

KENNEDY . KENNEDY

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THE HIGH COURT

ON CIRCUIT

CIRCUIT COURT APPEAL

PATRICK KENNEDY

Plaintiff/Responent

.v.

WILLIAM J. KENNEDY

Defendant/Appellant

COUNTY TIPPERARY -NORTH RIDING

JUDGMENT of Ellis, J., delivered the 12th day of January 1987

The plaintiff; Patrick Kennedy, and the defendant, William Kennedy, are brothers. They are the eldest and second sons of the late William Kennedy and Mrs. Rose Kennedy of Castl lake, Cashel, County Tipperary. Mr. and Mrs. Kennedy had two other sons one being Eamon and five daughters. Castl lake comprises a farm known as the Homefarm consisting of about 154 acres statute measure with a dwellinghouse and other buildings thereon of which Mr. William Kennedy



in his lifetime was the beneficial owner.

Mr. Michael Kennedy in his lifetime was the registered owner of the nearby farm lands of Knockroe consisting of about 157 acres comprised in Folio No. 23953 of the Register of Freeholders for the County of Tipperary. Mr. Michael Kennedy was the uncle of Patrick and William, the parties hereto.

By his Will Michael Kennedy devised his said farm lands of Knockroe to his nephews Patrick and William the parties hereto in trust until they reached the age of 21 years and thereafter to Patrick and William absolutely as tenants in common in equal shares. Michael Kennedy died on 8th January 1957 and his Will was proved in solemn form of law on 7th November 1958. In his Will the late Michael Kennedy mistakenly referred to his nephew William as Matthew as his intended beneficiary, but there is no dispute that he meant William.

On 13th March 1972 Patrick and William were registered as full owners as tenants in common of an undivided moiety of the said lands of Knockroe on the said Folio.

Since 1972 William has been in occupation of and has farmed and developed the whole of the said lands of Knockroe. On 10th November

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1980 Patrick as plaintiff caused to be issued an Equity Civil Bill against William as defendant calling on William to render an account of the rents and profits of the said farm and to have the lands thereof partitioned and one divided half part thereof allotted to him in severalty, or alternatively to have the said lands sold and for all necessary accounts and inquiries. It is to be noted that in his Civil Bill no agreement by William to pay rent to Patrick in respect of the said lands is alleged.

William has defended Patrick's proceedings on the ground that in 1972 there was a verbal agreement between them which according to its terms and the consideration therein agreed it is alleged by William that he, William, then became entitled to the sole occupation and possession of the whole of the lands of Knockroe and that in the events which have occurred that Patrick has become obliged to transfer his half share interest in Knockroe to William when their father transferred his lands of Castlelake to Patrick which he did by Deed of Transfer of 9th January 1975. Mr. William Kennedy died on 11th October 1979. Patrick denies that there was ever such an agreement as is alleged by William whose claim he has contested. In

his defence and counterclaim William relies on this agreement and he seeks a declaration accordingly that he is entitled to the entire beneficial ownership of the said lands of Knockroe and claims an order for specific performance by Patrick of the verbal agreement which he has alleged and for rectification of the Register and other ancillary orders and damages.

By agreement William's counter-claim has been heard for decision first.

Regrettably the case has given rise to serious conflicts of evidence and deep family divisions.

The main issue is to determine whether or not Patrick and William made the agreement alleged by William in his defence and counter-claim and of which he has given evidence. The onus of proving such agreement to the satisfaction of the Court on the balance of probabilities lies on William. Many other issues of conflicting facts subsidiary to the main issue have arisen in evidence as matters on which the parties have relied to corroborate or contradict the main issue as will appear in the course of this judgment.

I now come to deal with the evidence relating to the events and

circumstances in so far as they are relevant surrounding the time and the making of the alleged agreement which William has stated occurred in January 1972.

Mr. Kennedy Senior ran a dairy farm on the home farm of Castlelake. Patrick left school at 14 and worked at home. He became entitled to his half share of Knockroe in 1969 and William to his half share in 1972. In 1969 Patrick went into and worked Knockroe as well as Castlelake. William was then away in college but returned about 1969 and worked with his father in Castlelake in the dairy business for 2 years. He also worked a milk round of his own. Unfortunately, the father's dairy business at Castlelake and William's own milk round finally collapsed financially both with heavy debts. William's debt on his personal milk round business amounted to some £3,000 to £3,500. This all happened by 1971 some months before William became 21 years of age in January 1972 when he would in due course become entitled to his half share of Knockroe. Prior to the brothers becoming 21 these lands were held and rented out by the trustees for the benefit of both boys.

In the judgment of the Circuit Court Judge it appears that the

visits to Mr. Lynch, the then manager of the Bank of Ireland, Tipperary, resulted from a contemplated purchase of a farm of Mr. Gus Ryan by the two brothers although nothing came of it. The evidence in this Court as to how such visits came about is different.

In his evidence William mentioned that before he, William, was 21 he spoke to Patrick about what should be done in the future about both farms and the matter of buying Gus Ryan's farm came up but got nowhere. Patrick in his direct evidence made no reference to Gus Ryan's farm but did so on cross-examination. William said that at that time when the question of Gus Ryan's farm fell through, no hard and fast arrangement was then made, but that they agreed that when he (William) was 21, that is in January 1972, and he got his deeds to his half share of Knockroe they would see what the bank would do and that they would each go to the bank - Patrick to Thurles and William to the Bank of Ireland in Tipperary.

This is what Patrick said in evidence how they came to go to the bank. He said he was on the lands of Knockroe when William became 21 in January 1972 and had been there for 4 months. He agreed there was a discussion between them as to what was going to happen to

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Knockroe and that William wanted something to be worked out to provide for the two of them. Patrick said he agreed that the matter of Gus Ryan's adjacent lands was discussed. Gus wanted £20,000 but that William said no. Patrick said William had nothing but a debt of £6,000 plus £3,000. This deal then fell through. Patrick denied that he agreed to go to the bank with William to get finance to work Knockroe. He said he was financially independent. William had no money. Patrick said that the steps to be taken were that William was to go to Mr. Lynch to get money to raise stock for Knockroe. He agreed that William reported back to him that Mr. Lynch would give financial accommodation with his, Patrick's, authority and that he, Patrick, agreed to go into Mr. Lynch.

William's evidence was that he went to see Mr. Lynch, the manager of the Bank of Ireland in Tipperary, in January 1972 and that Mr. Lynch gave him a favourable reception. He said Patrick told him that he, Patrick, got a favourable reception in Thurles and that he, William, told Patrick that he, William, had got the green light to buy stock for Knockroe. Consequently, he (William) said arrangements were made for the two of them to see Mr. Lynch which

they did about mid-January 1972. William described in evidence what occurred and what was said between the three of them (William, Patrick and Mr. Lynch) on that occasion. After the usual formalities he said Patrick stated that whatever money was being lent that day he needed £2,000 for himself. William said this was the first he had heard of this and he was dumbfounded, and that Mr. Lynch then said to the two of them that they had not discussed it properly and to go away and come back again.

