Neutral Citation Number [2009] IEHC 304

THE HIGH COURT

2006 1811 P

BETWEEN

JOHN HANRAHAN

PLAINTIFF

AND

THE MINISTER FOR AGRICULTURE, FISHERIES AND FOOD

DEFENDANT

JUDGMENT of Mr. Justice McMahon delivered on the 24th day of June, 2009

Introduction

Only another herd owner can fully appreciate the traumatic effect that John Hanrahan and his family felt when he had 355 cattle from this dairy herd seized by officials of the Department of Agriculture, Fisheries and Food over the two day period, the 15th/16th March, 2006. Not surprisingly, the seizure was accompanied by a share of upset and drama, and although many animals were seized, the officials did not succeed in taking the whole herd as was their intention when they arrived at Mr. Hanrahan's farm. Eventually some 130 animals had to be left behind.

Mr. Hanrahan's dairy herd was comprised of mature cows, calves, weanlings, yearlings and heifers. The management of this herd involved cows calving twice a year, in the spring and the autumn. The best of these calves were kept as replacements for cattle that were culled or sold on during the year, so that constant replacements were bred on the farm. Surplus calves were sold on. Sales might also become necessary when feed was scarce. Milk yields rose around calving time as nature ensured that lactating cows increased their supply to feed the newly born calves. The plaintiff was very proud of his herd as he had taken great care when he had to restock the farm after a disaster in the 1980s. He had selected the Holstein breed as the most suitable for his operation as such cattle were bred to give a high milk yield, and did not put "the condition on their backs". This last remark was intended to distinguish this breed from other breeds which were more suitable as beef animals. The predictability of this herd cycle was important to maintain the business operation. It meant that milk yields would be high from spring until autumn when the grass was growing at its strongest. It also meant, as in all farms, that fodder was at its scarcest during the winter and early spring periods and provision had to be made for fodder during this period by way of silage, hay and supplements. The weather dictated the length of the growing season and how long the animals could be left out for grazing. To cater for his herd of almost 500 animals, Mr. Hanrahan had to rent land also, and this he did from various landowners close to the family farm.

Mr. Hanrahan achieved prominence, not only as a farmer but as a litigant in the 1980s when he successfully sued the chemical manufacturers Merck, Sharp and Dohme for damage to his animals and to his person for negligence/nuisance in the wrongful discharge of noxious fumes from its factory adjoining Mr. Hanrahan's farm near Clonmel in County Tipperary. (see *Hanrahan v. Merck*, *Sharp and Dohme (Ireland) Limited* [1988] I.L.R.M. 629). This eventual legal success in the Supreme Court, however, did not resolve all of Mr. Hanrahan's problems. By reason of the consequences of the chemical pollution, Mr. Hanrahan's milk quota was suspended for many years, and he commenced proceedings against the Department of Agriculture, Fisheries and Food ("the Department") and others claiming €1.4m in damages. The exact nature of this claim was not opened to the Court, nor indeed was it necessary to do so, but its existence and continuation is relevant background, and for that reason it must be noted by this Court. Mr. Hanrahan claimed that the failure by the defendants in that case to pay monies owed to him, caused serious cash flow problems for him, to such an extent that in late 2005, and early 2006, he had problems with feed and fodder for the herd. He complained bitterly to the local officers of the Department from the end of 2005 through the Spring of 2006 about his financial problems and the effect it was having on his ability to feed the herd. Impatient with the pace of the legal process he also sought to publicise and politicise his difficulties in the hope that such extra legal pressure might expedite a solution to what he then claimed were increasing herd problems. He enlisted the aid of his MEP and other politicians and wrote directly to the Minister for Agriculture and Food and to the Taoiseach at the time.

As an example of his forceful urgings in this context one may quote what he wrote to the Taoiseach by letter dated 12th December, 2005:-

> "Dear Taoiseach,
>
> Please find enclosed documentation already sent to the Minister for Agriculture, Minister for Justice, and your department to Mr. Reddy on 18th November, 2005.
>
> We are asking you now in the interest of fairness and justice to intervene and bring this matter to finality.
>
> You will see from Dr. Butler's reports attached to a letter to Mary Coughlan, Minister for Agriculture dated 9th December and delivered by hand on 12th December just how serious the animal welfare on the farm is at this moment.
>
> You will recall receiving documents by hand from Liam Lynch while you were on holiday in Kerry, we are at a loss to know why no action was taken in spite of the fact that you asked the Minister to deal with it.
>
> We regret having to trouble you once again but this cannot go on any longer because it is now causing an animal welfare problem as well as a human welfare problem. We urge you to deal with it immediately before matters go any

further."

Again in his letter to the Minister dated 9th December, 2005 he stated:-

> "I am surprised to have had no response from you to my letter of 18 November and I understand from the attached letter I received from Kathy Sinnott [MEP for Munster] that you have declined to meet either her or myself or my advisors to discuss the situation.
>
> I attach also copies of letters from Dr. Tom Butler, Farm Business Advisers, dated 23 May 2005 and 22 November 2005 on the stock condition and animal feed situation on the farm.
>
> It will be clear that unless you are prepared to take some action along the lines suggested in Dr. Butler's letters, I will have no alternative but to slaughter the worst affected of the animals to avert a serious animal welfare problem.
>
> Accordingly, I am forced to seek the assistance of your Department in carrying out this slaughter and to ask for your written permission to bury the animals here on the farm."
>
> The plaintiff's agricultural and nutritional advisor was Dr. TM Butler of TBA Laboratories Limited. Dr. Butler was a very well qualified expert on animal nutrition and wrote two reports on John Hanrahan's farm operation, one on 23rd May, 2005 expressing first, serious concern because of the lack of funds to purchase forage and concentrates and the second, in November 2005 warning: "without winter forage supplies, you are facing a major crisis that has serious financial and welfare implications".

Dr. Butler's conclusions in these matters were given in good faith and in making his assessments he was relying on the information provided to him by Mr. Hanrahan as to what rented land was available to him. When Dr. Butler gave evidence it was clear to me that he was happy to confirm his views on the basis of the information available to him. In a further report on 14th February, 2006, concerned with herd book condition and feed requirements, Dr. Butler found that out of the 487 animals on the farm, only about 100 could be classed as poor or poor to moderate. That was just a month before the seizure on the 15th/16th March and given the scarcity of feed and nutrients at that time it is difficult not to conclude that the vast majority of the animals were, in view of the other evidence, cause for serious concern when they were seized.

Mr. Hanrahan had earlier written a long letter to the Minister on 18th November, 2005 setting out the history of his problems since 1981 with the Department which had an appendix of some 25 pages.

In a phone message to Mr. Toby Moran (a veterinary officer in the local office of the Department) he accused the Department officials of "watching my animals suffer. I am holding you responsible."

Subjected to this campaign from Mr. Hanrahan, it is not surprising that the Minister requested an investigation, and local officers of the Department were sent to inspect the condition of the plaintiff's herd on 21st December, 2005. The visit to the farm, however, disclosed no welfare problems and caused Mr. Toby Moran to say in evidence:-

> "I was very pleased with the condition of the animals. I had no problem whatsoever. There was about 80 round bales of silage on the premises and quite a lot of bag meal up in the loft." He confirmed that he had written a report to that effect.

It was not until early February 2006, however, that the situation on Mr. Hanrahan's farm caused greater concern. An animal went down with suspected BSE. It proved to be a false alarm, but the animal was put down and restrictions were put on the movement of animals on the farm for approximately six days. Officers from the Department visited the farm on several occasions between this incident and the eventual decision to seize the herd on the 15th March, 2006. These visits became increasingly difficult over that period as Mr. Hanrahan became defensive and took offence with one officer in particular, that is, Mr. John O'Gorman. Ambrose Hanrahan, the plaintiff's son who was deeply involved with managing the animal stock, alleged that Mr. O'Gorman was abusive and aggressive on one occasion when he came to the farm. Thereafter, Mr. Hanrahan resented Mr. O'Gorman coming onto the land and objected anytime he appeared for an inspection. Whether Ambrose Hanrahan's allegations are true or not, the fact was that John Hanrahan believed them and resented Mr. O'Gorman visiting the farm from that time on.

