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THE HIGH COURT
DUBLIN

[2006 No. 778 J.R.]

N.W.

APPLICANT

JUDGE OLIVE BUTTIMER, IRELAND
AND
THE ATTORNEY GENERAL

RESPONDENTS

MS. A.W.

NOTICE PARTY

Judgment of Mr. Justice Murphy given on Friday 13th October

1. Mr. .Murphy: Judge, before you deliver judgment, can I just raise the in camera situation with you?

2. Mr. Justice Murphy: Yes.

3. Mr. .Murphy: Obviously we do not know how much your Lordship is going to touch on evidence. There is at least one member of the press present and in fairness to that member of the press, the question has been raised by the press.

4. Mr. Justice Murphy: And quite properly raised.

5. Mr. .Murphy: I wonder could you give some indication as to whether your judgment should be regarded as in camera or whether you want to put any restriction on publicity.

6. Mr. Justice Murphy: What I had hoped to do is to leave matters which would normally be in camera out of the judgment and deal with the Judicial Review matter. But I am concerned in relation to the Respondent to this motion, who of course is the Applicant in the Judicial Review proceedings, and maybe

7. Mr. N.W. should be called at this stage.

8. Registrar: Mr. W.

9. Mr. Justice Murphy: I understand in fact the registrar yesterday did contact Mr. W. and did inform him that the matter had been heard yesterday and the Court was going to proceed to judgment today and I understand that there was no application for an adjournment or anything which would indicate the Court should not proceed to deal with the matter today.

10. Mr. Bulbulia: My Lord, can I just say in that respect I understand also that the registrar did make contact with Mr. W. and in addition, as directed by the Court, my solicitor sent a text message to the Applicant's mobile telephone and my solicitor personally left a message on his voice answering machine on his mobile telephone and I can hand in a letter from my solicitors addressed to the town agents setting out the text of that text message to the Applicant (same handed). I should also say Ms. Boyle sends here apologies, my Lord, she cannot be present.

11. Mr. Justice Murphy: Yes, I understand that from yesterday and indeed if there had been a request to adjourn the matter the Court would have dealt with it sometime next week. But the Court is always concerned in cases such as this that the Court deals with it as a matter of urgency and the Court proceed s to do that. While I will then deal with my judgment, you will just bear with me in terms of the arguments that have been put forward and also the matters that obviously should be in camera, I do not want to make a reference to that.

12. Mr. Murphy: Judge, can we take it that you intend that the names may or on the other hand may not be used in any report of your judgment.

13. Mr. Justice Murphy: I would prefer names were not mentioned but I am of course conscious this is a Judicial Review, this is not a family law issue. But I do think that the press might exercise their discretion with regard to naming names, particularly when there have been clear breaches of the in camera rule before. The Court is concerned about that and indeed it is one of the concerns the Court has which has led it to deal with this matter as a matter of urgency given the nature of the Judicial Review. The review does touch on family law matters.

14. The background has already been opened to the Court in relation to the position of the parties and it does not seem to me that at this stage I need to deal with the prehistory of the matter other than to refer to the many orders that were made under the 1989 Judicial Separation and Family Law Act as amended by the 1995 Act. The motion for Judicial Review was moved in the court on 3rd July of this year and an order was made by Mr. Justice Peart ex parte, that is with the Applicant only being before the Court seeking the following orders, an order of certiorari by way of application for Judicial Review quashing any or all of the orders made by the Circuit Court Judge under the Judicial Separation Act of 1989 and the Family Law Reform Act of 1995.Further an order of prohibition against any further proceeding in the matters before the Circuit Court, thirdly a declaration by way of Judicial Review that the First Named Respondent, that is the Circuit Court Judge, acted improperly in making preliminary orders under Section 6 of the Family Law Reform Act in circumstances where the Applicant's affairs related to matters which were under the jurisdiction of the Roman Catholic Church. Fourthly, a declaration by way of Judicial Review that the Circuit Court Judge acted improperly in issuing an attachment warrant compelling the Applicant to be brought to court so that he might act even against his religious conscience and free will as the Respondent to the proceedings under the 1989 Act. There was also a request for damages and for costs as part of the matter which was before Mr. Justice Peart.