William said they then went away and that relations were cool between Patrick and himself for a few days, but that then when he was in the cow-house in Castlelake looking out the door Patrick came across the yard and that as he (William) went to move off out of the cow-house Patrick called him and said to him, "What about Knockroe?". He (William) said, "What about it anyway?" and that Patrick said, "Hunt is on to me, I need £2,000 for cattle. If I get £2,000 immediate and until 31st March (1972) to remove my stock when I get Castlelake, Knockroe is yours." William's account in evidence of this conversation continued that he (William) then said to Patrick, "Fair enough - it's a gentleman's agreement", and that they then shook hands. William stat

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in evidence that his understanding of the agreement was that he would move into Knockroe and that Patrick would move to Castl lake and that he (Patrick) would have a good chance of getting Castl lake.

William then said in evidence that after they had shaken hands Patrick and himself went in again to Mr. Lynch also in January 1972. If so this would have been William's third visit to Mr. Lynch and the second visit by Patrick.

This conversation at the door of the cow-house together with the shaking of hands constitutes the verbal agreement on which William relies as having taken place to entitle him in the events which have occurred to Patrick's half share of Knockroe whereby he, (William) would then be the beneficial owner of the whole of the lands in Folio No. 23953 and be entitled to be registered as such.

Patrick however, denies that such conversation or agreement as William alleges ever took place. He says it did not occur and in evidence he has given a different account of how and why he and William came to visit Mr. Lynch and what transpired and was said there. He says he was only once with Mr. Lynch whereas William says he was with him twice with Mr. Lynch. Whether it was once or twice what

was said and done by William, Patrick and Mr. Lynch in the bank is of obvious and crucial importance in determining whether or not the agreement relied on by William and denied by Patrick took place.

William, Patrick and Mr. Lynch have each given evidence of what transpired and what was said in the bank. Before dealing with their respective accounts I propose first to give Patrick's version of events and conversations which he has stated in evidence led up to the visits, or on his account his single visit, to Mr. Lynch and then to return to and deal with what occurred in the bank so as best to try and determine in so far as these happenings are concerned what the probabilities are in relation to the issue of the alleged agreement and who is telling the truth.

The account of Patrick in evidence in so far as it is relevant to the issues is as follows.

He said that William came back to Castlelake about Christmas 1968 - give or take 6 months - and drove the farm milk lorry for 6 to 9 months into early 1970. He, himself, was doing the milking work on the farm and doing a bit of cattle dealing. The milk business he said was then going well. He said William decided to

go into the milk business himself when he saw money in it and that he (William) asked him to secure him in the National Bank in Cashel. He said he sent William to his father about it and that he (William) set up a substantial round of his own but lacked experience, and that the result of this was financial disaster which left his father and himself in a bad position and both businesses closed down with his father and Castlelake in debt for about £20,000 and William also with a debt of £3,000 and possibly £7,000. He said this affected Knockroe because his father had to sell the cattle off it in September 1971 to help to pay debts leaving 25/30 sheep and 10/15 cows of his (Patrick's) on Knockroe. At this stage according to Patrick Mr. Hunt gave him cattle to stock Knockroe without charge because he, Patrick, had been dealing with Hunt for 3-4 years. He said William had a disagreement with Mr. Kennedy in January or February of 1972 and had moved out of Castlelake and gone to his brother-in-law, Tadhg Rafferty for 3-4 months. Earlier in November/December 1971, according to Patrick, William was in a bad financial position due to the collapse of the milk business and he and Patrick had discussions in November/December 1971. Patrick said he had collateral - meaning

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he said a current account in the Provincial Bank in Tipperary and he said he funded William with a loan of £250 by cheque until 29th January 1972 when he (William) would get his money for his half share of Knockroe. This cheque which was produced was dated 8th January 1972. William denied it was for a loan but for reimbursement of money he paid on behalf of Patrick.

About this time Patrick said he and William had further discussions before approaching the bank. He said William said, "What am I going to do - I'm not wanted in Castlelake, where am I going to go?", to which Patrick said William said that under the circumstances there were not too many places for him (William) to go but that he (Patrick) said if he could be of help he would. To this Patrick said William replied by asking him that if he (William) could raise money to start and buy stock for Knockroe would he (Patrick) allow him two years to get started to which Patrick said he agreed. Patrick said this conversation took place in the kitchen of Castlelake. It is to be noted as a matter of importance that this conversation was never put in cross-examination to William. This is an aspect of the case to which I will be referring later in more detail. Patrick

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further stated that William came to him two weeks later, that is in early January 1972, and told him he had been with Mr. Lynch and had put his case to him and that Mr. Lynch would be happy to facilitate the situation if Patrick would come in and see him with William and sign the necessary documents for a loan to William to stock Knockroe. Patrick further stated that William had a debt in the National Bank in Cashel and that part of the loan to William was to deal with this. He said they both went in to see Mr. Lynch on 23rd January 1972.

I have found it necessary to give this evidence of William and Patrick in detail as it indicates their differing and conflicting accounts of the reasons they each said they went in to see Mr. Lynch. It will be noticed that Patrick has denied that the visit to Mr. Lynch took place at which William says Patrick wanted £2,000 for himself and that they were both told by Mr. Lynch to go away and come back again.

William's account in evidence of what occurred in the bank when he says they both met Mr. Lynch is as follows. He said he explained to Mr. Lynch that they had come to an arrangement and told him what

it was - that Patrick was to get £2,000 and that he (William) wanted to stock Knockroe and take it over. He said Mr. Lynch had had Knockroe inspected by Mr. Hyland and that Mr. Lynch said the bank would advance £9,500 on the farm being £2,000 to Patrick - £3,500 to the Bank of Ireland in Cashel to pay off his (William's) overdraft there and the balance for his (William's) working capital. He said three of them agreed to this and documents were signed. He said the deeds of Knockroe were given in later as collateral for the loan. The land certificate for Knockroe was also lodged as security for the loan. He said three accounts were then opened by the bank -

- (1) A joint account in the name of Patrick and himself;
- (2) A separate chequing account in Patrick's sole name, and
- (3) A separate chequing account in his (William's) name.

He said the £2,000 was put as a credit into Patrick's chequing account and the balance was lodged into his (William's) account after deduction of his debt of £3,500 to the Bank of Ireland in Cashel. Each was given a cheque book.

On cross-examination William said he did not mention the

gentleman's agreement at the first meeting with Mr. Lynch. He maintained that he and not Patrick was not liable to the bank for the loan of £9,500 although both he and Patrick both signed documents securing it and he did not sign any document making himself solely liable. He said he did not know that Patrick was liable with him for this sum. He said he brought in the Folio to show that each was the owner of half of Knockroe. He said he was responsible for the sum of £115,000 now due to the bank and that he regarded himself as liable for it and would pay it even if the bank regarded Patrick as also liable.

