Neutral Citation [2015] IEHC 464

THE HIGH COURT

CIRCUIT COURT APPEAL

[2015 No. 12 C.A.]

BETWEEN

JAMES MEAGHER AND ADRIAN TRUEICK

PLAINTIFFS

PATRICK JOSEPH (OTHERWISE KNOWN AS P.J.) WOODS AND

DANNY WOODS

DEFENDANTS

JUDGMENT of Ms. Justice Baker delivered on the 3rd day of July, 2015

1. The Circuit Court made an order for possession of four separately rated premises in the County of Monaghan on the 23rd January, 2015. The question in this appeal is whether the Circuit Court had jurisdiction to hear and determine the application or the proceedings having regard to the fact that the combined rateable valuation of the four separate premises exceeded the jurisdiction of the Circuit Court. The plaintiffs argue that as the Circuit Court had jurisdiction to determine the application in respect of each individual premises, the subject matter of the proceedings, it is irrelevant to that jurisdiction that the combined rateable valuation is in excess of the monetary jurisdiction of the Circuit Court. The second defendant was not represented in the appeal, and the first defendant argues that the Circuit Court jurisdiction is confined to determining proceedings in respect of real property where the rateable valuation of the premises the subject matter of the proceedings, taken as a whole, is under the statutory jurisdictional limit.

2. It was agreed by counsel for the parties that I should hear and determine the jurisdictional question first, namely whether the Circuit Court had jurisdiction to hear and determine the proceedings and/or to make the possession order. Certain other questions arise in the appeal and will come to be determined in the light of my decision on the question of jurisdiction.

Background facts

3. The plaintiffs are receivers appointed by Ulster Bank Ireland Ltd ("the Bank") under two security instruments, the first a charge of the 31st March, 2006 registered as a burden on Folio 1052L of the Register County Monaghan, and the second a mortgage by deed of 7th February, 2007 over unregistered land situate at and known as 1 Old Cross Square, Monaghan. In each case the appointments were made on the 26th March, 2013 pursuant to the power of the Bank under the mortgage or charge. I note the deed of appointment of the receivers over the premises at Old Cross Square is dated the 22nd November, 2013, and not 26th March, 2013, asserted to be the operative date, and that an issue may yet come to be determined in the balance of this appeal with regard to whether an error in this date has any legal import.

4. Following their appointment as receivers, they by letter of the 23rd April, 2013 sought possession of the premises comprised in the two security instruments, and possession having been refused, and in the context of a claim on the part of the receivers that the defendants, or in particular the first defendant, had attempted to obstruct the exercise by the plaintiffs of their entitlement to take possession, proceedings were instituted. The proceedings were brought in the Northern Circuit County of Monaghan by a Civil Bill for Possession bearing record number 285/2013 and show a date of issue of the 30th October, 2013. By these proceedings the plaintiffs sought an injunction requiring the defendants to deliver up possession of the two parcels of land described in the Civil Bill by reference to the parcels clause in the security instruments, and there is a plea in standard form that the two parcels were situate within the jurisdiction of the Circuit Court of Monaghan and pleads in the plural that the "rateable valuations do not exceed €254". It is also noteworthy that the sole claim was for injunctive relief in the form of an order for possession and/or ancillary relief restraining any interference with the possession or taking of possession by the receivers. No claim for damages was made.

5. An Appearance was entered by the first defendant on the 18th December, 2013, and the second defendant has taken no part in the proceedings or in this appeal. As the second defendant was believed to be resident out of the jurisdiction the plaintiffs were given liberty to serve him by way of advertisement in a national newspaper circulating in Australia, and by order of the 12th March, 2014 service by this means was deemed good and sufficient service of the Civil Bill, and the plaintiffs were given liberty to serve all subsequent documents in the same manner.

6. Following correspondence with the first defendant, and later with his solicitors, and the exchange of a number of affidavits for the purposes of the hearing of an interlocutory application, an amended Civil Bill was delivered on the 18th November, 2014, pursuant to an order of Judge O'Hagan on the 7th October, 2014, by which the Bank added a plea that its power to appoint a receiver arose under s. 19(1)(iii) of the Conveyancing Act 1881 (the "Act of 1881"). This plea arose from a claim made in correspondence, and in affidavit, by the first defendant that the receivers were not validly appointed. Nothing turns on this plea for the purposes of the present application.

