THE HIGH COURT

RECORD NO. 2005/840P

BETWEEN

SHELL E & P IRELAND LIMITED

PLAINTIFF

AND

PHILIP MCGRATH, JAMES B. PHILBIN, WILLIE CORDUFF, MONICA MULLER, BRID MCGARRY AND PETER SWEETMAN

DEFENDANTS

Judgment of Finnegan P. delivered on the 7th day of April 2006.

1. The Plenary Summons herein was issued on the 4th March 2005. The reliefs claimed included the following injunctive reliefs –

> 1. An Order restraining the Defendants, and each of them, their servants or agents, and any person acting in concert with them and any person having notice of the making of the Order from obstructing or continuing to obstruct and/or interfering or continuing to interfere with the entry by the Plaintiff on lands at Rossport in the County of Mayo and more particularly described in the Affidavit of Paul Gallagher sworn herein on the 4th day of March 2005.
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> 2. An Order restraining the Defendants, and each of them, their servants or agents, and any person acting in concert with them and any person having notice of the making of the Order, from assaulting, battering or committing trespass to the person of the employees or agents of the Plaintiff at or near lands at Rossport in the County of Mayo and more particularly described in the Affidavit of Paul Gallagher sworn herein on the 4th day of March 2005.
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> 3. An Order restraining the Defendants, and each of them, their servants or agents, any person acting in concert with them and any person having notice of the making of the Order, from intimidating or continuing to intimidate and/or threatening or continuing to threaten the employees or agents of the Plaintiff at or near lands at Rossport in the County of Mayo and more particularly described in the Affidavit of Paul Gallagher sworn herein on the 4th day of March 2005.
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> 4. An Order restraining the Defendants, and each of them, their servants or agents, any person acting in concert with them and any person having notice of the making of the Order from continuing to cause or causing a nuisance at or near lands at Rossport in the County of Mayo and more particularly described in the Affidavit of Paul Gallagher sworn herein on the 4th day of March 2005.
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> 5. An Order restraining the Defendants, and each of them, their servants or agents, any person acting in concert with them and any person having notice of the making of the Order from interfering or continuing to interfere and/or trespass or continuing to trespass on the lands at Rossport in the County of Mayo and more particularly described in the Affidavit of Paul Gallagher sworn herein on the 4th day of March 2005.

2. On the same day the Plaintiff issued a Notice seeking interlocutory relief to the like effect.

Background

3. The Corrib Gas Field is sited 65 kilometres from the nearest significant land mass the islands off the Mayo coast at the Mullet Peninsula and Achill Head on Achill Island. Between 2001 and 2004 the Plaintiff obtained the statutory consents required to commence development of the Corrib Gas Field. The Defendants oppose that development.

4. On the 15th April 2002 the Minister for the Marine and Natural Resources granted a pipeline consent for the construction of the import pipeline pursuant to section 40 of the Gas Act 1976 (as amended). As the necessary way leaves could not be obtained by agreement the Plaintiff applied to the Minister for the Marine and Natural Resources for Compulsory Acquisition Orders pursuant to section 32 of the Gas Act 1976 and these were granted by the Minister on the 3rd May 2002 and the 5th June 2002. In each case these conferred on the Plaintiff the right in relation to the lands the subject matter of the Orders –

> "to use the relevant land for the construction, operation and maintenance thereon, therein or thereunder of a pipeline and such other works, services, facilities and other things as are necessary or expedient in relation thereto or are ancillary thereto or form part of such construction, operation or maintenance."

5. Each of the Defendants are owners of lands affected by the Compulsory Acquisition Orders. Each of the Defendants was notified under Article 3(2) of the Second Schedule of the Gas Act 1976 of the way leave deviation limits confirmed by the Minister pursuant to Article 9 of the said Schedule by letters dated 17th December 2001. They were each served with a Notice of Entry pursuant to Article 11(f)(iii) of the Gas Act 1976. They were each notified of the Plaintiff's intention to exercise its right of entry on or after the 10th January 2005.

6. On the 10th January 2005 the Plaintiff sought to enter upon the lands the subject matter of the said Compulsory Acquisition Orders in order to survey and peg the pipeline centre line and the boundaries of the working width way leaves which were the subject matter of the Compulsory Acquisition Orders. On that day and on a number of days following the Plaintiff was prevented by the actions of, inter alia, the Defendants from carrying out its intention.