Postponing a more detailed description of these official visits, it is sufficient to note at this juncture that increasingly over this period, the authorised officers became concerned with the welfare of the animals, being of the view that many of them had become emaciated and thin and looked as if they did not have enough fodder. When these concerns were raised with Mr. Hanrahan, consistent with his earlier complaints, he blamed the Minister for withholding his entitlements. Alternatively, he blamed fresh emissions from the Merck, Sharp and Dohme factory in January, 2006. Mr. Hanrahan, however, never produced any proof of such a connection and the officials from the Department were not willing to accept that there was not an investigation into such a leakage or that it was a relevant cause for the poor condition of the animals. Furthermore, Mr. Hanrahan in cross examination admitted that officials from the Department of Agriculture had visited Merck, Sharp and Dohme and had exonerated it.

In any event, the Department officials became so concerned with the welfare of the herd, that they decided to invoke the provisions of the European Communities (Protection of Animals kept for Farming Purposes) Regulations, 2000 ("the Regulations") (giving effect to Council Directive 98/58/EC) and proceeded to the seizure of the herd on the 15th/16th March, 2006. Although the officials acknowledged that all animals were not *in extremis*, they nevertheless considered it necessary to seize the whole herd as they concluded that even those animals which were not too emaciated at that time, were at risk if left on the farm. It is also relevant to note that before taking this drastic action, the Department had written on 1st March to the plaintiff proposing the removal of 130 animals to alleviate the situation, but offering no compensation. The plaintiff rejected this offer and in this he was supported by his agricultural and nutritional expert, Dr. Butler.

Having considered all of the evidence given on behalf of both parties I have come to the conclusion that when the cattle were seized on the 15th/16th of March, 2006, there were welfare issues relating to Mr. Hanrahan's herd which justified the seizure under the legislation. My conclusions on this are also informed by the evidence of the Veterinary Surgeons employed by the Department who were involved in the period immediately preceding the seizure: Mr. Toby Moran, Mr. Martin Hanrahan, Mr. Ian O'Byrne and Mr. John O'Gorman. These witnesses gave evidence that the animals were on the relevant dates "in various stages of malnutrition"; presented "a serious welfare problem" and "a serious welfare issue"; "had seriously gone over that line and were seriously suffering unnecessarily". This finding, of course, is not fatal to the plaintiff's claim since the plaintiff's claim is for breach of the Agreement, referred to in more detail below, and counsel for the plaintiff has indicated at the outset that he is not challenging the lawfulness of the seizure for that reason in these proceedings.

Once the animals were seized the plan was that they were to be removed to Purcells' Lairage in County Kilkenny. This was a private holding facility near Waterford, which was normally used to hold cattle for short periods prior to being exported by ferry from the port in nearby Waterford. It was intended to hold the seized animals in Purcells' Lairage for a brief period only before disposing of them by sale. Although the lairage was suitable for what it was intended – having large pens, good yards and some sheds – it was never designed for long term stays and was normally used for beef cattle only. It had no milking facilities. These limitations eventually caused problems for the Department when the period of detention was extended and as calving time came for many of the cows and the increase of milk necessitated milking facilities.

The initial plan of the Department officials was that milking cows could be dried off and all the animals would be prepared for an early disposal by way of sale. If this was done according to plan, then there would be no need for milking facilities at the lairage.

That there would a problem, if the detention period was extended, was recognised on the day the cattle were seized in an email which was sent by Pat Brangan (Senior Veterinary Inspector in the Department) to Martin Blake (Deputy Chief Veterinary Officer in the Department) and colleagues on 28th March, 2006. The email read:

> "Ray Carthy has identified a potential problem regarding some of the seized cattle in Purcells' yard. Approximately 48 of these are at the point of calving and apparently the majority of these are first time calvers. With the improved plan of nutrition there may be a problem with excess milk. The original intention was to 'dry off' these as they calved but this appears to be no longer an option. There are no milking facilities on these premises. Unless these can be sold, there may be a requirement for additional labour, perhaps Farm Relief Services, to deal with the problem."

Mr. Blake's response on the same day was as follows:-

> "Pat
>
> My response is to suggest that we attempt to sell these particular animals as quickly as possible – otherwise their welfare may be compromised further. We should not engage in further 'farming activities' where we do not have facilities. The animals' welfare is best served by selling them to someone who is able to look after them. I do not imagine it was ever the intention of the staff who decided to remove them on welfare grounds that we should engage in milking them on this site.
>
> Signed: M.B."

By 3rd May, 2006 Mr. Toby Moran (Veterinary Inspector) was writing to the Department in the following terms:-

> "Following a visit to Purcells' yard today, it is obvious that there is a serious management issue developing, mainly with the milking cows and their calves. I recommend that the immediate return to J.H. of all the milking cows (approx. 60) plus the 25 cows that will calve over the next few weeks, plus all the calves at Purcells.
>
> Toby Moran."

One hundred and forty six animals were returned over the next few days.

The Agreement of 11th April, 2009 ("The Agreement")
The above narrative is gleaned from the evidence of many witnesses and is not for the most part in dispute. It is necessary, however, to present it so that the Agreement reached between the parties on 11th April, 2006 can be seen in its full and proper context.

When the cattle were seized Mr. Hanrahan appealed to the District Court as he was entitled to do under the Regulations. (Regulation 9(1)). This hearing was specially fixed for the 11th April, 2006, at the District Court in Clonmel. Protracted negotiations on that day ended in a settlement agreement ("the Agreement") signed by the parties at 9.00pm that evening. The Agreement envisaged the return of a number of cattle to Mr. Hanrahan's farm up to a maximum of 328 livestock units, the exact number to be determined by two "experts", one nominated by each side. Any animals left in Purcells' Lairage after this calculation was carried out, were to be sold by the Department and after the deduction of the Department's costs, any surplus was to be returned to Mr. Hanrahan. If, after disposing of the animals in the lairage, there was a shortfall, this could be recovered from Mr. Hanrahan by deducting it from his single premium payment or as a simple contract debt. Under the Agreement Mr. Hanrahan also gave several undertakings which will be referred to in detail later in this judgment.

To establish the exact amount of livestock to be returned a formula was set out in para. 1 of the Agreement. To understand the formula it is necessary to understand two concepts used in such a calculation: "Livestock Unit" and "Stocking Rate".

Livestock Unit

A livestock unit is a fully grown mature animal which provides a measure for all other less mature animals. A livestock unit may be a fully grown cow, whereas a calf or a weanling would only be regarded as a percentage of a livestock unit. It is apparent therefore, that to count livestock units one must differentiate between different cattle who are of different sizes and at different stages of their development. Calves are smaller and should not be equated with adult cattle in terms of their demands on the land. Calves will clearly eat less grass than mature cattle. Similarly, heifers are also not to be equated with fully grown cattle and would not normally constitute a full livestock unit. As a result of this, the number of animals on the land will normally be more than the actual number of livestock units at any given time. If land is capable of carrying 100 livestock units, a farmer may decide to keep 40 mature cattle (i.e. 40 livestock units) and 100 other smaller cattle who between them aggregate to 60 further livestock units. The total animals on the land would then be 140, although the livestock units would still only be 100.

Stocking Rate
Related to the livestock unit is the concept of "stocking rate". This is the estimated acreage required to support one livestock unit. It varies, of course, depending on the quality of the land. For example, if the land is bad the stocking rate might be 1.4, that is a determination that it takes 1.4 acres to support one livestock unit. If the land is good, the rate might be as low as 0.8 acre for one livestock unit. To work out the stocking rate for any given piece of land, the quality of the land must be assessed for this purpose. This, of course, may be a matter for experts and may be a matter for agreement between experts. The evidence before the court was that the stocking rate would normally vary between 1.4 or 1.3 down to 0.8 of an acre depending on the quality of the land. On the 11th April, 2006, at the negotiations at Clonmel Courthouse, the parties agreed that the stocking rate for the O'Hanrahan land was to be 1.1, and it was on this basis that the figure of 328 livestock units was calculated as the maximum which the Hanrahan farm and the rented land he had from Ms. Kiely, could sustain.

