married to another member of the family were sent to the public house in Corrany to see if the plaintiff was there and whether he was in any fit state to attend the meeting. In the public house they found him drinking and intoxicated so they said nothing to him and after a drink they left.

[8] At the meeting the deceased expressed his concerns about the plaintiff drinking and that he could not see an end to it. He did not want to see the farm sold and felt the plaintiff would sell it and drink himself to death. The various possibilities and personalities who might rescue the situation were discussed. Patrick was singled out as the most appropriate if he had the money to do it. Patrick's attitude was that if it was his father's wish he would do so, but he was not returning to live in Fermanagh as his home was then in England. No firm decision was made that night. It was the deceased's decision and it was left to him to him to do what he wished.

[9] At some stage it was decided to build a replacement dwelling in the farm. Housing Executive grants towards the replacement of derelict dwellings were available. By whom and when it was decided to replace the farmhouse was not entirely clear. The plaintiff may have been involved as there was a suggestion he engaged the architect to drew up plans. If a grant was obtained Patrick was agreeable to put up the rest, probably more than 50%. The applicant was required to be the owner of the property and building had to start within six months of the grant being approved and finished within twelve months. It seems this was the route the deceased decided upon.

[10] The deceased's medical records were produced. There is an entry probably dated 30 January 1997 stating 'arteriosclerotic dementia' and the results of a short memory test. On 27 May 1997 a Mini-Mental State

Examination was carried out. There was no evidence as to where or by whom this was conducted but the score sheet was among his medical notes. He scored 12 out of a possible 30. There is an entry dated 9 July 1997 in the clinical notes that reads – 'Family dispute re mental capacity to change his will'. On the same date the deceased consulted his solicitor Mr McManus, apparently brought there by his daughter Mary. Mr McManus' attendance note records that the deceased indicated he wished to transfer his lands, except a small portion containing the replacement dwelling, to his son Patrick and change his will. He said this was because the plaintiff had a drink problem and had become abusive towards him and he felt it was wrong now to give him the land as he would only sell it to keep himself in drink. He also indicated that the plaintiff would be cross when he found out and would probably try and challenge it. Mr McManus noted – 'you become forgetful'. He said the deceased or his daughter Mary probably told him this. The attendance note goes on to record that an examination by a psychiatrist would be arranged. It appears the solicitor rang Dr Bindal a psychiatrist at Tyrone and Fermanagh Hospital and then wrote to him. In the letter he set out the history relating to the plaintiff and the deceased's intentions and commented that it appeared a sensible course of action. The letter continue –

> "Our client …. is diagnosed by Dr George's practice some time ago as having early stage of Alzheimers disease. Before drawing a new Will we would very much like you to examine out client and let us know if in you opinion he is capable of making a will.
>
> This writer has spoken to him on two occasions and he certainly appears to be quite capable though he is forgetful. …."

[11] Dr Bindal examined the deceased on 18 July 1997. He found him to be capable of making a will and phoned the solicitor on the same date to inform him. Mr McManus contacted his daughter Kathleen and arranged for her to bring her father in that day which she did. Dr Bindal wrote to the solicitor setting out his findings and stated inter alia –

> "At the time of my examination Mr Little appeared an average build appropriately dressed elderly man who was pleasant and co-operative. He was fully orientated to time, place and person. There was no evidence suggestive of senile dementia. He did not display any delusions or hallucinations indicative of any major psychiatric disease.
>
> In my opinion Mr Little is of sound mind, is capable of managing his affairs and property and is fit to

make a will and sign other legally binding documents."

[12] The solicitor's attendance note for that day records the deceased's instructions and intentions and that he had lost all hope that the plaintiff would ever give up drinking. Initially the deceased said he wished the plaintiff to have a right of residence at Gorteen for the rest of his natural life. Later after further discussion regarding the plaintiff and the right of residence he decided that the plaintiff should not have a right of residence but he expressed a wish that Patrick would allow him to live in the house if his behaviour was reasonable, but this was not to be a legal obligation. He gave instructions that he wished to proceed with the will and the transfer indicating that he knew the difference between them. In relation to the portion of land on which the replacement dwelling was to be built he indicated that he would attend to that later. The note records that the deceased was very sad that he had to deal with the plaintiff in this way but was convinced it was the best thing for him. The deceased thought the title deeds were with the solicitor. Mr McManus was not sure so he obtained authority from the deceased to obtain them. In the will dated the 18 July 1997 the deceased left all his lands to his son Patrick. He expressed 'his wish that my son Patrick should allow my son Liam to reside in the dwelling house on the lands at Gorteen but this wish is not to be construed as a legal obligation upon my said son Patrick nor as a grant of a right of residence for Liam. The remainder of his estate he left equally to his sons and daughters alive at the date of his death. On 30 July 1997 the lands less the portion reserved for the dwelling house were transferred to Patrick. It transpired that the solicitor did not have the deeds so he wrote to the three banks in Lisnaskea to inquire if they had them. Negative responses were received. However, where they were found and how they were deposited with the solicitor and by whom was never resolved.

