[2017] IEHC 331

THE HIGH COURT

[2013/10093P]

BETWEEN

GERALDINE HANRAHAN AND COLM HANRAHAN

PLAINTIFFS

AND

GREYHOUND RECYCLING AND RECOVERY

DEFENDANT

AND

RONAN BUCKLEY AND KEVIN FLANAGAN

THIRD PARTIES

JUDGMENT of Mr Justice David Keane delivered on the 26th day of May 2017

Introduction

1. Who bears responsibility for an illegal dump that Laois County Council found on 6 April 2011 at an old quarry on certain lands within its functional area? The plaintiffs in this case ('the Hanrahans') are a widow ('Mrs Hanrahan') and her son ('Mr Hanrahan Junior'). The defendant ('Greyhound') is an unlimited company, engaged - as its name suggests - in the business of waste management.

2. The Hanrahan family farmlands ('the Hanrahan lands') are located at Graigueadrisly (sometimes referred to simply as 'Graigue'), Rathdowney, County Laois. Mrs Hanrahan owned the lands jointly with her late husband until his death in May 2013 and is now the sole owner of them. Mr Hanrahan Junior obtained a leasehold interest in the lands from his parents on or about 11 October 2007, but he claims that, because of a family dispute, he was not in occupation of them between 2009 and the date of his father's death. The Hanrahans claim that, on various dates between March and April 2011, Greyhound was responsible for the transportation of waste material from its facility at Crag Avenue in Clondalkin, County Dublin, to the Hanrahan lands and the illegal dumping of that material there, without their knowledge or consent.

3. The Hanrahans contend that these actions on the part of Greyhound amount to trespass, negligence and breach of duty (including breach of statutory duty), nuisance and, for reasons explained below, an interference with Mr Hanrahan Junior's economic relations with his own employer. They claim damages (including aggravated or exemplary damages) for those torts, together with three separate declarations of right and an order pursuant to s. 57 of the Waste Management Act 1996, as amended ('the 1996 Act'). The three declarations they seek are: first, that Greyhound dumped waste on the lands between March and April 2011 without lawful authority and in breach of the 1996 Act; second, that Greyhound is liable to remove that waste from those lands; and third, that Greyhound is obliged to indemnify the Hanrahans for: (i) the costs they have incurred, or will incur, in respect of the removal of the waste and the remediation of the lands; and (ii) any liability they may have to any statutory authority arising from the dumping of that waste on those lands. The Order the Hanrahans seek under s. 57 of the 1996 Act is one directing Greyhound to effect the removal of the waste material and to remediate the lands.

4. In its defence, Greyhound puts Mrs Hanrahan on proof of her ownership of the lands and denies the lease of the lands in favour of Mr Hanrahan Junior. Greyhound denies that any waste material was removed from its facility, transported to the Hanrahans' lands and dumped there between March and April 2011. It denies that the Hanrahans did not authorise the dumping of noxious material on their lands or that they were unaware of that activity until so informed by Laois County Council in April 2011. Greyhound denies the loss, damage, inconvenience or expense claimed by the Hanrahans. In the alternative, it claims that they have failed to mitigate that loss. In the further alternative, it claims that any such loss was caused by the deceased Mr Hanrahan Senior (the husband of Mrs Hanrahan and father of Mr Hanrahan Junior). On that basis, Greyhound seeks an indemnity from his estate in respect of the Hanrahans' claim.

5. Greyhound advances other specific defences. First, it contends that the Hanrahans are guilty of inordinate and inexcusable delay or laches in asserting their claim, or of acquiescence in the circumstances giving rise to it, such that their proceedings should be struck out or they should be deemed estopped from seeking the reliefs they now claim.

6. Second, Greyhound asserts that the Hanrahans are not entitled to the reliefs they claim in circumstances where the High Court found Mr Hanrahan Junior in contempt of court for failing to comply with an Order of that Court requiring him to remedy the effects of the dumping of the waste material on the Hanrahan lands. Greyhound contends that this precludes the Hanrahans from obtaining the declarations they seek because it means that they do not come to court with clean hands.

7. Third, Greyhound pleads that the Hanrahans, or either of them, in concert with Mr Hanrahan Senior or alone, have by their own wrongful, unlawful or illegal acts brought about or permitted the holding or disposal of the said waste on the lands, rendering the present proceedings unsustainable in law as contrary to public policy or an abuse of process.

Background

8. Laois County Council ('the Council') issued proceedings against the Hanrahans (together with Mr Hanrahan Senior), by originating notice of motion dated 10 November 2011, seeking orders against each of them pursuant to s. 58 of the 1996 Act that: (a) they discontinue holding or disposing of waste on the lands; (b) they mitigate any and all effects of the said holding or disposal of waste on the lands through the excavation and removal of that waste; and (c) that they remedy any and all effects of the holding or disposal of that waste on the lands by: (i) excavating and removing it; (ii) providing confirmation that that has been done and that no residual soil contamination remains; (iii) remediating the landscape; and (iv) providing an independent report confirming that the remediation has been done, following confirmatory sampling at the conclusion of those remedial works ('the s. 58 proceedings').