The lands used in this calculation were according to Dr. Butler "those given by the Teagasc Advisor at Clonmel Court on 11th April, 2006". (His report on grass cover on John Hanrahan's farm dated 15th May, 2006). Mr. Lonergan (the Teagasc Advisor and the expert appointed on behalf of the Department under the Agreement) in a report dated 20th April, 2006 confirms that the stocking rate agreed was 1.1. Subsequent reports by Mr. Lonergan, which were concerned with projected stocking rate for the future, put the rate at 1.9 and 1.7, but these to my mind are irrelevant as the only rate I am concerned with on this issue is the rate agreed on 11th April, 2006, the day the Agreement was signed.

Once the acreage and stocking rate were agreed, to work out the amount of animals which could be returned to Mr. Hanrahan's farm a head count of all the animals, both on the farm and at the lairage, had to be undertaken and this number had to be converted into livestock units. This was the task that was entrusted by the Agreement to the two experts, i.e. Mr. Lonergan on behalf of the Department and Dr. Butler on behalf of Mr. Hanrahan. When this calculation was done on 19th April, 2006, it was established that all the animals could be returned to Mr. Hanrahan's farm except 5.4 livestock units. The evidence was that this conclusion came as a shock to the officials of the defendant, who had anticipated that there would be close to 150 animals for sale at least, which would cover the Department's costs arising out of the seizure and that clause 1 only related to the remainder of the animals in the lairage. The Agreement, however, does not reflect this interpretation as was pointed out by Clarke J. in those proceedings. Nor was there any suggestion in the letter from the Department's legal division dated 12th April, 2006, that 328 was the wrong number. The plaintiff argues that the defendant then began to fight a rearguard action and began to focus on the plaintiff's undertakings to put the plaintiff in breach.

For reasons which I have set out below, I have come to the conclusion that the object of the Agreement as set out in clause 1 of the Agreement, was fulfilled on 19th April, 2006, and the number of animals to be returned to the plaintiff was settled at that time. Mr. Brangan's evidence on the 1.1 ratio is telling. In answer to questions put to him by the Court his evidence was as follows.

Q. Mr. Justice McMahon: Reverting to the agreement of 11th April, paragraph 1 and the figure of 328, which was agreed as the maximum?

A. Yes, Judge.

Q. Mr. Justice McMahon: That was livestock units?

A. Yes, Judge.

Q. Mr. Justice McMahon: Who calculated that?

A. That was calculated between the two experts; Mr. Lonergan and Dr. Butler.

Q. Mr. Justice McMahon: In the precincts of Clonmel Courthouse?

A. Yes.

Q. Mr. Justice McMahon: On the day?

A. On the day.

Q. Mr. Justice McMahon: What was the purpose for them going out visiting the land subsequently? Didn't they go out to visit the land shortly afterwards?

A. They went to Purcells' Lairage to look at the stock there.

Q. Mr. Justice McMahon: That was the maximum anyway?

A. Up to that.

Q. Mr. Justice McMahon: That was based on 1.1?

A. That was based on 1.1.

Q. Mr. Justice McMahon: And that was by agreement?

A. That was by agreement.

Q. Mr. Justice McMahon: Thank you.

Before the animals were returned, however, the defendant was entitled to insist that Mr. Hanrahan would fulfil his undertakings in that regard. These, however, were very much by way of assurances to the defendant and had only meaning, relating as they did to the proof of the amount of land available, the treatment of the land, and the purchase of feed, when the total number of livestock was known as a result of the calculation under clause 1. This could not have been done in any real sense before 19th April, 2006. A great deal of communication and correspondence took place between the lawyers after this, culminating in the letter from the defendant's solicitor to the plaintiff (25th April, 2006), alleging that the plaintiff had failed to comply with the terms of the agreement in a number of material respects.

First, it was alleged that the plaintiff had not fulfilled the conditions set out in clause 4(d) which declared that no livestock units were to be returned to the plaintiff unless he produced clear evidence that he had purchased a minimum of three weeks' feed/fodder supply, as advised by his consultants, for the returned animals. It also claimed that the plaintiff was in breach of certain undertakings (identified more specifically below) in accordance with clause 5 of the Agreement.

As already mentioned, however, the fact was that the consultants from both sides (Dr. Butler and Mr. Lonergan) had agreed on 19th April on the basis of a 1.1 stocking rate that all but 5.4 livestock units were to be returned.

The defendant's solicitor also, in the same letter of 25th April, 2006, indicated that it was the Minister's intention to sell 150 of the animals from the lairage on 28th April, 2006. This prompted the plaintiff to commence these proceedings and seek an interlocutory injunction to prevent the Minister disposing of the cattle. The effect of this was that the Agreement was effectively parked until the injunction application was finally disposed of on the 23rd May, 2006.

The Main Proceedings
These proceedings were commenced in April, 2006 and in an amended plenary summons dated the 27th April, 2006, the plaintiff seeks damages for breach of contract and damages for negligence. The original plenary summons also sought orders of prohibition and specific performance which, because of subsequent events, including the sale of many of the animals on the 2nd June, 2006, are no longer relevant. In opening the case before the Court, counsel for the plaintiff indicated that the plaintiff was no longer contesting the lawfulness of the seizure and that the Court need only concern itself with the liability for breach of the Agreement at this juncture, as it had been agreed between the parties that the question of quantum would be postponed and would only be addressed if the plaintiff was successful on the liability issues. The defendant's counterclaim for expenses incurred in the seizure was also postponed on the same basis.

As the case progressed it became clear that the plaintiff's complaints were threefold:-

(i) The defendant breached the settlement agreement of the 11th April, 2006;

(ii) The defendant was in breach of contract, or breach of duty, or was negligent in the care of the animals after they were seized and while they were in its care at Purcells' Lairage, *i.e.* from 15th/16th March until 2nd June 2006; and

(iii) The defendant disposed of the animals in such a manner and at such a price as to amount to negligence and/or breach of contract which caused damage to the plaintiff for which the plaintiff claimed damages.

The defendant has entered a full defence and counterclaim. Further, during the trial the defendant was allowed to amend its defence by including a plea of fraudulent misrepresentation against the plaintiff as well as a plea of fundamental breach of contract.

The Injunction Proceedings
The transcript of Clarke J's judgment delivered on 12th May, 2006, was available to the Court. His decision on that day was to adjourn the matter for a further argument and he sought further affidavits to determine what his decision should finally be. In the course of his decision on that day, however, Clarke J. expressed the view that it was difficult to see how the agreement of 11th April, 2006 could necessarily give rise to a requirement, advanced on behalf the Minister, that at least 150 of the cattle were to be sold, as the dispute between the parties on that day really only concerned how many of the remaining cattle in the lairage were to be returned to Mr. Hanrahan's farm. In the injunction proceedings when the Agreement was being negotiated there was no question, according to the Minister, of all or even a large number of the cattle going back to Mr. Hanrahan. No such argument was made by counsel for the Minister before me in the present case and I cannot interpret the Agreement, other than to read it in a way that contemplated that:- "If all the relevant conditions in the agreement were observed, it might result in the return of a number of cattle from the lairage provided at the end of the day the herd was not to exceed a maximum of 328 livestock units."

Interestingly, Clarke J., in the interlocutory proceeding, without deciding the matter, observed: "In these circumstances, it seems to me that the Minister will have an uphill struggle in maintaining that there was an additional term of the Agreement or understanding which would have the status of a term, to the effect that 150 cattle minimum have to be sold". Perhaps, because of this comment, the defendant did not advance that argument before me.

At the end of the day, Clarke J., on the balance of convenience argument, it appears, discharged the interlocutory injunction. The Minister had argued that if all the animals were returned, the farm could not support them, something which Clarke J. was not in a position to determine. The Minister returned 149 animals of various ages to Mr. Hanrahan, nearly all in the first week of May 2006 and proceeded to sell 233 animals on 2nd June.

