

IN THE HIGH COURT OF JUSTICE
THE BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (Ch D)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: 31 August 2018

Before :

HIS HONOUR JUDGE EYRE QC
(Sitting as a Judge of the High Court)

Between :

GREGORY WILD

Claimant

- and -

1) MALCOLM WILD

Defendants

2) JEAN WILD

3) ABIGAIL WILD

Stephen J Pritchett (instructed by **Cooper Sons Hartley & Williams**) for the **Claimant**
David Hoffman (instructed by **Hibberts LLP**) for the **Defendants**

Hearing dates: 16th, 17th July and 1st August 2018

JUDGMENT

HH Judge Eyre QC:

Introduction.

1. Members of the Wild family have farmed at Beard Hall Farm in Derbyshire (“the Farm”) since 1952. The Farm has been operated as a dairy farm with an associated retail milk business and consists of: a farmhouse which is the home of Jean Wild, the Second Defendant; High View Bungalow (“the Bungalow”) which is the home of the First and Third Defendants; and approximately 103 acres of farmland. About 40 acres of adjoining land which was formerly part of Gowhole Farm were acquired and added to the holding in 1995. The current value of the Farm (excluding the Bungalow) is £1.4m and that of the Bungalow £285,000 (or £190,000 if that property is subject to an agricultural occupancy condition).
2. The Claimant and the First Defendant are brothers. They are the sons of the Second Defendant and of the late Ben Wild. The Third Defendant is the First Defendant’s wife. From 1978 to 1994 Ben Wild and the First Defendant conducted the farming business as partners under the style “B & M Wild”. The Claimant and the Second Defendant joined the partnership in 1994 but the Second Defendant left the partnership in 1999. The trading style of the partnership was not changed initially but from 2000 at the latest it traded as “B

Wild & Sons”. Ben Wild died in 2003 and his sons continued to trade in partnership thereafter. However, that trading was in circumstances of increasing acrimony between the two brothers and the partnership was dissolved in November 2016. Although there were a series of partnerships with different members in this judgment I will normally refer just to “the partnership” because the parties are agreed that there was a continuing business and, more significantly, that if the disputed property became a partnership asset it became one in 1978 and continued as a partnership asset throughout the changes in membership.

3. The Claimant commenced the proceedings seeking a declaration as to the dissolution of the partnership; orders for winding up and accounts; and other relief. There has been a substantial narrowing of the issues and agreement of figures. There is agreement that the land at Gowhole is an asset of the partnership but there is no such agreement as to the Farm. The central issue before me was the ownership of the Farm (including the Bungalow). The Claimant says that Farm is an asset of the partnership and is to be brought into account in the winding up. The Defendants say that neither the Farm nor the Bungalow are assets of the partnership. They say that even if the Bungalow is otherwise found to have been an asset of the partnership the First and Third Defendants have an interest in it by way of proprietary estoppel or constructive trust.

The Factual Background to the Dispute.

4. William Wild acquired the Farm in 1952. He died in 1965 and title to the Farm passed to his widow, Dorothy. At that stage their son, Ben Wild, was farming the land. Dorothy Wild died in 1973. Her will left the Farm to Ben Wild on terms that if he elected to accept that devise he was to pay sums totalling £9,400 to his three sisters and one brother. Ben Wild did that and the Farm passed to him. In January 1975 Ben Wild obtained a loan of £12,000 from the Agricultural Mortgage Corporation and there is disagreement between the parties as to whether Ben Wild used that advance or other funds to make the payments to his siblings. The Farm and the Bungalow were valued at a total of £38,640 in Dorothy Wild’s estate accounts.
5. In 1978 the First Defendant was aged 16. He became a partner with his father and they operated the dairy farm trading as “B & M Wild”. There was no written partnership agreement. It is not surprising the partnership accounts from that period are no longer available. The earliest accounts available are those for the year ended 5th April 1990 although the balance sheet for the preceding year has also been provided. At that stage the partnership accountants were the Owen Pickup Partnership but they do not appear to have been the partnership’s original accountants. From 1993 the partnership accountants were John Bullock & Co (subsequently trading as Bullock Woodburn).
6. The balance sheet from the 1989 accounts contains an entry identifying as one of the fixed assets of the partnership “property” with a value “at cost” of £40,750. The same entry appears in the 1990 and 1991 accounts. The balance sheet and those accounts also include entries and values for a shed and for a beef shed as well as for plant and machinery (listed separately as “farm” and “dairy”)

and for tractors, motor vehicles, a milk float, and for goodwill. In subsequent years the entries for property, for the shed, and for the beef shed are combined under the heading “land and buildings”. The parties are in dispute as to whether the “property” entry is a reference to the Farm and, if it was, whether the Farm was correctly included in the accounts as an asset of the partnership.

7. The First and Third Defendants married in 1987 and in 1988 they moved into the Bungalow. They have lived there since then. It is common ground that the Bungalow was at that time in need of modernisation and refurbishment. It is also common ground that substantial works were undertaken by way of modernisation and renovation including (in 1992 or thereabouts) the building of a substantial extension to the Bungalow. There is, however, considerable dispute as to whether and in what proportions the partnership or the First and Third Defendants paid for those works and as to the basis on which any expenditure by the First and Third Defendants was made.
8. In November 1991 Susan Owen of the Owen Pickup Partnership wrote to Ben and Jean Wild urging them to make wills. The parties each invite me to draw inferences from the terms of that letter and I will return to the letter later. Notwithstanding that encouragement Ben Wild did not, in fact, make a will until December 2002.
9. In 1994 the Claimant and Jean Wild joined the partnership. Again there was no written partnership agreement. The Claimant was then aged 25 or 26. In 1995 he married Gillian Race and in the same year they bought Redgate End Farm Cottage in the next village to the Farm. They have lived there since then. There is disagreement as to the extent to which Ben Wild and/or the partnership assisted in that purchase and in the works of refurbishment undertaken on that cottage. The land at Gowhole Farm was acquired in December 1995. The four partners (as there were at that stage) were registered as proprietors. That purchase was funded by a further advance from the Agricultural Mortgage Corporation secured by a charge on the Farm identifying Ben Wild (the paper title owner of the Farm) as the mortgagor and each of the partners as the borrowers. Jean Wild left the partnership in 1999.
10. In 2002 Chafes Solicitors were engaged by Ben and Jean Wild. Those solicitors corresponded with Mr. and Mrs. Wild and with Bullock Woodburn in the context of preparing and giving advice as to the drawing up of wills and a potential transfer of the Bungalow to the First Defendant. I will consider that correspondence in rather more detail in due course.
11. Ben Wild died in July 2003. In December 2002 he had made a will in the simplest of terms whereby he left “all my estate both real and personal” to Jean Wild whom he appointed as his sole executrix. Mrs. Wild obtained probate in July 2005 but it was not until March 2017 that she executed assents. Title to the Farm had been unregistered until then but Mrs. Wild then executed assents to herself creating separate titles in respect of the Bungalow and the balance of the Farm, being the farmhouse, farm buildings, and the land.
12. It seems that the Claimant and the First Defendant had never got on particularly well. After their father’s death they continued the partnership business in

circumstances of increasing acrimony and indeed hostility. By 2016 matters had reached such a pass that the brothers had not been on speaking terms for a number of years and in November 2014 the First Defendant had been convicted of a common assault committed upon the Claimant in April of that year the former's defence of self-defence having been rejected by the magistrates. On 3rd November 2016 the First Defendant's solicitors served a notice of dissolution on the Claimant. This purported to dissolve the partnership from 1st July 2016 but it is common ground that it took effect on 3rd November 2016.

The Current Issues.

13. The parties have resolved many of the subsidiary issues as to figures and as to whether sundry comparatively low value items were or were not assets of the partnership. They agreed that there were a number of issues which had to be determined to enable conclusions to be reached on the winding up of the partnership.
14. The Second Defendant is the registered proprietor of the Farm and of the Bungalow. The Claimant says that those properties are assets of the partnership; are held on trust by the Second Defendant for the partnership; and are to be brought into account in the winding up. The Defendants say that neither property was an asset of the partnership. They say that Ben Wild owned them in his own right before going into partnership with his son; that he did not bring them into the partnership; and that they never became assets of the partnership.
15. If the Bungalow is a partnership asset do the First and Third Defendants have a claim to the same by way of proprietary estoppel or constructive trust and if so how is that claim to be satisfied? The Defendants say that the First and Third Defendants met the costs of refurbishment, modernisation, and extension of the Bungalow and did so in reliance on assurances from Ben Wild that the Bungalow was or was to be theirs. The Claimant says that there were no such assurances. He also says that to the extent that the First and Third Defendants spent money on the Bungalow, something he does not accept, that expenditure was dwarfed by the expenditure of the partnership on those works.
16. At the start of the trial it appeared that there was an issue between the parties as to the orders to be made if the Farm and/or the Bungalow were found to be partnership assets. Should there be an open market sale or should the Defendants be permitted to buy out the Claimant's interest? That might still be a matter in dispute between the parties but sensibly it was agreed that submissions would be made in that regard after I had determined the issue of the beneficial ownership of those assets.
17. There is a dispute between the parties as to whether the First Defendant has failed to account for the sales of livestock and of milk which were partnership assets. The Claimant says that there was such a failure; that the First Defendant has appropriated to himself the proceeds of the sale of such assets; and that he has concealed or sought to conceal those sales. The First Defendant denies this. He accepts that some sales were taken out of the control of the Claimant but says that this was to avoid misappropriation by the Claimant. The First Defendant says that he has accounted for all the sales and that he has brought

into the winding up all the sums he has received from sales of partnership assets. The Claimant does not seek any monetary redress in respect of the alleged misappropriation. This is a pragmatic approach with the Claimant saying that uncovering of all the sums involved would be a disproportionate exercise. Instead the Claimant invites me to conclude that there was such misappropriation and to regard it as a matter of relevance when assessing the credibility and reliability of the First Defendant's evidence.

18. Before the dissolution of the partnership each brother had his own milk round selling milk produced on the Farm by the partnership's herd. The First Defendant had control of the operation on the Farm and from 1st July 2016 he stopped supplying milk to the Claimant for sale on the latter's milk round. The Claimant then had to source his milk from elsewhere but he continued to operate a milk round. The Claimant says that the loss of the milk supply from the partnership herd together with the actions of the First Defendant meant that for all practical purposes he had to start his round from scratch again. He says that the milk round he has operated since dissolution is not a partnership asset. The First Defendant says that the round now operated by the Claimant is a continuation of the round operated before dissolution and is a partnership asset in respect of which the Claimant should account in the winding up.

The Reliability of the Evidence of the Principal Witnesses.