9. According to the evidence adduced by the Council in the said proceedings, the subject site is a former sand and gravel pit on the Hanrahan lands covering 0.95 hectares of which 0.4 hectares has waste deposited on it. The waste is predominantly municipal solid

waste, the volume of which is assessed at between 960 and 1,840 tonnes. On initial testing, carbon dioxide and methane levels on the site were found to exceed Department of Environment limits and the waste was found to have the potential to generate a leachate, which in turn has the potential to migrate to the local groundwater system and cause 'significant pollution.' The soils and subsoils at the site are predominantly sands and gravel with a high permeability. A regionally important karstified (that is to say, irregular limestone) aquifer is located close to, and potentially extends beneath, the site.

10. In response to an anonymous complaint on 6 April 2011, two authorised officers of the Council immediately attended at the Hanrahan lands on that date, arriving at approximately 3.40 pm. They observed a farmyard with a shed and surrounding farm lands. Upon entering the farmyard, they immediately detected a strong, foul smell consistent with waste disposal and observed waste stored at a location adjacent to the shed in the farmyard. On further investigation, the officers noted tractor type tracks leading from the yard into the surrounding farmlands. Those tracks led to the top of a field approximately 150 yards from the farmyard, on the other side of which the officers discovered the subject site. On a preliminary inspection, the officers observed three types of waste: an area of domestic, processed waste; an area of mixed waste including construction and demolition waste; and an amount of windblown litter over the site and field generally.

11. On subsequent investigation, the domestic processed waste was found predominantly to comprise shredded plastic of generally uniform size (originally bottles, food containers, toothbrushes *etc*) and minor amounts of organic waste, with a strong odour consistent with municipal solid waste that had undergone processing. An expert report commissioned by the Council concluded that, if the waste remains *in situ*, a strong leachate will be generated, and the site will pose a moderate risk to the local groundwater system.

12. At the material time, the family home of Mr Hanrahan Junior was on a site carved out of the north of the folio comprising the relevant part of the Hanrahan lands ('the out farm'), adjacent to the farmyard there. Mrs Hanrahan and Mr Hanrahan Senior were living approximately 1.2 km from the entrance to the farmyard, in a dwelling house with its own separate farmlands ('the home farm'), also part of the Hanrahan lands, attached.

13. At approximately 4 pm on 6 April 2011, the same two authorised officers went to the home of Mr Hanrahan Senior and spoke to him there. Mr Hanrahan Senior stated after caution that he was unaware of any waste deposited on the lands, which were leased to Mr Hanrahan Junior. Mr Hanrahan Senior gave the officers Mr Hanrahan Junior's mobile phone number. When an officer succeeded in contacting him on that number the following day, 7 April 2011, Mr Hanrahan Junior stated, after caution, that he was separated from his wife and no longer living at the family home at Graigueadrisly. He then stated that he had entered into an agreement with a 'Mr James O'Connor' of a business named 'Acorn Plant and Machinery Hire' in 'Ashbourne, Navan, County Meath', permitting 'Mr O'Connor' to remove sand from the quarry. Mr Hanrahan Junior said that he had not attended the site for a period of four weeks.

14. On the following day, 8 April 2011, Mr Hanrahan Junior met with the officers at the site. There he stated, again under caution, that the site had been leased for 'up to seven months' to 'Mr O'Connor' to use as a quarry. He telephoned 'Mr O'Connor' in their presence and invited one of the officers to speak to him. After caution, 'Mr O'Connor' agreed to meet the officers at the site at 5 pm on 11 April 2011. 'Mr O'Connor' failed to attend that meeting. The Council's solicitors wrote to Mr Hanrahan Junior, on 23 August 2011, seeking further details of 'Mr James O'Connor' and 'Acorn Plant & Machinery Hire'. Mr Hanrahan Junior did not reply. A Companies Registration Office search demonstrated that there was no company or business registered in that name in the Ashbourne area. There was a company with a registered office in Cork named Acorn Plant and Machinery Limited but it never commenced trading; no one named James O'Connor was associated with it; and it was dissolved in 2005. There was a company named Acorn Plant Hire Limited with a registered office in Dublin that was dissolved in 1995 and did not have anyone named James O'Connor associated with it. The business name Acorn Plant Hire was registered in 2002 by a business in County Clare but no one named James O'Connor was associated with it. O'Connor Plant Hire has been registered as a business name by a business in Navan, County Meath but it is associated with one Andrew O'Connor. It has not been possible to locate a 'James O'Connor' in the Ashbourne area through directory inquiries or internet searches. No evidence of the existence of such a person or such a business has ever been produced.

15. When Mr Hanrahan Junior met with the Council's authorised officers at the site on 8 April 2011, he informed them that he was living at his brother's house in Sandyford, County Dublin, having left the family home at Graigueadrisly after separating from his wife. However, when the Council's summons server attempted to serve him at his brother's address on 18 November 2011, there was no response. Meanwhile, when a summons server attempted to serve Mr Hanrahan Senior and Mrs Hanrahan at their farmhouse at Bawnaughra, Rathdowney, County Laois on the same date, Mr Hanrahan Junior was found to be present there. He was subsequently served there four days later, on 22 November 2011.