It is now necessary to relate what was said and done at this meeting according to the evidence of Patrick. He said this was the first time in the bank and that after some preliminary chat (the details of which Patrick gave in evidence) Mr. Lynch asked him what was his position and that he (Patrick) told him it was pretty good - that he had about 100 sheep and 60 cattle and a current account in the region of £2,500-£3,000 in the Provincial Bank in Tipperary. Patrick said that Mr. Lynch said the reason he (Mr. Lynch) was asking was if he (Patrick) needed a float and that he (Patrick) then said that if

money was available he thought he (Patrick) could make use of it at this stage, and that Mr. Lynch then asked him what sort of money did he want and that he (Patrick) asked in return what was available. He said that Mr. Lynch then said anything from £1,000 to £3,000 to which Patrick replied that if he (Mr. Lynch) could manage £2,000 he (Patrick) could make good use of it. According to Patrick they then shook hands and Mr. Lynch wished him the best of luck and he left. It is again to be noted that none of this conversation was put to William in cross-examination. Patrick also said in evidence that facilities were arranged for William for £9,000 or so and that the Deeds of Knockroe were to be transferred from Mr. Ryan's (solicitor's) office to the Bank of Ireland, Tipperary. He said also that they (he and William) both signed a document lodging a land certificate and that they made themselves jointly liable for a sum by signing documents. He denied what William had said that the £2,000 was being given by him (William) to Patrick for his share of Knockroe.

In cross-examination Patrick said Mr. Lynch was wrong in saying there was a visit to him by William and Patrick in which he told them to go away and come back. He said that when he went into Mr. Lynch

his only object was to secure a loan for William to run Knockroe. His explanation as to how Mr. Lynch came to offer him the loan was that money was free and that he had not gone in for money. He said Mr. Lynch knew him - that he had often met him in the bank in Tipperary and that he had been introduced by a Mr. Kavanagh. He said Mr. Lynch made the offer to him as a potential customer who had plenty of money and no debts and that he (Patrick) took up the facility of a loan because he liked Mr. Lynch and because he was helpful. He said it was pure coincidence that the £2,000 which he owed Mr. Hunt was what he said was offered by Mr. Lynch.

In evidence Mr. Lynch said his recollection of William's first visit was that he told him of the financial crash of the dairy and of his debt to the National Bank in Cashel. He also recollected William telling him of the two holdings of Knockroe and Castlelake and his specific request was for £7,000 to buy cows to stock Knockroe. Mr. Lynch told William he would give it favourable consideration and he made arrangements for a Mr. Hyland to inspect Knockroe for a valuation to be made for security purposes. He applied for permission to grant accommodation and contacted the National Bank in Cashel and

verified William's overdraft. Mr. Lynch then recounted how William and Patrick came in 10 days later and said this was the first time he met Patrick. His recollection of what occurred was, he said, vague but he remembered that there appeared to have been a misunderstanding between the brothers as to the division of the moneys to be advanced and that he advised them to go away and come back when they had agreed. This evidence would approximately agree with that of William and it contradicted the account of Patrick. He said they both returned on 28th January 1972 and appeared to have sorted out their problems.

In the meantime the agreement alleged by William would have taken place.

Mr. Lynch said that at their discussions on 28th January 1972 a loan of £9,500 was to be granted to William of which Patrick was to get £2,000 and William £7,500 and of which £3,300 was to go to the National Bank in Cashel to clear William's overdraft there and that the balance was to be used for the purchase of cows by William to stock Knockroe. He said the size of the loan was dictated by Mr. Hyland's advice. He said he had no knowledge of any agreement

between the brothers and that the usual bank documents in joint account form were signed by both and two separate current accounts were opened - one for Patrick with credit for £2,000 in his sole name and one for William in his sole name for £7,500. He said he could not recall anything that was said in their discussions before the documents were signed but that the arrangement as he understood it was that William was to work and run Knockroe and eventually own it and that Patrick would run and work Castlelake and eventually own it. This is contrary to Patrick's account. Mr. Lynch also said he was not told by Patrick that he was getting £2,000.

He said that William had been accommodated to date and owed the bank £115,000 and that he never applied for additional facilities for Patrick except for a first increase to £13,000 on the loan for £9,500 because he understood William was the principal at Knockroe, and that what he understood was the arrangement as above was a genuine one and was to be the position for the future, and that William would be dealing with him for Knockroe and Patrick for Castlelake.

He further stated that he understood the original loan and debt of £9,500 (which would include the £2,000) was William's and would be

repaid by him and that he was aware that Patrick had the paper title to Knockroe and that his name was joined as he had title as tenant in common on the Register.

He said he had a general doubt as to the sources of his information but that he was probably originally told by William; possibly in part by Mr. Hyland and possibly something by the bank manager in Cashel. He said he relied on the contents of his file which in large part resulted from what William said. He said the position as he had stated was as he had repeated to head office and repeated in 1973 as being his belief in his application to head office in 1973. He said both boys were agreeable to this and that it was the sensible solution to the whole thing, and it was on this basis and assumption that he spoke to both of them in the last decade. He looked on William to repay on Knockroe and to Patrick to repay on Castlelake.

Asked by Mr. Ryan in cross-examination what was the reality about liability for the debt on Knockroe he answered that William was responsible for the whole debt except for the first increase to £13,000 from £9,500. He said the total liability was £115,000-£20,000

due solely by William; £75,000 due on a joint account of William and Patrick and the remainder on a bridging loan against grants opened by William on the 2nd October 1979 and put into the joint names of William and Patrick on the 27th September 1980. He agreed that his recollection of what was said was extremely vague and was based on information from his file. When Mr. Ryan put to him that Patrick said he attended only one meeting Mr. Lynch said he (Patrick) was present at two meetings and he said he remembered this from his memory without any help from letters on his file and also as his file showed that Patrick was present at two meetings. He said he was quite clear in his memory that there was a dispute at the first meeting and he told them to go away and sort it out and that they did. When it was put to him that he gave Patrick the £2,000 as a "general facility" Mr. Lynch said he had no memory of this and did not know how the £2,000 for Patrick came about, meaning as he had already said that he was not told why Patrick was getting £2,000. He stated that he was given instructions by both William and Patrick how the money should be divided and applied. Later in re-examination Mr. Lynch said he knew of the intended transfer of Castlelake to Patrick

and that he had discussed it with Patrick who had called in to see him several times. He said he became aware in 1973 that there was talk of transferring Castlelake to Patrick and that he (Mr. Lynch) thought this was only just and right as he was under the impression that when Patrick got Castlelake that William would get the whole of Knockroe. He said he spoke to Patrick and his father about the transfer on a number of occasions about it all and about Patrick taking over the debts of Castlelake, and that he thought this was the right thing to do.

Mr. Lynch also said that if Patrick wanted money for stock he would have opened a different form of account and that if Patrick had wanted a loan it would probably have been by way of overdraft as a debit on a loan account and not as a credit (which is the way it appears on the sole account opened in Patrick's name) and which in fact was and is debited to Patrick.