19. I have concluded that the evidence of each of the Claimant and his wife and of the First Defendant was flawed. At the very least each of them had allowed their evidence to be coloured by their belief as to what the correct or just outcome should be; by their belief as to what ought to have happened; and by a feeling of grievance arising from their beliefs as to the actions or failings of the other side. I take account of the fact that the witnesses were giving evidence about matters which had taken place over a period of time and that some of the relevant events and dealings were more than thirty years ago. In those circumstances it is not surprising that some of the details were unclear and imprecise. However, I have concluded that these witnesses had lost objectivity and a sense of proportion. As I will explain below each of these witnesses gave evidence part of which simply could not be correct and which if the witness had stood back and considered the position impartially he or she would have had to acknowledge was not correct.
20. It follows that in respect of each of these three witnesses I have to exercise a very considerable degree of caution in the assessment of their evidence. As in any case requiring findings as to the interpretation of dealings some years in the past I have assessed the witness evidence in the light of the picture which emerges from contemporaneous documents and from documents created before any dispute arose and in the light of inherent likelihood. In that regard it is to be noted that because significant events took place so long ago and in the context of dealings between members of a family there is little by way of contemporaneous documentation.
21. In practice I do not have to make findings of fact about a number of the matters where the evidential conflicts were starkest and bitterest. For example the question of whether and the extent to which the Claimant operated a business

as a car mechanic from the Farm aroused considerable ill-feeling and was addressed at some length in the evidence but was relevant at most only as a minor factor in consideration of the credibility of the Claimant's evidence and as part of the background to the ill-feeling between the brothers and their families.

22. I have considered the reliability of the evidence of the Claimant. In late June 2018 and so less than one month before the trial Gillian Wild had, with her husband's approval, sent e-mails requesting information from Bagshaws who are livestock auctioneers. A further e-mail to the same effect was sent in the week before the trial. The e-mails said that the partnership business was being audited and that information had been lost. Bagshaws were asked to give the figures in respect of two account numbers one of which was the First Defendant's personal account but which was said to be an account of the business. In these e-mails Bagshaws were being deceived. That deception was taking place in order to get information which the Claimant believed the First Defendant was concealing. The Claimant was very reluctant to acknowledge in his oral evidence that untruths had been told to Bagshaws although he ultimately came to the position of accepting that there had been deception but said that this was because if the truth had been told the information would not have been forthcoming. At the very least this was indicative of the Claimant's sense of grievance and of a belief that he was entitled to deceive others in order to further the cause which he believed was right.
23. Although I remind myself of the need to avoid attaching undue weight to the demeanour of a witness when giving evidence I have concluded that the Claimant was at times evasive in giving his evidence and that he was not prepared to address directly matters which were put to him. Similarly he was not prepared to concede that his recollection might have been flawed when the contemporaneous documents clearly demonstrated that it was. Thus the documents from his own solicitors' ledger demonstrated that his father had been given some comparatively modest assistance in meeting the costs of the purchase of Redgate End Farm Cottage but even when confronted by these documents the Claimant did not accept that there had been such assistance.
24. I find that the extent of the Claimant's animosity towards and distrust of his brother was such that it coloured his evidence to a marked degree. Thus the Claimant was resolute in his assertion that the First Defendant and those acting at his instigation had sabotaged the Claimant's milk round. He maintained that the First Defendant had deliberately provided him with contaminated or defective milk. The Claimant said that he attended the dairy earlier in the morning than the First Defendant or those acting on the latter's behalf. He said that matters were deliberately arranged such that milk which was contaminated or which had gone off was placed nearer to the door with the effect that he was more likely to take it than the other milk. The Claimant accepted, however, that he was free to choose which milk to take from the dairy. In those circumstances I find that there was no such sabotage and accept as considerably more likely the explanation from the First Defendant that to extent there were problems with the milk (which he accepted there were) they arose at a time when the First Defendant himself was not controlling the operation because he was in hospital

or recovering from injuries suffered in a fall and when standards in the dairy had slipped. It appears that a young woman who had spent some time working for the First Defendant posted online a false bad review of the Claimant's milk. However, I do not find that this was done at the instigation of the First Defendant. The level of animosity between the brothers and their supporters was such that I have concluded that it is equally likely that this was an instance of a person who saw themselves as a friend and supporter of the First Defendant acting on her own initiative to harm the Claimant. The Claimant's fixed belief that every difficulty which there had been in respect of his milk round was the result of deliberate action against him organised by the First Defendant was, I find, an illustration of the extent to which the Claimant's evidence was pervaded by distrust of his brother such as to cause him to exclude other and more likely explanations of events.

25. I have also concluded that the Claimant's evidence about relations between himself and his mother was untrue and that he cannot have believed that his evidence in this regard was correct. The Claimant said that until the current dispute he and his mother had got on reasonably well. More significantly he said that her account of bullying and intimidatory conduct on his part together with the evidence of David Simms about such matters was deliberately dishonest and had been made up. I reject that contention and accept the evidence of Jean Wild and David Simms in that regard. In relation to the former I will explain below the impact of the fact that Mrs. Wild was not available to be cross-examined but I find that the entries in her diary asserting bullying by the Claimant were made contemporaneously and indicate that the Claimant engaged in such conduct. In assessing the evidence of David Simms I have reminded myself again of the need for caution in attaching weight to a witness's demeanour when giving evidence. Nonetheless I found Mr. Simms to be an impressive witness who gave his evidence in moderate and considered terms and who was prepared to make concessions when appropriate. Mr. Simms gave evidence of an incident in which the Claimant confronted him and Jean Wild and threatened violence towards them. This incident had also been set out in Mrs. Wild's evidence. The Claimant's position is that nothing of this kind had happened and that the allegation is a fabrication. Even when account is taken of the relationship between Mr. Simms and Mrs. Wild I am satisfied that it is simply not credible to suggest that this evidence was fabricated. Accordingly, I accept that the incident did happen and reject the Claimant's denial. The significance of this incident and of my finding in respect of it is not really about the nature of the Claimant's behaviour to his mother. The real significance lies in the Claimant's denial of the incident and his assertion that the evidence of it was deliberately untrue. This is a powerful indication of the Claimant's willingness to deny matters which occurred and incorrectly to allege that others are lying when he must have known that was not the case. In those circumstances I have concluded that the Claimant's evidence cannot be regarded as reliable save where it is supported by other evidence or contemporaneous documents or by inherent likelihood.
26. I turn to Gillian Wild. Mrs. Wild was the author of the e-mails sent to Bagshaws in which she sought to deceive Bagshaws in order to obtain information which would not otherwise have been forthcoming. In her oral evidence Mrs. Wild

refused even to accept that the matters set out in the e-mails were untrue. Indeed, she went so far as to assert that she had believed and still believed them to be true. I reject that assertion. Just as her husband did Gillian Wild refused to accept that Ben Wild had given any financial support in the purchase of Redgate End Farm Cottage even when confronted with documents from the solicitors who had acted for her and her husband in that purchase demonstrating payments made by Ben Wild. I am driven to conclude that Mrs. Wild was prepared to attempt to deceive Bagshaws with a view to furthering her husband's case and that before me she was determined to stick to the line which she believed supported that case rather than being concerned to ensure that what she said was the truth.

27. In those circumstances I have concluded that I need to exercise very considerable caution in assessing Gillian Wild's evidence. However, I did find credible in general terms her account of two conversations or types of conversation with Ben Wild. I accept that when she and the Claimant were living together at the Farm before moving to Redgate End Farm Cottage there were occasions when she and Ben Wild spoke at times when she was waiting for the Claimant to end work. I accept that at those times Ben Wild told her it was worth waiting for the Claimant because the Farm would be his one day. Similarly I accept that at a stage when thought was being given to the Claimant and Gillian Wild having a home built for themselves on the Farm Ben Wild counselled her against putting her own money into that project. Although I accept that there were conversations along those lines my reservations about the reliability of Mrs. Wild's evidence and the passage of time since those conversations mean that I cannot rely on the assertion that express reference was made in them to the partnership or to the Farm belonging to the partnership. So while I accept that Ben Wild indicated that he expected the Claimant in the fullness of time to have the Farm together with his brother and that he warned Gillian Wild against putting her money into building on land which was not hers I cannot accept that matters went beyond that.
28. I have already said that there was real animosity between the Claimant and the First Defendant. It was apparent that the First Defendant believed that his brother had not pulled his weight in the work of the partnership and that he felt considerable resentment about this. Moreover, the First Defendant is at risk of losing the property which has been his family home since 1988. Mr. Pritchett invited me to conclude that the First Defendant had sought to divert to himself various assets of the partnership; that he had done so deliberately; and that he had used deception in that exercise. Mr. Pritchett sought to persuade me that this undermined the First Defendant's credibility. In that regard I conclude that the Claimant's criticisms of the First Defendant's conduct were in large measure exaggerated and were borne out of the animosity between the brothers with each putting the worst potential interpretation on the acts of the other. The First Defendant gave a sensible and credible explanation for various of the matters alleged against him and a number of the matters which the Claimant said demonstrated a dishonest plot against him were properly explained as misunderstanding or error. By way of example I find that the fact that the new bank account opened by the First Defendant was at the Uttoxeter branch of Lloyds Bank was not a deliberate ploy to undertake banking at a distance from

the Farm and so to keep it hidden from the Claimant. Rather it was, as the First Defendant said, because that was where Lloyds Bank based its farming accounts for the area. However, although I do not find that the First Defendant engaged in the deliberate and organised deception alleged by the Claimant I do find that the distrust between the brothers meant that in the latter months of the partnership Malcolm Wild sought to exclude his brother from the affairs of the partnership and that he concealed from Greg Wild matters which the latter as partner was entitled to know and to be involved in. Indeed the First Defendant said in terms that he did not provide the Claimant with certain information because he did not trust him. That conduct does impact on the credibility and reliability of the First Defendant's evidence. In addition and making due account for the fact that the First Defendant who is a dairy farmer was being questioned about the details of financial and property dealings I found that in the course of his oral evidence he was at times evasive and sought to avoid addressing matters which he believed might pose difficulties for his case. Thus he was evasive when asked about the failure to provide information to the court appointed receiver. I regard the First Defendant's assertion that although he signed the partnership accounts he did not read them at all as a further demonstration of an unwillingness to address potentially difficult details. I readily accept that the First Defendant very probably did not consider the accounts in detail and that in the early stages of the partnership (which he joined when he was 16 or perhaps 17) the decisions were taken by his father. I was unable to accept that over the years the First Defendant had not read the accounts at all nor that there had been no discussion of the same with the partnership accountants. I have concluded that the First Defendant's assertion that he did not read the accounts at all even in the period since his father's death was an attempt to avoid being questioned about the detail of the accounts.