16. On 13 April 2011, the Council wrote to Mr Hanrahan Senior as joint owner of the lands requiring him to identify the person(s) who disposed of the waste on his lands, the nature of the waste, and the person(s) whose waste it was. Mr Hanrahan Senior replied by handwritten letter dated 18 April 2011. In that letter, he asserted that he was unaware that waste had been placed on his lands until the Council notified him of it and that he did not know what the nature of the waste was, who put it there, or where it came from. He concluded by stating that he had been retired from farming for three or four years and that his lands were leased to his son, Mr Hanrahan Junior.

17. Mr Hanrahan Senior filed an affidavit in the s. 58 proceedings on 6 March 2012 (unfortunately, the copy of that affidavit in the Hanrahans' discovery is unsworn). In it he averred on behalf of Mrs Hanrahan and himself that, although they were retired farmers and the registered owners of the Graigueadrisly farmlands at issue, they had leased the lands in question to their son, Mr Hanrahan Junior, by lease dated 11 October 2007, and since then they had not been in possession or occupation of them. Although the lands are just one mile (or a mile and a half) from their farmhouse, Mr Hanrahan Senior emphasised that they were not directly visible from it, that neither he nor his wife had any reason to be on the lands, and that they did not 'ordinarily' pass the lands in the course of their daily business. Thus, he averred that neither he nor Mrs Hanrahan were aware of any waste being transported to the lands or being disposed of there. Mr Hanrahan Senior then averred that he was aware that Mr Hanrahan Junior 'had some form of arrangement with a third party' but had been advised that the relevant evidence should more properly be given by his son.

8. The proceedings were heard on 3 May 2012. By Order made on 24 May 2012, the High Court (per Hedigan J.) found that each of the respondents was a waste holder within the meaning of that term under the 1996 Act and granted all of the orders sought by the Council under s. 58 of that Act against each of them. The necessary works, including the remediation works, were to be completed no later than 1 September 2012. A notice of appeal, dated 19 June 2012, against that order was served by a firm of solicitors on behalf of all three respondents but was later withdrawn on 24 January 2014 in circumstances that have not been explained.

19. No works of remediation were carried out by the respondents.

20. By notice of motion dated 16 April 2013, the Council applied to the High Court for orders of attachment and committal of all three respondents. The application against Mr Hanrahan Senior ended with his death in May 2013. The Council did not pursue its application

against Mrs Hanrahan, who was then in poor health, on what appear to have been compassionate grounds.

21. Not without some difficulty, the s. 58 Order with the necessary penal endorsement was eventually served on Mr Hanrahan Junior who then began, for the first time, to engage with the claim against him, entering an appearance in the proceedings on 8 July 2013. Mr Hanrahan Junior retained a firm of consulting engineers, Michael Reilly & Associates, to draw up a remediation programme and payment plan (with costings) on his behalf. After some initial works were carried out, it became clear that the costings in the plan did not take account of a landfill levy, statutorily payable in respect of each tonne of waste removed from the lands and properly disposed of in a landfill facility. It was, and is, Mr Hanrahan Junior's case that he is unable to finance the payment of that levy and so the removal of the waste did not occur, preventing the remediation of the lands. It was also Mr Hanrahan Junior's case that, should he be committed to prison for contempt of the s. 58 Order, he has been told that his present employment will be terminated, which he contends would amount to an interference with the economic relations between his employer and him by Greyhound, as the alleged dumper of the waste. That aspect of the Hanrahans' claim appears to have fallen away in that Mr Hanrahan Junior has since left that employment and is currently self-employed.

22. In the course of his defence to the committal application, Mr Hanrahan identified Greyhound as the dumper of the waste for the first time (though without then producing any evidence in support of that assertion) in an affidavit that he swore on 31 July 2013, more than two years after the illegal dump was discovered by the Council. In the same affidavit, he indicated that his legal representatives had been instructed to issue proceedings against Greyhound. He then sought the adjournment of the application pending the resolution of those anticipated proceedings. Hedigan J refused that application on the basis that the evidence produced up to that point in support of that contention was 'thoroughly unconvincing' and because it would be an abdication of the responsibility of the Court to grant an open-ended adjournment in those circumstances.

23. By Order made on 17 September 2013, Hedigan J committed Mr Hanrahan Junior to prison for contempt of court for a period of six months or such further period as the court might direct unless the appropriate steps were taken to remove the waste and remediate the lands within a stipulated period.

24. Mr Hanrahan Junior appealed that Order. In judgments given on 14 March 2014 (in a case reported under the title *Laois County Council v Hanrahan & Ors* [2014] 3 IR 143), the Supreme Court set the order aside and remitted the Council's motion for the attachment and committal of Mr Hanrahan Junior to the High Court for further consideration. At the risk of oversimplification, the Supreme Court reached its decision on the basis that the form of order that had been made unacceptably blurred the line between civil and criminal contempt (*per* Fennelly J (at 162), Laffoy J concurring (at 187)), or, differently put, that the order that had been made impermissibly conflated the coercive and punitive powers of the court (*per* McKechnie J (at 186)).