I am giving all this evidence in detail as in my view the ascertainment of the truth or accuracy of what transpired and was done at these bank discussions is fundamental to the central issue of the case and goes a long way if not the whole way to deciding

it, certainly in preference to matters of conflicting evidence on events which occurred many years later and in changed circumstances and pressures.

In addition to examining in detail the differing points of conflict, I have taken an overall view of these events and of the consistency, conduct, and integrity of the parties in relation to them in determining where the truth lies and if William has established on the balance of probabilities the agreement he alleges.

I have no doubt that Patrick visited the bank on two separate occasions. I accept the evidence of William and Mr. Lynch that he did and reject his evidence to the contrary.

I believe Patrick has a motive in denying that he was present the first time at the bank because it was on this occasion according to William that Patrick stated he wanted £2,000 for himself, and that Mr. Lynch sent them away because they had not discussed their requirements properly and to come back again. Although Mr. Lynch does not remember the reason for it he does remember that there appeared to have been a misunderstanding between the brothers as to the division of the moneys to be advanced and that he advised them

to go away and return when they had agreed. He said this occurred ten days after William's first visit alone and that he remembered it, as well as having checked it from his file. This is not a matter of failure of recollection on Patrick's part. He said it did not take place. I am satisfied it did take place and that Patrick was present and that it was abandoned because of Patrick's expressed requirement or need for £2,000 for himself. I am unable to attach any credence to the evidence of Patrick on this, and his motives in saying it did not take place make his evidence suspect. I am satisfied that at this meeting Patrick declared his need of £2,000. There is thus evidence of a foundation for that part of the agreement alleged by William that Patrick told him he needed £2,000 immediately for cattle and that the raising of this sum for Patrick by William was by agreement between them one of the reasons why they returned to Mr. Lynch. According to Patrick Mr. Lynch offered this sum to him as a potentially good client. I have given the conversation which Patrick says took place whereby the manager offered and gave him this loan without any initiating request by him. Apart from the fact that Mr. Lynch said he did not remember offering this sum as a

"general facility" to use Mr. Ryan's words this important conversation and transaction, if it took place, was not put to William who was present at all times and neither was it put to Mr. Lynch other than by way of suggestion of a "general facility". Having denied that the first meeting took place Patrick now had a reason to give a different meaning to explain the significance of the £2,000 he in fact got.

Mr. Lynch's evidence and the nature of the documentation support and corroborate William's evidence of the purpose of this visit and that he told Mr. Lynch that they had come to an arrangement that Patrick was to get £2,000; that he, William, wanted to stock and take over the farm at Knockroe, and that the £2,000 was part of the advance on the farm of £9,500. The link-up between this mention of £2,000 and Patrick's expressed need for it, which I hold took place at the prior meeting, and William's allegation in regard to it as part of the conversation at the cow-house when he says Patrick said he needed it for cattle is obvious. The £2,000 was put as a credit into a chequing account in Patrick's sole name. According to Mr. Lynch if Patrick himself had wanted or got a loan it would probably

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have been by way of overdraft as a liability and not as a credit which is the way it appears on Patrick's chequing account.

I have already recounted Mr. Lynch's evidence about the loan to be granted which was that of the £9,500 to be lent, of which Patrick was to get £2,000 and William £7,500. The security was the title deeds and land certificate in relation to Knockroe. The obvious reason for this was that both brothers were regarded as joint owners of their respective shares of this land. This is at complete variance with Patrick's version that the £2,000 was an independent loan to him by Mr. Lynch which I am unable to accept as having occurred.

Other points of conflict also arise. William says that on the occasion of the conversation at the cow-house Patrick said he was in need of the £2,000 because Hunt was on to him and that if he got it immediately and until 31st March to remove his stock etc. It transpired that by cheque dated 29th January 1972, being the day after Patrick was in with Mr. Lynch, Patrick paid Mr. Hunt the exact amount of £2,000 which William says Patrick said he wanted immediately to pay Mr. Hunt as part of the alleged agreement. Patrick says that

this was coincidence. He was asked to explain how William could have known of this debt due by Patrick to Mr. Hunt if not from Patrick himself. Patrick said he (William) got it from his mother. Mrs. Kennedy Senior gave evidence and did not mention this. Patrick also sought to explain this by referring to the pleadings and particulars where it was stated the amount was £3,000 and the year 1971. Clearly this was a mistake which was immediately corrected. It could only have been £2,000 - the amount of the loan and the cheque, and January 1972 when this amount was lent. Patrick said that William could have found out about this £2,000 from Mr. Hunt. Mr. Hunt did not give evidence. He said he and Mr. Hunt had an extended credit arrangement with ample time to pay and which did not require immediate payment. It would seem to me that this would be good reason why Mr. Hunt need not have been paid so quickly and that this quick payment is corroboration of William's account of the conversation consistent with the agreement he alleges.

Patrick then said that over a period of 5/6 years he (Patrick) always had an outstanding account with Mr. Hunt and that he (William) took it for granted that Patrick owed this money. Finally when asked

why he did not pay Hunt until January 1972 he said Hunt did not want it for tax purposes.

These answers are based on a pure speculation and without substance or corroboration and I am unable to place any reliance or credence on them.

Patrick was asked about his Provincial Bank account in January 1972 which he said was in credit for £2,500 to £3,000. A notice to produce Patrick's bank statements had been served. He was asked to produce his statements of account in this bank. He said he did not have them as he closed this account in 1973 after which he had no further dealings with this bank. He said he went to the bank to get the statements but the Provincial had left these premises. He said he then enquired from Mr. Purtill an accountant in Cashel who was recommended to him by Mr. Rafferty. Mr. Purtill told him that bank accounts were burnt after 7 years. I have the gravest doubts about this piece of evidence. Mr. Purtill did not give evidence. Neither was any witness called from the Allied Irish Banks with which the Provincial Bank became amalgamated. The production of these statements became important evidence in corroboration and support

of Patrick's statement of his conversation with Mr. Lynch concerning his version of how the loan of £2,000 came about and that he did not need this money to pay Hunt. It thus was important for him to prove he then had this amount of credit in the Provincial Bank. An appropriate witness from the Allied Irish Banks in Dublin was easily procurable at the shortest of notice. From my own knowledge it so happens I know that similar bank statements from the same Provincial Bank in another southern country branch were recently produced by a bank official witness in another action at present before me going back to 1954 as having been kept in that bank's vaults.

The position is that I am not satisfied with the accuracy or reliability of this evidence. Consequently I am of opinion that Patrick has not proved he had the credit he said he had in the Provincial Bank in Tipperary in January 1972. With reference to his account in the National Bank, Cashel where he said he was overdrawn to the extent of £3,000-£4,000 and was not operated since March 1969 he said when asked what happened to this overdrawn account that he had it transferred to his account in the Bank of Ireland,

Tipperary in 1975. An examination of this account does not show any such transaction. His evidence concerning the operation and amounts of his bank accounts is therefore shown not to be reliable and I am left with no other conclusion than Patrick's evidence on these matters is to say at least suspect and puts me in the position that I cannot attach any credence to it.