29. It follows that I must be cautious in accepting the First Defendant's evidence. Exercising that caution I have, however, concluded that in his evidence as to the nature and circumstances of the refurbishment, renovation, and extension of the Bungalow and as to who paid for that work the First Defendant was seeking to give his honest recollection. I find that although there was imprecision about a number of the details the substance of his account was correct. I will set out the reasons for this conclusion in more detail below but at this stage it is sufficient to note the relevance of the contrast between the consistency of the First Defendant's account of the general nature of what was done, by whom, and why and the imprecision and at times varying evidence he gave about the details and timing of this. I had regard to the passage of time and the fact that for many years there was no need for the First Defendant to consider the issue of entitlement to the Bungalow. In those circumstances I conclude that it is not surprising that the First Defendant's evidence about the details was imprecise and varying and I find this more indicative of honest evidence than an artificial purported precision would have been.
30. The Third Defendant, Abigail Wild, is personally engaged in these matters. Not only is she at risk of losing her home but it was apparent that she believed that her husband had been badly treated by his brother and that she shared the former's sense of grievance towards the latter. However, she gave her evidence in a calm and measured manner. In a number of respects she was able to give a

detailed account supported by documents with credible explanations as to why the documents which she had or the circumstances which she could remember enabled her to provide details. I accept that it was credible that even after 30 years Mrs. Wild was able to recollect a number of details about the kitchen arrangements and set up of the home she moved to shortly after she was married and in which she had three children in quick succession. It was not a significant factor against the reliability of her evidence that after 30 years a number of the documents which might have thrown light on the dealings in the period from 1987 to 1992 were no longer available. I found Abigail Wild to be an impressive witness but even in respect of her evidence a note of caution is to be sounded. For the reasons given below I accept the Claimant's evidence that there was an occasion on which Ben Wild had told the Claimant that Abigail Wild had asked him (Ben Wild) for the "deeds" to the Bungalow. I will have to consider the significance of that exchange in due course but I find that there was such a conversation between the Claimant and Ben Wild and that it had been preceded by the Third Defendant having made such a request to Ben Wild. Abigail Wild denied that anything of that kind had ever happened. This denial detracts from the reliability of Mrs. Wild's evidence and I must bear in mind when assessing other parts of her evidence that either she has completely forgotten that exchange or, which I have to regard as more likely, she has chosen to deny a conversation which she feared might harm her case.

31. Jean Wild is the Second Defendant and the mother of the Claimant and of the First Defendant. Mrs. Wild is gravely ill. She did not give oral evidence but her statements were admitted in evidence under the Civil Evidence Act 1995. It follows that there was no opportunity for cross-examination on behalf of the Claimant. Mr. Pritchett invited me to say that this meant I should attach no weight to her evidence. That is an over-statement of the position. I have to exercise considerable caution in placing weight on Mrs. Wild's evidence. I do so not just because that evidence was not tested in cross-examination but also because it is apparent that Mrs. Wild now feels considerable animosity towards the Claimant and that she fears that a finding for the Claimant will deprive her of her home. I must have regard to the possibility that this animosity and fear have influenced her recollection and interpretation of past events. I conclude that it has done so at least in one regard because in her first statement, at [11] and [12] Mrs. Wild says that her husband assisted in the purchase and improvement of Redgate End Farm Cottage. I am satisfied from the material provided by the Claimant and his wife that the bulk of the expenditure in those regards was met by them and that the assistance from Ben Wild was modest. The language used by Jean Wild in the two paragraphs in question may be strictly accurate but I find that it gives an impression of much greater financial assistance being provided than was in fact the case. That caution to be adopted in assessing Jean Wild's evidence is to be balanced by the fact that at least in respect of the recent dealings with the Claimant her evidence of bullying is supported by some diary entries. I find that those were made contemporaneously with the events described because of the form and place of the entries in the diary and because any other explanation would involve a deliberate deception of an organised and sophisticated kind which I do not find credible. Moreover, Mrs. Wild's account of recent events is supported in some significant respects

by the evidence of David Simms, evidence which as I have already said I found persuasive and which I have accepted.

32. I must at this stage consider the reliability of the evidence of Susan Christensen. Mrs. Christensen is an accountant and was, as Susan Owen, a partner in The Owen Pickup Partnership. She was the partnership's accountant from the early 1980's until 1991 but had not been the accountant when the partnership was first created and had not drawn up the partnership's first accounts. It follows that Mrs. Christensen's involvement in the affairs of the partnership ended over 26 years before her statement was prepared. I have no doubt that Mrs. Christensen was seeking to give truthful evidence but she was in very large part giving evidence of what she believed she would have done rather than setting out her actual recollection. In a number of respects her evidence involved speculation as to what would have happened and attempts to rationalise the documents in ways which were patently incorrect. Thus Mrs. Christensen initially said that the figure of £40,750 given as the value of "property" in the accounts precisely matched the amount which Ben Wild had paid his siblings under his mother's will. Mrs. Christensen went into some detail in support of this explanation of the figure but when shown Dorothy Wild's will she had to accept that the amounts paid to the siblings totalled only £9,400. Mrs. Christensen then sought to say that the figure included the value of the bequest to Ben Wild and in so doing was, in my judgement, speculating as to potential explanations rather than saying what she recalled of what she had been told at the time. In due course I will consider the significance of the letter which Mrs. Christensen wrote to Ben and Jean Wild on 22nd November 1991. I have concluded that in doing so I must concentrate on the terms of the letter and that I can derive little assistance from Mrs. Christensen's current explanation as to its purpose and meaning. That explanation is being given 26 years after the letter was written and was clearly incorrect at least in some respects. Thus Mrs. Christensen said that although the trigger for the letter had been an approach from Lloyds Bank seeking to sell insurance against Inheritance Tax the possibility of such insurance had been dismissed because the assets owned by Ben Wild would be unlikely to approach the tax threshold and so such insurance was not needed. However, I am unable to accept that explanation as the first paragraph of the letter is inconsistent with that position. The letter talks of potential Inheritance Tax problems and goes on to say "unfortunately the main avenue open to you which is that of insuring against them is now probably out of the question because the premium would be too high". Moreover, the penultimate paragraph of the letter says that unless tax planning is undertaken "the eventual tax bill falling onto the shoulders of the children will be too dreadful to contemplate" – language which is not apt for circumstances in which Ben Wild's assets would be unlikely to reach the tax threshold. I have concluded that Mrs. Christensen was seeking to give honest evidence but that the extent to which I can rely on her evidence is markedly tempered by the passage of time and by Mrs. Christensen's tendency to move beyond giving evidence of her recollection to asserting what she believes would have happened and to putting forward explanations based on speculation.

Are the Farm and Bungalow Partnership Property?

1. The Relevant Principles.

33. Before the partnership came into being Ben Wild was the owner of the Farm. The relevant parts of Section 20 (1) of the Partnership Act 1890 provide that:

“All property and rights and interests in property originally brought into the partnership stock ...are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.”

34. The question, therefore, is whether Ben Wild brought the Farm into the partnership stock.

35. Mr. Pritchett contended that the reference in Section 20 (1) to property being “brought into” the partnership stock indicated that property could become a partnership asset without there having been any agreement to that effect between the partners. He said that the act of bringing in is to be regarded as “unilateral in nature”. Mr. Pritchett argued that the focus was on the person bringing in the relevant asset and contrasted the language of Section 20 with that of Section 19 which spells out that consent is both necessary and sufficient to vary the rights and duties of partners. I reject this contention. Section 20 (1) is concerned with the consequences which follow once property has become a partnership asset and does not address what is necessary for property to become such an asset (a point which is made by HH Judge McCahill QC in *Ham v Bell & others* [2016] EWHC 1791 (Ch) at [44] to which I refer below). As a matter of principle one partner cannot unilaterally cause his or her property to become a partnership asset without either the prior agreement of the other partner or partners or subsequent acceptance or ratification on their part. Not only does this follow as a matter of principle it is also consistent with the authorities to which I will shortly turn addressing the circumstances in which an agreement to bring in particular property will be inferred or in which the courts will imply into a partnership agreement a term that particular property is partnership property.

36. In support of his argument Mr. Pritchett referred me to various passages in chapter 18 (“Partnership Property”) of Lindley and Banks on Partnership (20th Edition 2017) and to the decision of Sir George Jessel MR in *Robinson v Ashton* (1875) LR 20 Eq 25. However, on proper consideration these do not support Mr. Pritchett’s contention that the bringing in of property into the partnership is unilateral in nature. Thus the passages in Lindley & Banks are to be seen in the light of the section at 18-03 headed “importance of agreement” and which begins with the words “...it is up to the partners to agree between themselves what assets are to be treated as partnership property.” Similarly at 18-13 the learned editors emphasise that when property has been used by a partnership the “crucial question” is whether it has “treated” as partnership property. In context this must be a reference to the property having been treated in that way by the members of the partnership and not by one partner acting unilaterally. Mr. Pritchett placed emphasis on the absence of any reference to agreement in the short judgment in *Robinson v Ashton*. However, that judgment must be seen in context and it was apparent that the circumstances in which the mill in question were being used and the way it was treated by the partners were regarded as

indicative of the partners' intentions. Indeed in argument the plaintiff's counsel referred to particular matters as "a strong circumstance to show the intention of the parties."

37. The relevant agreement or consent can be inferred or can arise by implication. However, care is needed in deciding whether such inference or implication is appropriate. When the court infers such an agreement it is making a finding of fact and holding that the evidence is such that the parties must have made such an agreement either expressly or by their actions notwithstanding a current contention to the contrary. There is to be an implication that a particular item of property has become a partnership asset where there is a partnership formed by agreement and the bringing in of the asset is implied as a term of that agreement by application of the normal rules for the implication of terms. This approach was exemplified by the approach of Harman J in *Miles v Clarke* [1953] 1 WLR 587. Harman J had to determine whether the lease of premises from which a partnership operated a photography business was an asset of the partnership and he set out the approach to be adopted thus (at 540):

"In my judgment no more agreement between the parties should be inferred than is absolutely necessary to give business efficacy to that which has happened, and that is the only safe way to proceed."

38. The fact that a particular item of property is used by a partnership for the purposes of the partnership's business does not necessarily give rise to an inference that the partners agreed that the item was to be a partnership asset nor is the implication of such a term normally necessary to give business efficacy to a partnership agreement. Thus in *Miles v Clarke* (at 541) per Harman J "the partnership could get on quite well if [the defendant partner] gave his partner a licence to go on to these leasehold premises for the purposes of the business and to use the cameras for the purpose of making the joint profits." This is particularly so in the case of land used by a farming partnership. HH Judge McCahill QC addressed this issue in *Ham v Bell & others* [2016] EWHC 1791 (Ch). That was a case where farm land had been made available rent free for the farming partnership's use and where the partnership had from time to time met the cost of improvements of the land. In this respect I adopt the summary of the authorities and of the applicable factors set out by Judge McCahill QC at [41] – [47] thus:

"How is any implied agreement based on the 1998 to 2003 accounts to be established?"

41. In *Geary v Rankine* [2012] 2 FLR 1409 at paragraph 15, Lewison LJ said:

"The mere fact that there is a partnership in profits produced by a particular asset does not indicate that the asset itself is partnership property. It is a commonplace that one partner may own the property in which a partnership business is carried on. If the asset is acquired with profits generated by the partnership, that is a different proposition..."

42. To the same effect in *Singh & Co v Nihar* [1965] 1 WLR 412, Lord Pearce quoted with approval from the 19th Edition of Lindley & Banks as follows:

“...it by no means follows that property used by all the partners for partnership purposes is partnership property. For example, the house and land in and upon which the partnership business is carried on often belongs to one of the partners only, either subject to a lease to the firm, or without any lease at all.”

43. It was drawn to my attention during submissions that it is common for farming partnerships to farm land owned by one or more of the partners without the land being a partnership asset. For example, at paragraph 8.15 the learned authors of Blackett-Ord & Haren on Partnership Law (5th Edition 2015) state:

“Often (especially in farming partnerships) the most valuable assets used by the firm are owned by some or all of the partners outside their capacity as such partners”.