7. The exact sequence of events is somewhat unclear, but on the 13th January, 2015 Judge O'Hagan granted an *ex parte* interim order in terms of paras. 1, 2, 3 and 4 of the amended Civil Bill, by which the defendants were required to deliver up possession of what was described as "the first property" and "the second property", and orders restraining unlawful interference with the possession of the receivers. The matter was adjourned to the 23rd January, 2015 and the order recites the circumstances of the adjournment as follows:-

> *"…when the court shall on that date make a final order in the terms of this Order unless the Defendants can show cause as to why the court should make such final order."*

8. The word "not" is clearly missing from this part of the order, but the effect of the order is clear, namely that the Circuit Judge determined that he would make a final, as opposed an interlocutory, order on the adjourned date if the defendants could not show

cause why an order ought not be made.

9. In an affidavit of the 6th January, 2015 of the first defendant, described as an affidavit by way of "further reply", there was first identified the question of jurisdiction, and the deponent exhibited four certificates of rateable valuation which when combined showed a total rateable valuation for the premises comprised in the Civil Bill of €265.97, in excess of the €254 jurisdiction of the Circuit Court. That affidavit is not shown as having been before Judge O'Hagan when he made the interim order on the 13th January, 2015 which recites that it was grounded on one affidavit only, of the 7th January, 2015 of James Meagher.

10. The interim order was appealed by notice of appeal of the 14th January, 2015 by the first defendant but it is the final order of Judge O'Hagan made on the 23rd January, 2015 that comes on for appeal before me, and that order does not recite what affidavits were before the Court but does show that the plaintiffs were represented, the first defendant appearing in person, and that there was no appearance by or on behalf of the second defendant. The order recites as follows:-

> *"The Court being satisfied that this Court has jurisdiction to determine this matter and that the Receivers were validly appointed.*
>
> *AND it appearing to the Court that the Plaintiff is entitled to possession of the premises as claimed in the Civil Bill."*

11. The court made what is clearly a final order granting possession of the "first property" and the "second property" (the phraseology used in the Civil Bill) and various restraining orders, and an additional order for the payment of rent to the receivers. Costs were awarded to the plaintiffs including all reserved costs and a stay was refused.

12. On 23rd February, 2015, Barr J. in the High Court made an order that a stay be put on the Circuit Court order of 23rd January, 2015 and that the rental monies in relation to the Midland Radio Group be held in an escrow account pending the determination of this appeal.

The evidence of rateable valuation

13. In all, nine substantive affidavits were sworn by or on behalf of the plaintiffs, and five affidavits by the first defendant for the purposes of the Circuit Court hearing. Most of these were concerned with the power of the Bank to appoint a receiver and the operation of the Act of 1881, and some of the later affidavits related to the claim by the receivers that the first defendant was interfering with their power as receiver to take possession. None of these issues are relevant to the preliminary issue. Only two affidavits are relevant to this question, the affidavit of PJ Woods sworn on the 6th January, 2015 which exhibits the certificates of rateable valuation, and the replying affidavit of James Meagher sworn on the 3rd February, 2015 which deals partly with the question of a stay and partly with the question of the rateable valuation. From paragraph five of this affidavit it is apparent that an exchange of argument occurred in the Circuit Court at the hearing on the 23rd January, 2015 with regard to the rateable valuation and Mr Meagher avers in this affidavit that Mr Woods has made a "straightforward factual error", and that it is not legally correct to add together all the rateable valuation as shown on the four certificates.

