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Ref:

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 04/09/09

**IN THE COUNTY COURT FOR THE DIVISION OF FERMANAGH AND
TYRONE**

BY THE COUNTY COURT JUDGE

BETWEEN:

**CHRISTINE MEYLER
(As personal representative and executor of the estate of Bridget Ferris
(Deceased))**

Plaintiff;

-and-

BRIAN FERRIS

Defendant.

HIS HONOUR JUDGE MILLER QC

[1] This action is brought by Christine Meyler as personal representative and executrix of the estate of the late Bridget (known as Bridie) Ferris. At the time of her death on the 23rd November 2005, Bridie Ferris was the registered owner in fee simple of the lands in Folio 20044 County Tyrone amounting to 6 acres 2 roods and 23 perches. In addition Bridie also held title in fee simple to a further 2 acres 3 roods and 23 perches statute measure of adjoining unregistered lands. These lands had been conveyed by a Joseph Harding by deed of conveyance dated 14th July 1962 to Bridie and her late sister Eleanor Veronica (known as Nellie) Ferris. Collectively these lands are known as “Coyle’s Lands” and they are in turn located adjacent to lands in Folio 2794 County Tyrone, (known colloquially as “Home Farm”) which have been the subject of protracted litigation between this Plaintiff and a Joseph Ferris, brother of the Defendant in the present action. The late Bridie Ferris had made an inter vivo transfer of the lands in this folio to her brother, Joseph Patrick Ferris, who died before her on the 15th May 2000. She remained, however, in occupation of the family home

located on the lands in this folio at 106 Old Mountfield Road, Omagh. The Defendant is a nephew of the late Bridie and resides at 7 Waterworks Road, Glenhordial, Omagh, County Tyrone a distance, (I was informed during the hearing) of some one and a half to two miles from the lands the subject of the current proceedings.

[2] Bridie Ferris, by her last Will and Testament dated 16th February 2001 named the Plaintiff and Mr Barry Fox, her partner in the firm of R H O'Connor, Solicitors, as joint executors of her estate and her niece Marie Regan, (a daughter of the late Joseph Patrick Ferris) as her sole beneficiary in respect of the lands known as "Coyle's Lands." The Plaintiff was granted Probate on the 22 December 2006, (Mr Fox having renounced his rights) and thus is empowered to administer the estate according to the declared testamentary wishes of the late Bridie Ferris.

[3] It was brought to the attention of the Plaintiff that the Defendant, Brian Ferris was making use of "Coyle's Lands" by placing cattle and sheep on the lands and also by making claims for farm subsidies in respect of this said use. Furthermore in 2007 he entered an application with the Land Registry for first registration, pursuant to Section 53 of the Land Registration Act [NI] 1970, in respect of the unregistered portion of the said lands. The Plaintiff lodged an objection to this application and the matter came on for hearing before Arthur Moir the Acting Registrar of Titles on 11th March 2008. I received a copy of the Registrar's order dismissing the application and it is clear from this document that both Brian Ferris and his brother Joseph gave evidence at the hearing.

[4] As a result of the alleged encroachments the Plaintiff on the 12th August 2008 issued the present proceedings by civil bill seeking, inter alia, the following relief:

- a) An injunction preventing the Defendant, his servants and agents, heirs and successors from trespassing on the disputed lands, whether by animals or otherwise; and
- b) A declaration that the Plaintiff has full unencumbered title to the said lands.

The civil bill was supported by an affidavit of Marie Regan setting out the history to the title and occupation of "Coyle's Lands." In this Mrs Regan amplifies on the acts of trespass alleged against the Defendant.

BACKGROUND TO THE HEARING ON 28TH AUGUST 2009

[5] By virtue of the convoluted background to this case and its' association with other proceedings involving the adjoining lands, I consider it appropriate to set out in some detail the history of these proceedings from the date of issue of the civil bill.

[6] The Defendant, by notice dated 1st September 2008 gave indication of an intention to defend these proceedings and also purported to appoint his brother Joseph as his personal representative in the case. The Plaintiff lodged a Certificate of Readiness dated 25th September 2008 and in response by letter dated 13th October 2008 Mr Joseph Ferris on behalf of the Defendant, drew attention to the fact that Brian Ferris had lodged a Section 53 application with the Land Registry dated 27th February 2008 in respect of that portion of "Coyle's Lands" located in Folio 20044 County Tyrone. I shall return to this matter in due course.