44. Section 20 of the Partnership Act 1890 provides that all property originally brought into the partnership stock is called ‘partnership property’ and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the Partnership Agreement. The legal estate of any such partnership property is held in trust so far as necessary. The persons beneficially interested in the land under the section. However, section 20 does not assist here, because it does not tell one how to decide if a particular item of property was, within the wording of section 20, “brought into the partnership stock”.

45. Nevertheless, it is clear from *Miles v Clarke* [1953] 1 WLR 537, a case where there had been no express agreement as to what was partnership property, that property owned by one or more partner at the start of the partnership will only be treated as brought into the partnership stock if it is expressly or impliedly agreed between the partners. In that case it was said:

“These parties and their advisors so far as they thought about it at all always contemplated that the lease, the equipment and the studio furniture and stock in trade would all be brought into the common pool and there is an indication to that effect, but the fact is that nothing was ever finally agreed about it...”

“No more agreement between the parties should be inferred that is absolutely necessary to give business efficacy to that which has happened.”

46. Mr Jourdan’s submission, which I accept, is that in a farming partnership such as this it is not necessary to imply that the farm on which crops grow or animals are grazed is an asset of the partnership. Such a partnership can work perfectly well on the basis of the land-owning partners making the land available to the partnership for the use of a partnership business so long as it continues and that could happen perfectly well and naturally without any change in the ownership of a farm.

47. He also drew my attention to the case of *Eardley v Broad* [1970] 215 EG 823, where a partner held a tenancy of a farm and then went into partnership. The court concluded that the mere fact that the partnership paid the rent under the tenancy did not make the tenancy a partnership asset, but, given that the partnership was using the land, it was only natural

and right that it should indemnify the partner who was the tenant in respect of that rent.”

39. At [48] - [50] the learned judge said:

“48. Of course, any court which infers or implies an agreement is doing so on the basis of outward and objective signs or appearances of such an implied agreement. Yet, the law does not impose an agreement on parties where subjectively neither of them intended to create one, even if objectively it appears as if an agreement was made.

49. The learned authors of Chitty on Contract at paragraph 2170 explain the law clearly and correctly as follows:

“In deciding issues of contractual intention, the courts normally apply an objective test: for example, where the sale of a house is not “subject to contract”, both parties are likely to be bound even though one of them subjectively believed that he would not be bound until the usual exchange of contracts had taken place...

The objective test is, however, here (as elsewhere) subject to the limitation that it does not apply in favour of a party who knows the truth. Thus, in the house sale example given above, the party who did not intend to be bound would not be bound if his state of mind was actually known to the other party. Nor could a party who did not in fact intend to be bound invoke the objective test so as to bind the other party to the contract: to permit this would pervert the purpose of the objective test, which is to protect a party who has relied on the objective appearance of consent from the prejudice which he would suffer if the other party could escape liability on the ground that he had no real intention to be bound...”

50. *Dresdner Kleinwort v Attrill* [2013] 3 AER 607 at paragraphs 86 to 87 is to like effect.”

40. The language used at [48] is to be read in the light of the passage set out at [49] and the effect is that if no partner actually intended the property in question to be a partnership asset the court will not impose a requirement that it be treated as such an asset. That proposition is not contradicted by the scope for inference or implication of terms to that effect. Where the court infers that property has become a partnership asset it is concluding that the evidence shows that this was what the partners agreed. Where it implies such a term it is doing so by way of implying a term in an agreement in accordance with the general rules for implication of terms.

41. In the circumstances of farm land being used by a farming partnership as happened in this case it is not normally necessary for business efficacy to imply a term that the farm land is a partnership asset. In my judgement there is no such need in this case as the partnership could operate entirely effectively on the footing that Ben Wild retained ownership of the Farm. That is an arrangement which is adopted, as HH Judge McCahill QC pointed out, in a considerable number of farming businesses. The question then becomes one of whether an agreement to that effect is to be inferred. In this case this means that I must consider whether I am to conclude from the circumstances taken in the round that Ben Wild intentionally brought the Farm into the partnership with the First Defendant agreeing to that or at least accepting that the Farm was being or had

been brought into the partnership. This is a matter not of implication but of inference.

42. In determining that issue I must first decide as a matter of fact whether the reference in the accounts to “property” with a value of £40,750 is a reference to the Farm. I will then consider the effect of that conclusion on the question of whether or not the Farm was a partnership asset.
43. A considerable amount of the evidence relates to events taking place after the start of the partnership and after the Farm became a partnership asset if it did. I have to be mindful of the way in which such evidence can be relevant. There is no suggestion that there was a change in the status of the Farm after the partnership between Ben Wild and the First Defendant had begun nor that there was a change when the Claimant became a partner. If the Farm became an asset of the partnership it became an asset when Ben Wild and the First Defendant first went into partnership. The evidence of subsequent dealings is relevant to the extent that it assists in determining the subject matter of the entry “property: £40,750”. If that reference is to the Farm then the evidence of subsequent dealings is relevant to the extent that it assists in determining whether that reference was intentional and was the consequence of agreement that the Farm should be brought into the partnership (or an acceptance of that position) or was made without any such intention, agreement, or acceptance.
44. Particular care must be exercised in considering the relevance of dealings by Ben and Jean Wild after the creation of the partnership. It is clear that Ben and Jean Wild were the driving forces in the business for at least some time after the First Defendant and then the Claimant became partners. The First Defendant was only aged 16 or 17 when he became a partner and I accept his evidence that the partnership was created because there were thought to be tax advantages in that arrangement. It is not surprising in those circumstances that Ben and Jean Wild took the decisions nor that they regarded themselves as being in control of the Farm. However, if the Farm had in fact been brought into the partnership as an asset of the partnership then any subsequent belief on the part of Ben or Jean Wild that they were entitled to control the land would have been erroneous. The evidence demonstrating Ben and Jean Wild’s subsequent actions (and so their state of mind) can assist in determining the intention with which the entry was made (if it did refer to the Farm) but I have to remember that it is possible that Mr. and Mrs. Wild had not understood the legal effect of the former’s actions or that they subsequently sought unilaterally to disregard that effect.
45. Mr. Pritchett’s primary submission was that the “property: £40,750” entry was a reference to the Farm. As a subsidiary line of argument he submitted that even if that entry was not a reference to the Farm then the sundry dealings in respect of the Farm and the partnership should be seen as indicating that the Farm had been brought into the partnership and was being treated as a partnership asset. I can deal briefly with that submission. If the “property: £40,750” entry was not a reference to the Farm then the various dealings (such as putting expenditure on the Farm through the partnership accounts and claiming sundry allowances) would not suffice for a finding that the Farm was a partnership asset. In some instances those dealings provide support for a finding that the entry was a reference to the Farm and they also assist with the question of what was intended

by that entry if it did refer to the Farm. However, standing by themselves and in the absence of a reference to the Farm in the partnership accounts they would be equally compatible with a conclusion that the Farm was not a partnership asset but was property belonging to Ben Wild which the partnership was permitted to use with expenditure on the property being referable to that use.

2. Was the Farm included in the Accounts of the Partnership as an Asset?

46. I have concluded that the entry “property: £40,750” as part of the fixed assets in the 5th April 1989 balance sheet (the earliest accounting document now available) is a reference to the Farm.
47. Although the sum of £40,750 is neither the amount which Ben Wild paid his siblings for their interests in the Farm nor the amount of £38,640 which was entered in Dorothy Wild’s estate account it is sufficiently close to the latter for that to be seen as the likely source of the £40,750 figure. It is also relevant in my judgement that when it was acquired the Gowhole Farm land which was undoubtedly a partnership asset was accounted for under the “land and buildings” heading into which the “property” entry had been incorporated.
48. I am satisfied that not only is it the most natural and likely explanation of the entry that it refers to the Farm but also that there is no other realistic explanation of that entry. The entry appears under the heading “Fixed Assets” and is part of a list of assets in which a number of other such assets are identified separately. Thus there are entries with values given for “plant & machinery – farm”, “plant & machinery – dairy”, for various vehicles, for a “shed”, and for a “beef shed”. If the entry “property” which appears at the head of the list of fixed assets was not a reference to the Farm it is hard to see to what else it could have been referring which was not already covered by one or other of the other entries. The First Defendant set out his belief that the figure had been derived from the cost of “various works of repair and improvement” which Ben Wild had undertaken from the time when he first began to farm the land. The First Defendant lists a number of such items including the installation of mains water; the building of a boiler room; and various building works. I cannot accept that this is a likely or realistic explanation for the entry or the figure. The works identified by the First Defendant are more properly seen as improvements of the plant and machinery of the farm or the dairy and there are separate entries for each of those headings. Indeed it is to be noted that in his statement the First Defendant includes the beef shed in his list of the items whose construction cost made up the sum of £40,750 but that cannot be right because “beef shed” appears as a separate entry in the list of fixed assets.

3. Was the Farm in fact a Partnership Asset?

49. What is the effect of my finding that the entry “property: £40,750” is a reference to the Farm? The fact that a particular asset is included in partnership accounts as property of the partnership in question is not of itself determinative of the issue of whether the asset is actually partnership property. The inclusion of an asset in partnership accounts as partnership property is evidence that it is partnership property and is likely to be very powerful and persuasive evidence but it is not conclusive of that question.

50. This approach in respect of entries in partnership accounts was set out thus by HH Judge McCahill QC in *Ham v Bell & others* at [51] – [53]:

The accounts as evidence of an agreement to make the farm a partnership asset

51. The accounts of a partnership may provide evidence as to whether there was an express agreement to make land a partnership asset. If one partner says there was such an express agreement and the other denies it, the accounts may help the court to decide whose recollection is more reliable. That was the submission of Mr Jourdan who went on to contend that farmers and other business people do not always look carefully at accounts or appreciate what the entries in them mean and mistakes can be made. He then drew my attention to the observations of the editors of *The Encyclopaedia of Forms and Precedents* Volume 2(1) (Partnership) who stated at 126:

“Practitioners should be wary of relying on the accounts as evidence of the intention of the parties, however, as often such an inclusion is made at the behest of the partnership accountants who include the item solely in order to get tax relief and without addressing the consequent ownership issues, let alone advising the partners to seek legal advice on them. Experience indicates that this is a particular problem with agricultural partnerships.”

52. Accounts, therefore, are no more than evidence and if they do not reflect what was agreed they fall to be disregarded. There are a number of cases where the court has held that the accounting treatment of an asset did not reflect what had been agreed between the partners: see *Miles v Clarke* [1953] 1 WLR 537, *Barton v Morris* [1985] 1 WLR 1257 and *Powell v Powell* (unreported decision of Daniel Gatty sitting as a Deputy Adjudicator to HM Land Registry Ref/2009/1485).

53. Mr Partridge said that of course these cases depend upon their individual facts. That is right, but it does not detract from the fundamental principle that accounts are only evidence and the cases may differ, one from the other, over whether the evidence supported the inference that an agreement was in fact made.”