25. At the time of the trial of the present action, the Council had not yet reinitiated that attachment and committal motion before the High Court.

26. Considering the Hanrahans' claim that Greyhound is liable to them in damages for the distress, upset, inconvenience and reputational damage caused to them by the Council's proceedings against them under s. 58 of the 1996 Act, and by the attachment and committal application that the Council brought against them during those proceedings, it is important to note certain specific findings of the Supreme Court. The judgment of Fennelly J, with which Laffoy J concurred, expressly records (at 149) that, while the Hanrahans (and Mr Hanrahan Senior) had lodged a notice of appeal against the Order of Hedigan J in the s. 58 proceedings, they subsequently withdrew it. The same judgment further notes (at 163) that Mr Hanrahan Junior had not contested that he was in contempt of that Order. In a concurring judgment, McKechnie J stated (at 186):

> 'My view on the validity of the order does not disturb the underlying finding that [Mr Hanrahan Junior] was guilty of contempt. In fact, by open admission, he pleads to it. Equally so, it does not disturb the view of the trial judge, one with which I respectfully agree, that the contempt in question is serious in nature and must be regarded as such.'

Procedural history

27. The plenary summons in these proceedings issued on 20 September 2013, almost two and a half years after the Council's discovery of the illegal dump. The Hanrahans delivered a statement of claim on 9 January 2014 and an amended statement of claim on 4 February 2014, principally adding the claim for damages for interference with economic relations already referred to. Greyhound delivered its defence on 27 May 2014.

28. Each party has made discovery. Yvonne Czajkowski, a solicitor employed by Greyhound, swore an affidavit of discovery on its behalf on 10 December 2014 ('the Greyhound discovery'). Mr Hanrahan Junior swore affidavits of discovery on behalf of the Hanrahans on 2 March 2015 and 26 March 2015 ('the Hanrahan discovery'). By agreement between the parties, all the documents thus discovered were admitted in evidence without the necessity for proof of their contents and execution. However, I did not understand there to be any broader agreement between them that the truth of the contents of those documents was to be considered proved in the absence of the appropriate direct evidence to that effect or the identification of an applicable exception to the rule against hearsay; see the discussion of the relevant principles in Delany & McGrath, *Civil Procedure in the Superior Courts*, 3rd edn, at paras. 20-99 and 20-100.

29. Only at the end of the trial and after some prompting from the Court did the parties address the evidential status of the affidavits in the s. 58 proceedings, upon which each side had relied liberally for the purpose of either examination in chief or cross-examination throughout the trial. Each of the parties ultimately acknowledged that the affidavits were to be admitted in evidence by agreement between them, subject to a proposed qualification on the part of the Hanrahans that, where the viva voce evidence of Mr Hanrahan Junior at trial conflicts with certain aspects of the affidavit evidence of his own father and of the relevant authorised officer of Laois County Council in the s. 58 proceedings, only very limited weight should be given to those averments. I will return to that submission later in this judgment.

30. Although the relevant order was not produced in court, Counsel informed me that, in managing the case, Gilligan J has directed that the present trial should address the issue of liability only.

31. Counsel for the Hanrahans also informed the Court of the existence of certain third party claims that Greyhound has been given leave to bring against two persons, Cormac Buckley and Kevin Flanagan, who the Hanrahans later called as witnesses during the trial. Counsel suggested that there may be motions pending for judgment in default of appearance in respect of those claims, but the relevant third party notices were not produced and the Court was given no other information concerning the nature or status of them.

32. Then, after lunch on the second day of the trial, another Counsel purported to appear unattended on behalf of each of those two third parties, having received a telephone call from a firm of solicitors in County Sligo requesting him to do so. His instructions went no further than that the firm concerned intended to enter an appearance on behalf of each. Although no papers whatsoever were produced to the Court in relation to those claims even then, I was informed that Greyhound had been granted leave to serve the said third party notices by Order of the Court made on 12 May 2015, and had served those notices on those parties shortly afterwards.

33. It appears that, on 10 July 2015, Greyhound issued a motion for judgment in default of appearance against each of the third parties, originally returnable for 25 July 2015. Either on the return date or subsequently, Gilligan J ordered that those motions be adjourned to the trial of the action. Counsel for the defendant submits that they have now become superfluous (if they were not always so) because, having failed to enter an appearance within the time prescribed under the Rules of the Superior Courts, as amended ('the RSC'), each of the said third parties is deemed to have admitted his liability in respect of the third party claim against him, by operation of O. 16, r. 5. of the RSC. There is no suggestion that either third party had entered an appearance within time, nor that either had brought an application under O. 16, r. 4 of the RSC for leave to appear at any point thereafter. In so far as may be necessary, the implications of that state of affairs will have to be considered in light of the terms of this judgment.