[7] The present proceedings were first listed for hearing on the 7th November 2008 but by prior agreement of the parties they were adjourned due to the indisposition of the Plaintiff's principal witness, Mrs Regan. From the details available to me it appears that the matter was then adjourned to the court sitting at Dungannon on 9th January 2009 and on this occasion the Defendant failed to appear, the court being informed by Joseph Ferris that he was medically unfit to do so. His Honour Judge McFarland enquired as to why no steps had been taken to bring this matter to the attention of the Plaintiff and the court prior to the date of hearing and adjourned the matter for mention at Omagh on the 23rd January 2009. In the intervening period Mr Joseph Ferris filed further details of the Defendant's condition and treatment, though it should be noted that the medical report from the Defendant's GP, Dr Rodgers, dated 7th January 2009 was confined to a single line stating that Brian Ferris "suffers from bladder disease." The case was then re-listed for hearing at Omagh on the 14th May 2009 with notification being given by letter from the Court dated 18th February 2009. In this letter, sent to both parties, the Court Office indicated that His Honour Judge McFarland had "*further directed that if Charles (sic Brian) Ferris wishes to appoint a 'McKenzie Friend', the application should be made before the hearing date.*"

[8] Due to listing difficulties, including a Public Family Law hearing being adjourned into His Honour Judge McFarland's list for 14th May 2009, I was asked to hear this case and the location was initially transferred to Armagh Courthouse. When the Court Office contacted the parties the Defendant stated that he would not be attending for medical reasons. He was then told that he would normally need to submit medical evidence and apply for an adjournment. A short medical report from Dr Rodgers dated 11th May 2009 was faxed to the Court Office on Brian Ferris's behalf. This stated as follows:

"The above named patient (referred to as 'Bernard' but accepted as meaning Brian) suffers from severe chest disease and the stress of appearing in court causes breathing difficulties. Please take this into consideration as *he feels unable to attend court.*" (My italics).

[9] As matters transpired arrangements were made for the case to be heard at Omagh on the 14th May 2009 as was originally intended. The Plaintiff attended with all her witnesses. The Defendant did not appear though his brother, Joseph, together with a number of unidentified persons was also in the public gallery. Mr McHugh BL of counsel, on behalf of the Plaintiff, urged me to hear the case in the absence of the Defendant. I refused at that stage to do so but directed that the Court should write to the Defendant requiring him by the 29th May 2009, to lodge a detailed medical report, which should include a detailed prognosis as to when he would be able to attend court. A failure to comply with this direction could lead to the issue of a summons duces tecum requiring the Defendant's GP to attend in person.

[10] A medical report dated 27th May 2009 and signed by Dr Jackson, (another doctor in the Three Spires Surgery, being the Defendant's GP Practice) was filed with the court. This report made reference to his ongoing problems with a bladder tumour but placed emphasis on his suffering from mild emphysema giving rise to the following prognosis: **"progressive worsening of breathlessness symptoms."** Significantly this report did not specifically state that the Defendant could not attend court.

[11] On foot of this report I directed that the case should be re-listed for hearing on Friday 28th August 2009 at Omagh Courthouse. By letter dated 3rd June 2009 the Court Office wrote to the parties informing them of this direction and advising as follows:

"All parties should attend at 10.30am on 28th August 2009. Any application or matters arising should be notified to the Court upon receipt of this letter. Should you have any queries regarding these directions you should contact the Court Office directly."

Neither party raised any query nor did they notify the Court Office of any application as required by this letter and thus the case stood listed for hearing on the 28th August 2009.

[12] When the matter came on for hearing before me on the morning of Friday 28th August Mr McHugh BL of counsel appeared on behalf of the Plaintiff together with her witnesses. Once again Mr Joseph Ferris appeared in the public

gallery in the company of several unidentified persons. I enquired whether the Defendant was present and was told that he was not. At this point Mr Joseph Ferris rose and in answer to my question as to whether he knew where his brother was, he informed me that he was at home and that he would not be attending court. Mr Ferris then handed a bundle of documents into court, which Mr McHugh acknowledged had, prior to the court sitting, been served upon his client. These documents took the form of a statement bearing Mr Joseph Ferris's signature and dated 26th August 2009 supported by accompanying exhibits. I shall return to a consideration of this and other such statements dated 7th and 21st January 2009 at a later stage of this ruling.

