APPROVED

THE HIGH COURT

[2024] IEHC 220

Record No.: 2023/1342 JR

Between/

LAKSMEE BISSESSUR AND PHILIP SMITH

Applicants

and

EVELYN MCMILLEN as Personal Representative of the estates of both Adeline Keppel and Rita Keppel.

Respondent

A JUDGE OF THE DUBLIN CIRCUIT COURT

Notice Party

JUDGMENT of Ms. Justice Emily Farrell delivered on the 24th day of April 2024.

1. These proceedings relate to the hearing of an application made by the Respondent for an order directing the Applicants to vacate a property which forms the estate of Adeline Keppel and Rita Keppel.

2. The application before the Court is a telescoped hearing, whereby the Applicants seek leave to apply, and if leave is granted, an order of *certiorari* quashing the Orders made by the Circuit Court on 14th November 2023. On 14th November 2023, the Circuit Court made an Order directing the Applicants to vacate the property, subject to a stay for 14 days, and an order for costs. The Respondent sued in her capacity as the Personal Representative of the estates of Adeline Keppel and Rita Keppel. The property is a

registered property and is still registered in the name of Adeline Keppel, who died in 2001.

3. Three grounds are relied upon in the Statement of Grounds. Firstly, it is alleged that the Circuit Court Judge fettered his discretion by refusing to consider whether the grants of administration had been obtained by fraud and refused to look behind the Orders of the High Court. It is alleged that this breached the Applicants' rights under Article 40.3.2 of the Constitution.

4. Taken together, the second and third grounds contend that the hearing was conducted in breach of fair procedures by reason of the interventions of the Circuit Court Judge during the cross-examination of the Respondent by the Applicants' counsel.

The Circuit Court proceedings

5. The Circuit Court proceedings commenced by way of an Equity Civil Bill dated 21st June 2022 in which the Respondent was identified as Personal Representative of the estates of both Adeline Keppel and Rita Keppel. She relied on letters of administration which were granted on 23rd May 2022, appointing her as administrator of both estates. At paragraph 11 of the Equity Civil Bill, it was pleaded that the Applicants had been called upon to vacate the premises but had not done so, "*in consequence of which the estates of the deceased have suffered and continue to suffer loss and damage*".

6. The number or identity of the beneficiaries of the estate were not specified in the Equity Civil Bill, nor was it necessary for such details to be included. The Respondent has not asserted, whether in the Circuit Court proceedings, or otherwise that she is the sole beneficiary of the estates of Adeline Keppel and/or Rita Keppel.

7. The Applicants delivered a Defence to those proceedings on 1st September 2022, which Defence denied the pleas in the Equity Civil Bill, although it was accepted that Adeline Keppel is currently the registered owner of the property. At paragraphs 2, 9 and 10 of the Defence, the Applicants pleaded fraud. In particular, it was pleaded that:

"2. If the plaintiff has procured a grant of representation in the estates of either Adeline Keppel of Rita Keppel, same was procured by fraud in that it was represented that the Plaintiff was the attorney of Florence Chambers whom it was wrongly claimed was a second cousin of both Adeline Keppel and Rita Keppel and as such was entitled to a share in the estate of one or both of them.

...

9. If letters of administration in the estate of Adeline Keppel were granted appointing the Plaintiff herein as Personal Representative in her estate on the 23rd day of May 2022 same were procured by fraud as set out in paragraph 2 above.

10. If Letters of Administration in the estate of Rita Keppel were granted, appointing the Plaintiff herein as Personal Representative in her estate on the 23rd day of May same were procured by fraud as set out in paragraph 2 above."

8. It was also denied, at paragraph 5, that Rita Keppel was the sole surviving sister of Adeline Keppel or that they were sisters. It was accepted at paragraph 6 that both Adeline and Rita Keppel resided at the property in question and paragraph 7 pleads "*if Rita continued to reside therein post her sister's death in 2001 it was in adverse possession to the estate of Adeline*." The fact that they were sisters is accepted at paragraph 7.