15. Now, it does not seem to me that I need to do anything other than to refer to the extensive grounds in respect of which leave was granted by this Court.

16. The matter which was before the Court on Wednesday and yesterday is a motion by the Notice Party to let Judicial Review and I might add that the original application for Judicial Review did not include the Notice Party who is the wife in the proceedings. It seems to me that that was improper but in fact the Court did order that the Notice Party be included and as such clearly the Notice Party then issued a notice of motion which, as I say, was dealt with on Wednesday and Thursday of this week. That application was to

discharge the order of the 3rd July last, that is the leave order whereby the Applicant was given leave to apply for Judicial Review in respect of the reliefs and on the grounds set out in that order.

17. Secondly the Notice Party sought an order pursuant to Order 19, Rule 28 of the Rules of the Superior Courts for in the alternative, pursuant to the inherent jurisdiction of the Court, striking out or dismissing the Applicant's proceedings on the grounds that the said proceedings disclosed no reasonable cause of action, that the said proceedings were frivolous and/or vexatious and that the proceedings were doomed to fail.

18. Thirdly the Notice Party asks in the alternative and strictly without prejudice that the Court make an order discharging the stay on the Circuit Court proceedings by the Notice Party on foot of a Family Law Bill under the provisions of the 1989 Act and I should add for the sake of clarity that the order granting leave did apply, as is normal, for a stay on the proceedings in relation to which Judicial Review was sought.

19. The Notice Party in the fourth instance looks for a further relief in the alternative, again without prejudice to the three reliefs claimed, for an order varying the aforesaid stay with regard to certain matters which were dealt with by the Circuit Court in relation to the progress of the judicial separation proceedings.

20. There was also a request that matters be dealt with in camera in relation to the family law matters and this indeed was acceded to by the Court and on Wednesday and Thursday the Court held an in camera hearing in relation to the factual matters and then yesterday morning when those matters were dealt with had the in camera notice removed from the door of the court so that the legal submissions could be made then in public, as indeed they were.

21. I should say that there was a statement of opposition and indeed an affidavit of the Notice Party in reply to the affidavit of the Applicant in relation to the Judicial Review application. I do not intend to go into the detail of those long affidavits which were opened extensively together with the exhibits therein before the Court. Suffice it to say the notice of opposition put in issue the main thrust of the Judicial Review which seems to me to be a jurisdictional matter, that is to say whether the Circuit Court or indeed any other court could deal with matters that arose out of a marriage celebrated in the Roman Catholic Church under the provisions of the law relating to marriages within that church.

22. The matter will become clearer when I deal with the substantive issue but there are a number of other matters that the Court should deal with first of all and that is on the procedural basis whether this Court has any jurisdiction, to use that word again but in perhaps a narrower more technical sense, in relation to an order made by the High Court, Mr. Justice Peart's order of 3rd July this year. The Court of course is aware of the distinction between the *ex parte* application for the Judicial Review which was granted by that order, and the actual hearing of the Judicial Review which of course is *inter partes*, that is all persons represented.

23. The Court would refer also to the analogy between an application for an injunction ex parte, that is by one party coming to the court seeking protective relief from the court so that there should be no change in the relationship in respect of which the injunction was sought, and that is what we term of course to preserve the status quo. The Court is also aware that the application for an injunction at an *ex parte* stage is of course only for a number of days and indeed when the matter might be adjourned afterwards it is clear that before an injunction is made final or indeed before it is even at an interlocutory stage there must be a hearing by all parties affected. As I said, that takes place within a number of days. In the case of Judicial Review the time between the grant of a relief and the actual hearing of the Judicial Review can of course take many months as further affidavits are exhibited and matters are taken in their normal course.

24. The Court has a concern with regard to matters relating to the Judicial Review which affect the rights of children in particular and more generally which affect issues relating to the judicial separation in this case.