The evidence

34. The Hanrahans called five witnesses: Mr Hanrahan Junior (the second plaintiff); Michael Reilly (a consultant engineer); Ronan Buckley (a plant hire/haulage business operator and lorry driver at the material time); Patrick Horan (a lorry driver at the material time); and Kevin Flanagan (a small contractor and, also, a lorry driver at the material time). Mrs Hanrahan did not give evidence.

i. Mr Hanrahan Junior

35. Mr Hanrahan Junior was the first witness to give evidence. He did so broadly as follows. He lives at the family home in Graigueadrisly ('Graigue') with his wife and their three-week-old child. At the time of these events he was working for a business or company named Lely Thurles, but is now self-employed with his own automatic milking machine dealership.

36. He grew up on the family farm, which is to say, the Hanrahan lands where the illegal dumping took place. Those lands extend to 100 acres, of which 32 acres comprise the out farm and the remainder comprise the home farm. There is about a mile and a half between those two parts of the farm, according to Mr Hanrahan Junior. In the s. 58 proceedings, Mr Hanrahan Senior averred that the distance between the two parts of the farm is one mile, both by road and 'as the crow flies', whereas an authorised officer of the Council has deposed that the farmhouse on the home farm is approximately 1.2 kilometres from the entrance to the farmyard on the out farm.

37. Mr Hanrahan Senior died on 10 May 2013. The Hanrahan lands are now held by Mrs Hanrahan by right of survivorship. As a farmer, Mr Hanrahan Junior acquired a seven-year lease of the Hanrahan lands from his parents on 11 October 2007 for a rent of €20,000 *per annum*. That lease was executed so that Mr Hanrahan Senior could avail of the then extant *Farmers Early Retirement Scheme*, which provided a pension payment to any farmer who availed of it on strict condition that the person concerned ceased agricultural activity forever, failing which payments would cease and the repayment of all monies already received would be required by way of 'clawback'. The Hanrahans also hoped that, through taking over the farm, Mr Hanrahan Junior would be able to avail of the relevant grant under the *Young Farmers Installation Scheme* but, due to changes made to the terms of the scheme, that did not come to pass.

38. Mr Hanrahan Junior farmed the lands on a part time basis thereafter, until 2008. He split up with his wife that year, though happily they are now reconciled and living together once again in the family home with a young child. Mr Hanrahan's wife did not give evidence. There is no suggestion of any formal separation proceedings between the couple. Nonetheless, Mr Hanrahan Junior stated that his father did not take kindly to the rift between his son and daughter-in-law, because he was 'old-fashioned in his ways.' The result, according to Mr Hanrahan Junior, was that his father resumed farming the lands and, despite the existence of the lease and the presence of his own livestock on the lands, Mr Hanrahan Junior acquiesced in his own effective exclusion from farming activity on the lands from then on, in deference to his father's wishes.

39. At first Mr Hanrahan Junior remained in the family home despite the rift with his wife and father. Then he went to stay at his brother's home in Sandyford, County Dublin. Mr Hanrahan's brother did not give evidence. According to Mr Hanrahan, although this is entirely uncorroborated, his work at that time involved long periods abroad in Holland and England. Mr Hanrahan stated that, in consequence, there could be 'a couple of months or more' between his visits back to the Hanrahan lands. During those visits, which would occur only if he happened to be passing, he would simply go to the family home, for which he had retained a key. He would visit his mother 'now and again'. Mr Hanrahan said that he would very seldom walk the lands on those occasions.

40. Although he does not give a date, Mr Hanrahan Junior says he returned to the Hanrahan lands within three hours of being contacted by an authorised officer on behalf of the Council concerning the illegal dump as, to the best of his recollection, he happened to be somewhere in Wexford that day. Mr Hanrahan met with an authorised officer of the Council on site the next day. Having been cautioned, he gave her his 'side of the story'. That story was that 'there was an arrangement with a person named James O'Connor, regarding the sand pit.' James O'Connor was 'the contact person who was going to take sand from the sand pit.' Mr Hanrahan Junior never met 'Mr O'Connor' but had spoken to him 'once on the phone 4 or 5 weeks previously.' 'Mr O'Connor' had phoned Mr Hanrahan Junior to tell him that he was taking sand from the lands. Mr Hanrahan had replied to the effect that that was fine with him because the lands were his father's and not his.

41. I pause here to note that this is a significantly different account of Mr Hanrahan's statements under caution than the one recorded by the Council's authorised officers and concerning which evidence was given in the s. 58 proceedings (see paragraphs 13 and 14, above). Mr Hanrahan Junior did not challenge that evidence in those proceedings, despite his undoubted entitlement to do so. Instead, he seeks to challenge it in these proceedings, although the Council is not party to them. In consequence, the Council has never had an opportunity to cross-examine Mr Hanrahan on his evidence. Neither of the relevant authorised officers of the Council was called as a witness by either side.

42. I note further that, insofar as I can see, the first suggestion that it was Mr Hanrahan Senior, and not Mr Hanrahan Junior, who had entered an arrangement to permit the elusive 'Mr O'Connor' to extract sand from the old quarry appears in Mr Hanrahan Junior's second affidavit in the committal proceedings against him. He swore that affidavit on 16 September 2013, several months after his father's death and almost two and a half years after the events in question. The assertion was then introduced into these proceedings for the first time in the Hanrahans' replies to particulars, dated 4 March 2014, almost three years after those events.