14. The certified extracts from the valuation lists show that the premises in respect of which the proceedings were brought have been subdivided for rating purposes as follows:-

> 1) The "first property" comprises three separate lots.
>
> > a. Lot 3AC, Unit C, stated as being occupied by one Brendan McCleary, t/a the Pet Shop Online, has a rateable valuation of €90 for buildings, and €0 for land.
> >
> > b. Lot 3AC, Unit 5a, stated as being occupied by Midland Radio Group Ltd, t/a Northern Sound Radio, has a rateable valuation of €89 for buildings and €0 for land.
> >
> > c. Lot 3AC, Unit 5 has a rateable valuation of €73 for buildings and €0 for land and is vacant.
>
> 2) The "second property" at Old Cross Square is identified as Lot 2 and has a rateable valuation of €13.89 for buildings and €0 for land.

15. In each case the certified extraction from the valuation list is dated the 31st December, 2014. From this it is apparent that the "first property" is contained within Lot 3 which had become subdivided into three units, one of which is occupied by Northern Sound Radio, the other by the Pet Shop and the third unit is vacant. It would seem from the evidence that two of the units, namely that occupied now by the Pet Shop and the adjoining vacant unit had for a period until the 29th May, 2014 a zero rateable valuation.

The legal test of jurisdiction

16. The Circuit Court is a court of limited and local jurisdiction which by virtue of s. 22 of the Courts (Supplemental Provisions) Act 1961 (the "Act of 1961") has, concurrently with the High Court, jurisdiction to hear those proceedings of the kind identified in column (2) in the Third Schedule to the Act.

17. Section 22 (1)(b) provides that, absent consent, the Circuit Court does not have jurisdiction to determine any cause of the kind mentioned in column (2) of the Third Schedule. The parties contend that the relevant reference numbers are reference number 8, namely civil proceedings in which the title to land comes into question other than an action of ejectment, reference number 9, an action of ejectment other than under the Landlord and Tenant Law Amendment Act Ireland 1860, as subsequently amended, and reference number 27, being an action in relation to land claiming an injunction otherwise than as ancillary to other relief.

18. In each case the Circuit Court is stated, absent consent, not to have jurisdiction to hear and determine an action where the rateable valuation of the land exceeds £60. The amount of £60 was amended and ultimately by s.2(1)(d) of the Courts Act, 1981 the jurisdictional limit was fixed at £200, later following the introduction of the Euro to €253.94 (often treated informally as €254).

19. Thus the jurisdiction of the Circuit Court in certain claims regarding land is limited by reference to the rateable valuation of the land in respect of which relief is sought, and it has not been argued that the Circuit Court has any form of full or inherent original jurisdiction. It is not doubted that the relief sought in the Civil Bill was one in respect of which the Circuit Court had jurisdiction, as it clearly does have jurisdiction to grant orders for possession or injunctive relief requiring that possession be ceded to another.

Nature of these proceedings

20. Counsel for the first defendant argues that the action is an action relating to the title of land, but I consider that counsel for the plaintiffs is correct to characterise the proceedings either as coming within reference number 9, i.e. it is an action for ejectment, or reference number 27, it is an action for injunctive relief. I say this for the following reason.

21. While the right to possession might flow from the determination of a question relating to title to the land, the receivers do not claim that their right to possession arises as a matter of their title, but rather under security instruments which vested in them a statutory right to take possession in certain circumstances. As stated in the old text written in 1903 by Harrison, *The Law and Practice relating to ejectments in Ireland* (Dollard Press), at pp. 12 and 13:-

> "An action to establish title merely must be distinguished from an action for the recovery of land. The latter deals with possession, and possession alone…. The judgment determines no question of title or estate, and the writ of execution by which it is enforced relates to the lands and not to the defendant personally…. An action to establish title is essentially different in its incidents and nature. In it the plaintiff seeks to have his title declared good by a judgment that will bind the defendant personally; and all persons who are interested, or alleged to be interested, in the subject matter of the suit must be parties to it, or represented in it, so that the judgment as far as it is possible, may be complete and conclusive."

22. The learned author went on to deal with questions where a claim for possession is ancillary to a claim of title and says following the judgment in *Gledhill v. Hunter* 14 Ch. D. 492:-

> "If a plaintiff claims to establish his title, and also claims possession, the action will be treated as an action for the recovery of land, and the declaration of title will be regarded as supplemental or consequential relief for the joinder of which no leave is necessary."