[13] Patrick was informed about the transfer to him and proceeded to carry out his father' wishes. Application was made for the grant in August. Patrick's documents record a meeting in early August at Gorteen with a representative from the Housing Executive at which the deceased completed the application forms.

[14] On a date in September 1997, which may have been 1st September, the deceased and the plaintiff were driven by one of the plaintiff's drinking friends to a Bank in Clones. There the plaintiff discovered that the deeds were no longer in that Bank. The party then drove to the solicitor's in Lisnaskea. Mr McManus spoke to the deceased alone. He was distressed and said he had been brought by the plaintiff and that there was trouble and that he wanted to know about the lands. The plaintiff burst into the solicitor's office in a furious mood. The solicitor said he had drink taken and used foul and abusive language towards the solicitor and towards his father. He demanded to know

what had happened but the solicitor due to confidentiality did not feel he could tell him, though he may have indicated there were no lands for him. The plaintiff manhandled his father out of the office and down the stairs saying they would get a decent solicitor. Mr McManus preceded them down the stairs as he feared the deceased might be pushed or fall. After they left Mr McManus, fearing for the deceased's safety, phoned one of the plaintiff's sisters and alerted her. She in turn phoned Michael who went round to the bungalow. On the way he passed the plaintiff in a car with one of his drinking companions. He went on to the bungalow where he found his father very agitated and annoyed and barely able to talk. He described him as 'shaken, roughed up and anxious'. His father told him he had been brought to Clones to remove the deeds from the Northern Bank. It was Michael's impression that this was against his will and certainly not with it. The deceased described going on to the solicitor's office where the plaintiff was abusive. He said he was lucky to get back at all and that he was almost pushed down the stairs.

[15] Patrick recalled a conversation with the plaintiff in either September or October 1997 when he discussed with him the fact that the lands had been transferred to him. He told the plaintiff that he could live in the house. Michael said he was present at this conversation and recalled the plaintiff asking whether he could stay at Gorteen for two or three nights and the rest of the week in the bungalow and Patrick replying that he could live in it.

[16] Approval of the grant to the deceased was signified on 16 October 1997. The foundations for the replacement dwelling were complete about mid- December with the assistance of Michael and construction of the dwelling proceeded in the New Year. Michael demolished the old house about February or March though the date was not certain. The family were given the opportunity to retrieve any mementos from the house and all interior furnishings and equipment were removed. Michael now farms the land but does not pay rent for it. This is mainly to maintain it. The deceased moved to stay with one of his daughters for a while and at the end of 1998 he moved into a nursing home.

[17] The plaintiff's claim begins with an event that occurred, according to the medical records, on 21 December 1963, when the plaintiff lost the sight of his right eye. Instead of returning home from school the plaintiff went to a neighbour's house where he played cards until late. He was then 13 years of age. He arrived home at 11pm, to be met by his father who was annoyed. He described his father as a hot tempered man and as he stood in the door way he knew he was likely to 'get a thump or two'. He decided to stay outside until his father calmed down and walked quickly round the house and ran towards a gap leading into a field. There in the dark he ran into a thorn hedge and a thorn went straight into his eye. He went back to the house with blood running down his face and the thorn was pulled from his eye. He was taken to hospital where he remained for 13 days. He said a priest brought his

parents to visit him. The three of them then left but his father returned on his own. He was told his sight in that eye would never be restored. His father told him he need not worry about the future that he would leave him the 'wee farm when finished with it'. He understood this to mean the whole farm which was one unit at that time, that is the Gorteen lands. He returned home from hospital and shortly thereafter ceased formal education. He remained at home and helped with the farm work. His siblings moved away and married. He continued to work on the farm with the suckler herd and a tractor. A cattle lorry was purchased and the plaintiff began to take cattle to livestock sales for other farmers. The money for this and the farm went to his father who maintained a bank account. The plaintiff did not have a bank account nor did he receive wages from his father, whom he described as tight with money but a good manager. If he complained long enough he 'might get a £5 note' though his father gave him money to buy clothes. The plaintiff looked after the farm paper work though everything was in his father's name. He said his father would say to him that he was working for himself rather than his father and that the harder he worked the better it would be for him. He understood this to mean he was getting the farm. In 1967 the new farm (Dernabackey) was purchased. This comprised some 34 acres and was about four miles away. The plaintiff farmed the two together as one unit. He was never paid a regular wage but on a good day he got £10. The plaintiff dealt in cattle on his own behalf and obtained a herd number and was able to keep any money he made from this for himself. He also transported cattle for other farmers.