25. The issue of course is whether, as I have indicated, this Court can vary an order now by way of *inter partes* hearing which was ex parte. It is clear that there are indeed a number of cases which justify that and I would like to refer to those briefly at this stage.

26. First of those cases is indeed a judgment of Mr. Justice McCracken in *Voluntary Purchasing -v- Insurco Limited* a case in [1995] 2 ILRM at page 145 where at page 147

27. Mr. Justice McCracken said:

> "In my view however, quite apart from the provision of any rules or statute there is an inherent jurisdiction in the courts in the absence of an express statutory provision to the contrary to set aside an order made ex parte on the application of any party affected by that order. An *ex parte* order is made by a judge who has only heard one party to the proceedings. He may not have had the full facts before him or he may even have been misled, although I should make it clear that that is not suggested in the present case. However, in the interests of justice it is essential that an *ex parte* order may be reviewed and an opportunity given to the parties affected by it to present their side of the case or to correct errors in the original evidence or submissions before the court. It would be quite unjust that an order could be made against a party in its absence and without notice to it which could not be reviewed on the application of the party affected."

28. This was quoted with approval by the Supreme Court in a judgment in two refugee cases, *Adam and others -v- Minister for Justice* and *Iordache -v- Minister for Justice*. Both of these cases were taken together and they were motions to set aside the granting of leave to apply for Judicial Review and to dismiss the proceedings as disclosing no reasonable cause of action. Now, the High Court held that it had an inherent jurisdiction to set aside such leave granted *ex parte* and that the proceedings of applicants in respect of whom the deportation orders had been made or threatened were without substance and the orders of the High Court would be set aside.

29. Now, in particular Ms. Justice McGuinness said the High Court and the Supreme Court on appeal had an inherent jurisdiction to set aside an order granting leave to apply for Judicial Review that had been made on the basis of an *ex parte* application including cases where there was an absence of mala fides, of lack or faith. She further said that leave to apply for Judicial Review should be set aside when the applicant's proceedings have disclosed no reasonable cause of action or were frivolous and vexatious or were doomed to fail and where the applicant had not only failed to put forward a stateable case but had not put forward any case at all within the confines of Judicial Review.

30. The judgment of Ms. Justice McGuinness to which I refer begins on page 63 when she deals with submissions of counsel and on page 68 and 69 she reaches her conclusions in respect of the application and she said:

> "In my view the learned trial judges in the two cases to which I have referred were correct in deciding that this Court had the jurisdiction to set aside orders granting leave which had been made on the basis of an ex parte application."

31. and she then says that jurisdiction should be exercised very sparingly and in a very plain case.

> "The exercise of the Court's inherent jurisdiction to discharge orders giving leave should therefore be used only in exceptional cases."

32. And clearly this is a matter that this Court must take into account in relation to the present application by the Notice Party.

33. I refer as well to the concurring judgment of Mr. Justice Hardiman and again I am sorry, the numbers at this stage are blotted out on the copy I have, but he is on the seventh last page. He says:

> "In my view an order made ex parte must be regarded as an order with provisional nature only. In certain types of proceedings either the apparent requirements of justice or the requirements of its administration mean that a person will be affected in some way or other by an order made without notice to him and therefore without his having been heard. This state of affairs may, depending on the facts, constitute a grave injustice to the defendant or respondent. In the context of an injunction only a very short time would normally elapse before the defendant has some opportunity of putting his side of the case. In Judicial Review proceedings the time before this can occur will normally be much longer. This clearly has scope to work injustice, in least in some cases."

34. He refers again to some English authorities in relation to his concurring decision. Now, clearly there is going to be certain repetition between the judgment of Mr. Justice McCracken, to which I have already referred, affirmed by Ms. Justice McGuinness and indeed in a slightly different way by Mr. Justice Hardiman in that case. This Court is conscious of the fact that it has already mentioned that the original leave was applied for without giving notice to the Notice Party. As I said of course that was improper and it was dealt with by the Court in ordering the Notice Party be informed of the application for leave for Judicial Review.