7. The Plaintiff sought interlocutory relief in similar terms to the reliefs sought in the Plenary Summons to restrain the Defendants from continuing their conduct. The motion was heard by me over several days, the 18th March 2005, the 23rd March 2005 and the 4th April 2005. On the last mentioned date I made an Order restraining the Defendants from interfering or continuing to interfere with the entry of the Plaintiff on to the pipeline corridor and deviation limits through the lands at Rossport in the County of Mayo more particularly described in the Compulsory Acquisition Orders and delineated on the maps or plans appended thereto and thereon coloured red and green respectively. The Plaintiff undertook that until such time as further authorisation was received from the Minister the works they would carry out would be limited to surveying and pegging the pipeline route and fencing the deviation limits of the way leave. From the Affidavits sworn on behalf of the Plaintiff it appeared that if works were not commenced by the 1st June 2005 the Plaintiff would become liable to pay €25,000 per day in stand-by costs. Further if the works were not commenced by the 1st July 2005 they would not be completed by the end of October 2005 and would then have to be deferred until 2006 whereupon the Plaintiff would incur a remobilisation fee of approximately €2,500,000. It was made clear by each of the Defendants that should such costs be incurred by the Plaintiff as a result of wrongful conduct on their part they would be unable to satisfy a claim for damages.

8. The Plaintiffs issued a motion returnable before the Court on the 29th June 2005 seeking the attachment and committal of the first named Defendant, the second named Defendant, the third named Defendant and two other persons not parties to the proceedings Vincent McGrath and Micheal O'Seighin for contempt of court in failing to comply with the Order which I made on the 4th April 2005. That motion was heard on that day by MacMenamin J. and an Order was made by him committing to prison the first named Defendant, the second named Defendant, the third named Defendant and the said Vincent McGrath and Micheal O'Seighin each of whom remained in prison until the 30th September 2005 that is for some 94 days.

9. On the 30th September 2005 the Plaintiff applied to the Court to have the injunction granted discharged: because of continuing difficulties in obtaining access to the site it had not been possible to progress works and as no works could be carried out during winter months the injunction was serving no useful purpose. This was a proper application for the Plaintiff to make and I discharged the injunction. An application was then made on behalf of the contemnors that they be released reliance being placed on *The State (Commins –v- McCrann* (1977) IR 80. At page 89 of the judgment Finlay P. said –

> "In civil contempt, on the other hand, a Court only moves at the instance of the party whose rights are being infringed and who has, in the first instance, obtained from the Court the Order which he seeks to have enforced. It is clear that in such cases the purpose of the imposition of imprisonment is primarily coercive; for that reason it must of necessity be in the form of an indefinite imprisonment which may be terminated either when the Court upon application by the person imprisoned, is satisfied that he is prepared to abide by its Order and that the coercion has been effective or when the party seeking to enforce the Order shall for any reason waive his rights and agree, or consent to the release of the imprisoned party."

10. On the application it was made quite clear that the contemnors were unwilling to purge their contempt and in particular were unwilling to undertake to comply with further Orders of the Court which might be made in this matter. Notwithstanding this I directed the release of the contemnors being satisfied that their detention at that time did not serve any coercive purpose. I indicated that I proposed to consider whether having regard to the contempt found against each of the contemnors and their refusal to purge their contempt it was appropriate that the Court should exercise in respect of any of the contemnors its punitive powers. On behalf of the contemnors it was argued that the injunction having been discharged on the application of the Plaintiff the Court enjoyed no powers to punish contemnors who had not purged their contempt. Having released the contemnors I adjourned this matter for argument.

11. Submission on behalf of the first named Defendant, the third named Defendant, Vincent McGrath and Micheal O'Seighin.

12. On behalf of these contemnors it is first argued that civil contempt is a coercive mechanism. In *Keegan v de Burca* (1973) IR 223 at 227 O'Dalaigh C.J. said –

> "Civil contempt, on the other hand, is not punitive in its object but coercive in its purpose of compelling the party committed to comply with the Order of the Court and the period of committal would be until such time as the Order is complied with or until it is waived by the party for whose benefit the Order was made."