[18] Some time in the early 1990s (the plaintiff said it was 1992/3) his father asked him which farm he would like – Gorteen or Dernabackey. He was to have first choice and the other farm would go to Michael. The plaintiff chose Gorteen because it was more up to date with better cattle facilities, water, electricity and a tarmac drive. This he understood to comprise Folios 5668, 5669, FE 8047 and the unregistered bog land. The other farm was later transferred to Michael and the plaintiff ceased to work on it.

[19] The plaintiff said his mother suffered a heart attack and a stroke and both parents moved in 1991 to live in a Housing Executive bungalow in Aghadrumsee. She died in February 1992. The plaintiff continued to live at Gorteen. He recalled an occasion when his mother told him that in an old will of 1987 he would be left the new farm at Dernabackey. He spoke to his father about this as the new farm had already been transferred to Michael. His father said he would attend to it and later said he had done so.

[20] The plaintiff's evidence was that after his father moved to the bungalow he visited him regularly. By early 1997 his father's mind 'started to go'. He stopped going to bingo, he would get on the wrong bus, go out and forget where he was going to, and leave the kettle on or the doors open. In September 1997 (identified by the plaintiff as 1 September) he took his father to the Bank in Clones at his father's request, so his father could collect the

deeds of the farm and transfer it to him. He said the deeds had been in the Bank since 1949 when it was purchased with a bank loan of £150 which had since been discharged. A retired friend Joseph Rooney took them in his car. He chose Rooney as he was someone who would not disclose their business. His father explained to the Bank Manager what they wanted and the Manager said 'no problem'. He left to obtain a ledger and on return told them the deeds had already been removed. He showed him a signature on the ledger in the name of W. Little. The plaintiff suggested his father always wrote 'William'. It was dated 28 July 1997. His father said he had not been in the Bank for twenty five years that he remembered. They left and at the plaintiff's suggestion they went to his father's solicitor, Mr McManus in Lisnaskea. There his father was taken in to see Mr McManus while he waited in the waiting room. After half and hour he decided to go and see what was happening. He walked in. His father was staring at the ceiling looking lost and Mr McManus was sitting relaxed with his arms folded. There was no conversation between them. Mr McManus said 'I hear you are here to have the land signed over to you. He has none to give you'. The plaintiff asked what happened and 'who has it'. The solicitor said he did not have to tell him. The plaintiff thought there was 'something fishy' and that the solicitor was not being straightforward. He said 'you hoor you haven't seen the last of me yet. Come on daddy, let's find a decent solicitor'. His father did not speak and they left. Mr McManus went first down the stairs and the plaintiff followed taking his father by the arm to assist him.

[21] The plaintiff claimed that he had applied for planning permission to replace the old dwelling at Gorteen. It was a two storey building with four bedrooms a living room and kitchen and was furnished throughout. The plaintiff stayed occasionally with his father. Patrick arrived on an occasion in the first half of 1998 with a digger driver and demolished the Gorteen dwelling with all its contents saying to the plaintiff that 'I can do what I like'. The plaintiff then went to live with his father until his father was moved to a nursing home in June 1998. The plaintiff then took over the Housing Executive tenancy of the bungalow where he continues to live on income support.

[22] The plaintiff claims that his father lacked the mental capacity to make either the will dated 18 July 1997 or to execute the purported transfer to the second defendant on 30 July 1997. The plaintiff alleges that this purported transfer was contrary to the arrangement and understanding between the plaintiff and the deceased about the ownership of the Gorteen lands and that the plaintiff has an interest in the Gorteen farm and lands by virtue of proprietary estoppel. Thus the plaintiff claims the deceased was and the personal representatives of the deceased are, estopped from denying the plaintiff this interest in the farm and lands.

The plaintiff claims inter alia –

a) a declaration that the purported transfer dated 30 July is of no force or effect;
b) a declaration that the deceased lacked the mental capacity to execute a transfer of the farm and lands;
c) an injunction to restrain the second defendant from dealing with the Gorteen farm and lands;
d) a declaration that the Gorteen Farm and lands vest in the plaintiff in equity by virtue of the principles of proprietary estoppel;
e) an order that the Gorteen farm and lands be conveyed to the plaintiff;
f) such other order as the court thinks fit to satisfy the plaintiff's equity in the Gorteen farm and lands whether by order of payment of monies and/or transfer of lands in such sums, portions or amounts as thought fit.