23. In *Howard v. Howard* 30 L.R. (Ireland) 340, an action brought against the fifth Earl of Wicklow, the plaintiff claimed title to certain lands known as the Wicklow Estate, and possession of so much of those lands as were in the occupation of the defendants. Holmes J., with whom Harrison J. agreed, held following *Gledhill v. Hunter* as follows:-

> *"…the action for the recovery of land is the former action of ejectment, and is wholly different from an action to establish title. The action of ejectment deals with possession and possession alone."*

I accept these formulations and consider that the receivers in these proceedings maintain a claim for possession and ancillary injunctive relief and that the proceedings are characterised as coming under reference number 9.

Effect of exceeding jurisdiction

24. If the Circuit Court makes an order in respect of land where the rateable valuation of those lands exceeds €254, the High Court would set aside such order *ex debito justitiae*, as having been without jurisdiction. This was established albeit *obiter* in the judicial review brought against a decision of Judge Murphy in *Harrington v. Murphy* [1989] I.R. 207, but O'Hanlon J. refused to make an order of *certiorari*, he being satisfied that the lands, the subject matter of the proceedings, had a rateable valuation under the statutory limit. The applicants failed to persuade the Court that failure to adduce formal proof of rateable valuation meant that the Circuit Court acted without jurisdiction, and O'Hanlon J. held that the failure to insist on proper proof did not deprive the Circuit Court of jurisdiction, nor did it invalidate the order made by that Court. That decision does not however deal with the question in this appeal, namely how the test of jurisdiction is to be applied in a case where there are separate properties in respect of which a claim is made, and while each has a rateable valuation under the statutory limit the combined valuation exceeds this.

The meaning of "land"

25. The Act of 1961 fixes jurisdiction by reference to the rateable valuation of "property insofar as it consists of "land" and I accept the argument made by counsel for both parties that the word "land" imports a singular and plural meaning, and note also that under the Valuation Act 2001 "land" has a special meaning to include structures erected on land and any land covered with water. Section 18 of the Interpretation Act 2005 expressly provides that a word importing the singular shall be treated as importing the plural and a word importing the plural shall be read as also importing the singular. The use of the word "land" in the Act of 1961 does not assist in resolving the preliminary issue in this case, as it may refer to a single parcel or to several parcels.

The Valuation Act 2001 and the interplay with the Interpretation Act 2005

26. There is no judicial decision on point but counsel for the plaintiffs argues from first principle by reference to the interplay between the valuation Act 2001 and the Interpretation Act 2005.

27. Section 17 of the Valuation Act 2001 sets out a comprehensive and new system for the valuation of lands and replaced the old poor law valuation with a new unit of valuation. The section provides that:

> "each separate relevant property shall be valued separately and entered as a separate item in the relevant valuation list".

While prior to 2001 the Valuation Office did separately value individual lots, the Act of 2001 created a statutory obligation to individually identify and separately rate each unit of property, and thereby to create separate and individually identifiable units of valuation to be entered as separate items. Thus, in the instant case the three premises formerly contained within Unit 3 became divided into three units of valuation, each appearing as separate items and each having separate and individually distinct rateable valuations.

28. Section 21 of the Interpretation Act 2005 links the meaning, construction and effect of a word or expression to certain identified particular words and expressions in Part 1 of the Schedule to that Act. The expression "rateable valuation" is stated to mean

> "The valuation under The Valuation Act 2001 of the property concerned".

29. Counsel for the plaintiffs argues that this express link by the Act of 2005 to the Act of 2001 has the practical and legal effect that the particular characterisation of rateable valuation provided for in s. 17(1) of the Act of 2001 means that for all purposes each separate relevant property is to be valued separately. I do not accept that he is correct in this argument for the following reason.

30. Section 17(1) of the Act of 2001 provides a mechanism for the separate valuation of "separate relevant property" and for the identification of that separate valuation. "Relevant property" is explained in s. 14(1) of the Act as follows:-

> "A provision of this Act providing that relevant property shall be rateable shall be construed as a provision to the effect that the property is property in respect of which a rate may be made and like provisions of this Act shall be construed

accordingly."