13. Reliance was also placed on *The State (Commins) v McCrann* (1977) IR 78 at 89 and in particular on the passage from the judgment of Finlay P. which I have set out above. There is, it is submitted, no Irish authority in support of the proposition that the Court is at large to impose on its own motion a sanction on a party that has previously been the subject of a Committal Order. While such a course was adopted in *Phonographic Performance Limited –v- Amusement Caterers (Peckham) Limited* 1963 Ch 195 that case was distinguishable on its facts. In that case prior to the hearing of the Committal Motion the Respondents complied with the Order and it was unnecessary for the Court to exercise its jurisdiction for the purpose of coercion. The Court in that case made an Order for sequestration of the defendant Company's property and committal of the Directors to prison on the Plaintiff undertaking that if certain conditions for the protection of the Plaintiff were fulfilled within a certain time the Plaintiff would not enforce the Order. The conditions were the payment of the Plaintiff's costs and an amount owing for licence fees.

14. I was next referred to *Jennison –v- Baker* (1973) QB 53 as a solitary instance of a Court imposing a sanction for a past breach of an injunction that had been abandoned. I note however that the dicta in that case were cited with approval by the Court of Appeal in *Whitter –v- Peters* (1982) 2 All ER 369 at 374.

15. Finally reliance was placed on passages in *Keegan –v- de Burca* and *Flood –v- Lawlor* (2002) 3 IR 67 at 79/80 and with which passages I will set out later in this judgment.

16. The next argument advanced on behalf of these contemnors is based on double jeopardy. While accepting that the imprisonment to date was coercive in nature it is argued that to impose a further penalty by way of punishment would be to expose the contemnors to double jeopardy. In committing the contemnors to prison MacMenamin J. it is submitted was exercising the dual functions of coercion and punishment and that accordingly the question of punishment cannot be revisited on the Court's own motion where this is not sought by the Plaintiff. It is further submitted that there is no new evidence before the Court to support such a step: this submission ignores the continued refusal of the contemnors to purge their contempt. In support of this argument reliance is placed on *Lamb –v- Lamb* (1984) FLR 278. Finally it is suggested that if I were to make any Order in this matter the original committal for contempt having been made by MacMenamin J. that I would be personalising the breach of my own Order. Further to so act in effect would represent a decision by me that the Order of MacMenamin J. was too lenient so that in effect I would be altering his Order.

17. The last matter raised in the submission is that the response of the Court to contempt should be proportionate.

Submission on behalf of the second named Defendant

18. On his behalf it is contended that he should not be punished for contempt because

> (a) the facts of the case do not come within the exceptional circumstances in which a Court may impose an entirely punitive penalty in civil proceedings;
>
> (b) the imposition of a penalty following the withdrawal of the relevant order would amount to the contemnors being punished twice for the same offence by a second Judge;
>
> (c) the power of the Court to impose a punitive sanction for civil contempt must be proportionate to the breach.

19. Reliance is based on the dicta of O'Dalaigh C.J. *in Keegan v de Burca* (1972) IR 223 at 227 –

"Civil contempt usually arises where there is a disobedience to an order of the Court by a party to the proceedings and in which the Court has generally not an interest to interfere unless moved by the party for whose benefit the order was made. Criminal contempt is a common law misdemeanour and, as such, is punishable by both imprisonment and fine at discretion, that is to say, without statutory limit, its object is punitive: see judgment of this Court in In *Re Haughey* (1971) IR 217. Civil contempt, on the other hand, is not punitive in its object but coercive in its purpose of compelling the party committed to comply with the order of the Court, and the period of committal would be until such time as the order is complied with or until it is waived by the party for whose benefit the order was made."

20. Reliance is also placed on *The State (Commins) v McCann* (1977) IR 78 at 89 and a passage of the judgment of Finlay P. quoted earlier in this judgment. It is accepted however that in particular circumstances a disciplinary jurisdiction may be exercised as in *Phonographic Performance Limited v Amusement Caterers (Peckham) Limited* (1963) Ch 195. In that case the contempt ceased before the hearing of a motion that the Defendant company be sequestrated and its directors committed could be heard. The Court made an order for sequestration not to be enforced should the Defendant pay the Plaintiff's costs and an amount owing for licence fees within a specified period. Again in *Jennison v Baker* (1973) QB 53 the Defendant landlord interfered with the quiet enjoyment of tenants and ignored Court orders and in effect drove the Plaintiffs from their homes. The conduct of the Defendant was so outrageous that the Court of Appeal were satisfied that it was appropriate in the circumstances that the County Court should act in the public interest and commit the Defendant to prison: the committal in that case was clearly punitive and not coercive. It is submitted only in rare and exceptional cases that a power to commit by way of punishment could arise.