[23] As is not unusual in family disputes over property, and as can be observed from my earlier findings, much of the plaintiff's case is disputed. The defendants contended that he was not promised the Gorteen farm and lands in 1963 following the loss of his eye. It was contended that since about 1971 the plaintiff has had a very serious problem with alcohol and that he became an alcoholic. He was unable to maintain regular employment and that he was not the only son to work about the farm or drive the cattle lorry. His drunkenness and misconduct was such he drove Michael and his wife away from their mobile home as they could no longer bear to live there. The 'last straw' was when he killed a cat by hurling it against a wall and then putting it in the bin. His conduct towards his parents, particularly when he was inebriated, was such that they also left the Gorteen farm and went to live in Rosslea. He was abusive towards them, trashed the house and lay about in a drunken state. He demanded on many occasions that the Gorteen farm be made over to him. By reason of his addiction to alcohol the plaintiff frittered away the assets of the farm including the herd and the machinery until there was no viable farm left. After his parents left he used the house as a drinking den with his like- minded companions. The deceased became concerned that his addiction was such that if he left him the Gorteen farm and lands he would 'drink it away'. It was contended that he and another man took the deceased to the Bank in Clones against his will and later to the solicitor's office. When he was leaving the solicitor's office he attempted to push his father down the stairs, annoyed at discovering that he was not to get the lands.

[24] The plaintiff admitted that he had a problem with alcohol but not of the nature or extent as was alleged and maintained that he has not consumed alcohol since July 1999. There is some independent evidence in the medical notes to support his evidence that he has been alcohol-free since 1999. He denied all the other allegations.

[25] There are two main issues in the case – does the plaintiff have a proprietary estoppel claim to the Gorteen farm and lands and did the deceased have mental capacity in July 1997. In the first instance I look to see if there is any independent evidence which casts some light on the disputed areas in this case.

[26] The plaintiff's medical records were available. These disclose that in 1990 he was diagnosed as suffering from chronic alcoholism and had been for a number of years. There were referrals to the Community Addiction Team, admissions to hospital for detoxification, attendances at AA and admissions to Cuan Mhuire in Newry for weeks at a time. He drank whisky and on occasions poteen, which he said went to his brain. There were significant admissions in 1995. In February he was admitted unconscious following seizures after drinking poteen and was an in-patient for many days. In July 1995 he was admitted suffering from hallucinations. Rose Ellen recalled episodes of hallucination or delirium tremors. In January and February 1996 he was admitted again. In January it was noted that 'he maintained that his drinking was associated with the worry about inheriting his father's farm. The farm had been signed over to him about six months previously'. In February he was noted to be extremely aggressive and physically abusive towards staff and other patients and was transferred to the psychiatric unit. In June 1996 he was admitted again and disclosed he was drinking two and a half bottles of Bushmills a day. He was transferred from Erne Hospital for threatening staff and breaking a television set. He had been suspended from driving through drink related offence on three occasions – 1976, 1986 and 1995. There was evidence of failure to keep appointments with various agencies to whom he had been referred for assistance. It is clear from the medical notes and records that from time to time his mind was affected adversely by alcohol. It was evident during his evidence that he had difficulty remembering events or had no memory of some events over this lengthy period when he was drinking heavily. This greatly affected his worth as a witness of truth.

[27] The medical notes and records provide ample support for the testimony of his brothers and sisters about his conduct in drink throughout this period. I have considered carefully their evidence. While with the passage of time the odd date or recollection may not be entirely accurate, I was satisfied that their evidence about the plaintiff's conduct and the running down of the family farm was substantially correct. It was suggested to Rose Ellen that she had exaggerated her evidence about his drunkenness. Her reply had the ring of truth - "I saw a lot, believe me". Equally Michael, who on being challenged about his evidence that he comforted his father after the visit to the solicitor, replied – "This was not a one off". I was satisfied as to the reasons why Michael and his wife and then the deceased and his wife left Gorteen. Generally speaking I found the first defendant and her siblings who gave evidence in defence of the plaintiff's claim to be straightforward

witnesses, concerned about their father and the Gorteen lands, but also concerned about their brother the plaintiff. They accepted that the plaintiff had come to believe that he should and would inherit the Gorteen lands and often spoke about it and demanded it. As Michael put it – "in the plaintiff's mind only one person should have the Gorteen lands and that was himself; there was no talking to him about it. His character was such you could not talk to him". It was strange in light of the evidence that the plaintiff was not made aware of the meeting at the bungalow. I can understand that the family would be wary of his reaction and not notifying him at all would be understandable. But two husbands –in- law were sent to see if he was in a fit condition. They did not speak to him. This could be open to the interpretation that they went to the public house to ensure he would not return while the meeting was in progress. However the plaintiff said that his father said to him 'why did you not come when Peter and Pat went for you'. In view of that it seems more likely that they were sent to see if he was fit to attend.