9. At paragraph 12 of the Defence, the Applicants denied having wrongfully occupied the premises and denied that they wrongfully continued to occupy the premises. No positive plea was made as to the basis on which they were or are in occupation of the property. During the hearing before me, counsel for the Applicants confirmed that the Applicants are squatters.

Requirement to Plead Particulars of Fraud

10. An allegation of fraud is a very serious matter, particularly where, as here, the allegation is that the Respondent has abused the judicial process and obtained two orders of the High Court and letters of administration in respect of two estates through fraud. The applications to the High Court were made *ex parte*.

11. It is a long-established practice of the courts that when fraud or misrepresentation is alleged, particulars must be set out in the pleadings. In *Hanley v. Finnerty* [1981] ILRM 198, Barrington J. stated, in relation to the plea of undue influence:

> "*undue influence as a plea similar to fraud and it appears to be that it would be quite unfair to require a party against whom a plea of undue influence is made to go to court without any inkling of the allegations of fact on which the plea of undue influence rests because of the seriousness of the plea Council will not likely put his name to a pleading containing a plea of undue influence so that his solicitor will usually have in his possession some allegations of fact which justify the raising of the plea or at least excuse the plea from being irresponsibl*e."

12. This has been approved by Dunne J. In *Keaney v. Sullivan* [2015] IESC 75 in which case she held:

> "*it is necessary to set out the allegations of fact in a statement of claim or pleading on which the plea concerned rests. That is required by the rules and as is made clear in that passage from the judgment of Barrington J., it is a fundamental requirement. The reason is, as Barrington J. said, that it would be quite unfair to require a party against whom such an allegation is made to go into court without any idea whatsoever as to the nature of the allegations of fact on which that plea rests. The second point highlighted by Barrington J. in that passage is the seriousness of such a plea. One does not lightly make an allegation of fraud against another party. It has to be borne in mind that absolute privilege attaches to pleadings in court proceedings (see s. 17(2)(g) of the Defamation Act 2009). The fact that absolute privilege attaches to pleadings in legal proceedings is not a licence to make unsubstantiated allegations of a serious nature such as fraud against another party. Care must be taken before making such an allegation. <u>There must be available facts to support such a plea and those facts must be particularised in the pleading concerned.</u> The seriousness of such a plea is underlined by the express requirement contained in Order 19, rule 5 of the RSC to properly particularise such allegations. Bullen*

and Leake in the passage set out earlier sets out how this should be done." (emphasis added)

13. Dunne J. also considered the judgment of Clarke J. (as he then was) in *National Educational Welfare Board v. Ryan* [2008] 2 I.R. 816 and stated that one must bear in mind that a plaintiff alleging fraud has to pass the threshold "*in a sufficient manner to give the defendant a reasonable picture as to the fraud contended for*".

14. The obligation to plead fraud with particularity stems from the right to fair procedures and not solely from the Rules of Court. The requirement to plead fraud with sufficient particularity applies equally to defendants who seeks to rely on fraud to defeat a claim made against them.

15. In this case, the sole particular of fraud pleaded by the Applicants was that:

    "*the Plaintiff was the attorney of Florence Chambers whom it was wrongly claimed was a second cousin of both Adeline Keppel and Rita Keppel and as such was entitled to a share in the estate of one or both of them*."

16. No additional particulars were set out at paragraphs 9 and 10 of the Defence, in which fraud was also asserted.

17. It is accepted by the Applicants that this plea contains an error - the Applicants accept that the Respondent was the daughter of Florence Chambers and they do not contend that she held power of attorney for her mother.