21. As to double jeopardy it is submitted that if civil contempt involved the inter mixture of a coercive function and a punitive function then both were dealt with when the contemnors were committed to prison by MacMenamin J. To impose a further penalty at this time would amount to double jeopardy. This is particularly so where there is no application on the part of the Plaintiff. In *Lamb v Lamb* (1984) FIR 278 the County Court made an order on an ex parte application committing the husband to prison for 14 days for breach of an order. Four days later there being no new evidence adduced the same Judge ordered that the husband be detained for three months. The Court of Appeal allowed the husband's appeal against the second order on the grounds that the County Court Judge had no jurisdiction to make the same.

22. As to proportionality it was submitted that it is well established that the Court's jurisdiction should be exercised in a manner appropriate and proportionate to the breach: *Flood v Lawlor* (2002) 3 I.R. 67.

Discussion

23. I propose to deal in turn with the relevant decisions.

1. *Keegan v de Burca* (1973) I.R. 223

By order of the Court the Defendant was injuncted from entering or occupying the Plaintiff's premises. Being in breach of the order a motion to attach the Defendant came on for hearing. The Defendant refused to answer certain questions put to her by the Judge and was adjudged guilty of contempt in the face of the Court and committed to prison until such time as she should purge her contempt. Judgment in the Supreme Court was given by O'Dalaigh C.J. He distinguished criminal and civil contempt –

"Criminal contempt is a common law misdemeanour and, as such, is punishable by both imprisonment and fine at discretion, that is to say without statutory limit, its object is punitive: see the judgment of this Court in In *Re Haughey*. Civil contempt on the other hand is not punitive in its object but coercive in its purpose of compelling the party committed to comply with the order of the Court, and the period of committal would be until such time as the order is complied with or until it is waived by the party for whose benefit the order was made."

O'Dalaigh C.J. in this case and in In *Re Haughey* seems to regard committal for civil contempt as purely coercive: however it is important to have regard to the context and in each case the Court was concerned with criminal contempt. Insofar as the dicta can be read as a definitive proposition they are accordingly obiter.

2. *The State (Commins) v McRann* (1977) I.R. 78

This was a State Side application. The Prosecutor had failed to obey an order of the Circuit Court in a civil action in which he was Defendant. An application was made to have him committed and an order was duly made. The Prosecutor contended that the determination by the Circuit Court Judge of the contempt issue had been the trial of a criminal charge within the meaning of the Constitution and as the punishment for the offence was imprisonment for an indefinite period he was entitled to be tried by a jury. At page 89 Finlay P. said –

"The major distinction which has been established over a long period and by a long series of authority between criminal and civil contempt of Court appears to be that the wrong of criminal contempt of Court is the compliment of the right of the Court to protect its own dignity, independence and processes and that, accordingly, in such cases, where a Court imposes sentences of imprisonment its intention is primarily punitive. Furthermore in such cases of criminal contempt the Court moves of its own volition or may do so at any time.

In civil contempt, on the other hand, a Court only moves at the instance of the party whose rights are being infringed and who has, in the first instance obtained from the Court the order which he seeks to have enforced. It is clear that in such cases the purpose of the imposition of imprisonment is primarily coercive; for that reason it must of necessity be in the form of an indefinite imprisonment which may be terminated either when the Court, upon application by the person imprisoned, is satisfied that he is prepared to abide by its order and that the coercion has been effective or when a party seeking to enforce the order shall for any reason waive his rights and agree, or consent, to the release of the imprisoned party."

Finlay P. considered himself bound by the decision of the Supreme Court in In *Re Haughey* (1971) I.R. 217 where O'Dalaigh C.J. said –

"Civil contempt, on the other hand, is not punitive in its object but coercive in its purpose of compelling the party

committed to comply with the order of the Court, the period of committal would be until such time as the order is complied with or until it is waived by the party for his benefit the order was made."