31. Section 14(2) provides for the use of the expression "relevant property" in lieu of the expression "hereditament" or "tenement", the relevant language of the poor law legislation. Section 15 makes "relevant property" rateable, and "relevant property" is defined in s. 3 to include buildings, land, railways, harbours etc., in essence all corporeal and incorporeal hereditaments whether they be lands, buildings, easements or waterways.

32. I consider that the purpose of s. 17, is to mandate the fixing of a unit of valuation in respect of each separately identifiable relevant property, and requires the valuation of separate properties where they can be shown to be separate for the purposes of valuation. The scheme of the Act is to provide for separate units of valuation and for the making of a rate in respect of each, as well as for the keeping of separate records of each such rate made.

33. The link made by s. 21 of the Interpretation Act is an interpretative tool and avoids any possible confusion of language such that the rateable valuation of land is the rate made under the Act of 2001, and not any other valuation informally or otherwise made. This approach is consistent with the recent decision of Murphy J. in *Bank of Ireland Mortgage Bank v. Finnegan* [2015] IEHC 304. Murphy J. hearing an appeal from the Circuit Court considered the consequence of the exclusion from the definition of rateable property for the purposes of the Act of 2001 of "*any domestic premises*", and the fact that in certain cases this would have the effect that the premises of the plaintiffs were "*neither rated or rateable*". She rejected the argument of the plaintiff that a letter which had issued from the Valuation Office of an ad hoc "*provisional assessment*" in respect of certain classes of premises, including domestic premises, was evidence of the rateable valuation of the premises. She held that such letters which resulted from an ad hoc and non statutory process were "*devoid of legal effect*" and came to the conclusion in those circumstances that the domestic premises in respect of which the possession proceedings were brought were not rateable at all, and had no rateable valuation to test and was not rateably valued for the purpose of giving jurisdiction to the Circuit Court.

34. I adopt the distinction drawn by Murphy J. between an ad hoc informal class of assessment, and a true rateable valuation which is made as a result of an assessment by the Valuation Office. The Valuation Act 2001 provided for the making of such a rate, and that the definitional link between the rate made under the Valuation Act and the interpretative section of the Act of 2005 has the effect that no informal or other ad hoc assessment is to be understood by the expression "rateable valuation" in any enactment. I do not consider that counsel for the plaintiffs is correct when he contends that the combined effects of the Act of 2001 and that of 2005, by which rateable valuation for the purposes of statutory interpretation is linked to the scheme established by the Act of 2001, means that in all enactments the expression "rateable valuation" is to be understood as creating a separate test of jurisdiction in respect of each individual part of premises for the purposes of giving jurisdiction to a court of limited jurisdiction.

35. To conclude otherwise would be, it seems to me, to take the view that the Oireachtas intended by virtue of the Act of 2005 to make a very substantial change to the operation of the jurisdictional test. With that proposition in mind I turn to examine the Act of 1961 and some older case law which guides my analysis.

The Act of 1961

36. The plaintiffs argue that when one comes then to look at the Third Schedule of the Act of 1961 the expression "rateable valuation" must refer to the rateable valuation of each separate relevant property concerned. I agree with this proposition, but it seems to me that it does not avail the plaintiffs in this case. If properties are separately valued because they are separate "relevant properties" in respect of which a valuation has been made, then the Circuit Court jurisdiction as identified in the Act of 1961 is tested against the rateable valuation of the relevant property. If there is one relevant property in respect of which the proceedings are brought no problem arises if the rateable valuation of that property is under the statutory limit. If there are several such properties, then each property valued separately is to be treated as an individual and separate property for the purposes of the Act of 196. But the property in respect of which a decree is sought or, to use the old language of Ross J. in *Tuite v. Cullen* [1914] 1 I.R. 60, "*the subject-matter of the suit*" is required to be under the statutory limit.