Notably, nowhere in the injunction proceedings, does Clarke J. refer to any argument advanced on behalf of the Minister to the effect that the agreement of 11th April, 2006 was repudiated by the Minister's agents by the letter of 25th April, 2006. That is significant and indicates to counsel for the plaintiff that the repudiation argument was an *ex post facto* construction put on the letter of 25th April, 2006 at a later point. That this is so, is also borne out, according to the

plaintiff, first by the fact that Mr. Lonergan went to Mr. Hanrahan's farm on several occasions after 25th April and second, by subsequent correspondence from the Minister's solicitor which would make little sense if the contract was repudiated at that stage.

According to Mr. Lonergan's reports of the visits he made in May and early June 2006, the purpose of his visits was to assess current grass cover and to assess the stock density that Mr. Hanrahan's farm could bear on the basis of certain assumptions regarding feed and fertiliser, *etc*., for the rest of the 2006 season and the winter of 2006/2007.

Counsel for the defence argue that there is no inconsistency in that regard as the Minister's obligations on welfare necessarily involved an ongoing assessment of the conditions on the Hanrahan farm for the purpose of determining not only that the animals already on the farm were being looked after, but also whether some of the remaining animals at the lairage, excluding the cattle to be sold, should be returned to Mr. Hanrahan.

The Defence

(i) Fraudulent Misrepresentation
In the present proceedings, the plaintiff now maintains that there were no welfare problems on his farm when the animals were seized on 15th/16th March, 2006.

The defendant says that the plaintiff did not tell the defendant, when the cattle were seized that the plaintiff did not believe that there was then a welfare issue with the animals. In fact, all his conduct up to that point was that there was a serious problem on the farm because of shortage of feed, *etc*.

When the contract or agreement was signed on 11th April, 2006, the defendant did not know that the plaintiff's true belief was that there was no welfare issue. The defendant now argues that had the defendant known of this duplicity, it would not have entered into the Agreement.

It is certainly true that up to the point of seizure, that is 15th/16th March, 2006, the plaintiff had been constantly complaining verbally and by letter, that there was a feed problem, and that some of his cattle were distressed as a result.

For fraudulent misrepresentation to arise there must have been a misrepresentation of fact to the defendant which was intended to cause the defendant to rely on it and evidence that the defendant did rely on it to his detriment.

Without examining all the ingredients required by the law to establish fraudulent misrepresentation, it is quite clear to the Court that the decision by the defendant to seize the animals was based not on anything the plaintiff said or omitted to disclose but on the conclusions and recommendations of its own inspectors at that time. It must be recalled that the defendant had rejected the plaintiff's claims of distress and starvation *etc.*, made in December 2005 after the defendant's own inspectors had visited the farm and reported to the Department.

For a misrepresentation to have an effect on the contract, the representee must have relied on it (see *Smyth v. Lynn* [1951] 85 I.L.T.R. 57). If the representee does not allow it to affect or influence his judgement or his decision the representation even if fraudulent does not affect the contract. (See McMahon and Binchy, *Law of Torts*, 3rd Ed., p. 973; McDermott P., *Contract Law*, p. 615)

The plaintiff appealed the seizure which in itself alerted the defendant to the plaintiff's belief that he was at that time maintaining that the seizure was wrong and that there was no welfare problem. This appeal was made on the 7th April, 2006, some four days before the agreement was entered into. It must also be recalled that the Agreement was negotiated on the steps of the Court, in the presence of both legal teams and many of the relevant officials from the Department, when clearly all the relevant legal positions were very much in play. A change in the plaintiff's position on the welfare issue must have been obvious at that time when the negotiations were taking place and the Agreement was being drafted. For the defendant (through Mr. Brangan the Senior Superintending Veterinary Inspector) to say in these circumstances that he would never have signed the Agreement on 11th April had he known that the plaintiff did not believe there was a welfare issue in early March 2005 as opposed to realising it only at the trial when the plaintiff produced a video in support of his argument, is not convincing.

When the Agreement was signed on 11th April, everyone involved in the negotiations realised that the plaintiff had fundamentally changed his tune on this issue. I have little doubt, from the evidence, that most, if not all, of the servants and officers of the defendant, had long since come to the conclusion that the stance adopted by the plaintiff at the end of 2005 and the beginning of 2006 was adopted to bring pressure to bear on the Minister in an effort to get her to compromise the "milk quota" proceedings. Writing to the Minister and Taoiseach and enlisting the help of various politicians was part of this campaign which would have been pressed in parallel with his interaction with the defendant's personnel during the same period. The plaintiff's tactics were transparent, and obvious to the defendant's inspectors who in assessing the animal welfare relied not on anything the plaintiff said, but on what they concluded themselves from their own inspections and visits to the farm.

Mr. Pat Brangan, of the Department, in evidence said that he was particularly surprised when during the trial a video taken on 8th March, 2006 by Mr. Gerry O'Callaghan, an independent journalist in Farmer Affairs, and a friend of the plaintiff, was shown to illustrate that the animals were not in a distressed state. When Mr. O'Callaghan gave evidence that the purpose of the video was to show that the cattle were in a condition that did not warrant the seizure which was anticipated as being imminent at the time, the defendant requested leave to amend its pleadings to include a plea of fraudulent misrepresentation. Mr. Brangan, in particular, sought to assert that if he had known the level of premeditation involved in the plaintiff's ploy, he would never have engaged in negotiations, as he would have had no trust in the plaintiff. In view of the above history of the relationship between the Department and the plaintiff, I find that difficult to accept.

Apart from the above, I am not satisfied that the defendant had established that the plaintiff made any positive misrepresentation in relation to what his state of mind was on this issue in any event, and there was no obligation on him to volunteer information on this issue.

The inconsistencies of the plaintiff, the unreliability of his messages and communications to the Department and the difficulty he posed for the Department in his dealings with it, were in my view, facts that were fully appreciated by the

defendant when it entered into the Agreement on 11th April, 2006. Had Mr. Brangan known about Mr. O'Callaghan's video, made on 9th March and the purpose for which it was made, I do not accept the evidence of Mr. Brangan, given at the hearing with an undoubted degree of hindsight, that he would have refused to deal with the plaintiff on the day. The extended nature of the negotiations and the detail of the various clauses finally agreed indicate a total awareness of the plaintiff's history in his dealings with the Department and the caution and wariness which informed the defendant's negotiations on that day. The Department officials were under no illusion as to the kind of the man they were dealing with.

(ii) The Letter of 25th April, 2006

The defendant alleges that it repudiated the Agreement of 11th April, by letter dated 25th April, 2006, for fundamental breach or breach of a condition by the plaintiff.

In this letter, the solicitor for the defendant complained that Mr. Hanrahan was in breach of the Settlement Agreement for: (i) failure, under clause 4(d), to supply evidence of purchase of fodder before any cattle were to be returned; (ii) failure to fulfil undertakings under clause 5 of the agreement in:

> (a) refusing access to his farm of one of the Minister's authorised officers (*i.e*. John O'Gorman) contrary to undertaking (e) in clause 5 of the Agreement not to obstruct any authorised officer entry to the Hanrahan farm;
>
> (b) failing to provide documentation relating to the herd, contrary to undertaking at clause 5(f); and
>
> (c) failing, contrary to clause 5(g) to produce satisfactory evidence that he currently leased/rented land to enable a calculation as to the number of livestock that could be returned to be made.

The defendant's solicitor indicated that for these reasons, the Minister intended to sell 150 animals on 28th April, 2006.

When the plaintiff received this letter, he immediately instructed his solicitors to seek an interlocutory injunction claiming that there was a breach of the Agreement by the defendant. In the present context, it is important to note that in the case made before Clarke J. in the injunction proceedings, the defendant claimed that it was entitled to sell the cattle *under the Agreement of 11th April*. Nowhere in its affidavits, however, did it allege that it was entitled to terminate the contract because of breaches by the plaintiff.

Further, even though the defendant identified four complaints in the letter of 25th April, nowhere is there any explicit statement that as a result of the breaches, the defendant is treating the agreement as being at an end or indicating that it was finished. I am satisfied, however, from the wording of the letter and from subsequent events that this letter purported to repudiate the Agreement.