[13] Mr McHugh BL also lodged two bundles of documents at the outset of the hearing. These included the pleadings to date (including the original grounding affidavit, which had not previously appeared on the papers before me, but which I accept from Mr McHugh had been served on the Court and the Defendant at the time of service of the original civil bill) together with additional supporting exhibits. I expressed some surprise that these documents were being lodged at such a late juncture and enquired as to what steps had been taken to serve them upon the Defendant. Again I am satisfied that all documents necessary for the fair consideration of this case had been previously served upon the Defendant and that those which had not, such as documents from The Department of Agriculture and Rural Development (DARD) and the Water Service were lodged in direct response to those previously lodged purportedly on his behalf by Mr Joseph Ferris in January 2009 and indeed those relied upon in the statement dated 26th August 2009. In short I was satisfied that on this issue the Defendant was not prejudiced in the preparation or presentation of his case by any late service of documents by the Plaintiff.

[14] The next issue for me to consider was whether the hearing could proceed in the absence of the Defendant. As previously noted no application had been lodged with the Court in furtherance of the letter of 3rd June 2009 requesting an adjournment of the hearing on 28th August 2009. Nor had any further medical reports been lodged with the court and as alluded to above those already before the court in January and May 2009, although indicating in very general terms the nature of the Defendant's condition, did not directly address the issue as to whether he was incapable of attending at court. Moreover and although not a determinative factor on this issue, Mr Joseph Ferris did not seek to stress his brother's medical condition as a reason for his non-attendance, rather stating that he (the Defendant) was satisfied that the Plaintiff's claim was statute barred by virtue of the Limitation (NI) Order 1989. I also took account of the following factors as providing support for the proposition that the Defendant was not incapable of attending court in defence of the claim:

- (a) He has asserted an ongoing occupation and use of the lands the subject of these proceedings. These are located some distance from his own home thus suggesting that he is capable of travelling from his home.
- (b) Both the disputed lands and the Defendant's home are located only a very short distance from Omagh town centre and the courthouse.
- (c) Although I accept that the hearing at the Land Registry was some 18 months ago in March 2008, I note that the Defendant was able to attend and give evidence on that occasion.

Finally I consider that this court has afforded the Defendant every opportunity since January 2009 to attend and defend these proceedings. The Defendant has chosen to act as a litigant in person forsaking the opportunity to instruct legal representation. That is his right but it is incumbent on him in such circumstances to pursue his case with due diligence and this he has failed to do. Had he appeared in court and made the necessary application to have his brother Mr Joseph Ferris appointed as a "McKenzie Friend" to assist him in the presentation of his case the court would have listened sympathetically to such an application and would have provided him with such assistance as he reasonably required. In this context it should be remembered that the court advised him by letter that any application should be made in advance of the hearing. Again the Defendant failed to avail of this opportunity. I, therefore, considered that the Defendant having failed to attend to prosecute his defence a further adjournment would not be permitted on this ground.

[15] There was, however, a further potential hurdle to the case proceeding on the 28th August. I have previously drawn attention to the fact that the Defendant had purportedly lodged an application for registration of title pursuant to Section 53 of the Land Registration Act [NI] 1970 (Paragraph 6 refers) and that this application related to the lands located in Folio 20044 County Tyrone, being the larger part of "Coyle's Lands." Clearly this application if extant before the Land Registry and without there having been a referral to the County Court either by the Registrar or on application of either or both parties pursuant to Section 53 (3) would preclude this court from determining the issue of title. In his original Section 53 application the Defendant did not request a referral and no such request had been made by or on behalf of the objector, Miss Meyler. Had the Defendant attended before me and so consented I concluded that I could have treated this as being a referral thus allowing the case to proceed, but he failed to do so. Mr McHugh BL argued that there was in fact no live application and in support of this he handed into court a sheaf of correspondence between Miss Meyler and the Land Registry relating to the

application. Significantly this included a letter dated 7th May 2009 from a M. Malcolmson for the Registrar of Titles in which it was stated:

“Please note by way of information that all Section 53 documentation lodged by Brian Ferris was returned to him on 23rd February 2009. The documentation lodged did not comply with Rule 115 of the Land Registration Rules (NI) 1994. I am currently waiting on the return of the correct documentation and have today forwarded a reminder letter to Brian Ferris.”