51. The position in *Ham v Bell & others* was different from that in the current case in that there the farm had been included as partnership property in the accounts for a number of years but had subsequently been removed on the footing that the entry was erroneous. Moreover, the accounts with the erroneous entry had not been signed by the partners while those in which the error had been corrected had been. Nonetheless HH Judge McCahill QC was addressing matters more generally in the passage I have just quoted. The learned judge’s approach was consistent with that adopted by Nicholls J in *Barton v Morris* [1985] 1 WLR 1257 where, again in circumstances rather different from the current case, the court did not regard the inclusion of a farm as partnership property in the partnership’s accounts as either conclusive of the question whether it was in fact partnership property or as amounting to a course of dealing constituting an agreement that it should be partnership property.
52. Mr. Pritchett argued that the Farm had been included in the accounts as partnership property; that the accounts are to be seen as having been settled and signed accounts; that the court should not reopen those accounts; and that, therefore, the court was bound to regard the Farm as partnership property. The flaw in this argument is that it is based on a misunderstanding of the effect of

settled accounts and the approach taken to them. In his closing submissions Mr. Pritchett contended that settled accounts are “conclusive as to their content” but that overstates the position. The true position is that an account which has been agreed between the partners is regarded as a settled account and “constitutes a good defence to an action seeking a further account of any transactions or dealings covered thereby” (Lindley & Banks 23-110 emphasis added). Save to the extent that a settled account provides a good defence in respect of a further account covering the same dealings it is not “conclusive as to its contents”. Settlement of an account during the life of the partnership does not prevent dissolution accounts being drawn up on a correct basis. This is consistent with the approach which was taken in *Ham v Bell* and in *Barton v Morris* where the courts did not regard the entries in the accounts as conclusive as to the question of whether or not particular assets were or were not partnership property. The editors of Lindley & Banks advert at 23-111 to the possibility of dissolution accounts leading to different outcomes from those shown in earlier accounts thus:

“Equally where an account has been settled up to the date of dissolution it does not mean that the partners have foregone their right to have full dissolution accounts taken thereafter, without reopening the settled account. The corollary is that it cannot be assumed that an amount shown as due to a partner in a settled account is necessarily payable to that partner since it may be affected by subsequent accounts which have not yet been taken.”

53. In applying that general approach to the effect of settled accounts the particular circumstances of this case must be borne in mind. If the Farm was not in reality a partnership asset then as between the Claimant and the First Defendant it cannot be appropriate for the final accounting on the dissolution of the partnership between them to be on the basis that it was an asset of the partnership. Neither the Claimant nor the First Defendant is the legal or beneficial owner of The Farm nor does either have any interest in it unless it is held by the Second Defendant for the partnership. In those circumstances neither of them could require the accounting by the other to proceed on the basis that the partnership has an asset which it does not have.
54. What is the position in respect of the Second Defendant? Jean Wild acquired title to the Farm as the successor to Ben Wild. Mr. Pritchett contended that she is bound by the accounts for the year to 5th April 2001. Those were the last accounts signed by Ben Wild before his death. Mr. Pritchett argues that those accounts included the Farm as an asset of the partnership and are to be seen as settled accounts which are not to be reopened and which are conclusive of the question of whether the Farm is partnership property. I reject this argument. As explained above the settlement of the accounts is not conclusive of the standing of the assets recorded in those accounts. In the circumstances of this case reference to particular accounts and to the inclusion of the Farm as an asset of the partnership in those accounts cannot operate to require the Farm now to be treated as an asset of the partnership if it is not otherwise appropriate to find that the Farm was brought into the partnership whether by reason of the inference of an agreement or the implication of a term into the partnership agreement. If it is appropriate in the light of the evidence as a whole to conclude that such an agreement is to be inferred or such a term is to be implied then the accounts

reflect the true position and there is no need to find that Ben Wild's successor is bound by the accounts as settled accounts. Conversely if no such agreement is to be inferred and no such term is to be implied then it must follow that the inclusion of the Farm in the accounts as a partnership asset was erroneous or otherwise inappropriate. In those circumstances the court is to look to the reality of the situation and the accounting as between the Claimant and the First Defendant is to proceed on the basis of that reality.

55. In considering the effect of the accounts as between the Claimant and the Second Defendant it is relevant to note that there is no suggestion on the part of the Claimant that the accounts were the source of his belief that the Farm was a partnership asset. It was the Claimant's case that the Farm was included in the accounts and that this was because it was partnership property but he did not suggest that he relied on that. In his oral evidence the Claimant said that before he joined the partnership in 1994 he had not before then had much sight of the accounts and had not had any real input into them. Thereafter the accounts continued to be drawn up on the same basis as previously. In his second witness statement the Claimant said, at [10] "although I had little involvement in actually dealing with the partnership accounts I was of course aware generally of matters concerning the business". The Claimant's position was that his belief that the Farm was a partnership asset derived from what his father said to him rather than from perusal of and reliance on the terms of the accounts. In those circumstances even if the accounts are to be seen as settled accounts and even if Mr. Pritchett's argument as to the effect of that were correct it would still be appropriate to reopen the accounts and to proceed on the correct basis if, in the light of the evidence as a whole, I were to find that the inclusion of the Farm as partnership property in the accounts was an error.
56. Accordingly, I must assess whether in the light of the evidence as a whole Ben Wild is to be regarded as having brought the Farm into the partnership as an asset. Does that evidence either lead to the inference that there was an agreement to that effect or make it appropriate to imply such a term into the oral partnership agreement? In that exercise the inclusion of the Farm as a partnership asset in the accounts is part of the evidence to be considered: an important and powerful part of the evidence but not necessarily determinative of the conclusion to be reached.
57. The inclusion of the Farm as an asset of the partnership in the accounts has to be seen in the context of the dealings in relation to the accounts. As I have just explained the effect of the Claimant's evidence was that he had little to do with the accounts. He had not had any real input into the accounts before he became a partner and after he had become a partner the accounts simply continued to be prepared on the same basis as before. I have already said that I regard the First Defendant's assertion that he has never read the accounts as an evasion designed to avoid having to answer questions about the details of the accounts. However, in deciding whether the Farm was brought into the partnership I have to consider matters as they were in 1978. The First Defendant was then aged 16. I accept that he became a partner because there were believed to be tax advantages flowing from that. I also accept the First Defendant's evidence (supported as it was in this regard by Mrs. Christensen's recollection) that decisions about the

business were taken by his mother and father. I accept the First Defendant's contention that he had little involvement in and little knowledge of the accounts at that time. It follows that the inclusion of the Farm as an asset in the partnership accounts cannot be regarded as having necessarily been the result of a decision to which the First Defendant was party.

58. In her witness statement Mrs. Christensen said not only that the "property: £40,750" entry related to the Farm but also that "the figure of £40,750 was included in the balance sheet upon the instructions of the then partners (Ben and Malcolm)". However, in the course of Mrs. Christensen's oral evidence her account became rather more nuanced. Mrs. Christensen accepted that she probably had not drawn up the partnership's first set of accounts and that the entry was probably one which she had "inherited" from the earlier accountants. Mrs. Christensen also accepted that when she had said in her statement that the entry had been made on the instructions of the partners she had been setting out what her normal practice would have been rather than setting out an actual recollection. Mrs. Christensen said that when she had taken over the accounts she had met with Ben and Jean Wild but that she could not recall whether the First Defendant had been at that meeting. Mrs. Christensen explained that although Jean Wild was not a partner at the time when the Owen Pickup Partnership were the partnership's accountants she played an active rôle in the business. Indeed, Mrs. Christensen described her as the driving force and said that the fact that she was not a partner did not reflect her position in the business. Mrs. Christensen said that Ben Wild was not particularly concerned with the paperwork side of the business but his priority was to have a sustainable business which he could pass on to his sons. I accept that as an accurate picture of Ben Wild's interests and approach. Mrs. Christensen said that her discussions with Ben Wild had caused her to believe that the Farm was an asset of the partnership. She could not recall any specific discussion with the First Defendant about that issue. Although the accounts were discussed with the partners each year Mrs. Christensen accepted that there may not have been discussion each year about what was represented by the "property" entry and that the First Defendant "may not have fully understood everything in the accounts." The effect of Mrs. Christensen's evidence taken as a whole is that the "property" entry was carried over from earlier accounts; that her belief that the Farm was partnership property was derived from discussions with Ben Wild; that the decision makers in the business were Ben and Jean Wild; and that although Mrs. Christensen did go through the accounts with the partners the discussions did not involve reviewing the basis for the continuing entries and were not discussions in which the First Defendant was taking an active part or demonstrating a detailed understanding of the accounts. The First Defendant said that he had never actually met Susan Owen, as she then was, and that all the discussions with her had been conducted by his parents. I do not accept that evidence and have concluded that the First Defendant's denial is an aspect of his approach of downplaying his knowledge of and involvement with the account. I do accept Mrs. Christensen's evidence that the First Defendant, who would have been 28 when Mrs. Christensen's involvement ceased, was present for at least some of the meetings which she had but I find that his participation and understanding was limited. Moreover, the effect of Mrs. Christensen's evidence as a whole is such that it is not likely that the First Defendant was the

source of the instructions in 1978 or shortly thereafter which caused the “property £40,570” entry to be made in the accounts.

59. On 22nd November 1991 Mrs. Christensen wrote to Ben and Jean Wild. The Defendants rely on the terms of that letter as demonstrating that Mrs. Christensen was proceeding on the footing that the Farm remained distinct from the partnership and that Ben Wild was free to dispose of it. Mrs. Christensen said that this was not the position. She said that the letter was written in an attempt to persuade Ben and Jean Wild to make wills; that it was on the footing that the Farm was a partnership asset; and that the references to property were to Jean Wild’s savings and to property which she was expected to inherit from her mother in due course. I cannot accept Mrs. Christensen’s characterisation of the letter. Mrs. Christensen was being asked about a letter she had written nearly 27 years ago and I find that she was influenced by her belief that she had been told that the “property: £40,750” entry related to the Farm but her explanation of the letter is inconsistent with its terms. I have already explained that Mrs. Christensen was wrong to say that there were insufficient assets to justify insuring against Inheritance Tax. The letter went on to say:

“Before formal valuations are available on the land and the farm property I feel it will be impossible for [Lloyds Bank Financial Services] to go any further. Have you asked your own valuers to value the farm itself as we discussed some time ago?

You will have to give some thought to how you wish to leave the assets. At present the farming activities are carried on jointly in the names of Ben and Malcom. Greg does not come into the picture vis a vis any ownership of the farm.

Perhaps I should come and see you in the near future so that we can discuss this but first of all you should give a substantial amount of thought as to who is to inherit the farm and buildings and in what proportions.”

60. I have concluded that the letter was addressing questions of the passing of the Farm on the death of Ben and Jean Wild. This is the only way to make sense of the references to having the “farm” valued and to the question of who is to inherit “the farm and buildings”. It is correct to note that in the second of the paragraphs I have quoted Mrs. Christensen drew a distinction between Ben and Malcolm Wild (who were the partners) and Greg Wild with regard to ownership of the farm. Mrs. Christensen said that this demonstrated her understanding that the Farm was owned by the partnership but in my judgement that reference must be seen in the context of the letter as a whole. I have concluded that the letter betrays a degree of confused thinking or confusion of understanding on the part of Mrs. Christensen. There is reference to the partners as being in a different position from the Claimant who was not then a partner but there is also reference to Ben and Jean Wild being able to determine the destination of the Farm. I have concluded that the letter cannot be taken as indicating Ben Wild’s understanding save to the extent that it does indicate that in discussions about the Farm the partnership accountant was not setting out in clear terms the effect of the Farm being partnership property and was giving Ben and Jean Wild the impression that they retained control of it.