In particular, the correspondence that ensued between the parties, after Clarke J. suggested on 23rd May, 2006 that certain "fluid issues" should be addressed to see if more animals might be returned by the Department, maintained a tone that indicated that the Department was not resiling from its view that the Agreement was repudiated by the letter of 25th April. In the Department's view this correspondence was entered into and the further inspections after 25th April were conducted, merely to establish whether animals other than the 150 which the Minister was intent on selling, could be returned to Mr. Hanrahan.

In these circumstances, the question for the Court is whether the Department was entitled to repudiate the contracts as it purported to do in its letter of 25th April, 2006.

A closer examination of each of the alleged breaches is now warranted.

(a) Clause 4(d)

Clause 4(d) provides as follows:

> "4. (d) No livestock unit will be returned to John Hanrahan until the sale of the retained animals has been effected by the Dept, unless John Hanrahan produces clear evidence that he has purchased a minimum of three weeks feed/fodder, in a quantity and quality as advised by his consultants to be used specifically for the returned livestock units (excluding any livestock units currently on his holding which he shall continue to maintain at his expense)."

Clause 4(d) means that if the plaintiff is to get animals back before the sale of the retained animals, he must produce clear evidence that he has purchased a minimum of three weeks' feed/fodder for the livestock units to be returned.

My interpretation of clause 4(d), is that it only relates to the period before the Minister sells the retained animals. It says nothing about the position after such a sale is effected. It says that there is no obligation on the Minister to return any cattle before such a sale without proof of feed from Mr. Hanrahan. Failure by Mr. Hanrahan to do this only means that he loses the opportunity to have the animals returned early. He is under no obligation to provide the proof, but failure to do so means that he will not have any animals returned before the sale. That is the contingency that is addressed in clause 4(d): failure to provide evidence of feed means the cattle will not be returned before the sale. The clause does not purport to do more; and specifically, it does not say that Mr. Hanrahan is in breach of contract for failing to do so.

That this is the meaning of clause 4(d) is clearly accepted by the defendant in a letter addressed to the plaintiff's solicitor dated 12th April, 2006, where the defendant acknowledged that the only consequence of failing to observe the terms of clause 4(d) is a delay in the return of the animals to the plaintiff. The same view is repeated in the defendant's letter of 25th April where, having noted Mr. Hanrahan's failure to provide proof of feed, the Department's legal advisor says: "As a consequence no animals will now be returned to Mr. Hanrahan's holding until after the sale of animals, the details of which are set out below".

It is also difficult to understand the defendant's action in returning 146 animals in the two day period, 5th / 6th May,

2006, if the defendant was maintaining at the same time that the Agreement was already repudiated. Perhaps the commencement of proceedings and the application for injunctive relief had something to do with this decision.

(b) Breach of Undertakings
The undertakings which the plaintiff is alleged to be in breach of are now reproduced:

> "5. John Hanrahan undertakes that he will:…
>
> (e) Permit the ongoing monitoring of his holding and all animals on it by the Minister without the obstruction of any of her authorised officers. (No need for John Hanrahan to be present for any such monitoring visits and reasonable notice being given for any visit). Dept may consult with John Hanrahan's consultant if it wishes before during or after any visit.
>
> (f) Provide on request made to him any documentation or information required by the Dept in relation to his herd or already provided for in any of the Regulation notices served on him to date.
>
> (g) Provide satisfactory evidence that he currently has rented lands for the purposes of the calculation of the maximum stocking density for 1 above and not to terminate or surrender such lease without advising Dept first."

It will be noted that there are no time periods specified for the giving of the information required under clauses 5(f) and (g). This is in contrast with a promise given by the Department at clause 4(a) that it "will purchase and provide John Hanrahan with: a) an amount of fertilizer . . . as soon as practicable after execution of this Agreement". In the circumstances, it seems to me that the information required under clauses 5(f) and (g) was not to be furnished ". . . as soon as practicable after the execution of this Agreement." (*Expressio unius est exclusio alterius*). Moreover, referring again to the defendant's obligation to provide fertilizer under clause 4(a), the defendant had not done so when it sent out the letter of 25th April, to the plaintiff, that is, fourteen days after the Agreement was signed, even though the Agreement specified that the defendant was to do so "as soon as practicable". This indicates that the defendant was not treating its own obligations as matters of urgency.

When counsel for the plaintiff was cross-examining Mr. Brangan on this clause, this point was clearly underlined by the plaintiff's counsel. The relevant part of the transcript reads as follows:

Referring to the defendant's obligation under clause 4(a), counsel put to the witness:

> Q. "That was never done, was it?
>
> A. No.
>
> Q. So, in the fourteen days that this Agreement survived, obviously the Department did not have an opportunity to spread that fertilizer?
>
> A. Well, it did not have an opportunity, and I think it would have required an assessment by experts to see what level of fertilization would be required.
>
> Q. That would take a bit of time, wouldn't it?
>
> A. Not an awful amount of time, it could be done the following day.
>
> Q. But it wasn't actually done?
>
> A. It wasn't actually done.
>
> Q. It wasn't done for the following fourteen days?
>
> A. No." (see transcript Day 15, Questions 87-91 inclusive).

My view is that the plaintiff's undertakings had only to be performed within a reasonable period in the circumstances and he was not in breach when the decision was made on 24th April or when the letter was sent out on 25th April, 2006.

Undertaking in clause 5(e) of the Agreement
With regard to clause 5(e), I am of the view that the plaintiff was in breach of his undertaking under this clause when he refused Mr. John O'Gorman admittance on 19th April, 2006. Although, given the background, it must be reasonable to suggest that the Agreement, oriented as it was, to future conduct, was based on an understanding that the parties would cooperate in its implementation and that the parties would not act unreasonably in the matter. Nevertheless, the terms are clear and were carefully drafted and must be given their natural meaning. It is true that it may have been insensitive of the Department, if not provocative, given the history, to assign Mr. O'Gorman to that task on that day, but the Agreement is clear on the matter. The question then arises as to the effect of this breach. In this matter, I accept the submission of counsel for the plaintiff when, in written submissions to the Court, he states:

> "The purpose of the clause as agreed by Martin Blake, in evidence, on behalf of the defendant, was to ensure inspection of the plaintiff's farm. He also agreed that inspections could continue despite the breach. Indeed, a successful inspection took place on 25th April. So, viewing the purpose of the clause from the defendant's perspective, the breach on 19th April, did not mean that the defendant was deprived entirely of the benefit of the clause or the contract. It is also noteworthy that the contract required the defendant to give reasonable notice of the inspection and, arguably, the short notice given on 19th April was not reasonable.

> Secondly, at the time the defendant did not elect to treat the contract as repudiated for this or any other reason. This is shown by the subsequent inspection by Toby Moran and Martin Hanrahan on 25th April, which Toby Moran said was for the purpose of checking compliance with the Agreement. This inspection post dated the decision to repudiate which, according to Martin Blake, was made on 24th April. Also, as already stated, the defendant's stance in the injunction meant that he had not relied on the obstruction as a basis for repudiating the contract."

There was also evidence that the visit by Mr. Moran and Mr. O'Gorman on 19th April was to meet with Dr. Butler and Mr. Lonergan to enquire why the number to be returned to Mr. Hanrahan from the lairage was so great. That was the live issue on that date. Dr. Butler and Mr. Lonergan waited for some considerable time, but when Mr. Moran and Mr. O'Gorman did not show at the fixed time, they left. Given the purpose of this particular meeting, it could not be classified as a normal inspection visit and, accordingly, in my view, had less significance for future visits to the farm.

In my view, Mr. Hanrahan's objection to Mr. O'Gorman was a personal one and it was not an objection to the monitoring, as such, as can be clearly seen from his subsequent attitude to Mr. Lonergan and Mr. Martin Hanrahan when they presented themselves at the farm on the following day after the refusal to allow Mr. O'Gorman on to the property. The plaintiff allowed these two authorised officers to come on to the property and carry out the required inspection without obstruction.