35. Now, clearly the Court is accordingly entitled then to look at the position of the order made ex parte and indeed to review that. It is not a matter of appeal to the Supreme Court, it is a matter that this Court has jurisdiction to deal with.

36. The question then is on an application such as this where does the onus lie? That has been dealt with in a further case to which I want to refer which is *Noreen McDonald -v-Brady and Others* it is in the [2001] 3 IR at page 589 and the particular passage I want to refer to in the judgment of Chief Justice Keane is on page 598. The Chief Justice said:

> "While the learned High Court Judge took the view that the onus was on the respondents to satisfy the court in the light of the criteria laid down in *America Cyanamid -v- Ethicon* including the balance of convenience that a stay granted should be discharged it could be plausibly contended that on the contrary the onus rests on the applicant to satisfy the court where it is challenged that is should be kept in place. There is nothing in the wording of Order 84 Rule 27A..."

37. That is the Rules of the Superior Courts dealing with Judicial Review applications.

> "... to suggest that where an applicant for leave seeks an order of prohibition or *certiorari* (that is an order quashing a previous order) that he is further entitled *ex debito justitae* (on the basis of his legal right) to a direction that the proceedings should be stayed. There seems to be no reason in logic why the applicant, where the grant of a stay is subsequently challenged, should not be under an onus to satisfy the court that it is an appropriate case to which to grant a stay."

38. This authority then allows the Court not only to deal with the issue of the order in its entirety but also to deal with the issue of the stay on further proceedings and further orders that have been made by the Circuit Court Judge. Accordingly it seems to me that the Court then has the right to deal with those two matters.

39. But before I deal with that there is a further procedural matter which I must deal with and that is the question of the position of the Applicant for the Judicial Review and the Respondent to this motion by the Notice Party acting as a lay litigant, particularly in circumstances where he had been reluctant to put in an appearance to the Circuit Court proceedings. Indeed, I might elaborate by saying that while the county registrar believed that he had in effect appeared before the Court by way of letters sent to the Court, that itis clear from the position of the Circuit Court Judge that there was no formal appearance as indeed the Notice Party to this motion insisted he had made no appearance before the Court because he was in fundamental disagreement with the jurisdiction of the Court to which I will return to.

40. The Court is further concerned about an application that was made on Wednesday for an adjournment and while my understanding is that when the matter was before Mr. Justice Quirke, who was dealing with the Judicial Review list and who had assigned this particular case to this Court, that he did not want to put in any further affidavits. It does seem to me that his application to this Court did seem to imply that he had disagreed with many matters in the Notice Party's affidavit and did want to reply to that. The Court considered the matter and indeed considered it as a formal application for adjournment and having considered the matter did not think that there was any point in granting an adjournment and so ruled.

41. Secondly the Court understands the reluctance of the Respondent to this motion to become embroiled in litigation in relation to the family matters, however it would seem that this did carry over to his reluctance to be involved in this Judicial Review element whereby the Notice Party sought leave to lift the stay or indeed to vary the order entirely that had been granted. It was clear that the Judicial Review proceedings were brought by the Respondent to this motion and that accordingly he had clearly a role to play in relation to that. It does seem to me that on that basis he did make submissions to the Court on Wednesday. Unfortunately yesterday he did not appear in court and the Court had expressed some concern about that. The Court was informed by the solicitor for the Applicant in this motion that a fax had been received by them early that morning which was timed at1:42 a.m. from a Mr. E. in relation to the Applicant not attending and that enclosed a note from a general practitioner who was not the Respondent's normal practitioner, nor indeed lived in his area, to the effect that he was not fit to attend court at present. There were further matters then which counsel for the Applicant found a difficulty in deciphering.

42. It was clear that this was not a notice to the Court and indeed the Court noted that it was not proper for an Applicant for Judicial Review, a Respondent to the motion I am dealing with now, not to notify the Court of his non-attendance when clearly the matter concerned the Judicial Review proceedings which he had initiated.