However Finlay P. regards imprisonment for contempt as primarily and not exclusively coercive.

3. *Flood v Lawlor* (2002) 3 I.R. 67

This was a case concerning civil contempt - failure to comply with an Order for Discovery. The Court considered the object of committing a contemnor to prison in respect of civil contempt. At page 79 Keane C.J. said –

> "Accordingly while the decision (in *Keegan v de Burca*) suggests that there may be some room for a difference of view as to whether a sentence imposed in respect of civil contempt is exclusively – as distinct from primarily – coercive in its nature in civil proceedings generally, I am satisfied that where as here, the proceedings are inquisitorial in their nature and the legislature has expressly empowered the High Court to secure compliance with the orders of the Tribunal, it cannot be said that a sentence imposed in respect of a contumacious disregard of the orders of the Tribunal and the High Court is coercive only in its nature. The machinery available for dealing with contempt of this nature exists not simply to advance the private, although legitimate, interests of a litigant: it is there to advance the public interest in the proper and expeditious investigation of the matters within the remit of the Tribunal and so as to ensure that, not merely the Defendant in this case, but all persons who are required by law to give evidence, whether by way of oral testimony or in documentary form, to the Tribunal comply with their obligations fully and without qualification."

4. Ross Company Ltd & Anor v Patrick Swan & Ors (1981) ILRM 417

The Defendants deliberately disobeyed an order of the High Court and a motion for committal issued. In the course of his judgment O'Hanlon J. said –

> "In an appropriate case I am of opinion that the Court must exercise its jurisdiction to commit for contempt not merely for the primary coercive purpose of compelling obedience to its orders, but in order to vindicate the authority of the Court whose order has been disobeyed.
>
> I take the view that the High Court may, in such circumstances make a punitive order involving sending the party in contempt to prison for a fixed period. Such jurisdiction was recognised as existing in the High Court in England, in the judgment of Devlin L.J. in the case of *Yager v Musa* (1961) 2 All ER 561 at p 562, a decision of the Court of Appeal with which Davies L.J. and other members of the Court concurred. The English Court of Appeal again confirmed the existence of such jurisdiction in the latter case of *Danchevsky v Danchevsky* (1974) 3 All ER 934.
>
> The jurisdiction of the Court to imprison for an indefinite period for what is known as civil contempt of court is one which is exercised sparingly for a number of reasons. The procedure is primarily intended to be coercive rather than punitive. This aspect of the jurisdiction was stressed by the Supreme Court in the case of *Keegan v de Burca* (1973) I.R. 223: see the judgment of O'Dalaigh C.J. at p 227 – and again by the President of the High Court Finlay P. in *The State (Commins) v McRann* (1977) I.R. 78 at p 89."

O'Hanlon J. went on to deal with the situation where a contemnor has no intention of obeying the order of the Court –

> "It appears to me that the principle enunciated by the English Court of Appeal (in *Danchevsky v Danchevsky*) is a correct and prudent one. It is undesirable that the High Court should commit to prison for an indefinite period a person who has no intention of obeying the order of the Court, and who may even welcome the publicity he gains by the making of such an order as a means of furthering his own cause. If no other reasonable course is open, then the order may have to be made to vindicate the authority of the Court. If some other reasonable course is open then it is preferable that it should be adopted."

5. Jennison v Baker (1972) 1 All ER 997

In this case the Court granted an injunction against the Defendant restraining her from evicting or attempting to evict her tenants in breach of the covenant of quiet enjoyment. She did not desist and so successful were her efforts that she drove out the Plaintiffs who declared that they had no wish to return and face possible similar treatment. The Defendant was committed to prison for contempt in disobeying the Court order. On behalf of the Defendant in the Court of Appeal it was argued that since there was no longer any question of enforcing the injunction, but merely punishing the Defendant, the Court had no power to commit. In the course of his judgment Salmon L.J. referred to *Martin v Bannister* (1879) 4 Q.B.D. 212,491 and a statement by Bramwell L.J. at p 494 and went on to say –

> "In my view, it follows from Bramwell L.J's judgment that as the Defendant did evict the Plaintiffs, the County Court had jurisdiction to attach the Defendant. It cannot, in my view, assist the Defendant or deprive the Court of jurisdiction that she used such unpleasant methods in effecting the eviction that the Plaintiffs have lost all desire to return. Clearly a bare order not to evict would not have afforded the Plaintiffs a "full and ample" remedy. The fact that the Defendant was liable to be attached for its breach was an essential part of the remedy granted. Nor in my view would the remedy have been "full and ample" unless the order for attachment could be made in the County Court in which the injunction had been granted."