37. I accept the argument of counsel for the plaintiffs that the court in determining the question of jurisdiction is bound to consider each relevant property separately. If circumstances have arisen where property in respect of which proceedings had been commenced comprise a number of rateable units, and if the proceedings seek relief in respect of one only of those units, then the court is mandated to consider each relevant separately rated unit as a separate entity for the purposes of determining whether it has jurisdiction to make an award in respect of that unit. Thus if a bank had taken a charge over an industrial estate divided into a number of units where each unit is separately rated, the bank may in reliance on an omnibus charge seek to obtain orders in respect of the identified unit, part only of the entire estate, and the court may assume jurisdiction if the rateable valuation of that unit is below the statutory limit. It would not matter in those circumstances if the bank's charge was created over lands with a rateable valuation far in excess of €254, provided the lands the subject matter of the action, taken separately in accordance with the provisions of the Act of 2001 is capable of being shown to have a separate rateable valuation below the statutory limit.

38. This approach is consistent with the decision of Egan J. in *Blackhall v. Grehan* [1995] 3 I.R. 208 relied on by the plaintiffs. This was a judgment of the Supreme Court in a judicial review of a circuit appeal, itself a matter in respect of which Egan J. accepted the Supreme Court had no jurisdiction. Egan J. did however consider whether the Circuit Court had acted correctly in dividing the case in two where the rateable valuation of the entire lands exceeded the relevant statutory limit, and where, following the division, the relevant lands came under the limit. Egan J. in the Supreme Court, albeit *obiter*, appeared to endorse the approach of the Circuit Court judge by describing it as "*an eminently sensible way to deal with the difficulty which had arisen*".

39. It seems to me that the *dicta* of Egan J. is persuasive as to the issue before me, in that the Supreme Court judge seemed to accept that a difficulty had arisen by virtue of the fact that the poor law valuation (the property having been valued under the old statutory regime) of the entire lands was in excess of the circuit jurisdiction.

Can I divide the proceedings at this stage?

40. In that case Egan J noted that the proceedings themselves were capable of being dealt with as two separate actions and had been so constituted by the Circuit Court, such that the original named parties were separately identified as plaintiffs or defendants respectively in two sets of separate proceedings in respect of each of which an order was made.

41. Counsel for the plaintiff urged upon me an argument that a similarly "sensible approach" could have been taken either by the Circuit Court or by the High Court on appeal in this case. The Circuit Court did not take that approach as had the Circuit Court in *Blackhall v. Grehan*, and application that this be done was not made before the Circuit Court, at any time before the final order was made, to divide the proceedings and to reconstitute them as two separate actions. This is understandable as it is apparent to me from the affidavit evidence that the plaintiffs were unaware of the amount of the rateable valuation until the issue was flagged in the replying affidavit of the first defendant of the 6th January, 2015. However, as that affidavit had been served before the matter came

on for final hearing, the plaintiffs had sufficient notice of the issue. Further, the issue was canvassed before the Circuit Court judge. Thus, I consider that application ought to have made to divide the proceedings before the final orders were made.

42. As to whether I may at this stage in the proceedings make an order reconstituting the proceedings as two separate claims, I note in the first place that no consent to the making of such an order is forthcoming from the first defendant. The High Court hearing an appeal from the Circuit Court determines the matter by way of a complete re-hearing but the High Court's jurisdiction is that of the Circuit Court, and not that conferred on the High Court in its original and inherent jurisdiction. Certain limitations are apparent from the legislation as to the power of the High Court hearing a circuit appeal and in particular the court may not hear fresh evidence adduced in such a hearing in the absence of an express order for that purpose (Order 61). If the High Court on Circuit has the jurisdiction of the Circuit Court it seems to me wrong in principle to now seek to establish jurisdiction by a notional division so as to constitute the proceedings as two separate appeals, and this would have the undesirable effect that two appeals would arise from one judgment, with the consequent administrative confusion that might cause. Further, no application was made at the commencement of the appeal for such an order and the matter was canvassed only with legal submissions, and I consider it to be wrong in principle to make a division so late in the proceedings and appeal.