43. Returning to the evidence, Mr Hanrahan said that, on visiting the site the following Monday, 11 April 2011, he could at once see the seriousness of the situation from his perspective and was horrified and flabbergasted. He immediately set out to find out what had happened.

44. At this point in the evidence, an entirely new and different narrative entered the case. In the second affidavit that he swore on 13 September 2013 in the committal proceedings against him, Mr Hanrahan Junior had expanded for the first time on what he had told the Council's authorised officers about the arrangement whereby 'Mr O'Connor' had been given permission to draw sand from the old quarry. He now asserted that it was his father (by then deceased), and not he, who had entered that arrangement with 'Mr O'Connor.' He also now claimed for the first time that, as part of that agreement, after the removal of sand from the quarry, 'Mr O'Connor' was 'to ensure that the quarry was filled-in with soil and top soil.'

45. I pause briefly to consider that suggestion. The unchallenged evidence of the Council in the s. 58 proceedings (and, by extension, at trial in this case), was that the old quarry site covers 0.95 hectares of which 0.4 hectares had waste deposited on it. That waste weighs between 960 and 1,840 tonnes. According to Mr Hanrahan Junior, Mr Hanrahan Senior had reached an agreement with 'Mr O'Connor' that, in exchange for the right to remove some sand from the old quarry, he was going to fill it in afterwards with soil and top soil. It is very difficult to see the commercial sense in any such arrangement and, hence, very hard to accept it as plausible.

46. The Hanrahans' position shifted slightly again in certain replies to particulars that they delivered on 4 March 2014. At paragraph 16 of those replies, they plead:

> '[Mr Hanrahan Junior] was, as has already been averred to by him, estranged from [Mr Hanrahan Senior] at the material time when the "dumping" occurred on the lands. He now understands, however, from his own enquiries that [Mr Hanrahan Senior] agreed with James O'Connor on behalf of [Greyhound] that a portion of the lands would be filled in with compost and covered with top soil.'

47. That asserted link between 'Mr O'Connor' and Greyhound was never established in evidence and is hard to reconcile with the evidence given. Once again, it is difficult to see the commercial sense of an agreement whereby 'Mr O'Connor' obtains the right to draw some sand from the old quarry (whether on his own behalf or that of Greyhound, a waste disposal company) in exchange for undertaking (whether on his own behalf or that of Greyhound) to fill in and level the quarry with compost and top soil (rather than waste), particularly since the court is left to infer that a reclamation project on that scale was agreed without a written contract or acknowledgement of any kind and with, or through, a character as ephemeral as 'Mr O'Connor'.

48. Returning to the evidence at trial, Mr Hanrahan Junior stated that, during his investigations, he spoke to Mr Flanagan. Mr Flanagan was a person who had trucks and plant. He carried out work as a general contractor in the Rathdowney area. In that capacity, Mr Flanagan had dug out the foundations for Mr Hanrahan's family home a few years previously. Mr Hanrahan Senior would have known Mr Flanagan but not well. Through Mrs Hanrahan as intermediary, Mr Hanrahan Junior had obtained Mr Flanagan's number from his father as someone who might be able to assist him in his inquiries concerning the illegal dump.

49. Mr Hanrahan Junior rang Mr Flanagan. Following that conversation, within days (or a short number of weeks) of 6 April 2011, the two men drove to the Greyhound premises at Crag Avenue, Clondalkin. Mr Hanrahan Junior wanted to speak to the owner or managing director. In his efforts to force that impromptu meeting, Mr Hanrahan Junior drove up onto the weighbridge and refused to move off until his request was met. Eventually, a man who identified himself as Cormac Shields arrived to speak to the men.

50. Mr Hanrahan Junior asked Mr Shields numerous questions premised on the assertion that the waste dumped on the Hanrahan lands had come from Greyhound. Specifically, he asked Mr Shields to identify the nature of the waste and demanded to know what steps Greyhound was proposing to take to remove it.

51. According to Mr Hanrahan Junior, when Mr Flanagan pointed to the part of the Greyhound premises where he claims his lorry had been loaded several times with material that he then brought to the Hanrahan lands, Mr Shields said: 'You will have a hard time proving it. You know yourselves lads, people get paid off.' That was the only occasion on which Mr Hanrahan Junior spoke to Mr Shields.

52. Counsel for the Hanrahans referred to a letter, dated 17 July 2012, from Greyhound's solicitors to the Hanrahans' solicitors, prior to the issue of the present proceedings. A letter of that date (over which no privilege is claimed) appears in the relevant section of the index to Greyhound's discovery. Although a copy of the letter was never produced to the Court, Counsel for the Hanrahans suggested without demur that it refers to 'our client's Mr Shields', thereby indirectly confirming that a person of that name did indeed work for Greyhound at the Crag Avenue premises at the relevant time.

53. Mr Hanrahan Junior said that, between the date on which the Council notified him of the existence of the dump (7 April 2011) and the date upon which he received a preliminary letter from the Council's solicitors in respect of the s. 58 proceedings (23 August 2011), he phoned the number he had for 'Mr O'Connor' as many as 100 times, without reply.