While the arguments centred on the statutory jurisdiction of the County Court it is clear from the judgment that the Court saw no objection to committal being imposed for civil contempt by way of punishment.

In the course of his judgment in relation to *Seaward v Paterson* below Salmon L.J. said –

> "In that case the injunction took the form of an order for the benefit of the Plaintiff not to allow certain premises to be used for boxing coupled with a notice that if the Defendant disobeyed the injunction it could be enforced by sending him to prison. He did break the injunction and it was so enforced. None of the Judges in this Court nor in the Court below suggested that this was merely to deter the Defendant from committing further breaches.
>
> Of course an injunction is granted and enforced for the protection of the Plaintiff. The Defendant who breaches it is sent to prison for contempt with the object of vindicating (a) the rights of the Plaintiffs (especially the Plaintiff in the action) and (b) the authority of the Court. The two objects are in my view inextricably inter mixed. Rigby L.J. in Seaward's case pointed out that the Court might well send the Defendant to prison even if a Plaintiff (having applied for attachment) relented and asked that the order in his favour should not be so enforced. The Plaintiff cannot waive the order, but, as a rule the Court will pay attention to his wishes. A stranger who helps the Defendant to breach the injunction is sent to prison, no doubt, as a punishment for contempt but the effect of sending him to prison is also an indirect enforcement of the order which benefits the Plaintiff."

Salmon L.J. recognised a wider public interest in orders of the Court being obeyed –

> "We should be doing less than our duty, because not only does she richly deserve the punishment which is being meted out to her, but there are many other unscrupulous landlords who might be tempted to follow her example and many other humble decent tenants who might be subjected to the same beastly methods of terrorisation and persecution were we to allow the Defendant to go free. To my mind it would be a real encouragement to landlords such as her to act as she did and it would be exposing the tenants to a real danger should the law (as the Learned Judge below put it) sit limply by."

6. *Seaward v Paterson* (1897) 1 Ch 545

In *Seaward v Paterson* (1897) 1 Ch545 at 555/556 Lindley L.J. dealt with the difference between a party to a suit in which an injunction has been granted who is in contempt and a person not included in the injunction nor a party to the suit who assists in the contempt –

> "In the one case the party who is bound by the injunction is proceeded against for the purpose of enforcing the order of the Court for the benefit of the person who got it. In the other case the Court will not allow its process to be set at nought and treated with contempt. In the one case the person who is interested in enforcing the order enforces it for his own benefit; in the other, if the order of the Court has been contumaciously set at nought the offender cannot square it with the person who has obtained the order and save himself the consequences of his act."

In his judgment in that case Rigby L.J. held that in the case of a person not included in the injunction nor a party it was not correct that the Court did not act of itself. Once the Court is seised of the matter it acts upon its own jurisdiction and authority without regard to the wishes and feelings of the person who has brought the contempt before it. In the case of three Respondents who are not parties they were each committed to prison by way of punishment for fixed terms.

7. *Phonographic Performance Ltd v Amusement Caterers (Peckham) Ltd* 1964 Ch 195

An injunction was granted restraining the Defendant infringing the Plaintiff's copyright in sound recordings. The Defendant acted in breach of the injunction. A contempt motion was issued by which time the Defendant and its directors were in compliance with the injunction. Notwithstanding this Cross J. held that he had power to make an order for sequestration against the company and orders of committal against the directors.

