ASSENTS AND THE DECISION IN MOHAN V ROCHE

The Conveyancing Committee has received a number of enquiries as to whether the principle enunciated in the Mohan v Roche decision [(1991) 1 IR 560] alters the general practice of obtaining assents to the vesting of land forming part of a deceased's estate. The answer to this is clearly in the negative. The procedures with regard to assents as laid down in the Succession Act, 1965 should, in the vast majority of cases be followed and, if pursued, should operate for the benefit of all parties concerned.

There will, however, be a limited number of cases where the Mohan v Roche doctrine could prove to be useful. These must be approached with care, and would seem to be limited to the following, the pertinent features of which will in each instance have to be substantiated:

i) Where the administrator alone is beneficially entitled to the estate of an intestate deceased and evidence is forthcoming that all the liabilities of the estate have been discharged or have become statute-barred.

ii) Where the executor alone is beneficially entitled to the unadministered part of the estate of a testate deceased and evidence is forthcoming that all the liabilities of the estate have been discharged or have become statute-barred and that all legacies, devises and bequests have been satisfied in full.

In certain circumstances, and provided that the appropriate proofs are made available, the doctrine laid down in Mohan v Roche can be helpful and may, in future dealings with the estate, obviate the necessity of seeking a de bonis non grant in the absence of an assent. However, as mentioned, it will in the majority of cases be far more satisfactory to have a formal assent completed.

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