In the light of this correspondence I rose to allow Mr McHugh an opportunity to contact the relevant solicitor in the Land Registry in order that the position could be clarified and updated.

[16] When the Court reconvened Mr McHugh told me from the Bar that he had been unable to speak to the solicitor in the Land Registry having carriage of the case as he was on annual leave. He had spoken, however, to another solicitor who, though understandably reticent to speak on matters of which he had no direct knowledge, had confirmed that later in May 2009 and presumably in response to the reminder referred to in the above quoted letter, Mr Joseph Ferris on behalf of his brother wrote to the Land Registry requesting clarification of the matters considered defective in the original application. Mr McHugh was informed that regrettably this letter had yet to receive a reply from the Registry. He was able to confirm, however, that no further application had been received on Mr Brian Ferris’s behalf. I, therefore, concluded that as the original papers had been returned to the Defendant in February 2009 and had not been re-submitted by him there was no application for registration currently before the Land Registry and I was as a consequence not precluded from hearing evidence and determining the issues in the present proceedings.

[17] Having determined that there was no legal impediment to my hearing the civil bill and determining the issues arising there from and indeed having concluded that it was in the interests of justice that I do so, I next turned to consider what relevance, if any, were the various statements drafted and signed by Mr Joseph Ferris purportedly on behalf of the Defendant and dated the 7th January 2009, 21st January 2009 and 26th August 2009. Each statement was accompanied by a series of exhibits some of which seemed to have more bearing to the title and alleged use and occupation of the adjoining lands in Folio 2794 County Tyrone. I was mindful that the Court had not had the benefit at any stage of seeing or hearing from Mr Brian Ferris and given the history of these and the proceedings concerning Folio 2794 County Tyrone, which directly involved Mr Joseph Ferris the court was concerned about the risk of there being a conflict of interest between the two brothers. Bearing all these factors in mind I determined that I should read the documents and give them such weight as I considered

appropriate. I considered, however, that I was entitled to give more weight and credence to the affidavit of Brian Ferris sworn on 22nd February 2008 and lodged in support of the defective Section 53 application in respect of the lands in Folio 20044 County Tyrone. I made it clear to Mr McHugh BL and to those present in court that I would bear all the factors arising from this evidence and in particular the said affidavit when receiving and considering the evidence submitted on the Plaintiff's behalf.

THE HEARING

[18] At the outset Mr McHugh BL submitted that if satisfied that the Plaintiff had established the paper title to the unregistered portion of "Coyle's Lands" I should conclude that the issue of whether or not the Defendant could upset that title by the doctrine of prescription was effectively res judicata as a result of the hearing before and determination by the Acting Registrar of Titles on 11th March 2008. I accept this submission but shall nevertheless proceed to look at the alleged occupation of all the lands by the Defendant when considering the totality of the evidence as presented.

[19] As previously stated the title to the unregistered lands devolved by survivorship to the late Bridie Ferris upon the death of her sister Nellie in June 1982, the two sisters having acquired the fee simple to the lands by dint of a deed of conveyance dated 14th July 1962 from the previous owner Joseph Harding.

[20] The position so far as the lands in Folio 20044 County Tyrone is slightly less straight forward. Nellie and Bridie were registered as owners in fee simple at the Land Registry on 20th July 1962. Following on Nellie's death in June 1982 Bridie succeeded to sole title by survivorship. On the 26th June 1984, however, Joseph Patrick Ferris (her brother) and she were registered as joint owners in fee simple. Joseph Ferris died on the 15th May 2000 and full title devolved by survivorship back to Bridie who died on 23rd November 2005 and who by her will dated 16th February 2001 named Marie Regan as the sole beneficiary of all the lands registered and unregistered comprised in "Coyle's lands" and then in her possession.

[21] Although the first witnesses to give evidence at the hearing were from the Water Service and The Department of Agriculture and Rural Development (DARD) for the purposes of this ruling I believe that it is appropriate to consider the evidence of Mrs Regan and Miss Meyler first.