18. The plea (made as an alternative to the denial that the Respondent was the Personal Representative of the estates of both Adeline Keppel and Rita Keppel) is that it was "*wrongly claimed*" that Florence Chambers was a second cousin of Adeline and Rita Keppel. It is not pleaded that that claim was advanced dishonestly, nor is it asserted that the Respondent made the application in the knowledge that her mother was not related to Adeline or Rita Keppel. At its height, the Applicants would have to rely on an inference of dishonesty being drawn from the fact that the particular is a particular of fraud. I do not consider that it is appropriate to draw such an inference in circumstances

where the obligation to plead the material facts of the fraud alleged is a fundamental requirement. Carrying out an act wrongly does not amount to fraud without an element of dishonesty.

The Proceedings before the High Court under the Succession Act 1965

19. The orders of the High Court dated 10th February 2020 (Hyland J.) and dated 8th February 2021 (Allen J.), which the Applicants assert were obtained by fraud were made under section 27 (4) of the Succession Act 1965.

20. Section 27 provides:

> "*27.—(1) The High Court shall have power to grant administration (with or without will annexed) of the estate of a deceased person, and a grant may be limited in any way the Court thinks fit.*
>
> *(2) The High Court shall have power to revoke, cancel or recall any grant of administration.*
>
> *(3) Subject to subsection (4), the person or persons to whom administration is to be granted shall be determined in accordance with rules of the High Court.*
>
> *(4) Where by reason of any special circumstances it appears to the High Court (or, in a case within the jurisdiction of the Circuit Court, that Court) to be necessary or expedient to do so, the Court may order that administration be granted to such person as it thinks fit.*
>
> *(5) On administration being granted, no person shall be or become entitled without a grant to administer any estate to which that administration relates.*
>
> *(6) Every person to whom administration is granted shall, subject to any limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.*
>
> ..."

21. An order under section 27 (4) simply permits the appointment of "any person" as an administrator of the estate. It is not necessary for the person appointed to be the closest living relative of the deceased, nor even a relative. In this case there is no doubt that the Respondent made the applications on the basis that she was a relative of the deceased through her mother.

22. As appears from the affidavit of the Respondent's solicitor sworn the 28th January 2020, that urgency arose due to the occupation of the property, which was the sole asset of the estate by squatters, who we know to be the Applicants. He swore that it was intended to issue proceedings to protect the estates' only asset.

23. The orders of Hyland and Allen JJ. recited the fact that "*it was expedient to appoint some person to be the administrator of the estate of the said deceased other than the person who under the Succession Act of 1965 would be entitled to a grant*."

24. Nowhere in the papers which were before the High Court and which have been exhibited in these proceedings did the Respondent assert that she was the sole beneficiary, nor did she identify who the beneficiaries of the estate were. She did assert, in the originating Notice of Motion, that she was entitled to her mother's share in the estate of the deceased. This was also stated in the grounding affidavit in the application in respect of the estate of Rita Keppel.

25. The orders of Hyland and Allen JJ. do not amount to recognition that the Respondent is the closest living relative of the deceased persons nor that she is entitled to benefit from the estate, but rather that it is appropriate in all the circumstances that she be appointed as Administrator.

26. An application has been brought by the Applicants in the probate list for an order revoking the grant of letters of administration to the Respondent. A motion was brought by the Respondent seeking to dismiss that application on the grounds of *locus standi*, in which judgment has been reserved. The outcome of that application is of no relevance to the instant proceedings.

Fettering of discretion in relation to the question of fraud

27. The Applicants submit that the Circuit Court Judge fettered his discretion in relation to the question of fraud as he refused to look behind the Orders of the High Court.

28. The Applicants rely on *Heaphy v. Murphy & Ors* [2018] IEHC 141 and in particular, the finding that the Court has a duty to uphold the integrity of the legal system. The Respondent does not challenge the contention that the courts have a duty to uphold the integrity of the judicial system but argue that the Applicants were not precluded from putting any evidence regarding fraud before the Court.

29. The circumstances of *Heaphy v. Murphy & Ors* are very different to the facts before this Court, not least by reason of the fact that orders had been made by the High Court in reliance on the very evidence which the Applicants sought to question before the Circuit Court and the fact that there was a live application before the High Court brought by the Applicants, seeking revocation of the orders made under section 27(4) which the Applicants contend were obtained by fraud.

