



In a recent case, *Mulligan v Dillon*, judgement delivered on 7th November 1980 (unreported) brought under the Vendor and Purchaser Act 1874, Mr. Justice McWilliam indicated that he was of the opinion that both parties were under a misapprehension as to the functions of the Court in such Applications. In this case the Vendor's Solicitors had to reply to the standard form of Requisition number 52 in the Law Society's printed form of Requisitions, dealing with the Family Home Protection Act and replied as follows:

52 (a) Is there on the property any "Family Home" as defined in the Act?

*Answer:* "No"

52 (c) If the answer to (a) is in the negative please state the grounds relied upon and furnish now draft Statutory Declaration for Approval verifying these grounds.

*Answer:* "The Vendor's spouse had never resided on the property, herewith draft Statutory Declaration for approval".

In fact four draft Declarations were furnished, a full one by the Vendor with the following relevant provisions. "(2). I say I am the sole owner of the property which I have purchased by way of Lease dated 28th day of September, 1973 which purchase I effected entirely with my own money and I further say that I have resided in the property continuously since the month of August 1973. (3) I say I have been separated from and lived apart from my husband Malachy since the 26th March 1967 and I further say since I acquired the property in 1973 my husband has neither resided in, visited, occupied nor has been accommodated in the property".

The draft declaration of the children were in the following terms subject to variance as to the period of residence: "I say that I resided in the property continually during the period between August 1973 and 30th December, 1977 and I further say that my said father Malachy Mulligan neither resided in, visited, occupied nor was ever accommodated in the property during the period aforesaid".

The Defendant's Rejoinder was as follows: "Purchaser notes contents of draft Statutory Declarations. However it is now clearly established that either a corroborative Statutory Declaration of the Vendor must be furnished or a Court Order obtained declaring that the premises are not a "Family Home". Please advise which procedure the Vendor will follow".

The Vendors reply to this dated 9th October was "The Vendor is issuing a High Court Special Summons seeking a Declaration that premises are not a "Family Home". You might please advise whether you have authority to accept service of the Summons".

A Special Summons was issued on the 20th October, 1980 and claimed an Order pursuant to Section 7 of the Act of 1874 for

## USE OF VENDOR AND PURCHASER ACT SUMMONS PROCEDURE



**USE OF VENDOR  
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(Contd.)

- (a) A determination as to whether or not the said flat is a family home within the meaning of Section 2 of the Family Home Protection Act 1976;
- (b) A determination as to whether or not the Defendant is a bona fide purchaser for value within the meaning of Section 3 of the Family Home Protection Act 1976;
- (c) Further or other Relief;
- (d) Costs.

Mr Justice McWilliam said that he was of opinion that both parties were under a misapprehension both as to the appropriate steps to be taken under an investigation of title on a sale and as to the function of the Court. It was not the function of the Courts to take over the duties of Conveyancing Counsel or Solicitors on an investigation of title. Once the facts have been established or the Vendors fail to make disclosure or the parties have joined issue as to the legal effect of the facts or of the failure of the Vendor to furnish information it is then for the Court to decide what is the legal position “whether good title has been shown or whether the Vendor was bound to furnish further or better evidence of title”. In the instant case he indicated that it was for the Defendant to consider the particulars furnished in the Affidavit of the Plaintiff, make such further enquiries as she may be advised and then decide whether or not she would accept or refuse the title.

Mr. Justice McWilliam indicated that as no argument had been addressed to him under Law applicable to the contention made in the Defendant’s Rejoinder he would not make any further pronouncement on it.

Section 9 of the Vendor and Purchaser Act 1874 provides that a Vendor or Purchaser of Real or Leasehold Estates in Ireland or their representatives may apply to a Judge of the High Court in Ireland “in respect of any Requisition or Objection, or any claim for compensation or any other question arising out of or connected with a Contract, (not being a question affecting the existence or validity of the Contract) and the Judge shall make such order upon the application as to him shall appear just and shall order how and by whom all or any of the costs of or incidental to the application shall be borne and paid.