It is certainly true that it was not for Mr. Hanrahan to nominate what authorised inspectors were to visit the farm, but noting that Mr. O'Gorman was from outside of Mr. Hanrahan's agricultural area, and had to be reassigned from his normal area for the visit to the Hanrahan farm, as well as the personal animosity that already existed, I am of the view that such an assignment was unfortunate, to say the least. I am not prepared to hold, in the circumstances, that Mr. Hanrahan's breach of this undertaking was such as to justify repudiation.

In reaching this conclusion I would also like to draw attention to the fact that obstructing an authorised officer is a criminal offence and it was open at all times for the defendant to initiate a criminal prosecution if it was of the opinion that John O' Gorman had been obstructed or refused entry by Mr. Hanrahan. Although it is understandable that the defendant was reluctant to take this option in the circumstances, it might reasonably be taken also to indicate that the defendant too did not consider the "obstruction" to be a major issue.

Clause 5(f)
This clause related to the undertaking by Mr Hanrahan to provide, on request, documentation in relation to his herd. Under the relevant regulations, the owner or keeper is obliged to keep certain records (e.g. numbers, medical treatment, mortalities, etc.) of the herd and produce them when requested by the Department officials. There had been a problem of records on the Hanrahan farm for some time. Ambrose Hanrahan, the plaintiff's son, had since February, 2000 kept the records on his computer. Ambrose was the person who primarily managed the cattle and the allocated keeper, and whose familiarity with almost all of the individual animals in the herd was truly impressive, being able in court to identify from photographs the tag number of each animal from its size and colourings alone. He gave evidence that sometime before December, 2005 he had a virus on his computer and that the records were gone and could not be retrieved. Since then he had recorded the relevant information by hand in a ledger which was produced in court. Ambrose also gave evidence that on 21st December, 2005, he mentioned this to Mr. Denis Vaughan (an authorised officer) in the course of an inspection, which also involved Toby Moran (who admitted overhearing part of the conversation) from the Department, who responded that these things happen and advised him that the best thing to do was to keep a written record. Ambrose handed into court a book with handwritten records the first entry of which was dated 20th December, 2005. He gave further evidence (which was contradicted by John O'Gorman) that he had shown this book to Mr. O'Gorman during an inspection on 9th February, 2006 in "the power room" next to the calving shed which was brusquely brushed aside with an angry gesture. He said Mr. O'Gorman had begun shouting and roaring at him and accused him of putting the virus on the computer himself. He said he was screaming at him and was invading his "personal space". Ambrose testified that he was shocked at this treatment from an official from the Department and that he then walked away. Shortly thereafter, he told his father what had happened. This was the origin of the animosity that existed from that day between John Hanrahan and Mr. O'Gorman.

Mr. O'Gorman confirmed that a confrontation took place and lasted for a period of 10 to 15 minutes on the farm on that day. He also admitted that it was "a very unusual occurrence in terms of the speed at which Ambrose Hanrahan progressed to a state of what I read as inchoate (*sic*) rage." When cross-examined as to whether the book had been recently compiled, Ambrose denied that it had. Mr. O'Gorman in his evidence denied being offered written records on that day. Mr. O'Gorman also admitted that he had access to some of the requested information from a central computer in Tipperary and he had some of the requested information in the car on that day.

Without determining where the full truth rests on this issue it is clear that there was a serious altercation on that occasion as a result of which John Hanrahan took a position in relation to Mr. Gorman's presence on the farm after that.

On 2nd June, 2006, when Mr. Toby Moran and Mr Martin Hanrahan were carrying out an inspection on the farm, Ambrose again offered to assure Martin Hanrahan about the records he had been keeping. According to Ambrose, Martin Hanrahan said "No, there's no need. There is no issue with that at all". The transcript of Ambrose's evidence then continues: "I insisted on showing him the book and he opened it like this (indicating) and closed it. He made no comment on it. I showed it to Toby Moran as well and Toby looked at it and he said: 'That's a great job. Keep it up. It's lovely and tidy and it's lovely and neat"'.

I accept much of what Ambrose Hanrahan said in respect of the records and their availability as set out above and if there was a deficiency in this as far as the Department was concerned, it made provision for it in clause 5(f) of the Agreement. This obliges the plaintiff to "provide on request made to him…" the information relating to his herd. There was no evidence of any request for, or refusal to furnish the documentation relating to the herd, between the 11th and 25th April. There was no request for such documentation on 19th April, when the farm was inspected, and according to Mr. Moran (the defendant's authorised officer), the plaintiff did produce documentation to Mr. Martin Hanrahan (another authorised officer) on 25th April, and this was not contradicted. I accept that it is possible to interpret the clause as requiring the plaintiff to provide information specified in regulation notices already served on him without being asked for it specifically, but there is no evidence as to what this might be or whether such information was outstanding on 25th April. Even if this was so I would expect a request to be made to trigger the information in the new situation that prevailed after the Agreement was signed on 11th April.

For these reasons, I find that there was no breach of this undertaking by the plaintiff.

Undertaking in clause 5(g)
It is true that the information in clause 5 was required for the calculation to be made by the experts at clause 5, but since the experts made the calculation on 19th April, one has to assume that they had this information available when they made their determination on that date. It transpired in any event that the calculations were made on figures supplied by Teagasc which in the event short- changed the plaintiff in so far as a 38 acre field owned by the plaintiff was omitted from the calculation. Had it been included it would have resulted in more animals being returned to John Hanrahan.

The calculation done by the experts on 19th April, 2006, was based on the assumption that Mr. John Hanrahan would have available, for 2006, in addition to the home farm, the Kiely lands of approximately 146 acres. Mr. Hanrahan gave evidence that he rang Ms. Kiely from Clonmel Courthouse on 11th April, 2006, and she confirmed to him on the phone that the land was his for 2006. Ms. Kiely, in her evidence, confirmed the phone call and the letting. Not only had she a recollection of the conversation, but she also had a diary entry to that effect. Commendably, Ms Kiely kept a personal diary in which she recorded all of this type of information and the relevant excerpts were exhibited in court. Subsequently, she wrote a brief letter dated 3rd May, 2006, to Mr. Hanrahan, confirming the agreement in the following terms:

> "Dear John,
>
> I confirm that full rent for 2005 has been received by Shee & Hawe, and that the let lands of 126.904 acres at Curraghdobbin are available to you immediately in addition to the 18.6 acres at Curraghdobbin in return for the maintenance of the fences by you.
>
> Yours sincerely,
>
> Anne P. Kiely."

Ms. Kiely frequently used Mr. P. J. Shee of Shee & Hawe, property consultants, *etc*., Carrick-on-Suir, as her agent, when letting the land and Mr. Shee responded by letter dated 28th April, 2006, to an apparent enquiry from the defendant's solicitor, which appeared to contradict what Ms. Kiely had said. It suggested that although Mr. Hanrahan wished to take the lands again for 2006, "he will not be allowed into the lands until at least the 2005 balance is paid beforehand". Ms. Kiely confirmed in her evidence to the Court that as far as she was concerned, her decision to let the property to Mr. Hanrahan had not changed between 11th April, 2006, and 3rd May, 2006. She wrote a further, more detailed, letter of 7th May, 2006, to John Hanrahan, again confirming the agreement and setting out the long term plans for treating the land (*i.e*. with fertilizer, *etc*.) which had been agreed between them as far back as 2005.

Counsel for the defendant suggested that Mr. Shee's letter of 28th April, 2006, indicated that no final agreement had been made with Mr. Hanrahan at that time. That, of course, is a possible construction, but having heard Ms. Kiely give her evidence, as well as Mr. Shee, I have come to the conclusion that Ms. Kiely had made an agreement to let the land on 11th April, 2006, and that subsequent discussion, prompted, no doubt, by the solicitous Mr. Shee, related to making arrangements for payment of the rent. It must be remembered, as Ms. Kiely herself said in evidence, that Mr. Hanrahan was a friend and neighbour with whom she had done business previously. In fact, she said Mr. Hanrahan had overpaid her in 2005. A clear indication how such business is done in the farming community can be seen from a diary entry made by Ms. Kiely in 2005, where someone else wished to take the land and was willing to pay the rent up front. The entry read:

> "Bates Bros. called. [I] said I had given my word verbally to J.H. [*i.e*. the plaintiff], wouldn't go back on it."