[28] The mainstay of the plaintiff's case was that when he was in hospital recovering from the eye injury his father spoke to him alone and to quote the statement of claim 'assured the plaintiff that he had no need to worry in relation to his permanent disability and inability to acquire gainful employment as he would inherit the farm when he was older'. The plaintiff was then 13 years of age. His father would have been 48 years of age with other sons then aged about 16 years, 6 years and 3 years. It is unlikely that anyone would make such a commitment at that time taking into account the father's age and that of his other sons. He had no way of knowing how the future would unfold for any of them. It is most unlikely that this deceased, in light of what is known about him, would make such a rash promise. None of the family heard of this. There was no reason for the deceased to feel guilt over what occurred or such responsibility that he required to make the type of assurance the plaintiff states. If it were true, one would expect the plaintiff when in drink and demanding the farm be handed over, to have mentioned it. The deceased is unlikely to have kept it from his wife, yet Michael said that when he got married his mother told him that the Gorteen lands would be his. If the deceased made such a commitment it is less likely that he would not have taken some steps to honour it when he was in his mid- sixties. Other members of the family suffered injuries without evidence of guilt and promises. The plaintiff is probably convinced that his father did make such a commitment and the effects of his lifestyle have reinforced that belief. I do not accept that such a commitment was made. If there was a conversation in the hospital, which I strongly doubt took place; any commitment given was no more than any parent would give, that they would do their best for him. That doing his best for him would result in him inheriting the farm was well beyond anything that may have passed between them.

[29] After he left school the plaintiff did work on the farm and probably assumed a role of some responsibility as time passed including responsibility

for some of the paperwork. The plaintiff did engage in transporting cattle but was not the only son to do so. Some of the cattle transporting was for the benefit of the farm, but I strongly suspect that a lot of it was for his own benefit particularly as time passed. As the other sons became independent the deceased probably relied more on the plaintiff. I could well understand him saying that the harder he worked the more benefit it would be to him later on, though it is probable that any understanding between them was more a silent one on the basis that as time passed there was no-one else. I would be sure this was a fluid situation which rose and fell with events. An expectation was probably held by the plaintiff and among the family that if all turned out well the farm would pass to the plaintiff, though at earlier stages each of them would have had a legitimate claim to it. The plaintiff did have other employment from time to time. If his evidence that he was laying mains for three or four years is correct, he was away from the farm for a considerable period at a critical time, particularly if it was between 1980 and 84. I suspect these dates are inaccurate and that the plaintiff's memory has been grievously affected. As Michael put it so graphically – 'you cannot abuse yourself for that length of time and your thinking be correct'. Over time the plaintiff's addiction to alcohol increased and as it did so his commitment to the farm and any employment diminished. The evidence of the family looking out for the tractor or the cattle lorry parked in Corrany near the public house spoke volume of the plaintiff's lack of commitment as his problems increased. It is difficult to put a precise date on when the addiction began to rule his life but I consider it was well established by the early 1980s. The medical notes speak graphically for the 1990s. The result was that the farm was depleted and no longer viable. As the plaintiff's problems grew so did his expectation in his own mind, probably well beyond reality. I consider his father wrestled in his mind with what to do. He was anxious for Michael to return. He could see that Frank and Patrick were well established and he would have been anxious to do something for the plaintiff and to do what was right in the hope that all would turn out well. Being satisfied as to the extent of the plaintiff's addiction and his treatment of his parents and the farm this is the only explanation for the will made in 1996.

[30] Proprietary estoppel has long been recognised as an equitable relief. The seminal case on the development of proprietary estoppel is Taylor Fashions Ltd v Liverpool Victoria Trustee Co Ltd. 1982 QB 133. Oliver J referred to the arguments put forward by counsel and said starting at page 143 -

> "The starting point of both Mr. Scott's and Mr. Essayan's arguments on estoppel is the same and was expressed by Mr. Essayan in the following proposition: if under an expectation created or encouraged by B that A shall have a certain interest in land, thereafter, on the faith of such expectation and

> with the knowledge of B and without objection by him, acts to his detriment in connection with such land, a Court of Equity will compel B to give effect to such expectation."

Oliver J then analysed various authorities and then said at page 151 –

> "Furthermore the more recent cases indicate, in my judgment, that the application of the Ramsden v. Dyson, L.R. 1 H.L. 129 principle - whether you call it proprietary estoppel, estoppel by acquiescence or estoppel by encouragement is really immaterial - requires a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, *152 knowingly, or unknowingly, he has allowed or encouraged another to assume to his detriment than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour."