30. It is of note that no application was made for an adjournment of the Circuit Court proceedings. The reason proffered for this is that the Circuit Court Judge was aware of those proceedings and that discovery had been refused. This is not adequate to explain why an application was not made for an adjournment of the Circuit Court proceedings to the application for revocation proceed before the High Court. It is not clear whether the Applicants' counsel was suggesting that the Circuit Court Judge should have adjourned the proceedings without an application having been made or that it was assumed that such an application would have been refused.

31. For the issue of fraud to be properly before the Court, it must be pleaded with sufficient particulars and there must be evidence of such fraud. In this case the sole particular of fraud given was that the Respondent had wrongly claimed that her mother was the second cousin of both Adeline Keppel and Rita Keppel and as such was entitled to a share in the estate of one or both of them. Save insofar as it might be inferred from the fact that the particular is a one of fraud, no particulars have been given alleging

dishonesty. It has not been alleged that the Respondent knowingly made the application on an incorrect factual basis.

32. It has neither been pleaded nor contended that the Respondent, has dealt with or will deal with the property in a manner which is inconsistent with the obligations of an Administrator under the Succession Act, 1965 or which would adversely interfere with the rights of the persons who are the beneficiaries of the estate. Unquestionably, the Applicants are not potential beneficiaries of the estate.

33. At page 19 of the transcript, counsel for the Applicants stated, "*I haven't said that this witness told lies….*" In response to the Judge describing the use of the words blatant lies as very unfortunate. The Judge had said *"No, no, no I'm going to -- you're going to have to stop on this fraud bit. What you're going to have to say to me is what are the questions that you want to ask -- is somebody mistaken in relation to it or whatever? But don't use words like fraud which is criminal offences.*"

34. It is clear that when the cross-examination and submissions of counsel for the Applicant are read in their entirety, the case advanced by the Applicants was that there were discrepancies in the evidence which had been before the High Court when it made the orders under section 27(4) and that the Respondent had inadequately identified the matters in her affidavits for which she did not have personal knowledge. The affidavits related to the family tree of the Respondent's mother and clearly referred to information having been provided to her by her solicitor.

35. The Judge asked, *"can you not just put the questions to her that you want to ask?*" to which the Applicants' counsel said *"because it is now emerging that this witness went to the High Court swearing a relationship but she is unable to say…"*

36. When the Circuit Court Judge put to the Applicant's counsel that all he was doing was "*fishing around for something*", counsel responded that he was putting contradictions in the documents which the witness had disclosed through discovery to her.

37. Save insofar as the Respondent was cross-examined in relation to her means of knowledge of the affidavits and the photographs (which are of limited evidential value),

she was cross-examined in relation to matters which were relied upon by the Applicants as discrepancies in the documentary evidence which had been considered by the High Court.

38. Counsel for the Applicants stated, "*I haven't said this witness told lies but the implication of it is that anybody –*", "*And what I say is that this is a situation where we have a plaintiff who went to the High Court, swore to a relationship. She's unable to substantiate – what she swore*"… and " *it cannot be the case that anybody can go to the High Court and swear documents claiming*…" page.19-20.

39. These submissions, and the questions asked by the Applicants' counsel are relevant only to the adequacy of the evidence considered by the High Court in the applications made under section 27(4), and which was found by Hyland and Allen JJ. respectively to be sufficient to enable the High Court to grant the orders made.

40. Whilst I accept that if it were established that Orders of the High Court which formed the basis on which an application was brought on behalf of an estate had been obtained by fraud, that is a relevant factor which the Court may take into account in deciding how to exercise its discretion. However, it is clear from the statements of the Applicants' counsel in the Circuit Court, that whilst fraud was relied upon, dishonesty was not alleged. No questions were directed towards eliciting evidence of dishonesty, nor did the Applicants proffer any evidence of their own, despite assertions of fact having been put to the Respondent.