43. The Court, however, was concerned with regard to whether or not it should of its own motion allow an adjournment so that the Respondent could be present in court when the matter was dealt with and indeed invited submissions in relation to the matter. Counsel for the Applicant in this motion did make submissions and referred to the affidavit in relation to the Circuit Court attendance and it is sufficient to say the Court having heard that concluded that really nothing would be served by adjourning the matter. The Court was fortified in that view insofar as the arguments that had been made on Wednesday, the arguments which were clear from the Judicial Review application and in particular the grounds of that, and indeed the affidavit all related to legal argument.

44. Effectively the matters being dealt with in the Judicial Review related to the jurisdiction of the courts in relation to what I might call loosely and what indeed is referred to somewhat loosely as Roman Catholic marriages.

45. The further matter the Court was concerned with on the Wednesday was the position of what is known as a McKenzie Friend which is allowed by order of the court where lay litigants need some assistance with regard to the preparation of their case. The Court was aware that a McKenzie Friend had been allowed to the Respondent in the Circuit Court and indeed in the preliminary submissions that had been made on Wednesday it did appear that there were three parties that were assisting the Respondent to this motion in relation to the preparation of his case and indeed at one stage the Court asked whether his submissions were being made by the Respondent or by these parties, one of whom included the author of the fax which was sent at 1:42 yesterday morning, that is Mr. R.E. He had been a former McKenzie Friend and indeed I understand from the Respondent's own affidavit is Chairman of the N. M. C. of Ireland.

46. The Court did ask whether the Respondent wanted to apply for a McKenzie Friend given again the intervention that was being made by some of the people who accompanied the Respondent. After some consideration the Court was informed that he did not. Again I can understand the position of somebody who was reluctant and indeed refused to appear in the court below may have felt that a period here in an application to discharge or to vary the Judicial Review leave, there may have been some concern or indeed some confusion with regard to not taking a step in the proceedings to which he had objected. Clearly this is the thrust of the Judicial Review proceedings initiated by him.

47. There was further an application made with regard to evidence being held in camera to which I have already referred and that was dealt with on Monday when the court proceeded as I have already indicated.

48. The Court, having considered the matter submitted by counsel for the moving party in this motion and in particular paragraphs 20, 37, 38, 46 to 50, 56, 59 to 61, again I do this in ease of the moving party rather than by way of judgment, but clearly the Court had considered in detail these affidavits and I note they were not opened in public and perhaps I should not have referred to them here. I could summarise them by saying that it would appear that the Respondent had not voluntarily attended any of the Circuit Court sittings since 3rd November 2005 which predated the first order that was made by the Court and the Court had regarded the notification as being improper, particularly where the Respondent was in fact the Applicant in the Judicial Review proceedings.

49. Having regard to all of that the Court decided to proceed with the hearing yesterday and indeed at the end of the hearing indicated it was prepared to deliver its judgment as a matter of urgency on the following day, i.e. today, and as I have already noted the Respondent was notified by the Courts Service and indeed by the solicitor on behalf of the moving party that that judgment would be dealt with today.

50. I might just summarise the legal argument in court and that legal argument was based first of all on the nature of Judicial Review proceedings in terms of the time for making those Judicial Review proceedings. The first point that was made, not alone by counsel for the moving party but also counsel for the State who was in fact the Respondent in the Judicial Review proceedings, that the application was not made promptly and in any event was not made within the six months necessary for certiorari and the three months necessary for the other reliefs as laid down in order 84 of the Rules of the Superior Courts. That is to say that that the matter was moved on 3rd July 2006 whereas the first order that had been made was clearly of 3rd November 2005 and again, given the nature of the Judicial Review proceedings effectively to say the Court had no jurisdiction, this clearly in my view was the date in relation to which a Judicial Review should have been raised. It should have been done promptly and in any event within six months from that date. It was clear that it was not done so.

51. The Judicial Review arose, and I should deal with this perhaps very briefly, in relation to committal orders and in relation to a habeas corpus application which would appear to have been allowed on the basis that proceedings be taken by way of Judicial Review in a certain period of time, such period of time being enlarged to enable the respondent to this motion to instigate Judicial Review proceedings.