54. Mr Hanrahan Junior acknowledged that he did not swear an affidavit in the s. 58 proceedings, although his father did. Mr Hanrahan's explanation in that regard is that he didn't realise that his parents' solicitors were not representing him also. This misapprehension appears to have persisted even after the filing of Mr Hanrahan Senior's affidavit on 6 March 2012 (described at paragraph 17 above), which flatly contradicts Mr Hanrahan Junior's evidence in these proceedings in several fundamental respects.

55. In support of his contention in that regard, Mr Hanrahan Junior points out that the firm of solicitors who represented his parents in the s. 58 proceedings suggested at some point in correspondence with the Council that they were acting for all three respondents and that those solicitors filed a notice of appeal against the Order made by Hedigan J in those proceedings on behalf of all three respondents as appellants (which appeal was later withdrawn in circumstances that remain unclear). Be that as it may, it is difficult to look beyond the recital in the Order made by Hedigan J on 24 May 2012, that the trial of the s. 58 application had come before the Court 'in the presence of Counsel for [Mr Hanrahan Senior and Mrs Hanrahan]…, there being no attendance by or on behalf of [Mr Hanrahan Junior].' The Hanrahans did not call as a witness any solicitor from that firm to clarify the position for which they now contend.

56. Mr Hanrahan Junior said that his father was diagnosed with cancer in late 2011 or early 2012, before finally succumbing on 10 May 2013. He stated that the s. 58 proceedings adversely affected their relationship, which is difficult to understand if, as Mr Hanrahan Junior asserts, he was not involved in either of the two, apparently inconsistent arrangements that were said to have led to them. The first such arrangement was the agreement that Mr Hanrahan Junior now alleges his father, not he, entered with 'Mr O'Connor' to permit the latter to draw sand from the old quarry. The second, described in more detail below, is the agreement that the Hanrahans now allege Mr Hanrahan Senior directly or indirectly entered with Greyhound to have the latter supply him with 'compost' to fill in the old quarry with a view to turning it back into arable farmland.

57. In his evidence, Mr Hanrahan Junior next outlined the steps he had taken in an unsuccessful attempt to comply with the s. 58

Order, before going on to address his personal means. It does not seem to me that either of those matters is relevant to any issue I have to decide.

58. Mr Hanrahan Junior then stated that his reputation has been seriously damaged by the relevant events, which have been widely reported on the internet and elsewhere. His competitors in the automated milking machinery business have been using that adverse publicity against him. His lawyers have been in correspondence with the search engine provider 'Google', invoking the right to be forgotten ('le droit à l'oubli'). His mother, too, has been affected terribly by the proceedings, so much so that she will no longer answer the door.

59. Mr Hanrahan acknowledged that he is now farming the lands once again.

60. Mr Hanrahan Junior was invited to comment upon, or explain, certain averments in the affidavit that Mr Hanrahan Senior swore in the s. 58 proceedings. The first was that Mr Hanrahan Senior had been retired from farming for four years in April 2011. The second was that the Hanrahan lands had been let to Mr Hanrahan Junior in 2007 and that he had been in possession of them since then. And the third was that Mr Hanrahan Senior was aware that Mr Hanrahan Junior had 'some form of arrangement with a third party.' Mr Hanrahan Junior stated that those averments were false and that his father had made them because he could not then be seen to have taken back possession of the lands and to be farming them again, as that was inconsistent with his prior and continuing receipt of a retired farmer's pension from the Department of Agriculture.

61. It is worth pausing briefly to reflect on this evidence. Mr Hanrahan Junior is now saying for the first time – after his father's death - that his deceased father had perjured himself in the s. 58 proceedings in order fraudulently to continue claiming, and to avoid any clawback of, the retired farmer's pension and that, in doing so, he had exposed his son to a liability in those proceedings that, had he been truthful, his son might have been able to avoid.

62. Under cross-examination, Mr Hanrahan Junior denied the suggestion that the lease of the farm had been a sham from the outset. He stated that he had instructed the firm of solicitors who he understood were then representing both his parents and him to withdraw his appeal against the s. 58 Order, although he did not explain why he gave them those instructions, which are difficult to reconcile with the case he now makes. He stated that, after the falling out with his father, he might have had contractors on the land who were working for him, cutting silage, inspecting livestock and so on, but that his father had resumed the management of the farm and that he felt he couldn't visit the lands when his father was there.

63. Mr Hanrahan stated in cross-examination that it would probably have been two or three months prior to his meeting with the Council's authorised officer on the site that he was last on the lands and that he noted no unpleasant odour and saw no rubbish there then. Mr Hanrahan said that, when an authorised officer of the Council gave evidence in the s. 58 proceedings that he had said on the telephone on 7 April 2011 that 'it was about 4 weeks ago that he was on the site', that was a mischaracterisation of what he had said, which was that it was about four weeks since he had been at the family home. In fact, Mr Hanrahan Junior stated, it would have been two or three months since he was in the farmyard or on the lands adjacent to the family home, from which – on 6 April 2011- waste covered tracks were found to lead across a rubbish strewn field to the old quarry.