I next come to that part of the alleged cow-house agreement in which William says Patrick told him that on the two prior conditions already mentioned being fulfilled "When I get Castlelake Knockroe is yours." Patrick got Castlelake in 1975. William has to discharge the onus of proof that Patrick said this or made this promise as part of the conversation. Again the events in the Bank of Ireland with Mr. Lynch have a crucial bearing on the authenticity and recognition by the brothers of this allegation as the arrangements in the Bank were said by William to be influenced by and on the basis that Knockroe was to be his and Castlelake to belong to Patrick in course of time. Whereas Patrick does not agree and maintains that the loan to William was only to stock Knockroe secured by the deposit of its title deeds and was to be repaid in 7 years. I can find no support or mention anywhere else in the evidence for this last

condition or that such condition was ever sought to be enforced.

Furthermore it was never put to William or Mr. Lynch in the course of cross-examination. I have already given Mr. Lynch's evidence in detail and need not repeat it. It is clear that although his recollection of what was actually said was vague and he was not told of the agreement alleged by William, nevertheless his understanding and belief based on the contents of his file after the arrangement agreed between the brothers was that William was to work and run Knockroe and eventually own it and that Patrick would run and work Castlelake and eventually own it and that he understood that William was to be the principal at Knockroe and that this arrangement was a genuine one and was to be the position for the future, and that William would be dealing with him for Knockroe and Patrick for Castlelake.

Mr. Lynch is about the only truly independent witness in the case and his evidence was given carefully and objectively. Even if his recollection of what was said was understandably vague after a lapse of ten years the information on which his evidence on this matter was primarily based was obtained from his file and letters he wrote at the time. These are more likely to reflect the position as it then occurred than on a recollection of any ten year old verbal discussions. His

evidence as to his understanding of the position accords with and vindicates William's recollection of events in the Bank and not Patrick's, and in my opinion in the absence of any other explanation can only be compatible with an agreement between William and Patrick giving rise to such an understanding, which in turn would be supportive of the alleged cow-house agreement and of the events and conversation giving rise to it, and not be explicable by Patrick's version of alleged conversations and happenings.

The subsequent actions and conduct of the parties, more particularly in the period of a few years following the bank arrangements and the alleged cow-house agreement are relevant to the issues both of the cow-house agreement and the events in the Bank in 1972 as to whether or not and how these were implemented.

The evidence indicates that William and William only dealt with Mr. Lynch and the Bank of Ireland, Tipperary in relation to Knockroe and Patrick in relation only to Castl lake. Patrick accepts he removed his cattle off Knockroe by about the end of March 1972 leaving only a few horses although he said this removal was to pay debts for machinery in Castl lake. He did not use the farmlands of Knockroe again. William says, and his wife Anne also says, that he told her of the agreement when

they became engaged at Christmas 1973.

William's wife Anne had been a nurse in Dublin but comes from County Tipperary. They married in August 1974 and Patrick was their best man. They decided to re-construct the old residence on Knockroe and they converted the whole thing. She worked and earned money which went into the household and she worked hard on the farm and the house with William. They reconstructed and developed the whole place including the out-buildings until most were completed by end 1979 except for the installation of a milking machine for which purpose they applied for and got grants. According to William he went into Knockroe immediately and commenced working next day. He converted the old house into a dairy - made an avenue - put in water into every paddock - put in the E.S.B. and also he put in a modern unit for 21 cows; reclaimed 25 acres; put up fences and gates and got the place into peak condition. Mr. Carew the building contractor gave evidence of having done substantial work on Knockroe and produced paid cheques from William for about £15,000/£16,000 over the period 22nd September 1979 to a final settlement cheque in February 1980. Mr. Carew said in evidence that the biggest amount of work had been done when he went in - all sheds done and walls up on the site prepared for the rest of

the buildings. Patrick was inclined to dispute the amount of work William and Anne said they did on Knockroe and said that any buildings done were started in mid 1978 to 1980 but that he was not aware of buildings going on. Mr. Carew said he saw both Patrick and Eamonn in the yard of Knockroe when he was there. This was not disputed. Mrs. Anne Kennedy said Mrs. Kennedy Senior was there also. This was not disputed either. Photographs were produced to show a good view of Knockroe and the buildings from Castlelake which were stated to be only $\frac{3}{4}$ of a mile away on the same road. On these facts I find it hard to accept Patrick's evidence of his ignorance of what was going on at Knockroe. It is scarcely credible that Patrick could not have known or did not interest himself in what was happening in Knockroe. I accept the evidence of William and Anne and of Mr. Carew of what they did in relation to Knockroe. I am satisfied William and from August 1974 William and Anne as husband and wife went into occupation and possession of Knockroe as full owners to be and that he expended large sums of money in developing it in a permanent manner. It is a fair and reasonable inference that they would not have done all this except in the belief that it was or was to be theirs.

Patrick however says that William owed him money for the rent and

use of his Knockroe lands and gave evidence that neither E. himself were allowed on the lands and were prevented under force from looking for his money for them. He gave evidence on a shooting incident in August 1980 when he said he came looking for a mower off the land of which he said he was half owner. Pa. On cross-examination that this incident had everything to do with in the case but when asked this same question his mother said nothing to do with it. I believe his mother.

In my opinion the subsequent conduct of the parties and the conduct of William and Anne in relation to Knockroe as mentioned is consistent with what Mr. Lynch said was his view of what the position was and was to be as agreed between Patrick in the Bank in January 1972, and with what William said in his agreement between Patrick and himself. It follows and I

- (a) that William then gave or paid Patrick £2,000;
- (b) that Patrick paid this to Mr. Hunt by cheque on the next day;
- (c) that Patrick wanted this sum for this purpose;
- (d) that Patrick took his cattle off Knockroe by end of the year;
- (e) that the position agreed and accepted by Patrick was that

at the Bank was that William was to be the owner of Knockroe and that this was accepted by Patrick though he has denied it since;

(f) that the conduct of William in relation to Knockroe in the years following January 1972 was consistent with Mr. Lynch's understanding of what the position was and what William said it was, and

(g) that it was also consistent with William's evidence of what was agreed and not with Patrick's version of events.

In these circumstances I am satisfied that all these events could not have resulted without prior agreement between the parties and there being no evidence of any other agreement I am satisfied that the cow-house agreement on which William relies did take place.

I have given careful consideration to the evidence given by and on behalf of Patrick on which he seeks to rely to show that William tried to buy out his (Patrick's) half share thereby indicating it is submitted Patrick's ownership thereof, or that according to Patrick when he challenged William for his money for Knockroe William did not dispute his debt but set up inability to pay. It is to be noted that Patrick in his evidence has said he went looking at various times for his rent

from William. However he has not given any evidence of any agreement to support a claim for payment of rent or has any such agreement been pleaded.