41. It was not alleged that the Respondent had told lies, but rather that she had not explicitly stated she was relying on information told to her by the solicitor and /or genealogist, to ground the averments made by her as to the relationship between her mother and Adeline and Rita Keppel. The adequacy of the evidence which had been before Hyland and Allen JJ. was a matter for the High Court. The High Court was satisfied that it was appropriate to rely on those affidavits in making the orders under section 27(4).

42. Prior to the Judge giving his ruling, the Applicants' counsel had been afforded a number of opportunities to put the evidence on which he relied to the Respondent and was invited to go into evidence after the application for direction had been refused despite

the stated understanding of the Applicants' counsel that he was not entitled to do so. When the Applicants' counsel stated that he was not going into evidence, the Judge responded "*I'm surprised that you don't have any case at all*". Counsel subsequently declined to make any closing submissions despite having been invited to do so by the Court. In the ruling, at page 32 of the transcript, the Circuit Court Judge stated:

> "*I gave you every opportunity … to make a case in relation to court. I've offered you to call evidence and I've offered you to give submissions and you've said there's no point in relation to it. And I've heard what you've to say in relation to it. The reality in this is that I have a grant of administration which has been granted under sections 27 (4) of the Succession Act by the High Court pursuant to a court order of the High Court and it's issued from the Probate Office. That has not been revoked. And on the face of this [the Respondent] is entitled to act as administrator in dealing with the estate. I see absolutely no merit whatsoever in the defence in this case*."

43. Questions, such as adequacy of the evidence which was before the High Court when the orders were granted, including doubts or discrepancies relating to the family tree, are matters which the High Court could consider in an appropriate application under section 27(2). Without a plea, substantiated by evidence, that the orders were obtained through dishonesty rather than reliance on a mistake or insufficient evidence, no issue arises in relation to fraud.

44. The statement by the Circuit Court Judge that he could not go behind the grant of administration cannot be read in isolation and must be read in the context of the evidence before the court and the fact that on numerous occasions counsel was permitted to proceed with his questioning even where the purpose of the line of questioning was not clear to the Judge. This is also clear after the Judge asked counsel why he should be permitted to look behind the High Court Orders. After the application for a direction was refused, the Circuit Court Judge invited the Applicants to go into evidence and to make closing submissions.

45. There is no evidence whatsoever to demonstrate any basis for believing that the Respondent has made, or intends to make, an assent vesting the assets of the estate in herself. This was not pleaded in the Defence to Equity Civil Bill, nor were any questions

put to the Respondent at the hearing before the Circuit Court which put in issue the question whether she would carry out her duties as the administrator of the estate's otherwise than in a lawful manner.

46. In the circumstances, I do not accept that the Circuit Court Judge breached the Applicants' rights under Article 40.3.2 or that he fettered his discretion as alleged by the Applicants.

The Hearing

47. The transcript of the hearing before the Circuit Court has been exhibited and both parties have opened extracts to the Court. I have also carefully considered the transcript in its entirety.

48. The Respondent was very clear in her evidence in chief that she was relying on a report of a genealogist and information which her mother had given during her lifetime. She also clearly stated that she had never met Adeline or Rita Keppel. The thrust of the cross-examination of the Respondent was that there were inconsistencies and inaccuracies in the information which was put before the High Court. Whilst the Respondent's means of knowledge of the evidence put before the High Court in the previous proceedings was sought to be challenged, the Respondent was not asked any question which could have elicited evidence to the effect that she had knowingly put incorrect evidence before the Court or put any evidence before the High Court with a dishonest intent. No complaint is made in these proceedings to the effect that such a line of questioning was prevented by the Circuit Court Judge.

49. As noted above, no application was made for an adjournment of the proceedings to await the determination of the applications under section 27(2) of the Succession Act 1965 by the High Court. Sufficient explanation has not been given for not making such an application in circumstances where the question whether the orders should be revoked was before the High Court.