Cross J. in his judgment at pp198-199 said –

> "There is no doubt that the order of the Court was wilfully disobeyed. There is no question here of unintentional disobedience of the order, because the company and the directors never tried to obey the order or thought of obeying it until they instructed solicitors. On the other hand, the order has now been complied with, in these circumstances. What is the position of the Court in a case of civil contempt? As is pointed out in Halsburys Laws of England Third Edition Volume 8 (1954) p 20 where there has been wilful disobedience to an order of the Court and a measure of contumacy on the part of the Defendants then civil contempt, what is called contempt in procedure, "there is a twofold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State a penal or disciplinary jurisdiction to be exercised by the Court in the public interest." Civil contempt bears much the same character as criminal contempt. That is brought out very clearly by Rigby L.J. in his judgment in *Seaward v Patterson* (1897) 1 Ch 545, 558 where in reference to an argument addressed to him by Counsel he says "Unless I entirely misapprehend that argument, it went so far as this, that the Court has no jurisdiction to commit for contempt by way of punishment; but that the jurisdiction is an ancillary or subsidiary jurisdiction in order to secure that the Plaintiff in a suit shall have his rights. I do not think that that can be for a moment maintained." Later he says – "That there is a jurisdiction to punish for contempt of court is undoubted." I think he is talking here of civil contempt, not only of criminal contempt. "It has been exercised for a very long time – for longer than any of us can remember – and it is a punitive jurisdiction founded upon this, that it is for the good, not of the Plaintiff or of any party to the action, but of the public that the orders of the Court should not be disregarded."

8. *Yager v Musa* 1961 2 All ER 561

The Plaintiff was granted an injunction restraining the Defendant from causing a nuisance or annoyance to the Plaintiff's family. He was in breach of the injunction and was committed to prison for contempt. On expressing his regret and undertaking to refrain from further disobedience he was released but was again committed for contempt having again disobeyed the injunction. He expressed his regret and gave an undertaking and was again released. He was in breach of

the injunction on a third occasion and again applied to be released. The effect of the order made on that occasion was to commit him to prison for a term of three months. The Court of Appeal was satisfied that in the circumstances of the case it was appropriate for the trial Judge to commit the Defendant to prison for a definite period.

9. *Danchevsky v Danchevsky* 1974 3 All ER 935

The Defendant in this case made it quite clear that he was not going to recognise a Court order for the sale of his house nor vacate the house. He was committed for a period of three months. The Court of Appeal held in such circumstances that the Court has power to make an order to imprison the contemnor by way of punishment for a fixed term though in the circumstances of that case committal by way of punishment was not appropriate.

10. *Scott v Scott* 1913 AC 417

Following proceedings in camera the Respondent had published the transcript of proceedings. A motion was brought to commit the Respondent and her solicitor for contempt. The House of Lords equated the contempt to a breach of an injunction and held that the Court had jurisdiction to make a punitive order.

11. *Halsbury Laws of England* Fourth Edition Re-Issue Volume 9(1).

Halsbury deals with the Court's powers in the following terms –

> "In circumstances involving misconduct, civil contempt bears a twofold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State, a penal or disciplinary jurisdiction to be exercised by the Court in the public interest."

12. *Contempt of Court* - A Law Reform Commission Consultation Paper

The paper at page 176 states –

> "The primary purpose of civil contempt proceedings is coercive, whereas for criminal contempt the primary purpose is punitive; moreover in civil contempt proceedings the Court moves only at the instance of a party whose rights have been infringed whereas no similar inhibition applies in respect of criminal contempt.
>
> The problem with this analysis is that there are some cases classically characterised as civil contempt where the Court's intervention cannot credibly be perceived as serving a coercive function."

Reference is then made to Re *Freston* 11 QBD 545 and *AG v Kissane* 32 LRIR 220

Conclusion

25. On a review of the cases I am satisfied that committal for contempt is primarily coercive its object being to ensure that Court orders are complied with. However in cases of serious misconduct the Court has jurisdiction to punish the contemnor. If the punishment is to take the form of imprisonment then that imprisonment should be for a definite term. Insofar as O'Dalaigh C.J. in *Keegan v de Burca* and in In *Re Haughey* held that the objective in imposing imprisonment for civil contempt was coercive and not punitive I have regard to the facts of each of those cases. In each case he was concerned with criminal contempt and for that reason I regard his definition of civil contempt to be obiter: while the definition was sufficient for his purposes it is not completely accurate. More accurate is the proposition in *Flood v Lawlor* which left open the question as to whether civil contempt is exclusively as distinct from primarily coercive in nature. In *Ross Company Ltd & Anor v Patrick Swan & Ors* O'Hanlon J. was of the view that in an appropriate case the Court must exercise its jurisdiction to commit for contempt not merely for the primary coercive purpose but in order to vindicate the authority of the Court and in which case the Court has jurisdiction to make a punitive order. His approach is supported by the cases which he mentions *Jager v Musa* and *Danchevsky v Danchevsky*. It is also supported by *Jennison v Baker*, *Phonographic Performance Ltd v Amusement Caterers (Peckham) Ltd*. and by the passage which I quote from Halsbury.