The leading texts
43. Counsel has not identified any case law on the interpretation of the Act of 1961 but certain commentary in leading text books has been noted. The late John Farrell in his much respected *Irish Law of Specific Performance* (Butterworths, 1994) at para. 8.09 notes the disjunctive 'or' in reference number 22 in the Third Schedule to the Act of 1961 and suggests, correctly in my view, that if the rateable valuation of lands the subject matter of an action for specific performance is under the statutory limit that the Circuit Court has jurisdiction irrespective of the purchase price. He goes on to say, however, the following:

> "A court will often allow an amendment dealing with a matter of jurisdiction if necessary but this must never be taken for granted. If a parcel is not separately valued and as a result it cannot be definitively stated to fall within or without the Circuit Court limit a claim is properly brought in the High Court."

44. The learned author refers to the case of *Mulvey v. Flanaghan* [1936] Ir.Jur.Rep. 40 as authority for this proposition. That case is authority for the proposition that where several premises are the subject matter of an action to establish title, but have not been separately valued, the action is properly brought in the High Court and the plaintiff's costs should be taxed according to the High Court scale. It is not direct authority on the point in issue.

45. In their recent Irish text on specific performance, Buckley, Conroy and O'Neill, *Specific Performance in Ireland* (Bloomsbury, 2012), which incorporates much of the text of Farrell's first edition, the same comment is made.

46. Taken in conjunction with the authorities refereed to above, and noting that they do not authoritatively deal with the issue raised, I adopt the statement of Farrell as correct, and notwithstanding that he has not quoted authority directly on point.

The argument from policy
47. Counsel for the plaintiffs also argues from policy that I ought to take a teleological approach to the issue. In *Connor v. O'Brien* [1925] 2 I.R. 24 Kennedy C.J. examined the objectives of the Courts of Justice Act 1924 and the establishment of courts of local and limited jurisdiction:-

> *"It is that the great bulk of the ordinary litigation not involving very heavy financial consequences and of the criminal business of the country shall be dealt with and disposed of in the local venue."*

48. The same judge in the later case of *Hosi v. Lawless* [1927] 1 I.R. 464 identified that policy as being:-

> *"not only for the convenience of the litigants in a country like this, but indeed in mercy to the parties, the ordinary every-day actions, those not involving very large sums of money or raising exceptional questions for determination, should be in the ordinary course tried in the local venue by the Circuit Court, or in very small cases by the District Court. The policy was decentralisation of jurisdiction, though, no doubt, the High Court has, under the Constitution, and still keeps, original jurisdiction, which may be exercised in any case".*

49. Counsel for the plaintiffs identifies these objectives as tending towards a purposive approach to the interpretation of the jurisdictional limitations on the Circuit Court, namely that the clear preference on the part of the Oireachtas to establish courts of limited and local jurisdiction is one that supports the due and local administration of justice, for the convenience of litigants, and for what might be called the desire to ensure that justice is done and seen to be done locally, conveniently, and with the least expense possible. These objectives are laudable but I reject his argument that the purpose, which was expressed eloquently by Kennedy C.J. in the cases refereed to at paras. 30 and 40 *ante*, is one which must guide the interpretation of what is a clear statutory provision. I accept the argument of counsel for the first defendant that there is nothing in the Act of 1961, or in the columns identifying the jurisdictional limits of the courts, which admits of ambiguity, and that an approach to interpretation which requires me to look at purpose is neither appropriate nor proper when ambiguity is not found.

50. Equally, I accept what counsel for the plaintiffs says, that if the result of an interpretative process leads to absurdity then the court must seek to achieve a result that is not absurd, and the purpose of the legislation may, and is usually, a useful tool in achieving that end. However, I consider no absurdity arises, either a general absurdity arising in the administration of the Circuit Courts generally, or in the instant case arising from the fact that the plaintiffs could have, but did not, opt to seek possession of only some of the property the subject matter of the two security instruments. The plaintiffs had a remedy, they could have opted to seek possession of that part of the property in respect of which the complaints of interference actually were made, but chose to, and did in fact, obtain an order for possession of each of the individual units of property which by the time of the order compromised four separate rated units. The plaintiffs could of course also have commenced the proceedings in the High Court, or commenced tow separate sets of proceedings in the circuit Court, and applied that they be heard sequentially.

51. I do not for that reason consider that the matter can be determined in the manner contended by the plaintiffs for reasons of policy or to further the due administration of justice.