In my opinion there is sufficient evidence on which these foregoing findings are based to decide this case in favour of William. The Court however must have regard to other and later evidence adduced by and on behalf of Patrick which if accepted would throw doubt or disprove the correctness of such prior evidence and findings as indicating offers to purchase Patrick's half share of Knockroe and thereby later acknowledgments by William that he regarded Patrick as owner of a half share after January 1972 and even continuing to 1979/1980. Mr. Morris has unequivocally branded such evidence as fabricated by Patrick and his witnesses to get out of the cow-house agreement and its serious consequences if William were to succeed. If Eamonn is right in his evidence these would include the sale of Castlelake in the unhappy financial and farming history which has befallen it. These are serious charges and require the serious attention and examination which I have given them.

Before dealing with the alleged offers to purchase Knockroe by William the argument was advanced by and for Patrick that the nature

of the agreement and the consideration of £2,000 and the withdrawal of William's cattle in return for a half share in Knockroe stated to be then (1972) worth £19,000 indicated the improbability of such an agreement by Patrick. Whilst this may be a merit, nevertheless once there is consideration its adequacy in this sort of case is irrelevant to its validity and enforceability if the agreement itself has been proved. In addition there was also consideration of the purchase of William's goodwill and support in this large family of Patrick getting Castlelake in course of time.

The evidence by and on behalf of Patrick in regard to offers by William to purchase his half share was to the effect that a number of offers for such purchase were made by William at different places and times. In summary these were alleged to have been made before Mr. Goldberg's letter of 20th February 1980 and before Mr. Nash's undisputed advice to William when William saw him shortly after Mr. Goldberg's letter, not to let this sort of family dispute go to law and to try and settle it. Good advice may I say. William and Anne say such offers as were made pursuant to Mr. Nash's advice were to try and settle and not as alleged by Patrick as offers which acknowledged his title to his half share in Knockroe. The common sense of the application of these

arguments to the facts is this. If these offers by William were made before William saw and was advised by Mr. Nash it would be highly improbable that he would not then have told Mr. Nash about them - namely that he had already offered £10,000, or as alleged £40,000, and that as is also alleged Patrick wanted £75,000 for his half share and that these offers had all been refused. There is also the consequence that if William did not make these alleged offers after Mr. Nash's advice that he would then have done nothing on foot of such advice and would not have followed it. If this were so not only would it be improbable, but it would have emerged in evidence that he William did not carry out his Solicitor's instructions or advice.

On this broad approach the probabilities therefore must lie in favour of William's contention and against Patrick. I must now however consider the offers individually in order of time.

It was stated by Mr. Budd that Patrick would say that in 1974 he talked to William about his share, the jist of which conversation was that Knockroe was to be stocked by William who was to pay him (Patrick) for his share of Knockroe and that William acknowledged his (Patrick's) title to his share but said he could not pay him. William flatly denied any such conversation. Whilst Mr. Budd put it to William

in cross-examination that Patrick would say this, Patrick in fact did not give evidence of such conversation.

He did however state that also in 1974 he paid William a visit in Knockroe inquiring about his position and asking would William be able to pay him rents for his half share of Knockroe and that William said he was thinking about getting married and that he would need what he had at this stage to renovate the house and asked could he, Patrick, allow him another year or two until he got married and that he should be on his feet by 1976 and that he (Patrick) allowed him time again.

No instructions were given by Patrick to his Solicitor or Counsel to enable Counsel to put this conversation to William in cross-examination. It was not so put.

Patrick also gave evidence of an earlier conversation he said he had with William which he said took place about one and a half years before then when they met in Cashel and that he (Patrick) said to William that he had a good start milking cows now for 5 - 6 years - that he Patrick was needing money now for debts and that it was about time for him William to make repayments on his half share on Knockroe, to which William is said to have replied that he was finding it hard himself and did not have the money, to which Patrick said, he

Patrick replied that he, William had had free grass at £50 p.a. and that he, Patrick was due £20,000 from William, and that when William said again he had not got the money, he Patrick walked off and left it for family peace and quiet. For the same reason which I have already stated this important alleged conversation was never put by Counsel to William on cross-examination.

The next allegation of an offer by William is alleged to have occurred in March or April 1975 in conversation with Mrs. Joan Kennedy. Mrs. Kennedy referred to this conversation as having taken place in March or April 1979 but it had been previously mentioned as 1975. It was when she said William was driving her down to Knockroe to see Anne who was sick. She said she had a discussion in the car with William but she did not give evidence of what was supposed to have been said in the car. She did say however that when they were in the kitchen in Knockroe William mentioned again about giving Patrick £10,000 if he would sign over his half share in Knockroe to him. Mrs. Kennedy said she said what use is £10,000 - it won't build a house. She said Anne was in the bedroom and said what are they building - is it a hotel?

This is a different account to what Counsel put to Anne. He put

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it to her that in Anne's bedroom William said he was still offering £10,000 and that when she (Mrs. Kennedy Senior) said it was not enough to build a house for Patrick she (Anne) said is it a hotel they are building. It transpired in cross-examination and Mrs. Kennedy agreed that this alleged conversation did not occur in Anne's bedroom but that Mrs. Kennedy was in the kitchen and Anne in the bathroom and toilet with a bilious attack and that she spoke out from there because she overheard the conversation with William. Anne says she heard no such conversation. This is probably correct due to her condition of sickness and where she was. William's evidence on this is that what he said was that he would build a house for his mother which he had told Paddy he would do and that there was no mention of £10,000 or of offering or giving it to Patrick if he would sign over his half share of Knockroe.

Mrs. Kennedy Senior at this part of her evidence was overtly anxious to give evidence of another occasion early in 1978 when she said William arrived back to Knockroe from Cashel and in the presence of Anne mentioned the transfer of Patrick's half share. This intended evidence was ruled out by agreement of Counsel because it was never put to either William or Anne in cross-examination. I got the distinct impression at this stage of her evidence that Mrs. Kennedy Senior was

not a disinterested mother or witness. Her admitted variations in her account of what she said transpired on this occasion when Anne was ill and the improbability of Anne overhearing any conversation in the kitchen as alleged when she was sick in the toilet deprives this piece of evidence of the integrity it requires for truth and acceptance.

Moreover this lack of objectivity which Mrs. Kennedy Senior displayed in trying to adduce other evidence of a similar nature of which she had not given instructions made her appear to be a somewhat biased witness. I accept the evidence of William and Anne.

The next offer alleged was that William is stated by Mrs. Kennedy Senior to have made to her in Castlflake in November 1978 when she says William spoke to her about Patrick transferring his half share of Knockroe to him, and that he took out his cheque book and said he would write her a cheque for £10,000 to give to Patrick, and that she said she could not accept a cheque on Patrick's behalf and that he William wanted Patrick to make over his share of Knockroe to him. It is of note that in the cross-examination of William all that was put to him was that in 1978 he offered to his mother to write a cheque for £10,000 to give to Patrick. He denied this. Neither in cross-examination of William or of Anne was there any reference to £10,000 being offered for

Patrick's half share. Anne denied that any such conversation took place in 1978 and said that all offers of £10,000 took place after Mr. Goldberg's letter. I regret to say I do not accept this evidence of Mrs. Kennedy Senior as of November 1978.