52. The second argument made in open court related to the nature of marriage and this was a fairly extensive argument based on the decision of the High Court as far back as 1912 in *Usher -V- Usher* which was a very considered decision then of the Irish Kings Bench Division [1912] 2 IR at page 445 and in particular the judgment of Lord Chief Justice O'Brien on page 482 where he refers to the position of marriage generally and more particularly the position of Roman Catholic marriage in particular.

53. By way of background I will summarise the matter. It is clear that marriage had historically been subject to ecclesiastical law and this of course was determined more particularly by the various revisions of canon law in relation to the marriages and after the reformation of course it changed and in particular the position in Ireland was somewhat different to that in England and Wales, indeed that is referred to by Lord Justice O'Brien. He refers indeed to the position of the 1863 Act and I simply quote, I do want to get into detail here:

> "Until the year 1863 marriages between Roman Catholics, being the great majority of the whole number of marriages annually solemnised in Ireland, were left to the operation of the common law without any statutory enactment."

54. There of course having been in England and Wales several marriage acts.

> "...and as so far as relates to the legal constitution of marriage between such parties this is still the case and provisions of the Act passed in that year have been directory with a view to the registration only of such marriages."

55. And indeed I might add this is part of the case made by the Respondent in saying that the civil side of Catholic marriages in Ireland only relates to registration. The matter is further considered by Chief Baron McCallis who is another member of the King's Bench Division at that stage and he also refers to the effect of the 1863 Act and says further that:

> "By common law the presence of a clergymen of holy orders either of the Roman Catholic or Protestant Episcopal church was essential to the valid constitution of a contract of marriage, but a marriage solemnised by any such clergyman,

whether publically or privately at whatever time and place and in whatever form or manner between parties competent to intermarry was valid without any previous publication of banns, licenses, notices, residence or consent and this is still the law of Ireland as to all Roman Catholic marriages."

56. And again the submissions in relation to the matters where the civil effect of Roman Catholic marriages was recognised under common law and that even where it was regarded as being a civil marriage then that was the position, the legal position, in Ireland, the recognition even if there had been some impediment which might lead canon law to say there was no contract from the very beginning, in other words the civil law regarded the bond of marriage as being something that was at best voidable but not void.

57. So that matter of course is dealt with in extensive articles to which some reference was made, but in effect what we are dealing with here is a marriage which is clearly on both sides a valid marriage. The Respondent to the motion disagrees that the legal effect can be dealt with by the Oireachtas as in the case of the 1989 Judicial Separation Act and the 1995 Family Law Reform Act. While it does not arise in this case, it also would have affect with regard to the Divorce Act. We are not dealing with that.

58. The matter of the 1989 Act was dealt with extensively, and the submissions were very clear in this regard, in *T.F. -v- Ireland*, *the Attorney General and M.F*. and that is an appeal from a judgment of Mr. Justice Murphy in the High Court and again it is a decision on the effect of Section 2 of the Judicial Separation and Family Law Reform Act of 1989 to which I have made reference. It is at [1995] 2 ILRM at page 321. If I can simply refer to the head note at 323:

> (3) "A decree of judicial separation in respect of the spouses concerned does not and could not affect the bond of marriage. The provision of grounds for judicial separation does not, *per se* constitute a failure to guard the institution of marriage with special care or a failure to protect it against attack." (See also 347 of the judgment)

59. The head note continues at page 324:

> "The 1989 Act made every effort to protect the family once there had been a breakdown in normal marital relations with the court being obliged by Section 19 to have regard to the welfare of the family as a whole and in particular whether proper and secure accommodation is provided for the dependent spouse and any dependent child of the family. Likewise Section 20required the court to ensure that such provision as it made for any spouse or for any dependent child of the family is adequate and reasonable having regard to all the circumstances of the case.
>
> While the 1989 Act amended and extended the grounds upon which a judicial separation may be granted it goes on to provide that no order can be granted unless the court is satisfied that provision is made for dependent children, that the spouse has been made aware of the alternatives to judicial separation such as reconciliation, mediation and agreed separation and that proceedings may be adjourned to assist reconciliation. Even after granting a decree of separation an application can be made to rescind the decree of separation. This demonstrates the concern of the Oireachtas to safeguard the institution of marriage while at the same time making provision for the situations created by marriage breakdown.
>
> The grant of a decree of judicial separation under Section 3 of the Act on the grounds set out at Section 2 is an official recognition of an existing usually tragic state of affairs and is an appropriate attempt by the Oireachtas to reconcile the rights of the parties to the marriage, the family and the community of which the family is a fundamental unit."
>
> (see 349)