61. Mr. Pritchett pointed out that the partnership did not pay rent for the use of the land and buildings of the Farm; that partnership monies were used to meet expenditure on the Farm; and that allowances of various kinds were claimed. In my judgement those facts do not advance matters. The absence of rent and the use of partnership funds to pay for improvements to the Farm and to meet its outgoings are consistent with the Farm being used for the purposes of the partnership but do not necessarily mean that it is to be regarded as having been partnership property. As *Ham v Bell & others* and *Miles v Clarke* make clear it is possible for land to be used for the purposes of a partnership business without being partnership property. Expenditure on land being used by a partnership for its business purposes does not necessarily mean that the land is owned by the partnership. Mr. Pritchett sought to place considerable weight on the fact that allowances were claimed in respect of the Farm and were processed through the partnership accounts. I need not address the question of whether such allowances should in fact have been claimed if the Farm was not partnership property. This is because it is apparent that Bullock Woodburn were content for the claims for allowances to be made and for income from the allowances to be processed through the partnership. Those accountants took that approach even though they believed that the Farm was not a partnership asset (as will become apparent when I turn to the correspondence from the accountants). If the accountants were content to proceed in that way even though they believed that the Farm was not partnership property then it cannot be said that the actions of the partners in making the claims should be regarded as an indication that the partnership owned the Farm.
62. As I have already noted care has to be taken in taking account of the actions of Ben and Jean Wild in the period after the partnership was created. However, their actions do indicate that they believed that Ben Wild remained the owner of the Farm and that he was not constrained in that regard by the existence of the partnership. On 1st October 2002 Chafes solicitors wrote to Ben and Jean Wild. This was a detailed letter following a discussion on 25th September 2002 in which the solicitors had been given instructions about the Farm and the Bungalow with a view to the transfer of the latter and with a view to Inheritance Tax issues. The letter proposed a transfer of the Bungalow to the First Defendant; a transfer of the farmhouse into the joint names of Ben and Jean Wild; and a will by which Ben Wild was to leave “the farm land and his share in the farming partnership to the two sons equally”. It is apparent there had been discussion with the solicitors in which reference had been made to the partnership and to the elements making up the Farm but with such discussion being on the footing that the Farm was not an asset of the partnership.
63. On the same day Chafes had written to Bullock Woodburn seeking advice on question of whether a transfer of the Bungalow to the First Defendant would give rise to a Capital Gains Tax liability. Bullock Woodburn replied on 4th October 2002 saying that they had begun acting for “Mr. and Mrs. Wild and partners” (itself an indication of Mrs. Wild’s perceived involvement in the business) in 1991. Although the balance sheet had shown “property” at a cost of £40,750 “with no narrative” Bullock Woodburn said their “notes” showed “that the partnership (Mr and Mrs. Wild and Mr. and Mrs. M. Wild) is the tenant of the farm, Mr. B. Wild being the landlord and owner since 1965”. A similar

point was made in the letter dated 24th January 2017 from Bullock Woodburn to the Claimant's solicitors. There it was said that those accountants believed that the Farm had been on the balance sheet of Ben Wild's sole trader accounts before the creation of the partnership and that thereafter "the property remained on the balance sheet of the partnership accounts despite being an asset owned solely by Mr. B. Wild and used by the partnership". It is apparent that Bullock Woodburn were mistaken in some respects in their understanding of matters as set out in these letters. In particular the 2002 letter described Abigail Wild as being a partner at that time when she had never been a partner; it said that Jean Wild was still a partner when she had left the partnership in 1999; and it made no reference to the Claimant being a partner. Moreover, it said that Ben Wild had owned the Farm since 1965 when he had only become the owner in 1973 (albeit he had farmed the land since 1965). Care is needed in assessing the impact of these letters. However, I am satisfied that the letters do reflect the thrust of the instructions which the accountants had been given. It is apparent that Bullock Woodburn had notes indicating that Ben Wild rather than the partnership was the owner of the Farm. I find that such notes represented instructions given to Bullock Woodburn by either Ben or Jean Wild and reflect the understanding of the person giving those instructions. The error as to the date when Ben Wild became the owner of the Farm is likely also to have emanated from Ben or Jean Wild and confirms Mrs. Christensen's description of the former as not being concerned with the details of the paperwork. That attitude appears to have persisted in the family after his death because in the 2017 letter Bullock Woodburn said that they had repeatedly asked for confirmation that the Farm had been transferred to Jean Wild following her husband's death but had not received an answer.

64. Dianne Melland is the sister of the Claimant and of the First Defendant. She did the bookkeeping for the partnership having started doing so to help her father when she was aged about 14 in 1979 or 1980 and having continued to do so since then. Mrs. Melland has done this without pay spending an hour or so a week on this work as a way of helping the family business and in fulfilment of a promise made to her father. Mrs. Melland was called as a witness for the Defendants but I am satisfied that she was seeking to give an accurate account of the history and her understanding of matters. In her witness statement Mrs. Melland set out her belief that the Farm was not a partnership asset saying that this belief derived from her dealings with her father. Mrs. Melland records her father's view as being that he did not want the farmhouse to be part of the partnership because it was his and his wife's home and because he wanted to be confident that Jean Wild could remain there after his death. Mrs. Melland also records her father as having expressed concern as to what would happen to the Farm if he and his wife were to get divorced. I accept that Mrs. Melland was accurately stating her understanding and I also accept that this understanding had been derived from dealings with her father. The partnership had already been formed before Mrs. Melland's involvement with the accounts started and so her evidence is again an indication of Ben Wild's subsequent comments and attitude (albeit deriving from a time shortly after the partnership had been formed).

65. The Claimant and Gillian Wild said that Ben Wild told them that the Farm belonged to the partnership. For the reasons set out above I am not able to regard their evidence that there was express reference to the partnership as reliable. I find that Ben Wild expected and intended the Farm to remain in the Wild family and for his sons to continue farming there. I accept that over the years he made comments about the future consistent with that expectation. However, I am not able to accept that he made express reference to the partnership. In that regard I find that the Claimant and Gillian Wild were allowing their recollection of what was said in the past to be coloured by their knowledge that the question of the status of the Farm as partnership property is now of crucial importance. The assertion that Ben Wild made express reference to the partnership as the owner of the Farm is inconsistent with the other evidence showing him to have been unconcerned about paperwork and technicalities and also inconsistent with his actions in giving instructions to Chafes with a view to a transfer of the Bungalow.
66. In this regard I note that at the end of the first day of his evidence the Claimant accepted that his father had not said in terms that the Farm was a partnership asset but instead had made it clear that the Farm would be the Claimant's and the First Defendant's in the fullness of time presumably after Ben Wild died. The next day the Claimant sought to clarify that evidence. He said that he had given it when tired. The Claimant said that he had been referring to comments made when he had been a child but that when he became a partner the conversations were on the footing that the Farm was an asset of the partnership and that he was an owner because he was a partner. I am unable to accept this clarification and find that the Claimant's earlier acceptance that there was no express reference to the partnership as owner of the land but instead reference to the Farm passing to the sons in due course more accurately reflected the actual discussions.
67. The accounts for the year ended 5th April 1997 and thereafter include as partnership income sums received as wayleave payments. They appeared in the accounts latterly because Dianne Melland caused them to be included doing so because that was what her father had done before her. Initially it seemed that this might be significant evidence as showing money being derived from rights to land being treated as partnership income. However, there was no clear evidence as to the source of the wayleave payments nor the land to which they related. As Mr. Hoffman pointed out in his closing submissions the payments first appear after the purchase of the Gowhole land and the Central Electricity Generating Board did have rights over that land in return for which a wayleave payment have been due. The tax return prepared in respect of Ben Wild after his death and for the year ended 5th April 2003 treats a payment in respect of a wayleave as separate from Ben Wild's share of partnership profits. However, there is again no evidence as to the source of that payment nor the reason why the tax return was drawn up in that way. It follows that this is not material which can be regarded as bearing any weight whether for or against the proposition that the Farm was treated as partnership property.
68. Mr. Pritchett invited me to regard the fact that the Gowhole land was bought in the name of the partnership as a powerful indication that the land holdings were

being treated as partnership property. He said that the treatment of Gowhole was significant as indicating how the partners regarded the land holdings. Moreover, it was common ground that Gowhole was not tenable as a farm holding standing by itself and needed to be held together with the Farm. The Claimant says that in those circumstances the fact that Gowhole was expressly held as partnership property would not make sense unless the Farm was also regarded as being partnership property. This is a point of real force and provides support for the Claimant's position albeit it is not of itself conclusive.

69. I have regard to the inherent likelihood or unlikelihood of matters being conducted in a particular way. If the Farm is partnership property it became an asset of the partnership in 1978. At that time the farmhouse was the home of Ben and Jean Wild; Ben Wild had been farming the land since 1965 and potentially earlier; the First Defendant was aged only 16; the First Defendant was not the only child of Ben and Jean Wild and they are to expected to have had regard to the interests of Dianne Melland and of the Claimant; and the partnership was created because it was thought to be advantageous for tax purposes for the First Defendant to be a partner when working in the business. I also note that it is apparent that at least in the early years of the partnership Ben and Jean Wild remained the decision makers in the business. In those circumstances it would have been unusual and somewhat surprising conduct on the part of Ben Wild for him to cause the Farm to become an asset of the partnership just formed between himself and his 16 year old son and for him to give up his absolute control of the Farm in that way. The fact that particular conduct might be thought unusual or surprising does not mean that it did not occur but the unusual nature of conduct is relevant when considering what has or has not been established on the balance of probabilities.
70. There is no one factor which is conclusive in this case and I have considered the evidence as a whole. Having done that I conclude that the inclusion of the Farm as an asset in the partnership accounts was a decision taken by Ben Wild but not one taken on the basis of any discussion or agreement with the First Defendant. Ben Wild may well have thought that there was some tax advantage in having the Farm in the accounts or there might simply have been a continuation from his sole trader accounts without thought being given to the question of the property. I am satisfied that Ben Wild intended and expected that the Farm would pass to his sons in the fullness of time in order for them to continue the family business but I find that neither in 1978 nor thereafter did he cede control of the Farm and I also find that he neither intended nor represented that he was doing so.
71. In those circumstances it is not open to me to infer an agreement or to imply a term that the Farm was brought into the partnership. Accordingly, I find that the Farm is not partnership property and remains the property of Jean Wild.

Do the First and Third Defendants have an Interest in the Bungalow by way of Proprietary Estoppel or Constructive Trust?

72. My finding in respect of the ownership of the Farm means that the issue of the First and Third Defendants' interest in the Bungalow falls away. However, that

question was fully argued and it is right that I set out my findings in relation to it.

73. The approach I am to take in determining whether a proprietary estoppel arises and as to the consequences of such a finding can be summarised as follows.