[31] This statement according to Snell on Equity remains the most authoritative and important statement of the doctrine. It has now been modified by the addition of the further proposition that any relief granted by the court must be proportionate to the detriment suffered. In Re Basham decd 1986 1 WLR 1498 at 1503 Mr E Nugee QC identified the principle involved. This was quoted with approval by Balcome LJ in Wayling v Jones 1993 69 P & CR 170 and referred to Robert Walker LJ in Gillett v Jones 2001 Ch D 210 in these terms -

> "The other case in which In re Basham has been referred to in this court is Wayling v Jones (1993) 69 P & CR 170. It concerned an assurance ("It'll all be yours one day") given by the elder partner in a male homosexual relationship to his younger partner. Balcombe LJ cited Mr Nugee's statement of principle in In re Basham decd [1986] 1 WLR 1498, 1503 as having been accepted by the parties: "The plaintiff relies on proprietary estoppel, the principle of which, in its broadest form, may be stated as follows: where one person, A, has acted to his detriment on the faith of a belief, which was known to and encouraged by another person, B, that he either has or is going to be given a right in or over B's property, B cannot insist

> on his strict legal rights if to do so would be inconsistent with A's belief."

[32] Balcombe LJ went on to state the relevant principles as to reliance and detriment, at p173:

> "(1) There must be a sufficient link between the promises relied upon and the conduct which constitutes the detriment--see Eves v Eves [1975] 1 WLR 1338, 1345c-f, in particular per Brightman J Grant v Edwards [1986] Ch 638, 648-649, 655-657, 656g-h, per Nourse LJ and per Browne-Wilkinson V-C and in particular the passage where he equates the principles applicable in cases of constructive trust to those of proprietary estoppel. (2) The promises relied upon do not have to be the sole inducement for the conduct: it is sufficient if they are an inducement-- Amalgamated Property Co v Texas Bank [1982] QB 84, 104- 105. (3) Once it has been established that promises were made, and that there has been conduct by the plaintiff of such a nature that inducement may be inferred then the burden of proof shifts to the *227 defendants to establish that he did not rely on the promises-- Greasley v Cooke [1980] 1 WLR 1306; Grant v Edwards [1980] Ch 638, 657."

[33] Further explanation of the principle of proprietary estoppel and guidance as to how it should be approached was provided by Robert Walker LJ in Gillet v Holt. Proprietary estoppel does not consist of a number of separate concepts each of which must be addressed separately. Rather it should be looked at in the round. At page 225 Robert Walker LJ put it this way –

> "But although the judgment is, for convenience, divided into several sections with headings which give a rough indication of the subject matter, it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a "mutual understanding" may depend on how the other elements are

> formulated and understood. Moreover the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round."

[34] What makes the assurances or promises irrevocable is the other person's detrimental reliance on them. Detriment is an essential ingredient which must be pleaded and proved. It need not consist of the expenditure of money or other financial detriment but it must be substantial. At page 232 Robert Walker LJ said –

> "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 financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances.
>
> There are some helpful observations about the requirement for detriment in the judgment of Slade LJ in Jones v Watkins 26 November 1987. There must be sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on 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. The detriment alleged must be pleaded and proved."

[35] 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. The issue of detriment is to be judged at the moment when the person who gave the assurance seeks to go back on it. Thus the essential test is one of unconscionability at that time. What is required is a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstance. If estoppel is proved it is for the court to decide what will satisfy the expectation - see Jennings v Rice. The value of it will depend on all the circumstances including the expectation and the detriment. It is not an unfettered discretion in the court as to what is fair. As Robert Walker said in Jennings v Rice at page -

> "The essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result, and a disproportionate remedy cannot be the right way of going about that."

Earlier he said -

> "To recapitulate: there is a category of case in which the benefactor and the claimant have reached a mutual understanding which is in reasonably clear terms but does not amount to a contract. I have already referred to the typical case of a carer who has the expectation of coming into the benefactor's house, either outright or for life. In such a case the court's natural response is to fulfil the claimant's expectations. But if the claimant's expectations are uncertain, or extravagant, or out of all proportion to the detriment which the claimant has suffered, the court can and should recognise that the claimant's equity should be satisfied in another (and generally more limited) way.

[36] In Uglow v Uglow and Others 2004 EWCA Civ 987 Mummery LJ summarised the principles which derive from Gillett v Holt and Jennings v Rice. They were apt for that case and are to some extent appropriate also for the instant case. At paragraph 9 Mummery LJ said –

> "9. The general principles expounded in those cases are relevant to the instant case in the following respects-
>
> (1) The overriding concern of equity to prevent unconscionable conduct permeates all the different elements of the doctrine of proprietary estoppel: assurance, reliance, detriment and satisfaction are all intertwined.
>
> (2) The broad inquiry in a case such as this is whether, in all the circumstances, it is unconscionable for a testator to make a will giving specific property to one person, if by his conduct he has previously created the expectation in a different person that he will inherit it.