The vacant lot: is it relevant to the Circuit Court order?
52. It is also argued by counsel for the plaintiffs that while the plaintiffs sought possession of all of the property described in the Civil Bill as "the first property" (being the three units), that in essence the plaintiffs sought and obtained no relief with regard to the third unit, the vacant unit which now has a rateable valuation of €73. He argues that whilst the order of the Circuit Court has the effect of binding the defendants in relation to the validity of the security instruments, the appointment of the receivers and the debt, the order

for possession was "not relevant" to the third vacant lot in that no evidence to support injunctive relief in respect of that premises was adduced. He argues that there was "no reference to the third lot at all" and that there was no evidence in relation to any difficulties in obtaining possession and no evidence on which the court might have granted a permanent injunction in relation thereto.

53. I cannot accept this argument, although I accept that there might have been circumstances where this approach could have been taken in the Circuit Court by the plaintiffs. It is the case that no evidence directly relevant to the third lot was adduced for the purposes of persuading the Circuit Court that injunctive relief ought to be granted, but the fact remains that possession was ordered to be delivered of all of the first property and the second property, and that included the third, albeit vacant, lot. The concept of possession in law is not merely a matter of occupation, and one can be in possession of a vacant unit if one is, or is entitled to be, in possession of the rents and profits therefrom. The receivers have obtained an order for possession of the third vacant lot, and they are free as a result to collect rents were they to find a tenant. Equally, the obtaining of possession in respect of this lot may assist the smooth sale and the delivery of vacant possession to a prospective purchaser. I accept that it may not have been the intention of the plaintiffs to seek possession of the vacant unit, but the fact is that possession of that unit was granted, and the order of the Circuit Court is quite clear and makes no exclusion.

54. Furthermore, counsel for the plaintiffs is correct that the Circuit Court order also made a determination, binding on the defendants, that the security instruments were properly created and that the receivers were validly appointed. The security instruments were made over all of the identified properties, including the three separately rated units comprising the first property. The Circuit Court exercised its jurisdiction in respect of the vacant unit in giving declaratory orders as to the validity of the security instruments, the debt and the appointment of the receivers. It is not correct in those circumstances to say that the third lot was "not relevant" to the order of the Circuit Court, and if the Circuit Court order is to bind the defendants then it binds the defendants with regard to all of the properties and not merely those in respect of which evidence was adduced to found a claim for injunctive relief.

At what date is the test of jurisdiction applied?

55. It remains to be considered whether counsel for the plaintiffs is correct in arguing that, as the Circuit Court clearly had jurisdiction at the institution of these proceedings, it continued to retain that jurisdiction at the date it made the final orders. At the date the proceedings were instituted the rateable valuation of the entire premises, the subject matter thereof was less than €254 per year. The reason for this is that a fire had occurred in the buildings in one of the lots and it had for a period a zero rateable valuation. I reject the contention of the plaintiffs that as jurisdiction is established to have existed at the date of the institution of the proceedings, the Circuit Court continued to enjoy that jurisdiction until the making of the final order.

56. The answer to this question is found in the terms of the Act of 1961 itself, which provides that the jurisdiction of the Circuit Court to hear and determine proceedings is limited by the monetary and valuation limits provided in the Act. The fact that the Oireachtas provided that the jurisdiction was one to determine the proceedings reflects in my view an obligation that the jurisdiction be in existence at the date the relevant order is made, in other words the date of the determination of the dispute by the proceedings. Thus the correct date at which the rateable valuation is tested is the date of the order. This is consistent with the judgment of O'Hanlon J. in *Harrington v. Murphy* referred to at 24 ante.

Conclusion

57. I consider that the Act of 1961 cannot for the reasons stated be read as conferring jurisdiction of the Circuit Court when the combined rateable valuation of the lands in respect to which relief is sought exceeds the sum of €254, and the test of jurisdiction must be made in respect of the lands in the suit taken together, and not in respect of individually identified parcels which are contained in the suit. I conclude then that as the combined rateable valuation of the lands the subject matter of this suit exceeded the jurisdictional limit, the Circuit Court lacked jurisdiction to hear and determine the matters before it and that the order of 23rd January, 2015 must fall.