60. And then the court goes on as summarised in the head note to say the High Court had been correct in refusing to admit the evidence of a theologian as to the essential features of Christian marriage.

> "The concept of marriage as referred to in the constitution may well be derived from Christian origins, however whatever its origins the obligation of the State and the rights of the parties to a marriage are now contained in the constitution and the laws enacted thereunder. It falls to the court to interpret those provisions and it is not permissible to abdicate that function to others."
>
> (See p. 350 of judgment)

61. And the matters are indeed dealt with in extenso in the penultimate pages of the judgment of the Court, that is to say the judgment of Chief Justice Hamilton in that case.

62. Submissions were also made which clearly the Court must take into account in relation to the presumption of constitutionality of the Act which it is sought, not so much to impugn, but to say it does not in fact give jurisdiction or cannot give jurisdiction to the Courts to deal with the consequences of separation or indeed make an order of separation. I have already dealt with that. It is clear that in that case the Court has deemed the Act to be constitutional.

63. The decision of the Court in this matter first of all considers the reliefs that were sought and those reliefs sought relate first of all to an order discharging the order of 3rd July in its entirety or alternatively striking it out on the basis that it discloses no reasonable cause of action or that the proceedings are frivolous or vexatious and are doomed to fail. Now, it does not seem to me that the proceedings are either frivolous or vexatious and what the Court has got to deal with is whether they disclose a reasonable cause of action or not or indeed whether the proceedings are doomed to fail in any event. Alternatively the Court is asked to deal with the question of a stay so that certain matters may continue pending the hearing of the Judicial Review proceedings.

64. The court has an obligation in all of these cases when moved by a party to consider all of the submissions that are made before it. In doing so the Court would first of all try to understand what the Judicial Review element is and that, of course, as I have said, does come to a very succinct point and that is the question of the jurisdiction of the Courts to deal with Roman Catholic marriage. The argument is in essence that while these Acts may indeed apply to parties who marry outside of in particular Roman Catholic marriage, though possibly the same might apply to the marriage in the Episcopalian church, the Church of Ireland, they cannot apply to a Roman Catholic marriage and the Courts then do not have jurisdiction to deal with the matters.

65. The submissions made to the Circuit Court were effectively to show the jurisdiction of the Circuit Court and this was not simply saying the Circuit Court has a right under the 1989 Act to deal with certain matters as indeed the High Court has, and the High Court clearly has full jurisdiction to deal with all matters of the constitution, but it was to say that in relation to Roman Catholic marriage that was really a matter of a covenant with God, that was a matter which was to be dealt with under the provisions of the Roman

Catholic ecclesiastical code.

66. The definition of jurisdiction in itself is worth reiterating. It is of course a legal power or the right to administer justice. It is a legal power, a right to make or enforce laws or exercise authority. This appears to be the common definition in the Oxford English Dictionary, in Cassells', and the dictionaries give more or less detail with regard to the origins of the word, but the Latin derivation is very clear, it comes from *jus* and *dicere*, which is effectively to speak the law. It is probably worth dwelling a little bit on that because it I think underlines the case that the Respondent is making in his Judicial Review application and that is to say that to speak the law with regard to Roman Catholic marriage must necessarily be the Roman Catholic authorities. Again it is not clearly stated by which mechanism, whether that is a matter of the local church or the rota in Rome or other matters in relation to which canon law would have effect. But it does seem to be clear that the legal power or right to administer justice is a matter which is derived in this jurisdiction from the constitution very clearly and it does not seem to me that I have got to go into the authorities of the constitution. I think they are accepted by all parties.