MRS MARIE REGAN

[22] Marie Regan was sworn and adopted the contents of her grounding affidavit dated 12th August 2008. In essence this sets out the history of the lands and how title devolved to her by the will of her late aunt. She indicated that due to a significant Inheritance Tax burden following upon the death of Bridie Ferris it had become necessary to sell "Coyle's Lands" and in order for this to be done vacant possession was required. The affidavit then sets out the Defendant's failed Section 53 application in respect of the unregistered lands and his continued use of both portions of land for the purposes of grazing cattle and sheep. The affidavit also draws attention to the Defendant's alleged efforts to frustrate her attempts to rent the land in 2007.

[23] In her oral evidence Mrs Regan confirmed that she was born in 1958 and raised in Belfast and thus had never lived at the house at 106 Old Mountfield Road, Omagh. She stated, however, that as a child and up until she was 16 in 1974, she had spent the whole eight weeks of every summer holiday together with Christmas and Easter and the occasional weekend staying at Home Farm. She married in 1976 and lived in Holywood, County Down from then until in or around 1996 when she moved to Portaferry, County Down where she still lives. After her marriage and whilst her children were still small Mrs Regan's visits to the lands were reduced to day trips about six times a year. This position prevailed until about 1985, shortly after her father moved in with his sister Bridie from which time until about 1999 she would have visited at least once a month. By the end of the 1990's with her family grown Mrs Regan visited more frequently and between her father's death in 2000 and Bridie's death in 2005 she visited once a week and stayed overnight providing care for her aunt.

[24] When asked about her memories of the farm she said that she was about four years of age when her grandmother died in 1962 and that her three aunts (Mary, Nellie and Bridie) had farmed the lands (being both Home Farm and "Coyle's Lands") with the help of Joe Harding who received board and lodging as payment for his help. She recalled that there were pigs, cattle and fowl on the farm with Bridie taking the major responsibility for the chickens, which were housed in hen houses close to the house on Home Farm (this would have been Folio 2794 County Tyrone). Mary, who died in 1975, had worked very hard on the lands and Nellie was the main milker, a task that she carried out in the traditional way by hand right up until her death in 1982. At the time of Nellie's death Joe Harding was still alive and active on the farm but shortly afterwards the milking herd of between 12 and 15 cows was sold leaving a few beef cattle, which Joe helped to look after. It seems that it was sometime after Nellie's death in 1982 that Mrs Regan's father (Joseph Ferris) returned to Home Farm. For the first month or two his wife also stayed at the farm but she then returned to Belfast leaving her husband and his sister living on the farm where they stayed until his death in May 2000. I note that the transfer of the lands by Bridie from

her sole name into that of Joseph and herself took place in June 1984 and I, therefore, conclude from this fact that the witness's father was living on the lands from at least that date. Mrs Regan stated that her father and aunt continued to farm the lands together from then until his death.

[25] The thrust of the Defendant's case as it appears from his affidavit before the Land Registry is that he had farmed the lands comprised in "Coyle's Lands", which he refers to as "Ferris's land" from when he left school in 1966 right up until the present time. He refers to his aunt Ellen (otherwise known as Nellie) and to being involved in extensive farming enterprises with her until the time of her death in 1982. Thereafter he indicates that his aunt Bridie, who was of advanced years and frail, took little active part in the farm. Throughout this period he was never asked for rent, nor was any restriction placed upon his activities. Significantly in this affidavit he fails to make any mention of his uncle Joseph Ferris.

[26] Bearing in mind these issues the court was concerned to know the extent of Mrs Regan's knowledge of the Defendant, who is, of course, her cousin. She stated that he lived about one and a half to two miles from Home Farm. Mrs Regan stated that she would have visited his home and would have seen him there, though she indicated that she knew his brother Charlie best. She had no recollection of seeing the Defendant on Coyle's land at any stage before 2001 and that she did not see any of his sheep or cattle on these lands before that date. It seems that the catalyst for the Defendant's actions at this time was that Mrs Regan's brothers had arranged through a neighbour to sublet the lands to a man called Fleming who hailed from Gortin. The Defendant was apparently unhappy about this arrangement and ordered Mr Fleming off the lands and placed his animals on instead. It was Mrs Regan's recollection that Mr Fleming did not try to put his animals on the land again.