74. A proprietary estoppel arises when the owner of property makes a representation or assurance to another person that the other has or will have rights in that property and when that other acts in reliance on that representation or assurance thereby suffering detriment with the consequence that it is unconscionable for the property owner to rely on his legal rights. Lord Walker summarises the position thus in *Thorner v Major & others* [2009] UKHL 18, [2009] 1 WLR 776 at [29]:

“An academic authority (Simon Gardner, *An Introduction to Land Law* (2007) p101) has recently commented: “There is no definition of proprietary estoppel that is both comprehensive and uncontroversial (and many attempts at one have been neither).” Nevertheless most scholars agree that the doctrine is based on three main elements, although they express them in slightly different terms: a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance (see Megarry & Wade, *Law of Real Property*, 7th edition (2008) para 16-001; Gray & Gray, *Elements of Land Law*, 5th edition (2009) para 9.2.8; Snell’s *Equity*, 31st edition (2005) paras 10-16 to 10-19; Gardner, *An Introduction to Land Law* (2007) para 7.1.1).”

75. The assessment of whether the pre-conditions for a proprietary estoppel have been established should not be a mechanistic exercise viewing the elements separately and in isolation. The dealings of the relevant parties are to be considered in the round. The context is of crucial importance. The answers to the questions of whether there has been reliance and detriment will influence each other. The consideration of the nature of the assurances can influence questions of reliance. Each element will be underlain by the test of unconscionability. Detriment is necessary but is to be seen as a wide and not a narrow concept. In that regard see per Robert Walker LJ in *Gillett v Holt* [2001] Ch 210 at 225C – E:

“This judgment considers the relevant principles of law, and the judge’s application of them to the facts which he found, in much the same order as the appellant’s notice of appeal and skeleton argument. But although the judgment is, for convenience, divided into several sections with headings which give a rough indication of the subject-matter, it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a ‘mutual understanding’ may depend on how the other elements are formulated and understood. Moreover the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round.”

76. And at 232 D – E and F:

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

..

The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded— that is, again, the essential test of unconscionability.”

77. Action before an assurance or representation is potentially far from irrelevant. It can provide an explanation for the assurance and can be a guide as to the nature and quality of the assurance; it can make it more likely that there was an assurance; and it can influence the way in which the action in reliance on the assurance is viewed. The courts have repeatedly emphasised that in this field the actions of the parties are to be viewed in the round. In the words of Lord Hoffmann’s analysis in *Thorner v Major & others* at [8]:

“Past events provide context and background for the interpretation of subsequent events and subsequent events throw retrospective light upon the meaning of past events.”

78. Nonetheless, while pre-assurance actions are not irrelevant they cannot of themselves constitute the detriment which is an essential element if there is to be a finding of proprietary estoppel (see the passages cited above). The doctrine of proprietary estoppel cannot be used to give binding effect to promises of reward for past conduct if there is no further conduct after such promises.
79. The assurances upon which a proprietary estoppel is based must be of a legal interest or a right known to the law (see *Cobbe v Yeoman’s Row Management Ltd & another* [2008] UKHL 55, [2008] 1 WLR 1752 and must relate to identified property (see per Lord Walker in *Thorner v Major & others* at [61]).
80. The test of what constitutes a sufficient assurance is a broad one. An assurance can be by conduct (which can include inaction) and does not have to be by express words provided that in the context (on which it is “hugely dependent” - per Lord Walker in *Thorner v Major & others* at [56] - and which is itself to be viewed broadly) it is “clear enough” (ibid).
81. Where an equity arises by reason of proprietary estoppel the Court has to consider how it is to be satisfied. In that regard the question is of what is the minimum necessary to satisfy the equity. The court must approach that task cautiously; mindful of the need for proportionality between the expectation and the detriment in the particular case; and having regard to the possibility that the equity has already been satisfied (see *Jennings v Rice* [2002] EWCA Civ 159, [2003] 1 FCR 501 at [22] – [36] per Aldous LJ and [49] - [56] per Walker LJ).

82. I find that the First and Third Defendants acted to their detriment in that they incurred substantial expenditure in respect of the refurbishment, renovation, and extension of the Bungalow. I also find that they did so in reliance on representations and assurances from Ben and Jean Wild that the Bungalow was to be theirs and was being regarded as their property such that it would now be unconscionable for Jean Wild to rely on their absence of legal title to it.
83. In reaching that conclusion I have considered the evidence in the round and have given particular weight to documents which were created before this dispute arose. In that regard Abigail Wild's bank statements for the period from March 1991 to March 1992 are significant. I accept that the annotations were made by Mrs. Wild's accountant recording the explanations which Mrs. Wild had given for particular items of expenditure and doing so a comparatively short time after the expenditure in question. It is understandable and credible that such an exercise was undertaken in the course of the accountant preparing the accounts for the Third Defendant's hairdressing business. It follows that the Third Defendant was at that time attributing substantial sums of money to expenditure on the property. Thus Mrs. Wild identified expenditure on a cooker; expenditure in having plans drawn up; a sum of £1,231 spent in respect of the Bungalow; and payments made to builders.
84. The annotations made in the First Defendant's Building Society pass book have been made more recently. They represent the attempts of the First and Third Defendants to identify expenditure on the Bungalow. In that exercise the Defendants have identified three sums (respectively £3,600, £2,700, and £2,350) totalling £8,650 which they say relate to such expenditure. I accept this evidence and find that these sums were spent in the renovation and extension of the Bungalow.
85. The letters from Chafes solicitors sent in 2002 are also of note. The letter of 1st October 2002 was sent to Ben and Jean Wild and followed a discussion on 25th September 2002. This letter makes reference to the First Defendant having added value to the Bungalow by having extended it. On the same date Chafes wrote to Bullock Woodburn. In that letter they said that the First Defendant "has apparently invested a considerable amount of money out of his own pocket in the improvement and extension of the bungalow" and "it [the Bungalow] has been considerably extended by [the First Defendant] out of his own pocket". Chafes wrote to Jean Wild on 14th February 2005 in respect of Ben Wild's estate and again referred to the First Defendant having extended and altered the Bungalow at his own expense.
86. These letters are very significant because they demonstrate that in 2002 Ben and Jean Wild were giving instructions to solicitors that the First Defendant had incurred substantial expenditure on the Bungalow. That is a potent indication of the understanding which Ben and Jean Wild had at that time. It also bolsters the reliability of the account which Jean Wild gave in this regard in her witness statements. The assertion in the witness statements that the First Defendant had spent his own money on renovating and extending the Bungalow was consistent with the instructions which had been given to solicitors fifteen years before the statements were signed and many years before there appears to have been any suggestion of a dispute about these matters.

87. There were differences between the oral evidence of the First Defendant and of the Third Defendant as to dates and some of the details of the work done on the Bungalow and the order in which some of the work was done. There were also differences between the First Defendant's oral evidence and the details set out in his witness statements. Such differences are not surprising in circumstances where the First Defendant and the Third Defendant were giving evidence about events occurring 26 – 30 years ago. Indeed, the differences were indicative that the defendants were giving honest accounts (albeit potentially influenced by the factors to which I referred in [19] and [28] – [33] above). The differences in the evidence given satisfied me that this was not a case where Malcolm and Abigail Wild had agreed on a false account and had sought to put that before the court. Rather I conclude that in their evidence of the work done on the Bungalow and the source of the funds for that work the First and Third Defendants were setting out an account which was accurate and correct in broad terms albeit that the passage of time meant that the details of that account were somewhat imprecise.
88. I have considered whether the expenditure was in reliance on assurances given before the expenditure was incurred or whether this is a case where the assurances came after and because of the expenditure. As I have already explained matters must be considered in the round and events occurring before assurances are given are not wholly irrelevant for the purposes of proprietary estoppel. Nonetheless, in order for there to be a proprietary estoppel the person asserting the same must have relied to his detriment on assurances of an interest in the relevant property. At points in his evidence the First Defendant said that the assurances given by his father in relation to the Bungalow had been expressed as having been given because of the expenditure already incurred by the First Defendant and the Third Defendant. This again demonstrates that the First Defendant was not seeking to tailor his evidence to the case he needed to establish. The evidence given by the First Defendant in that regard must be seen in the light of the balance of his oral evidence and of his witness statements and regard must be had to the circumstances of the dealings between the First Defendant and Ben Wild. Ben Wild and the First Defendant were father and son; they worked together as partners on the Farm and in the dairy farm business from 1978 to 2003; the Bungalow was on the Farm; the works on the Bungalow were done over a period of time (in particular the extension of the Bungalow was some four years after the initial renovation works). If assurances were given it is entirely credible and, indeed, likely that they should have been repeated at different times and in slightly different terms. One would not have expected an assurance to have been given once and never thereafter repeated nor referred to and so it is not surprising that such comments were made after the works had been done as well as before.
89. Michelle Goodchild is the sister of the Third Defendant and gave evidence that at the time the works were being done the Third Defendant had told her that she and her husband had been told that the Bungalow was to be theirs. I found the evidence of Michelle Goodchild persuasive and I accept her account of what Abigail Wild told her when the works were being done and in particular when a kitchen was being installed in the Bungalow. Mr. Pritchett pointed out that Mrs. Goodchild went into markedly greater detail in her oral evidence than in her witness statement. This was correct but the thrust of the written and oral

evidence was the same. The key point throughout Mrs. Goodchild's evidence was that she was concerned when she saw the scale of the expenditure which her sister and the First Defendant were incurring in respect of the Bungalow; that she raised these concerns with her sister; and that the Third Defendant told her at that time that she and the First Defendant had been assured that the Bungalow was to be theirs. I have reflected on the facts that Mrs. Goodchild is the sister of the Third Defendant; that she was giving evidence about matters happening 30 years ago; that Mrs. Goodchild clearly feels that her sister and brother-in-law have been poorly treated; and that Mrs. Goodchild displayed a degree of animus towards the Claimant. I take account of the scope which all those matters give for Mrs. Goodchild's recollection to be distorted and for her to persuade herself that events took place in the way she now believes would have been appropriate. Nonetheless I have concluded that Mrs. Goodchild was giving honest evidence and I reject the suggestion put to her in cross-examination that she was making use of her legal training and giving a false account formulated so as to assist her sister. Not only do I find that her account was honest but I also find that it was based on a conversation or conversations which actually occurred at the time of the works and in which the Third Defendant told Mrs. Goodchild that she and her husband had been assured that the Bungalow was to be theirs. That is powerful evidence of the Third Defendant's understanding at that time. I also accept the evidence which Mrs. Goodchild gave to the effect that she had conversations with Ben Wild in which he explained that the Bungalow was to be the First Defendant's.

90. On behalf of the Claimant Mr. Pritchett pointed out that the partnership accounts for the years ended April 1992, 1993, and 1994 show greater expenditure on "repairs and maintenance" than there had been in preceding period. The Claimant says that this shows partnership funds being used to pay for the extension of the Bungalow. In this regard, however, it is to be noted that the expenditure under this heading increased still further in the period from April 1995 to April 1997 which appears to have been after the extension had been built.
91. Mrs. Christensen gave evidence of an occasion in the late 1980's when she was at Beard Hall Farm and was taken to see structural work being undertaken on the Bungalow. She said that Ben Wild made a point of showing her this and of explaining that the materials were being paid for through the partnership. In her witness statement Mrs. Christensen had said that she had been told that the partnership was also paying for the labour element of the works. However, in cross-examination Mrs. Christensen said that the work was being done by "the boys" (meaning the Claimant and the First Defendant). Mrs. Christensen was not able to say what work was actually being done other than to say that it appeared to be structural work. I accept that there was such an occasion and that Mrs. Christensen was told that the materials were being paid for by the partnership. However, it is apparent that the works in question cannot have been the extension of the Bungalow because the extension was built in about 1992 which was not only after the time Mrs. Christensen was shown works on the Bungalow but also after she had ceased to be the partnership's accountant.