50. The Applicants contend that there was a breach of fair procedures by virtue of the number of interjections made, and questions asked, by the Circuit Court Judge during the cross-examination of the Respondent by the Applicants' counsel.

51. There were a significant number of interventions by the Judge in the course of cross-examination, but that fact alone does not lead to a finding that the hearing was conducted in breach of fair procedures.

52. The Applicants rely on *People (DPP) v. McGuinness* [1978] IR 189, in which case the Court of Criminal Appeal quashed a conviction for rape on the basis of the repeated interruption of the cross-examination by the trial judge. The difficulty of cross-examination of the complainant in a rape case was highlighted in the judgment. Kenny J. held that the intervention of the Judge made it impossible for the accused counsel to conduct cross-examination on the lines he considered would be most effective and could have had the effect of causing the jury to believe that the Judge had formed a definite opinion as to the credibility of the complainant**.** Kenny J. cited the judgement of Denning LJ in *Jones v. The National Coal Board* [1957] 2 QB 55, on which the Applicants also rely.

53. In *Jones*, Denning L.J. held:

> "*now it cannot, of course, be doubted that a judge is not only entitled but is, indeed, bound to intervene at any stage of the witnesses evidence if he feels that, by reason of the technical nature of the evidence or otherwise, it is only by putting questions of his own that he could properly follow and appreciate what the witnesses saying. Nevertheless, it is obvious for more than one reason that such interventions should be as infrequent as possible when the witness is under cross examination… Excessive judicial interruption inevitably weakens the effectiveness of cross-examination in relation to both the aspects which we have mentioned, for at one and the same time it gives a witness valuable time for thought before answering a difficult question, and diverts cross-examining counsel from the course which he had intended to pursue, and to which it is by no means easy sometimes to return*."

54. Both *DPP v. McGuinness* and *Jones* were considered by the Supreme Court in *Murtagh the Minister for Defence* [2018] IESC 37, which case Peart J. (with whom the other members of the Court agreed) described the standard of judicial conduct commended with such eloquence by Denning LJ in 1957 is remaining "*an admirable standard of perfection earnestly to be desired of all judges*". However, he stated:

> "*36. I think it is fair to observe that the gold standard enunciated by Denning J. (as he then was) in* Jones *has been tempered somewhat in its strict application in the intervening years, without in any way wishing to condone behaviour that falls short of an acceptable standard. The* Jones *principles should not be seen as doctrinal and dogmatic, but rather a guide to what is expected in an ideal world. ...*
>
> *37. In my view, the manner in which this trial proceeded from start to finish was far short of ideal due to the manner in which the trial judge continuously interrupted proceedings. It certainly fell below the* Jones *gold standard. I have no doubt firstly that it was very irritating and distracting for counsel – on both sides as they presented their evidence – and secondly, it undoubtedly added significantly to the trial whose length should have been counted in days rather than weeks. However, this appeal is not an inquiry into the conduct of the judge. Rather, it is an examination of the fairness of the trial that eventuated, and specifically, given that only one party has appealed, whether the trial was so unfair to the defendants that justice was not administered with the consequence that the entire process should be set aside, and a retrial ordered.*
>
> *...*
>
> *39. ... it must be said also that these interruptions, constant as they were, did not prevent questions being asked by counsel either in examination in chief, or in cross-examination, and did not cut off lines of inquiry that counsel wished to pursue with witnesses. Neither it must be said were the trial judge's interventions ill-tempered and discourteous. The most that can be said is that they were largely unnecessary and irritating, albeit over the course of what became a very long trial. Importantly, I do not consider that justice was denied to the defendant by the trial judge's conduct. A fair though needlessly long trial was achieved."*

55. Peart J. held in *Murtagh* that, as in *Shaw v. Grouby* [2017] EWCA Civ 233, the interventions by the judge were such that he had effectively taken over the cross-examination of the defendant's witnesses. Peart J. found that the trial was not constitutionally unfair, notwithstanding the excessive and largely unnecessary interruptions and interventions by the trial judge at all stages of the trial.