[27] After she inherited the lands in 2005 she became aware of other activity by the Defendant. This included the use of a water meter on the disputed lands as a result of which she communicated initially by telephone and then by letter with the Water Service. This led to the disconnection of the meter located in Folio 20044. Then in 2007 the Defendant applied to the Land Registry to be registered as the owner of the unregistered lands to which the witness lodged an objection and as has been previously noted at the hearing the Defendant's application was refused. Mrs Regan had observed the Defendant's sheep on her visits to the lands (which have apparently been less frequent since the death of her aunt Bridie), the most recent being on the date of the adjourned hearing in May 2009. The witness also confirmed that although there is fencing between the registered and unregistered parcels of land this is not good and it was quite possible for sheep to stray between the two portions. Finally Mrs Regan confirmed that

“Coyle’s Land” was never allocated for silage and on being recalled by the Court at the conclusion of the hearing she stated that a fence and gate divided “Coyle’s Lands” from Home Farm and that access to Home Farm could also be gained by means of a gate from the Old Mountfield Road. This evidence has some significance to an issue that arose from the evidence of Miss Meyler.

MISS CHRISTINE MEYLER

[28] Miss Meyler had acted for the late Bridie Ferris and also her brother Joseph Ferris from in or about the mid 1980’s. At that time the witness was a solicitor in the firm of R H O’Connor & Co of 11 High Street, Omagh. The first part of Miss Meyler’s evidence concerned the history of the title to both the registered and unregistered portions of “Coyle’s Lands” and the granting of the probate of Bridie’s estate, which was made up entirely of these lands. Miss Meyler then went on to consider the role of the Defendant and indicated that she was unaware of any assertion by him in respect of “Coyle’s Lands” at any time before 2001. She did recall, however, that there had been problems with Brian Ferris’s encroachment onto Home Farm being the lands in Folio 2794 County Tyrone. A letter dated 7th June 1996 and directed to the Defendant was attached to the bundle of documents submitted to the Court by Joseph Ferris in support of the Defendant’s claim to have established title to “Coyle’s Lands” by prescription. Miss Meyler confirmed that she was the author of the said letter but stressed that it was her belief that it referred not to “Coyle’s Lands” but to Home Farm. She gave the following reasons in support of this assertion:

- (a) The letter refers to her client as Mr Joe Ferris. As previously noted at the relevant time title to “Coyle’s Lands” was held either in the sole name (so far as the unregistered lands are concerned) of Bridie Ferris or by her and Joseph (so far as the registered portion was concerned) in joint names. The lands in Folio 2794 County Tyrone however, were held by Joe Ferris in seven ninths undivided shares and by Joseph Ferris (brother of the Defendant Brian Ferris) in two ninths undivided shares. Had the letter referred to lands owned by Bridie and Joe then, according to Miss Meyler, she would have named them both as her clients.
- (b) Furthermore the letter refers to a trespass by the Defendant’s cattle over a field, **“which had just been allocated for silage.”** As previously noted Mrs Regan confirmed that none of the lands in Folio 20044 County Tyrone had ever been used for this purpose.

[29] Miss Meyler also stated that to the best of her knowledge there was no further correspondence in relation to this matter of alleged trespass and there was certainly no court action, all of which supported a conclusion that the

trespass was not repeated. Finally in response to a question from me Miss Meyler confirmed that during the fifteen years from 1985 – 2000 both Bridie and Joe had been assiduous in defending their rights over their lands and property.

[30] It was apparent from the evidence of both Mrs Regan and Miss Meyler that there had been repeated acts of trespass onto “Coyle’s Lands” by the Defendant in the period since 2001 and that these acts had been supported by applications by him for farm subsidies in respect of his use of the said lands. The bundles of statements and documents lodged by Mr Joseph Ferris also included copies of DARD letters, agricultural maps and single farm payment schedules, all of which, it was argued supported his assertion to have established a title by prescription to all of the disputed lands. I heard evidence called on the Plaintiff’s behalf from two witnesses from DARD and one witness from The Water Service who sought to provide amplification and clarification of these matters.