By letter dated 5th May, 2006, Mr. Shee wrote again to Mr. Plunkett, solicitor for the defendant, in response to another letter from Mr. Plunkett confirming:

> (i) that all arrears of rent for 2005 had been discharged;
>
> (ii) that in respect of 2006, the payment of rent and the procedures had already been agreed with himself and Ms. Kiely, as well as the term of the agreement for 2006;
>
> (iii) finally, in response to a question as to the acreage let and the purpose of the letting, he wrote:
>
> "has already been dealt with in reply affidavit which is already with you and I confirm Mr. Hanrahan has informed me when the soil analysis has been quantified on Ms. Kiely's farm and already agreed by Department of Agriculture and Food by Mr. Tony Lonergan [Mr. Hanrahan's agricultural advisor] on 3rd May, 2006.
>
> Total acreage of 145.5/146.
>
> I wish to state at the request of Ms. Kiely a meeting took place this morning in my office with Ms. Kiely and Mr. Hanrahan and all above matters have been discussed and clarified to the satisfaction of Ms. Kiely."

It must be recalled that Ms. Kiely was the principal in the relationship with Mr. Shee and in writing the letter of 5th May, 2006, Ms. Kiely was affirming clearly what she had already agreed with Mr. Hanrahan at an earlier date. That Ms. Kiely sometimes acted without the knowledge of her agent can also be seen from Mr. Shee's own evidence that from time to time, Mr. Hanrahan would go to Ms. Kiely and would give her a certain amount of money to keep her happy. That, according to Mr. Shee, is what happened in 2005, when, although he received no money, all payments were made directly to Ms. Kiely by Mr. Hanrahan.

It is my conclusion that Ms. Kiely had agreed to let her lands (146 acres) to Mr. Hanrahan on 11th April, 2006. This meant

that the total acreage available to Mr. Hanrahan when the experts were doing their calculation on 19th April, 2006, was 361.72 acres. When the stocking rate agreed by the experts of 1.1 was applied to this, it meant that 328 livestock units were to be returned. (This is also supported in the report of T. Lonergan, advisor, sent to Mr. Ray Carthy, Divisional Veterinary Officer, Tipperary, dated 20th April, 2006).

Much evidence was given on the question of how much land Mr. Hanrahan had rented/leased in the period of 2005/2006 and on which the 1.1 stocking rate was based. In a sense, this was not fully relevant since the Agreement had delegated this function to the two experts whose function it was to determine this. It is true that Mr. Hanrahan had given an undertaking at clause 5(g) that he would supply this information before any animals were returned. Nevertheless, as I have already pointed out, failure to honour his undertaking did not negate the calculations made by the two experts under clause 1; it merely enabled the Minister to delay the return. Before the delay would amount to a term, the delay would have to be of unreasonable duration and would require a reasonable warning at least from the defendant that time was then of the essence.

Dr. Butler, the expert appointed to represent the plaintiff's interest, gave evidence as to how the 1.1 ratio was arrived at. He said it was based on figures of the plaintiff's holding which were supplied to Teagasc. It assumed that the plaintiff had in addition to his own farm an additional 146 acres from Ms. Kiely. Significantly, Mr. Lonergan, the expert nominated by the defendant, was not called to give evidence at the hearing. Consequently, Dr. Butler's evidence on this was unchallenged by evidence from that quarter.

In the course of his evidence, Mr. Ambrose Hanrahan, the son of the plaintiff, gave evidence that in addition to the home farm and the Kiely land, the plaintiff also rented/leased additional land from a Mr. Gerard Quirke and from Mr. James O'Donnell (the Ballypatrick land).

When counsel for the defendant heard this, he applied at the trial to amend his pleadings to include a plea to the effect that if the defendant knew the quantity of land the plaintiff had available to him was much greater, according to Ambrose Hanrahan, than the experts knew, the defendant would have refused to sign the Agreement on the basis that if welfare issues arose when such a large amount of land was available, their view of the managing skills of the plaintiff would have been so negative that they would never have signed the Agreement. I refused to permit this amendment on this basis, but I did allow an amendment which permitted the defendant to plead fraudulent misrepresentation on other grounds and which I have already dealt with in this judgment.

When Mr. John Hanrahan was recalled, he was questioned about this additional land by counsel for the defendant. In his evidence, he said that his son Ambrose was not fully informed of the details of how these lands were taken. He said that Ambrose Hanrahan was very stressed at the time and that he, the plaintiff, did not keep him informed on all the details such as Dr. Butler's reports, letters from the Department or the arrangements he had with various people in respect of grazing and silage. The plaintiff gave evidence that the lands taken from the O'Donnells and from the Quirkes were never rented. In respect of the O'Donnell land he said that since it was "reps land" this could not be leased. He said that in 2004 he took two cuts of silage from the relevant land from Mr. O'Donnell. Again, in April 2005, the grass on the O'Donnell land was very high and at Mr. O'Donnell's invitation, he "blast grazed" a portion of it to enable a silage crop to be harvested. He gave evidence that he did not rent this land at the time. Similarly, in respect of the lands of Mr. Gerard Quirke, there was no question of renting the land. At Mr. Quirke's invitation, he put approximately 30 heifers onto this land for some weeks in 2005 to eat the surplus grass on the land. They were brought to the Kiely land in May before the scheduled auction of selected animals to be held by Mr. Johnson on 11th June. After that period, Mr. Hanrahan said that:-

> "We would have used the Quirke land as there was grass available and we would have cut 8 or 9 acres of hay...The strict understanding from Mr. Quirke was, he was not renting the ground, he wanted me to eat the surplus grass off the farm and we put the cattle out there."

After the aborted auction, in June 2005, he gave evidence that Mr. Quirke would come on some occasions and ask him to graze the excess grass there, but whenever Mr. Quirke wanted the land for his own horses, Mr. Hanrahan moved the cattle away.

I accept the evidence of Mr. John Hanrahan in relation to these extra lands. They were never rented in 2005 or 2006 and the impression that Mr. Ambrose Hanrahan gave in this matter was mistaken.

Conclusions on the Contract
For the reasons outlined above I have concluded that (a) there was no fraudulent misrepresentation that was relied on by the defendants such as would justify a repudiation of the agreement; (b) the undertakings which were still unfulfilled by the plaintiff on 25th April did not justify a repudiation of the contract. The letter of 25th April, 2006 from the defendant's solicitor constituted a repudiatory breach of contract which the plaintiff elected to challenge when he commenced the proceedings for injunctive relief. The animals returned by the defendant in early May, 2006, were, therefore, returned because of a contractual obligation under the Agreement, and not, as the defendant contends, because of an independent decision under the Regulations. In failing to deliver the cattle back to the plaintiff and by selling the cattle on the 2nd June, 2006 the defendant breached the agreement of 11th April, 2006.

Finally, if all the animals had been returned under the Agreement to the plaintiff's farm, they could always have been seized again if welfare issues arose in the future. There was nothing irretrievable in returning the animals to John Hanrahan and since the Minister always had the trump cards in relation to welfare issues, this also might favour an interpretation that suggests that the undertakings were not fundamental terms in the contract.

A proper reading of the agreement would suggest that the undertakings given were subsidiary to the main provision which related to how many cattle were to be returned. When that figure was established, the Minister reserved his right to retain the animals until he was satisfied that the assurances sought in the undertakings regarding conditions on the farm had been met. The effect was to postpone the return until the undertakings had been met. In that sense the undertakings enabled the Minister to postpone the return date, but did little more. Further, since no time was fixed for their performance, and time was not of the essence in the contract, it must be assumed that the plaintiff was to be given a reasonable time to fulfil his undertakings. Many of the undertakings could not be addressed in a meaningful way until the experts reported on 19th April and although Mr Hanrahan's efforts left something to be desired, it was, in my view unreasonable and in breach of the contract for the defendant to attempt to repudiate the Agreement in a letter dated

25th April which indicated that the Minister intended then to sell 150 animals on 28th April. This was especially so since the defendant was herself in delay in performing her obligations under the Agreement.