92. Mary Race is the mother of Gillian Wild. Mrs. Race gave evidence of an occasion “many years ago” when she and her husband and another couple had had dinner with Ben and Jean Wild at the farmhouse. As Mrs. Race and her husband were walking back to their car Ben Wild accompanied them. They passed the Bungalow and Ben Wild told them that the extension had cost £28,000 and had been paid for out of the business. Mrs. Race’s recollection was that Ben Wild said that the business had paid for the extension but that Malcom and Abigail Wild were to meet the cost of furnishing the inside of the Bungalow.
93. In assessing that evidence I have borne in mind that Mrs. Race is the mother-in-law of the Claimant. I remind myself again of the need to guard against attaching excessive weight to the demeanour of a witness when giving evidence. Nonetheless I do have regard to the fact that Mrs. Race gave her evidence in moderate and straightforward terms and was an impressive witness. I find that Mrs. Race’s evidence was based on a genuine recollection. Accordingly, I find that there was a conversation with Ben Wild substantially along the lines of that recounted and involving Ben Wild saying that the business had met the cost of the extension of the Bungalow.
94. In the light of the evidence of Mrs. Christensen and of Mrs. Race and of the figures in the partnership accounts I find that funds from the partnership were used to meet at least part of the cost of the works on the Bungalow. However, I find that these funds did not meet the full cost of the extension or the other works and that at least a substantial part of those costs was met by the First and Third Defendants. The conversations which Ben Wild had with Mrs. Christensen and Mrs. Race must be seen in the light of the instructions which the former had given Chafes Solicitors and which had caused those solicitors to write that Malcolm Wild had spent considerable sums on the improvement and extension of the Bungalow. It is those instructions which are to be regarded as representing Ben Wild’s considered assessment of the position and of the source of the funds and which must carry very much more weight in particular than comments he made in passing conversation after dinner to his daughter-in-law’s parents.
95. The Claimant gave evidence of an occasion when Ben Wild had been “livid” because the Third Defendant had asked him for the “deeds” to the Bungalow. Gillian Wild said that the Claimant had told her of this conversation at the time. I have already set out the caution with which I must approach the evidence of the Claimant and of Gillian Wild. However, having regard to the way in which the Claimant gave this evidence and, more important, to the unlikelihood of fabrication of such a matter I accept that in this regard the Claimant was recounting a conversation which he had with Ben Wild. I accept that there was such a conversation between the Claimant and his father and that this had been triggered by an exchange between the latter and the Third Defendant. Accordingly, I reject Abigail Wild’s denial that there was ever an occasion when she had asked Ben Wild for the deeds of the Bungalow. However, the Claimant said that the conversation took place in 1996 and so he was recounting a conversation which took place over twenty years ago. Moreover, he was doing so in the light of the current dispute and the animosity which there now is between himself and the Defendants. It is also to be noted that the Claimant had not been a party to the conversation between his father and the Third Defendant

and was recounting his recollection of what his father had said about the conversation. I accept this evidence as establishing that there was a conversation between Ben Wild and the Third Defendant in which the latter had asked for the deeds to the Bungalow and in which the former had refused this request and had been angry at the request having been made. That finding does not in my judgement mean that the First and Third Defendants had not incurred expenditure in respect of the Bungalow nor that they had not done so in reliance of representations as to the future ownership of the Bungalow. It is not probable that such a request was made “out of the blue”. On the balance of probabilities it is to be seen as having been preceded by dealings of some kind and to have been a consequence of such dealings. In my judgement the more probable explanation is that the conversation was in the context of Abigail Wild pressing her father-in-law for the deeds because she and her husband had been given assurances as to the ownership of the Bungalow (or at least believed that they had been given such assurances) and that Ben Wild’s anger was at what he saw as impatience and at an implied lack of trust.

96. In concluding that assurances were given and that the First and Third Defendants acted in reliance on them I have taken account of the surrounding circumstances and of inherent likelihood. It is not disputed that before her marriage the Third Defendant already owned a cottage near the Farm nor that she and the First Defendant had lived there before moving to the Bungalow. I have concluded that the First and Third Defendants spent substantial sums of their own money on renovation and extension of the Bungalow. The existence of the Third Defendant’s nearby cottage is a further factor making it unlikely that there would have been such expenditure unless assurances as to the Bungalow had been given. If these defendants had not believed that the Bungalow was to be theirs then I would have expected such expenditure to have been on the Third Defendant’s cottage rather than on the Bungalow.
97. The Defendants asserted that Ben Wild had contributed substantially to the purchase and refurbishment by the Claimant and Gillian Wild of Redgate End Farm Cottage. They say that this is to be seen as equivalent to such contribution as the partnership made to the works on the Bungalow. The Claimant and his wife say that they met all the costs connected with their home. During the course of the trial documents from the ledger of the Claimant’s solicitors (who had acted for the Claimant and Mrs. Wild in the purchase) came to light. These showed that Ben Wild had met some of the legal and related costs involved in the purchase. However, I find that the Claimant and Gillian Wild met the large majority of the costs and that the contribution from Ben Wild was minor. There is, accordingly, no equivalence to be seen between the Bungalow and Redgate End Farm Cottage although it is apparent that Ben Wild was willing to assist his sons in the costs of setting up home.
98. Mr. Pritchett pointed out that although Jean Wild’s evidence was that the First and Third Defendants were entitled to the Bungalow she did not transfer that property to them when she obtained probate of her husband’s estate. Probate was obtained in 2005 but it was not until 2017 that Mrs. Wild executed an assent and when she did so it was an assent to herself. In my judgement this point can carry no real weight. In the circumstances where there was to be no change in

the arrangements on the Farm and where the First and Third Defendants were already living in the Bungalow it is not surprising that no formal steps were taken to regularise the title. As to the fact that the assent of the Bungalow when it came was to Jean Wild herself I accept the evidence of Malcolm Wild that the Defendants were advised that because by that time proceedings were underway any assent to Malcom and Abigail Wild should await the outcome of those proceedings.

How is the Equity in Favour of the First and Third Defendants to be satisfied?

99. It follows I have found that the First and Third Defendants incurred substantial expenditure in respect of the Bungalow and that they did so in reliance on assurances that the Bungalow was to be their property such that it would be unconscionable for the owner of the Bungalow to rely on their absence of legal title. Accordingly, a proprietary estoppel arises in their favour. What relief should be given so as to satisfy that equity? The relief granted must be the minimum necessary to do justice in respect of the equity in the particular circumstances.
100. What account is to be taken in that regard of my finding that funds from the partnership were used to pay for the works on the Bungalow in addition to the expenditure by the First and Third Defendants? It is impossible at this distance of time and with the limited documentation available to determine with any precision how much partnership money was used. However, I am satisfied that the bulk of the expenditure came from the First and Third Defendants and that to the extent that partnership money was used it was on the footing that it was being spent on a property which was to belong to Malcolm and Abigail Wild and which they had made their home. Abigail Wild's ownership of a nearby property is relevant in considering the circumstances as a whole and in deciding what is necessary to satisfy the equity in favour of her and her husband. The First and Third Defendants spent money on the refurbishment and extension of the Bungalow making that their family home and doing so rather than undertaking equivalent expenditure on the property owned by Abigail Wild. So they gave up the opportunity to improve that other property and/or to invest those funds elsewhere. That commitment of funds to the improvement and expansion of the Bungalow rather than spending them in other ways substantially outweighs the benefit which the First and Third Defendants obtained through living rent-free at the Bungalow and through being able to rent out Abigail Wild's property. In those circumstances I have concluded that the minimum necessary to satisfy the equity in favour of those defendants is transfer of the beneficial interest in the Bungalow. It follows that if I had held that the Bungalow was an asset of the partnership I would have found that it was to be held on trust for the First and Third Defendants.
101. In his closing submissions Mr. Hoffman drew a distinction between constructive trusts and interests arising by way of proprietary estoppel contending that the circumstances here should be regarded as having given rise to a constructive trust by reason of the common intention of the parties. Given the conclusion I have reached as to the existence of a proprietary estoppel and of what is necessary to satisfy that equity it is unnecessary to engage in detail with Mr. Hoffman's argument. It suffices to say that the circumstances here of the First

and Third Defendants engaging in expenditure on the Bungalow in reliance on assurances from Ben Wild that the property was to be regarded as theirs are more naturally regarded as giving rise to a proprietary estoppel than to a common intention constructive trust.

Is the Claimant's Milk Round an Asset of the Partnership?

102. Before the dissolution of the partnership the Claimant and the First Defendant operated separate milk rounds with each of them selling milk produced by the partnership dairy herd and accounting as partnership income for the sums generated. From the beginning of July 2016 or thereabouts the First Defendant stopped supplying the Claimant with milk from the partnership herd. The Claimant continued operating a milk round but had to source his milk from elsewhere. The parties disagree as to whether the Claimant's milk round was thereafter a partnership asset such that he has to bring the income generated into the winding up account.
103. The Claimant says that the effect of the sabotage committed by the First Defendant by way of supplying milk which was either contaminated or had gone off followed by the total cessation of supply was to destroy his milk round. He says that he had to start from scratch and did so engaging a canvasser to obtain new customers and obtaining a new source of milk. Accordingly, he says that the milk round he operated from 1st July 2016 onwards was not a partnership asset. The First Defendant denies that there was any deliberate sabotage and says that the milk round operated by the Claimant was a continuation of that which had been operated before and which was a partnership asset.
104. I find that the First Defendant's analysis is to be preferred. I have already explained that I do not accept the Claimant's contention that there was deliberate sabotage of his milk round or of the milk supplied to him from the partnership herd. The Claimant accepted that he continued to use a milk float which was a partnership asset. He explained that when he started supplying milk other than from the partnership herd he gave his customers the choice of staying with him or leaving. The Claimant explained that at 1st July 2016 he had had 250 – 260 customers and of these only about 140 – 160 remained with him after the change. The round would not have been viable at that level and so he engaged a canvasser to obtain further customers. I find that after the change of milk supplier the Claimant's round was a continuing business and was a continuation of that which he had operated before that change. The goodwill in the customers of that round was a partnership asset. Not only did the Claimant continue to use the partnership milk float but he also had the benefit of that goodwill retaining between 54% and 64% of the existing customers.
105. I find, therefore, that the Claimant's milk round remained a partnership asset and that he is to bring into account the sum of £53,122 being the income generated from that round against which is to be set expenditure of £22,796.

The Approach to be taken in Relation to the Realisation of the Assets of the Partnership.

106. As I said at [16] the parties have agreed that argument as to the appropriate relief and the approach to be taken to realising the assets of the partnership should

await my findings as to the ownership of the Farm and Bungalow. In the event that parties are not able to agree a way forward I will invite further submissions at the handing down of this judgment.