56. It is clear therefore that while interruptions should be kept to a minimum, reasonable interruptions are permitted and may be required. Furthermore, even when there are excessive or unnecessary interruptions, the decision of the Court should only be overturned if the effect of the interjections of the judge was to render the trial unfair.

57. Considering the trial as a whole, it appears to me that the interventions of the Circuit Court Judge were largely made to ascertain the purpose and relevance of the questions or the line of questioning. Counsel for the Applicants referred in his submissions to this Court to the need for evidence to be relevant. I am satisfied that the Circuit Court Judge was entitled to intervene during the cross-examination to ensure that the evidence which the defendant sought to elicit was relevant to the issues before the Court. What is relevant is determined by the matters put in issue in the pleadings. Where fraud is pleaded in a Defence, as I have already said, particulars must be included in the Defence. This is the case where the fraud is being relied upon to seek to persuade a court to decline to exercise equitable jurisdiction. It was not unreasonable for the Circuit Court Judge to seek to clarify how the evidence which the Applicants' counsel sought to elicit in cross-examination was relevant to the issues to be determined.

58. Many of the interjections were expressly made to enable the Judge to ascertain where the line of questioning was going. This is specifically referred to at pages 7,8,9,10 of the transcript. At page 10, the Judge said "*Well, in fairness … I think the court is entitled to get clarification as to what your point are. I'm not trying to restrict you. I'm trying to actually ascertain*."

59. Counsel for the Applicants submitted that he must be allowed to cross-examine and adduce the evidence that he says supports his pleadings, to which the Judge replied "*All right. Go on*." (p. 14) Having reiterated his ruling that a letter need not be produced,

the Judge staid "*Just keep proceeding with your questions. I don't know where you're going with all this*." (p. 14). At page 28, the Judge said "*Can I – bear in mind the witness and try and just ask questions that might convince me to back up your case.*"

60. Certain lines of questioning, including in relation to the number of other second cousins of the deceased or whether the William Keppel on the birth certificates of Adeline and Rita Keppel was the same man, were plainly irrelevant or speculative.

61. The element of surprise which counsel for the Applicants contended was appropriate in his cross-examination does not go so far as to permit cross-examination of a witness against whom fraud has been alleged without adequate particularity. This would defeat the fundamental requirement that fraud be pleaded with particularity, as identified by the Supreme Court.

Discretion

62. If I am incorrect in my finding that the Circuit Court Judge did not unlawfully fetter his discretion and incorrect in finding the trial was fair, I am nevertheless satisfied that this would not be an appropriate case in which to grant the discretionary relief of *certiorari*.

63. The Applicants accept that they are squatters, and no legitimate basis has been put forward for their occupation of the property, past or present. There is no evidence whatsoever to suggest, much less establish, that the Respondent has or will take any steps which are incompatible with the duties of an administrator under the Succession Act 1965. It is neither asserted nor established that she would administer the estate in an improper manner. She has sued as the Personal Representative and is joined in these proceedings as the Personal Representative of the deceased. It is not alleged that she has assented to the vesting of the property in herself. If, as the Applicants suggest, there are other family members who are entitled to a share of the estate, the Order granted by the Circuit Court protects rather than undermines the property in the estate, and the interests of the beneficiaries of the estate.

64. The application determined by the Circuit Court was an application for an injunction directing the Applicants, who are squatters, to vacate the property of the estate of Adeline Keppel and Rita Keppel. That property has vested in the Administrator for the

benefit of the beneficiaries of the estate. The orders made by the Circuit Court do not confer any beneficial interest in the property of the estate on the Administrator but rather, enable her to protect and distribute the assets of the estate. The Circuit Court did not have jurisdiction to revoke or otherwise interfere with the vesting of the property of the estate in the Administrator.

65. I refuse the substantive relief sought.