The next suggestion regarding an offer by William to his mother for Patrick's half share was put to William in cross-examination as having occurred in March 1979. William maintained it was in July 1980 when Patrick's son came home from hospital. This is the alleged offer with which the "forged receipt" purporting to have been that of Mr. O'Donnell was concerned and which played such an important part in the Circuit Court hearing and the Judgment of the Circuit Court Judge in Patrick's favour.

Mrs. Anne Kennedy said this document was handed into the Circuit Court from when William was asked in evidence if Patrick had built a bungalow for his parents and if he objected to the production of this receipt. She also said it was Patrick who handed it to the Court and that the only reason for its production was for a reference to dates because Mrs. Kennedy Senior said the offer by William was made when the walls of the bungalow were up. In his evidence Patrick said in this Court that this receipt was handed to Eamonn when giving evidence and

that the reason for its production was that Mrs. Joan
sure about a date for something done to the house. M
with Mr. Morris, in cross-examination that in the Circ
no date for the first offer (November 1978) and that
for the second offer (March 1979) by reference to the
bungalow being up, and that she had said in the Circuit
could not remember dates. She then said she was not
the date March/April 1979 in the Circuit Court but t
she gave both dates to her lawyers before both Court
it was to Mr. Budd only before this Court but that h
have been present. She seemed to agree that the de
offer was fixed by reference to the four walls being

It is unnecessary to quote verbatim the relevant
Sheridan's Judgment in which he placed such reliance
in the case. It clearly indicates that though Mrs.
evidence of two different offers by William at diff
not give the times or dates or even months or year
of the second offer was fixed by reference to the
bungalow being up which Judge Sheridan from the in
thought was July 1979. He also attached great sig

evidence in the Circuit Court that the walls of the bungalow were up in July 1979. It is of significance in this Court that Eamonn has given no such evidence here and also of significance that neither did Mrs. Joan Kennedy in her direct evidence refer to any offer of William having been made in March 1979 as she did in the Circuit Court, or to any other time or to the walls of the bungalow - only when cross-examined by Mr. Morris in his exploration of the history of this receipt on the evidence given in relation to it in the Circuit Court and here. The only reference to this offer was by Mr. Budd in his cross-examination of William that he made it to Mrs. Joan Kennedy in March 1979. I did not think this failure to give similar evidence in this Court to that which they gave in the Circuit Court by Mrs. Joan Kennedy and Eamonn is by oversight. Judge Sheridan mentioned that the question of when the walls were up could have been put beyond doubt by calling Mr. O'Donnell. Mr. O'Donnell has given evidence in this Court and both the Plaintiff and his wife have admitted that the document on which Judge Sheridan put such reliance in deciding in Patrick's favour is not a document prepared or signed by Mr. O'Donnell as it purports to be on its face. Mr. O'Donnell gave uncontradicted evidence of the broken periods he spent working on the bungalow. These distort the whole time scale in the building of the

bungalow and as appear on the receipt. Mr. O'Donnell said he started work on it in July 1979. No attempt was made in this Court to prove when the four walls were up. He said the bill-head produced in Court was not in his writing nor was the signature on it his, or did he ever give such a receipt and that the amounts were different. He said Patrick had asked him for a bill in the region of £14,000 and to keep the dates of payments as close as possible. He said also that he gave Patrick a bill in the region of £14,700 by request and also a blank bill-head for which Patrick asked. He made out the bill for £14,700 from a rough one he made out first and he identified in Court the bill for £14,700 as a copy of the one he gave Patrick at his request. He said that after the Circuit Court hearing when approached by William he wrote out for William an exact copy of the bill he had given Patrick for £14,700. Patrick denies ever having got this bill from Mr. O'Donnell. Mrs. Mary Kennedy asked me if Mr. O'Donnell gave it to Patrick how did he give a copy of it to William. This would have been a question for Mr. O'Donnell to answer but the answer probably would have been if he had been asked that he made it out from the same rough draft as he did for Patrick. Mrs. Mary Kennedy said she made out and signed Mr. O'Donnell's name to the forged bill. Patrick said he did not know of this or why she did it.

It was never put to Mr. O'Donnell that he did not give this bill for £14,700 to Patrick who although he denied getting it from Mr. O'Donnell also said he got it in response to his Solicitors' letter.

The whole concoction and the need for forging Mr. O'Donnell's signature and the insertion of dates which did not correspond with the payments which were made (of which Patrick had most of the cheques) seem uncalled for by the simple request from Mr. Goldberg for a note for the cost of the bungalow.

While Patrick's account of how he got figures and put them in the phone book loses all credibility when he did not deem it worth his while to get it from his home during the weekend on such a crucial matter, and when he agreed in Court that it was in the house. He said that someone was rung up to have a look for it but that it could not be found.

Having allowed and assessed all the evidence relating to this event including all the documents and signatures and cheques it appears to me that the signature E. O'Donnell on the forged bill-head is so clearly similar to those on the cheques signed for payment by Patrick Kennedy to Mr. O'Donnell and so unlike those written in the witness box by Mrs. Mary Kennedy that it was signed by him and not his wife.

Even if written by her I cannot accept that he was
falsity of this document with which he was so close.
In any event he adopted and used it in Court. I
document, though containing Mr. O'Donnell's forged
innocently compiled and a mistake by Mrs. Mary
intended for use in Court. Whether or not it was
intended the fact is that it was used in Court
and misled the Judge, and was given to Patrick's
without any explanation as to its true nature.
for deceitful purposes whatever its origin. I
has been allowed to bear more than her fair share
unhappy event. It appears from the Judgment
Eamonn must also have been aware of what was happening
with it.

As I have said, Judge Sheridan was greatly misled
document in concluding that the offer of which
was giving evidence occurred in July 1979 before
and even he thought before Mr. Kennedy's death
only conclude that what happened in the Circuit
attempt to mislead the Judge as to the true date

£10,000 by William. I accept his evidence that it was not July 1979.

The detrimental effect of this episode on the family is obvious.

I now refer to evidence given by Eamonn of an argument he says he had with William in July 1979 in the area of Knockroe after he had rung William to come down when he says there was friction over Knockroe. He said he told William that the lands of Knockroe had to be sorted out and that he would go to Patrick and make him a decent offer, but there was no money at the moment to which Eamonn said he (Eamonn) said that William's offer of £10,000 was no money for 80 acres and that whatever he did to leave their mother and home he would be said that William replied that he would have "been taken to Court and that he would sink Knockroe so far in debt that it would be worth twopence to no one."

This is an important and ugly conversation. It was not given the chance to deal with it because it was not put in evidence.