The Duty of the Minister when the Animals were Seized
Having analysed the contract and the obligations of the parties under the Agreement, it is incumbent on the Court to address the Minister's obligation under the legislation, since the Agreement specifically provided that its terms were "subject to the statutory obligations of the Minister".

When it was determined (properly) that there were welfare problems on Mr. Hanrahan's farm, the Minister had power to seize the animals and hold them and eventually dispose of them through sale. The relevant provision reads:-

> "Regulation 10(2) In relation to any seized animal, an authorised officer may sell it or cause it to be sold or be otherwise disposed of or destroyed in such manner and at such place as the authorised officer considers appropriate in the circumstances of the case."

Since this power was given under the European Communities (Protection of Animals Kept for Farming Purposes) Regulations 2000, it must be assumed that the primary duty of the Minister was to look to the welfare of the animals in the first place. Initially, this would clearly entail locating proper and suitable accommodation for the animals, as well as ensuring that they were properly fed and watered and that they were supervised in an appropriate manner and that they were examined by veterinary inspectors.

In addition to this statutory duty, it may well be that the Minister has also a duty to take reasonable care of the animals and if disposing of them to ensure that a good price (not necessarily the best price) is achieved. But "reasonable care" must be construed in the context of the statutory obligations which authorised the seizure in the first place and must be assessed in the context of the welfare of the animals first and foremost. Any duty to the owner of the herd was secondary to this overriding obligation imposed on the Minister by the legislation. This does not mean that no duty of care was owed to the owner also, but it did mean that any such duty had to be subordinated to the primary duty under the Regulations. If, for example, the Minister decided to dispose of the animals by sale, having regard first to his statutory obligations, the Minister should, insofar as possible, also seek as fair a price as she can get for the possible benefit of the owner.

> Bearing this in mind, I must determine whether:
>
> (i) the accommodation reserved at Purcells' Lairage was appropriate;
>
> (ii) the feed and care provided for the animals was adequate;
>
> (iii) the veterinary supervision was sufficient; and
>
> (iv) the price obtained was adequate in the circumstances.

Postponing consideration of the price, I am satisfied, subject to the reservations expressed below, that no fault could be found in the preparation and in the provisions made by the Minister in respect of (i), (ii) and (iii) above. They were clearly adequate for the execution of the statutory functions entrusted to the Minister. More specifically, having listened to the evidence relating to the facilities available in Purcell's Lairage, I have come to the conclusion that they were adequate in the circumstances certainly when the initial seizure was made. Moreover, I am satisfied also that the herd manager, Mr. Byrne, was an experienced herdsman and was well qualified for the job. I am also of the view that adequate feed was provided during the early stages in particular and that the veterinary supervision was carried out regularly by qualified veterinary inspectors.

Clearly, if the cattle were sold within a reasonable period of time, no criticism could be made under any of these headings.

My only hesitation in that regard, however, relates to the fact that the herd seized was a dairy herd which, if not disposed of or sold quickly would clearly present additional problems of an ongoing and increasing kind. The longer the herd was detained at the lairage the more of a problem this would become.

The plan to dispose of the animals at an early stage, however, did not materialise and the holding period was extended beyond anything which the authorities imagined on the 15th /16th March. The delay was caused by the plaintiff exercising his right of appeal to the District Court, by the agreement signed by the parties on the 11th April and the injunctive proceedings taken by the plaintiff at the end of April. The latter were only finally determined on 23rd May, 2006 when Clarke J. eventually discharged the injunction which prevented the sale, thereby effectively leaving over the rights of the parties to be determined at the eventual hearing of the action. No criticism can be levelled against the plaintiff for exercising his legal rights: the appeal to the District Court is specifically provided for in the legislation itself. Nevertheless, the short period of detention envisaged by the authorities had by 23rd May extended to 10 weeks, and was ongoing. The duty of the authorities in respect of the herd needed to be reassessed on an ongoing basis. When the appeal came on for hearing on 11th April, 2006, the circumstances of the case were changing: it was becoming clear that the lairage was never designed for holding such a large number of animals for such an extended and continuous period of time; more cows were calving and the need for milking facilities increased dramatically; increased care and attention was also required in the management of the animals in such changing circumstances; the costs of the holding operation were increasing beyond anything that was originally envisaged; and lastly, the situation on the plaintiff's farm, which was the main reason for the seizure in the first place, had improved considerably when grass became plentiful as the growing season moved towards the end of April and the start of May.

In view of the changing circumstances it was quite proper, in my view, that the Minister should monitor the situation and review and revise her decisions relating to the herd. That is what I understood the authorities were doing when initially they left 150 of the milking cows (and some calves) at the farm on 16th March, 2006 and when the authorised officers visited the farm to assess the herd and grass growth on 23rd and 29th March, introduced some milking facilities and returned some 140 cattle and calves on the 3rd /4th May, 2006. This is also what underlay the agreement of 11th April. It was an attempt to calculate how many cattle could be returned on an agreed formula applied by agreed experts. There was nothing in these efforts which conflicted with the obligations of the Minister under the legislation.

It may be that the Minister's officers anticipated that the experts would report that a good number of animals would have to be sold, when on 19th April, 2006, they carried out their functions under the Agreement enough, perhaps, to cover the Minister's expenses and not a mere 5.4 livestock units only. But this is not how it worked out and the Agreement did not specify that any such minimum number of livestock had to be sold.

It is my conclusion from this analysis that there was nothing in the statutory regulations or in the Minister's obligations derived therefrom which prevented the Minister from entering the Agreement of 11th April, 2006 or from fulfilling the provisions negotiated in it.

In considering the positive duty of the defendant in these changing circumstances, I have come to the following conclusion. The primary duty of the Minister once the animals were properly seized was to look after the cattle properly bearing in mind the statutory powers of the Minister to sell and dispose of the animals if she considered it appropriate. The welfare of the animals was of course the primary concern and this involved providing adequate accommodation and shelter as well as seeing that they were properly fed and had available appropriate veterinary support when necessary.

Dr. Butler in his report dated 10th April, 2006 while accepting that the accommodation was quite good, expressed reservations, however, about the management regime for the freshly born calves and their mothers, and the feeding regime in place which was deficient, according to Dr. Butler, in that there was no mineral-vitamin supplementation which "would not bring the animals into a fit state to realise their market potential".

On that issue, it must be remembered that the primary duty of the Minister was not to bring the animals into a fit state to realise their market potential. Her principal duty was the welfare of the animals and if a decision was made to dispose of some of them, the Minister had then a residual duty to the owner to do so in a reasonable fashion. But reasonableness in this sale did not mean that the Minister was obliged to hold on to the animals until they had reached their maximum potential in that regard.

I am satisfied that the regime that existed up to 25th April, 2006 in the lairage was not in breach of the Minister's statutory duty to ensure the welfare of the animals. In any event, at clause 6 of the Agreement, the plaintiff acknowledged that the livestock units to be returned were in a condition no worse than when they were seized and he waived any claim in respect of the animals returned to him. If the Court finds that the defendant was in breach of the Agreement, as it does, then in my view, the plaintiff cannot resile from this waiver.

In such circumstances, whether the Minister took reasonable care given her primary statutory obligation, has to be judged against the delay involved in the legal challenges and the changing circumstances in the yard. Having considered all the evidence, I am not prepared to find that there was a breach by the defendant of the duty of care, statutory or other, she owed to the plaintiff in respect of looking after the animals up to the time when she attempted to repudiate the contract on 25th April, 2006.

As I have already said, however, she was in breach of her contractual obligations under the Agreement signed by the parties on 11th April, 2006 when she purported to repudiate the Agreement by letter dated 25th April, 2006 and sold the remainder of the animals on 2nd June, 2006.

These are the relevant liability issues that had to be determined and it now remains for the parties to address the damages that are appropriate. These should be measured in my view on the basis that all the animals except 5.4 livestock units should have been returned on 25th April, 2006, or whenever it might be assumed the plaintiff would have had a reasonable opportunity of honouring his undertakings.

When the parties have had time to consider this judgment, it can be mentioned to me at their convenience.