> (3) The expectation may be created by (a) an assurance to the other person by the testator and intended by him to be relied upon that he will leave specific property to him; (b) consequent reliance on the assurance; and (c) real detriment (not necessarily financial)consequent on the reliance.
>
> (4) The nature and quality of the assurance must be established in order to see what expectation it creates and whether it is unconscionable for the testator to repudiate his assurance by leaving the property to someone else.
>
> (5) It is necessary to stand back and look at the claim in the round in order to decide whether the conduct of the testator had given rise to an estoppel and, if so, what is the minimum equity necessary to do justice to the claimant and to avoid an unconscionable or disproportionate result.
>
> (6) The testator's assurance that he will leave specific property to a person by will may thus become irrevocable as a result of the other's detrimental reliance on the assurance, even though the testator's power of testamentary disposition to which the assurance is linked is inherently revocable."

[37] It was submitted by Mr Shaw QC who with Mr J Dunlop appeared on behalf of the plaintiff that the deceased promised and assured him the farm when he was thirteen and that there was support for that in the evidence. As I have indicated I do not accept that the deceased promised the plaintiff when he was thirteen that he would inherit the farm. Nonetheless I have to consider the other evidence. The plaintiff did work on the farm, he said the deceased encouraged him to work harder at it as it would benefit him later and allowed him the use of the cheque book. The plaintiff spoke to others about inheriting the farm indeed demanded that it be transferred to him as of right. There was an expectation within the family that he would inherit the farm and the deceased endorsed that in the 1996 will and in his attendance on the solicitor in July 1997. The deceased would have known that the plaintiff believed he would inherit the farm and it was accepted that the deceased would have wished the plaintiff to have it if he had remained sober. It was submitted that there was evidence of reliance in the fact that the plaintiff remained and worked on the farm, whereas, eventually all the other children left; he was not paid a wage; he accounted to his father for the money; the plaintiff did not marry as he lost the opportunity as he could not afford an engagement ring and as a man with some talent he did not seek opportunities

elsewhere. It was submitted that the detriment suffered by the plaintiff included the lack of a proper wage; loss of the opportunity to pursue other occupations; the opportunity to marry and being left without any inheritance or share in the deceased's estate. It was submitted that it was significant that the deceased was aware of the plaintiff's long history of alcohol abuse yet he chose to leave him the Gorteen lands in his 1996 will. Between 1996 and 1997 there had been no material change in the circumstances of either the deceased or the plaintiff. It was submitted that that the plaintiff's equity in the Gorteen lands would be satisfied by either a transfer of the lands to him or financial compensation based on the value of the lands.

[38] It was submitted by Mr Thompson QC who with Mr Henry appeared on behalf of the defendants that the plaintiff's evidence about working on the farm was no more than would be expected when he left school with no particular occupation to go to. When the opportunity arose he did obtain employment elsewhere with others and on his own behalf as a cattle haulier. Once he became addicted to alcohol the prospect of achieving independence in employment was lost. The plaintiff suffered no detriment in the circumstances rather he used the monies from farming to satisfy his addiction. As the other children moved away and became settled the plaintiff was the obvious person to acquire the Gorteen lands. The decision to leave the Gorteen lands to the plaintiff in the 1996 will was probably in the hope that he might resolve his addiction problem.

[39] As a result of events and partly from his addiction problems the plaintiff has become an embittered man. He feels he has been cheated out of his inheritance. He was a poor historian probably due mainly to the effects of his lifestyle until 1999. It is difficult to place much reliance on his evidence about historical events particularly during the period when he was drinking heavily. I doubt very much whether his prospects of marriage were thwarted by lack of money to buy an engagement ring. Relationships founder for many reasons and a determined admirer will usually find another way. My impression of the deceased is that he was a good husband and father, a determined and resourceful farmer and a man who sought to do what was right and fair by his family. The plaintiff would have been a disappointment to him; nonetheless he was prepared to give him a chance in the hope that he would mend his ways.

[40] After leaving school the plaintiff worked on the farm for want of something else to do. He took other jobs when the opportunity arose. As his father aged he took more to do with the farm and was probably encouraged by his father to work hard at it as it would be to his benefit in years to come. Any such assurances would have been given earlier rather than later. As the opportunity for hauling cattle increased the plaintiff paid more attention to that than the farm. I suspect it was the cattle hauling that lead him ultimately into his addiction. This was also a source of income. If he was not paid a

proper wage to begin with he did receive his board and lodgings. If there was reliance on any assurances or encouragement it was minimal. When opportunities arose elsewhere he appears to have taken them. As time passed rather than running the farm he ran it down. I doubt if he was capable of much serious farming from the mid-1980s. Whatever assurances the plaintiff received it is difficult to perceive what detriment he suffered arising from them. He chose the life he wished to live and when presented with the opportunity to run the farm he did not avail of it. Knowing that, his father's decision to leave him the farm in 1996 was a mark of the type of person his father was. He wished to be fair to the only member of the family who had nothing to rely on. However his caution about this disposition is obvious from his expressed desire that the plaintiff should not sell the lands and that he should bequeath them to a member of the family. Once he learnt within a year that the publican was expressing more than a passing interest in the Gorteen lands and having expressed his reservations in the 1996 will, was it unconscionable for him then to go back on whatever assurances were given to or belief encouraged in the plaintiff. I do not think so. It is noteworthy that in making the decision he made in 1997 the deceased still made some provision for the plaintiff in expressing his wish that Patrick should allow the plaintiff to reside in the dwelling house, though this was not a legal obligation.