[31] **Marie White** is the Head of Customer Services at Northern Ireland Water and she explained that there were two meters located one at 106 Old Mountfield Road on the Home Farm lands [Meter A] and the other on “Coyle’s lands” [Meter B]. Both meters were originally in the name of Bridie Ferris but the computer records, which only went back to 2000, show that in 2006 a request was made to disconnect Meter B and remove her name. At no stage had Brian Ferris ever applied to be registered as the account holder in respect of this meter, but in March 2009 he had applied to be registered as the account holder of Meter A and this was sanctioned in April 2009. This was by means of a transfer of responsibility. Up until this date Meter A had been in the name of Marie Regan, though it was not clear as to precisely when the connection had been altered from Bridie Ferris’s name to hers.

[32] **Sharon Conway** is a Single Farm payment Manager with DARD. This witness explained that she had dealt with such applications since 2005 but that she had access to records in respect of grants going back to 1997. In order for subsidies to be paid a claimant had to submit an application annually identifying the land used by a business. Each application contains a name, address, the Farm Survey Number together with the actual field number cross-referenced to a map. The witness took the court through the history of applications in respect of the disputed lands since 1997. The farm map shows 10 fields comprising both “Coyle’s Lands” and Home Farm. These show that from that year until and including 2000 the claims had been made by Bridie Ferris (1997 – 1999 – fields 1 – 9; 2000 – fields 1 – 10). The first application to be made by Brian Ferris was in 2001 and that was for Fields 1 – 10. Similar applications were made by the Defendant for each subsequent year up to and including 2005. In 2006 and 2007 the Defendant again made claims though these were in respect of Fields 1 – 3 and Fields 5 -10 in each year. It should be noted that these claims included the fields

containing the disputed lands. During the entirety of the period for which records exist Brian Ferris had also made claims in respect of other lands held by him and over which no dispute existed. In a letter to Meyler McGuigan Solicitors and dated 16th March 2009 the Department further indicated that records existed, going back to 1994 to show that Bridie Ferris had made application for Suckler Cow Premium in respect of cattle kept by her on the disputed lands. As a result of the receipt of notification from Mrs Regan in 2007 that Brain Ferris did not have permission to claim subsidies in respect of the disputed lands DARD stopped all payments to the Defendant and he has been requested to produce evidence of his right or permission to use the said lands. Mrs Conway confirmed that these enquiries are ongoing at this time. Finally, Mr **Steven Davis** an Assistant Officer in DARD having responsibility in the Grass Subsidies Branch, confirmed that Bridie Ferris had claimed subsidies in respect of the disputed lands from 1997 - 2000.

[33] For the sake of completeness I should indicate that after the hearing on Friday 28th August I visited the scene of the farm and viewed the disputed lands. I note that although originally in a rural location the town of Omagh has “come out to meet the farm” and that development has taken place both across the Old Mountfield Road and on the side road opposite the disputed lands. The potential for development is obvious. The farmhouse is in semi-derelict state though I noticed the hen houses adjacent to it, which I assume were those used by Bridie Ferris in former times. The disputed lands are of rough terrain offering limited pasture though I observed approximately half a dozen cattle and a reasonable sized flock of sheep distributed across the grounds. There was evidence of fencing between some of the fields though in the main this was in a dilapidated state such as would afford little barrier to straying cattle and sheep.

CONCLUSIONS

[34] Having summarised the evidence I now turn to consider my conclusions as to the merits of the Plaintiff’s case and whether I can be satisfied on a balance of probabilities that title has been established, trespass proved and if so whether and to what extent the relief sought should be granted.

[35] At the outset I am satisfied that the Plaintiff has established the paper title to all the lands comprised in “Coyle’s Lands.” Beyond that I am satisfied to the required standard and indeed to an extent far in excess of that standard that the Plaintiff has established title to the said lands and that, taking the Defendant’s case at its height, it is devoid of merit. In this regard I make the following observations:

- i.) The Defendant seeks to make the case that he has farmed the lands since 1966. By his own admission, as evidenced by his affidavit he accepts that until the time of her death in 1982, Nellie Ferris was actively engaged in the farm. In order to assert a claim for adverse possession, it must be shown that there was effective control or possession of the land to the exclusion of others. Whilst possession can be exercised jointly by two or more persons, it cannot be exercised severally – (see **Bligh -v- Martin [1968] 1 WLR 804 at 812 and JA Pye (Oxford) Ltd -v- Graham [2002] 3 WLR 221 at Para 70**) – thus even if I were to accept the Defendant’s stated account in its entirety I would conclude that for the period up to 1982 he had not established the necessary exclusive possession as required.
- ii.) Marie Regan’s evidence regarding the use of the disputed lands by her three aunts up to 1974 not only supports the contention that they were all actively involved but also throws into relief the total non-involvement of the Defendant during this time. Mrs Regan recalled seeing the Defendant on visits to his family home at Glenhordial but had no memory of seeing him at, still less in occupation of, “Coyle’s lands.”
- iii.) Turning then to the period from the death of Nellie in 1982 to the death of Joe Ferris in 2000 I am again satisfied that there is no evidence of the Defendant occupying or otherwise using the lands as he alleges in his affidavit. During this time Marie Regan was a frequent visitor to the farm and more importantly her father Joe was living there from in or about 1984. I consider it significant that the Defendant makes no reference to his presence in his affidavit and yet during the length of this period Miss Meyler was engaged as the solicitor for both Bridie and Joe and she asserted that both were assiduous in maintaining their rights over their property.
- iv.) Miss Meyler’s letter of 7th June 1996 addressed to the Defendant and warning him regarding his acts of trespass is significant for several reasons. First it supports the contention that Bridie and Joe were jealous of asserting their rights. Second no further action was taken suggesting that there were no further acts of trespass and third I am satisfied, on the basis of Miss Meyler’s account, that the trespass relates to lands other than those comprised in “Coyle’s Lands.”
- v.) The evidence of the DARD witnesses and the witness from the Water Service together with the supporting documents (all of which appear in the second of the Plaintiff’s bundles) even though limited to a

period from 1994 to the present day, clearly show that the Defendant made no application for any form of subsidy in respect of his alleged use of the disputed lands until 2001. This is notwithstanding the fact that during this same period he had made application in respect of other lands thus begging the question as to why no claim was made if he was in occupation as claimed by him?

- vi.) I believe that it is no coincidence that the first claim for payment and thus the first clearly identifiable act, which could be taken as credible evidence of an intention to oust the title of the true owner, was made in 2001. Joe Ferris had died the previous year and Bridie, although still active, was clearly very elderly and becoming more frail. Whereas, as noted above, I consider that these actions could provide the basis of a claim in adverse possession it is clearly evident that once Marie Regan became aware of her inheritance under the terms of her aunt Bridie's will, she took steps to identify the user of the water supply to the disputed lands and the claims being made by the Defendant for subsidy and to challenge these claims by asserting her own title.
- vii.) When the Defendant in 2007 applied for first registration of the unregistered lands Mrs Regan successfully objected and the claim was dismissed. I accept that the decision of the Acting Registrar in that matter to the effect that the Defendant had failed to establish the requisite period of 12 years uninterrupted use and occupation effectively deals with the part of the case relating to those lands and I pause to note once more that in reaching his conclusion Mr Moir did so having had the benefit of hearing the sworn testimony of both the Defendant and his brother Joseph Ferris.
- viii.) The Defendant does not seek to distinguish between his use and occupation of the unregistered lands from those located in Folio 20044 County Tyrone. On the basis of the evidence heard before me I find that there is nothing to support his contention regarding the use of these lands and therefore have no hesitation in concluding that his defence fails in its entirety.

[36] Finally I turn to consider the question of relief sought by the Plaintiff. I find as follows:

- a.) I grant an injunction preventing the Defendant, his servants and agents heirs and successors from trespassing on the disputed lands, as delineated in red and blue on the map attached to the civil bill, whether the trespass is by animals or otherwise..

- b.) I further grant a declaration that the Plaintiff has full unencumbered title to the said lands.
- c.) I award damages in the sum of #1,000.00
- d.) I award costs to the Plaintiff. Brian Ferris will pay the costs of the civil bill measured on the 7th band of the equity scale. I shall include the costs thrown away at the hearing before me on 14th May 2009, again on the 7th band of the equity scale. For the removal of doubt I make no order as to the proceedings adjourned before His Honour Judge McFarland on the 9th January 2009.

[37] Nothing further occurs.

31st August 2009.