67. Judges constituted by the constitution and indeed being appointed by the President clearly have a power and right, indeed further, a duty to deal with the law under the constitution. The *T.F. case* to which I have already referred has affirmed the constitutionality of the Judicial Separation Act. The Courts have dealt, rightly it seems to me, with the position of applicants who come to it seeking relief. It does seem to me accordingly that the issue which has been raised in Judicial Review does seem to me to disclose no reasonable cause of action. I am not going as far as to say it is doomed to fail but if it discloses no reasonable cause of action it does not seem to me that it can succeed before the Court. While the Court has to be reluctant, very reluctant, to stay the hand of a litigant that comes seeking relief and that this power to set aside the relief, the leave that has been granted, should be exercised sparingly, it does seem to me this is a case where the Respondent had disclosed no reasonable cause of action.

68. Further it does seem to me, and one might indeed have dealt with it on this preliminary point, that while the Judicial Review threshold is low, that the Court has an obligation to deal with applications that are made to it and that the matter could have been dealt with by way of simply a time bar and that is to say that the decision of 3rd December 2005 was the time in relation to which a Judicial Review application should have been referred, that is to say promptly and in any event within a period of six months. It does seem to me the leave for Judicial Review proceedings on that ground should be set aside. I should add in that regard that no application was made for an extension of time either at the leave stage or indeed subsequently. One would have thought that that would be a fairly basic point to make given that the statement of opposition which indeed was delivered, the statement of opposition of the Notice Party in the Judicial Review proceedings was delivered at the time or shortly after the leave was granted and the date of that is not on this copy but it certainly was July of this year. So from July right up to October that was very much a point which was alive and, as I said, no application was made for an extension of the time.

69. There is even a more fundamental point and that is one that does concern this Court, and that is the obligation of the Court to uphold the law and it does seem to me that it is inconceivable, indeed untenable, that a person could successfully argue in a constitutional court that a Roman Catholic marriage as celebrated before an ordained priest could not be recognised by the constitution, could not be recognised by the law of Ireland. It is clear from *Usher -v- Usher* that it is so recognised and could be dealt with by the Courts. It would seem that a constitutional Court could not entertain such argument. Indeed it would seem to me to attack the Court, the laws and indeed the constitution itself. It clearly would deprive a party to a Roman Catholic marriage of any assistance of the Court and clearly on the base of the constitution, on the base of the European Convention of Human Rights, no argument was made on this, it is clear the Court has an obligation to refer to the European Convention as enacted in this jurisdiction, clearly that would be to deprive a person from the protection and the reliefs sought in its Courts.

70. Finally, for the sake of completeness, I should say that of course the effect of the Judicial Separation Act, this is clear from the judgment of Mr. Justice Hamilton, does in no way affect the position of a Roman Catholic marriage. Indeed for the reasons that were given by the Chief Justice every effort is made not alone to uphold the bond and indeed to reapply under the Act where an order has been made, but that does not deprive the Court's duty to deal with this matter.

71. The State has intervened, not on the basis of the *inter partes* matter but rather to uphold the law and has been quite clear that it in no sense wants to impugn the motivation of the Respondent to this motion, nor indeed even to deal with the issues of the stay. The State is concerned with the public law, the interest in public law, what it has referred to as the civil matrimonial legislative scheme which of course governs the law relating to marriages and the law relating as well to separations and so forth. It does seem that the issue then of the stay is not then a matter which arises given the determination which I have made with regard to no reasonable cause of action and the issue of the time bar. If I were wrong for whatever reason in this it does seem to me that the interests of justice would be best served by varying the statements pursuant to the notice of motion on paragraph 4 allowing certain of the orders of the Circuit Court to proceed, notwithstanding the issue of if the Supreme Court were to allow the Judicial Review proceedings to continue to hearing. But, as I said, it does seem to me for the reasons given that I should accede to the application of the Applicant and indeed make an order in terms of paragraph 2 of the notice of motion and discharge the order of the High Court made on 3rd July last.