In the course of the case it has been noticed on a number of times of times Mr. Morris has justifiably objected to the evidence.

conversations of Patrick or his witnesses bein
the grounds that they were not put to William
cross-examination. Most of these objections h
significance of such happenings is it appears
his witnesses have clearly not given the neces
Solicitors and Counsel. The ability then of F
to remember and give evidence concerning them
can only result in either their being ruled i
weakened that reliance cannot be placed on the
witnesses, or that they are invented. This may
such omissions happen once or twice or so when
by recalling the other party, but when as here
frequently throughout the case the position go
of remedy and can only result in damaging th
being tendered or even destroying it. The mat
important when as I have already mentioned Mr.
that the evidence of Patrick and his witnesses
case were being tried with a jury it would hav
times over. I am completely satisfied in this
Solicitor were in no way remiss and were put i
position. The accumulation of such incidents :

it worthwhile for Mr. Morris to continue
lost their evidential value. William has
deal with these conversations and events
have said. He may have denied them or so
happen until after Mr. Goldberg's letter,
them. This last conversation alleged by
with William may or may not have been an
circumstances which I have mentioned and
however to place any value or credence on

I also refer to a conversation alleged
place with William at a dance hall in 19
William how was he fixed in Knockroe to
and that when by Eamonn "how so" in view of
alleged by Eamonn to have said he had hi
their sister Mary said to William to keep
William has denied this conversation ever
evidence of it. The only bit of it which
was the statement attributed to William
be corroboration of his then belief. No
existed at the time or is it likely that

intention to acquire them.

I now come to deal with the negotiations through Mr. Rafferty who struck me as an impressive witness.

There is a direct conflict about what occurred and when it occurred.

It is agreed that Mr. Rafferty was used as an intermediary in negotiations between William and Patrick. In the overall context this is more likely to have resulted from William acting on Mr. Nash's advice to settle. It has all the appearance of this although not so stated by William or Anne. Mr. Rafferty however says the negotiations took place in October 1979 shortly after Mr. Kennedy's death. William and Anne say the negotiations took place in February 1981 after Mr. Goldberg's letter and William's advice from Mr. Nash. They both say they produced William's deposit account book to Mr. Rafferty to show him the credit entry on 29th January 1981 of £9,254.00 as evidence that they had only £10,000 to offer which Anne said had come in the form of a cheque for a grant. Anne also stated in evidence that she was certain beyond a shadow of a doubt that this was so and she also gave evidence of where and when the occasion took place. In his direct evidence Mr. Rafferty made no mention of the production to him of this deposit account book but in cross-examination agreed he had first seen it around the end of

1980 and that he saw the cover but not the contents and that Anne never showed them to him. On the balance of probabilities it is more likely that the book was produced for a purpose and that the purpose was to refer to its contents when the only relevant entry at the time would have been that for 29th January 1981. This would have been close to the time when Mr. Rafferty says he saw it first. It is possible that Anne may have referred to this entry and that Mr. Rafferty accepted her word that it was in it as he did in Court. Accepting as I do that the book was produced in the course of negotiations to refer to this entry of 29th January 1981 it follows that this event occurred not around October 1979 but after the date of the entry and therefore after Mr. Goldberg's letter and Mr. Nash's advice and was made for settlement purposes.

I think this is a genuine error of recollection by Mr. Rafferty.

I also think there was a misunderstanding by him as to the amount of the offer. William was then in a bad financial position and heavily in debt to the bank. He demonstrably was not in a position to offer £40,000 without prior bank authorisation. Furthermore to have sought such accommodation to buy Patrick's half share of Knockroe in 1979 would have entailed a repudiation of what he believed was the agreement and arrangement made with Mr. Lynch in January 1972 and on which he had acted

For this reason allied to what I have said about the deposit account book the probabilities in my view are that William did not offer £40,000 and that this figure arose in Mr. Rafferty's mind as a possible compromise over £10,000 which Patrick might accept if offered by William. In any event I am satisfied the whole event took place after February 1980 and Mr. Goldberg's letter.

Finally it is necessary to refer to a matter on which considerable reliance has been placed by Patrick and about which much contentious evidence has been given. He disputes the evidence by William and Anne that they did not know of the transfer of Castlelake by Mr. Kennedy to Patrick of 9th January 1975. He says they did and that by the non-assertion of William's claim to Patrick's half share of Knockroe until Patrick's proceedings issued that this is corroborate evidence that the cow-house agreement never took place.

I think it most unlikely that William would not have known of such an event in the family from 1975 to 1980 although there is considerable doubt in my mind of the accuracy of the events on which Patrick relies for this purpose. I think William can be criticised for this delay but it is not fatal to his case. He was in possession and on good terms with Patrick notwithstanding the evidence by and on behalf of

Patrick to the contrary. It would seem unnatural to me that the hostilities which Patrick said existed between them of the nature and depth alleged following on William having been Patrick's bestman in May 1979 at Patrick's wedding and Patrick in turn having been Godfather to William and Anne's baby in June 1978:

The same charge of delay could be levelled against Patrick for being equally slow in asserting his rights. There was no overt reason for William to have acted earlier in the way suggested. He was in possession of the lands and overtly using them and in occupation of the whole of Knockroe and had carried out substantial improvements at his own expense which was all wholly consistent with his claim.

In any event whilst a factor to be considered in the overall circumstances of the case once I am satisfied as I am from the events in the provincial bank in January 1972 followed by conduct by both parties consistent therewith that the arrangements then made were on the basis of and corroborated the making of the cow-house agreement, the delay in legally asserting such agreement does not negative it.

Before concluding I think I should refer to the letter of 20th February 1980 from Mr. Goldberg to William. The reference in this to the charge in my view was not a mistaken recollection on behalf of

Patrick but was a positive and detailed instruction to his Solicitors to the contrary that this charge was created without his consent when in fact he could not but have known that this was wrong. This unfounded charge was made by Patrick as a basis for an acknowledgement that the property was as much his as Williams and was the line of attack to get his half back. There is nothing in this letter about any agreement for rent and nothing in it about any offers to buy as a basis of recognition of Patrick's continued ownership of his half share.

It was also relied on by Patrick that he signed with William applications for farm grants in relation to Knockroe. In my view this was a formal matter by which such applications had to be signed by each as joint registered owner and were not admissions or acts which would exclude or nullify the cow-house agreement.

Finally I regard the agreement with Mr. Meagher as a neutral event without implications on the matters in issue in the case.

As the matter was so obvious there was no dispute that in the event of my upholding the making of the "cow-house" agreement between the parties of which specific performance was sought that there was clear part performance thereof whereby it became a valid and forceable verbal agreement in respect of which an Order for specific performance could

be made.

Accordingly I dismiss the Plaintiff's claim and on the
I make his declaration Single and
 counterclaim I order specific performance of the agreement with
 the necessary ancillary orders sought therein to give effect to
 it, including rectification of the register.

W.R.G.
28/2/8.