[42] Detriment is to be judged at that time the promisor is alleged to have gone back on his promise. In 1997 the plaintiff had suffered no detriment. If he had worked the farm continuously and assiduously until then he probably would have suffered detriment. However he had long ceased to do so. If the matters relied on as deteriment could be so considered they were historical. Given the passage of time and the plaintiffs conduct, the deceased's decision to express his wish that Patrick would allow the plaintiff to reside in the dwelling home at Gorteen was a sufficient discharge of any obligation the deceased had in order to avoid an unconscionable or disproportionate outcome. Standing back and looking at the circumstances in the round I do not consider the plaintiff has established a proprietary estoppel in the Gorteen farm or lands. If there were assurances and detriment of the type suggested it was not unconscionable for the deceased to transfer the Gorteen farm and lands to Patrick coupled with his expressed wish that the plaintiff be allowed to reside there.

[42] The test for mental capacity to make a will is to be found in the judgment of Cockburn CJ in Banks v Goodfellow 1870 LR 5 QB 549 at 565. The test to be applied is whether the deceased had a sound disposing mind at the relevant time. This involves three questions –

i. did the deceased understand the nature of the act he was involved in and its effects;
ii. did the deceased understand the extent of the property he was disposing;

iii. did the deceased understand the claims to which he ought to give effect and the nature of the claims of others whom he is excluding from the benefit of his property.

The same test is required for the making of an inter vivos transfer of property.

[43] It was submitted by Mr Shaw that deceased lacked the necessary capacity. He relied on a number of matters –

a) marked confusion in the deceased in July 1997 evident from the attendances with the solicitor and the fact that he was unaware of the whereabouts of the title deeds;
b) in September 1887 he was unaware that he had previously uplifted the title deeds from a Bank in Clones;
c) the MMSE test carried out on 27 May 1997 when he scored 12 out of a possible 30 and the nature of the questions he was unable to answer;
d) an earlier test (which appears to be dated 30 January 1997) at which he scored poorly as well; and
e) the GP's diagnosis of Alzheimer's dementia.

The defendants relied on plene adminisitravit – the estate has been administered and there are no assets remaining.

[44] The deceased was examined by a psychiatrist on 18 July 1997. The psychiatrist concluded that the deceased had the mental capacity to make a will. When the deceased attended his solicitor on 9 July 1997 it was disclosed that he became forgetful. Mr McManus is an experienced solicitor and a careful one. He immediately arranged the psychiatric examination having obtained information from the GP. The deceased's instructions to Mr McManus are clear and suggest a man who knew what he was doing. He said he had left the Gorteen lands to the plaintiff but he had a serious drink problem and was becoming very abusive and he felt it would be wrong to now give him the land as he would only sell it in order to keep himself in drink. He also said he was aware that the plaintiff would be cross when he found out and that he might challenge it. He wanted to transfer the lands to Patrick. The attendance note for 18th July 1997 is equally clear. He had lost all hope that the plaintiff would give up drinking. He was distressed by this. Significantly he expressed the wish that Patrick should allow the plaintiff to reside in the house at Gorteen. He said he knew the difference between a will and a transfer and that he would deal with the small portion for the replacement dwelling at a later date.

[45] The deceased attended his solicitor on 30 July 1997. The Attendance Note discloses that he confirmed his wish to proceed with the transfer to Patrick. He signed the transfer and said he was aware of the implications.

The solicitor noted he was of the same mind as he had been on 18 July 1997. He also gave instructions for a valuation to be obtained.

[46] In July 1997 the deceased was 82 years of age. No doubt he had problems associated with that age. But he knew what he was involved in and the extent of the property of which he was disposing. He was aware of the plaintiff's expectation but crucially he appreciated that he was excluding the plaintiff and doing so for specific reason. In September 1997 when he saw the solicitor he was able to tell him, correctly, what was going on, before his son burst into the office. His problem, if such, was how to deal with the plaintiff who was furious and had drink taken. I am satisfied on the evidence of the psychiatrist and the solicitor that the deceased was of sound disposing mind on 18 July 1997 and 30 July 1997.

[47] The plaintiff has failed to establish proprietary estoppel. The defendants have established that the deceased was of sound mind on the relevant dates. Therefore the plaintiff's case is dismissed.