26. When exercising its powers for coercive purposes the jurisdiction to imprison for an indefinite period for civil contempt is one to be exercised sparingly: *Ross Company Ltd & Anor v Patrick Swan & Ors, Keegan v de Burca*, *The State (Commins) v McRann*. If there is any other means whereby compliance with the order of the Court can be achieved this should be adopted committal being in effect the last resort: *Danchevsky v Danchevesky*.

27. Commital by way of punishment likewise should be the last resort. It should only be engaged where there has been serious misconduct. In such circumstances it can be engaged in order to vindicate the authority of the Court. In litigation concerning exclusively private rights this will usually occur only at the request of the Plaintiff. Circumstances may exist which cause the Court to act on its own motion: *Jennison v Baker*, *Seaward v Patterson*. However where the interest of the public in general is engaged or where there is a gross affront to the Court it would be appropriate for the Court to proceed of its own motion to ensure that its orders are not put at nought. I am satisfied that such a power must be inherent in the Court. In the words of Judge Curtis-Raleigh –

> "The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope."

28. Committal for civil contempt is indefinite but in practice after an appropriate period if committal is not having its desired coercive effect it will be appropriate to release the contemnor. However it may not be just or fair in every case that the contemnor should thereby escape a punishment.

29. In the present case the contemnors have made it quite clear that they are determined to act in defiance of a statute passed by the Oireachtas which enjoys the presumption of constitutionality and the decisions of the Executive and finally an order of the Court. It would be wrong for the Court to shirk its responsibility to the Oireachtas and the Executive or to tolerate a continuing determination on the part of the contemnors to persevere by the threat of violence to obstruct the development of the Rossport Gas

Field. It is appropriate to take into account the consequences of their actions namely the losses which on the Affidavits before the Court the Plaintiff has incurred as a result of the contemnors actions, the loss of employment in the area and the loss to the local and I am told the national economy. The contemnors have not purged their contempt and have no intention of doing so.

30. A democracy such as ours functions on the premise that orders of the Court will be obeyed. Having determined that the Court has jurisdiction to impose a penalty it is necessary to consider whether in this case it is appropriate that it should do so. Each of the contemnors has spent 94 days in prison. Those who are parties to the action will suffer a further disadvantage in these proceedings. There is a well settled rule that the Court will not entertain an application by a person who is in contempt of Court until he has purged himself of that contempt: *Bettinson v Bettinson* 1965 1 All ER 102, *Hatkinson v Hatkinson* 1952 2 All ER 567, *Daniell's Chancery Practice* Seventh Edition Volume 1 p 725, *Oswald on Contempt of Court* Third Ed p 248, *Taylor v Taylor* 1849 1 MAC & G 397. As this litigation progresses there may well be circumstances in which the Court will be asked to apply its discretion in favour of the contemnors including its discretion in relation to costs in which case the fact that they remain in contempt will be a factor influencing the Court's exercise of its discretion. Should the contemnors again physically prevent the Plaintiff exercising its rights and a further injunction be obtained the Court will have jurisdiction to impose by way of penalty a fixed term of imprisonment of an appropriate duration: *Danchevsky v Danchevsky*. Insofar as the contemnors are parties to the proceedings these disadvantages coupled with the period of imprisonment which they have suffered represents sufficient punishment. The two contemnors who are not parties to the action will not of course suffer the same disadvantages as those who are. However I consider the period of 94 days spent in custody while coercive in intent to contain a sufficient punitive element and I do not propose imposing on them a further penalty.

31. Finally I am satisfied that in the case of a continuing contempt the contemnors may be dealt with by a Judge other than the Judge who initially commits them to prison just as the contemnors, who should not spend any greater time in prison than is necessary, may purge their contempt before any Judge of the High Court. I am satisfied that had it been appropriate to do so the Court had jurisdiction to impose by way of punishment for contempt a fine or a fixed term of imprisonment.