64. I am obliged to pause here to note that the relevant evidence had never been put in issue by any of the respondents, including Mr Hanrahan Junior, during the s. 58 proceedings. At the risk of restating the obvious, the Council is not a party to these proceedings.

65. Mr Hanrahan Junior went on to state in cross-examination that 'Mr O'Connor' would have telephoned him after making an arrangement with his father concerning the old quarry, and that he (Mr Hanrahan Junior) knew nothing about the commercial end of that arrangement, save that he was able to inform the authorised officers that the quarry had been leased to 'Mr O'Connor' for a period of up to seven months from a date approximately four weeks previously. Mr Hanrahan said that 'Mr O'Connor' had given him the name 'Acorn Plant and Machinery Hire of Ashbourne, Navan, County Meath' and that 'Mr O'Connor' would have got his mobile phone number from his father. Mr Hanrahan Junior believes that the 'third party' referred to in his father's affidavit is 'Mr O'Connor'.

66. Mr Hanrahan Junior stated that anyone who knew his father would know that he would not knowingly allow anyone to dump waste on his land. I cannot here refrain from observing that the force of that assertion, which might otherwise be viewed as an affecting demonstration of filial piety, is strongly undermined by Mr Hanrahan's earlier evidence to the effect that his now deceased father had broken the terms of the lease between them; had then perjured himself by averring that the said lease was still in effect (and that Mr Hanrahan Junior was still in occupation of the lands); and had done so in order to conduct a fraud upon the Department of Agriculture by continuing to claim a retired farmer's pension to which he was no longer entitled and by concealing his obligation to repay the pension payments that he had already received.

67. This might also be an appropriate point in the narrative to reflect on the inherent implausibility of the assertion that any sensible farmer or landowner would grant access to his or her lands for a commercial purpose to a stranger without any prior or existing commercial, social, community or family connection whatsoever, simply based on the provision of an unverified (and unverifiable) name, address and mobile phone number.

68. Mr Hanrahan Junior disputed the suggestion that he was present in his parents' farmhouse either when they were served with the s. 58 proceedings on 18 November 2011 or when he was served with them on 22 November 2011, stating that he would, in fact, have been in his parents' adjacent farmyard at the time. It is difficult to know what turns on that distinction, given Mr Hanrahan Junior's evidence that he was at that time excluded from all farming activity on the Hanrahan lands and very rarely present upon them.

69. Counsel for Greyhound put to Mr Hanrahan Junior the unchallenged evidence of the Council's authorised officer concerning the estimated number of vehicle movements involved in bringing the waste to the site. It will be recalled that between 960 and 1,840 tonnes of waste were found there. The authorised officer averred that articulated lorries bringing waste to Council landfill sites carry a maximum load of 23 tonnes each. If such vehicles were used to bring the larger estimated amount of waste to the site, that would entail 80 large vehicle movements to and from the site. Smaller trucks carrying 16 tonne loads would require 115 such trips to and from the site. In fact, as we shall see, one of the witnesses called by the Hanrahans gave evidence that he delivered several eight-tonne loads from the Greyhound premises in Clondalkin to the site. If each of the loads brought to the site was that weight, then as many as 230 round trips would have been necessary to deposit all the waste found there. To that figure would have to be added the number of further movements required to bring the necessary tractor(s) or track machine(s) to the site, and to remove them from it subsequently.

70. Mr Hanrahan Junior said that, despite the required level of vehicle movements at, and around, the Hanrahan lands, and all the associated noise, fumes, odour and litter, he had never become aware of the relevant activity and no one in the locality had brought

it to his attention.

71. Under cross-examination, Mr Hanrahan Junior went on to state that he became aware that Greyhound was the dumper of the waste within a week of the discovery of the illegal dump on 6 April 2011. It appears to be common case that the solicitors for Mr Hanrahan Senior and Mrs Hanrahan (and, perhaps, also at that time Mr Hanrahan Junior) first wrote to Greyhound on 27 June 2012, over a year later, asserting that it was responsible for the dumping of the waste, which elicited a letter in response from Greyhound's solicitors, dated 17 July 2012, denying that claim (albeit that a copy of neither letter was shown to the Court).

72. As noted previously, the first time that the Court in the s. 58 proceedings was apprised of that claim was in an affidavit sworn by Mr Hanrahan Junior on 31 July 2013 in opposition to the Council's application for his committal to prison for failure to comply with the Court's Order of 24 May 2012. It was then more than two years after the discovery of the illegal dump, more than eighteen months after the institution of the s. 58 proceedings, and more than a year after the Court made its Order in those proceedings. Mr Hanrahan stated in evidence that his failure until 7 September 2012 to bring the existence of that allegation to the attention of the Council, and his failure to respond to the Council's subsequent request for further information, is the fault of the firm of solicitors that he believed was then representing him, because he brought it to that firm's attention at the first opportunity. However, the Hanrahans did not adduce any evidence to corroborate that excuse.

73. Mr Hanrahan Junior later made the quite extraordinary additional claim that he had in fact brought the relevant information to the attention of an authorised officer of the Council at the time of the initial investigation into the illegal dump, but that she had failed to record it and did not subsequently acknowledge it in either the High Court or Supreme Court. I say 'extraordinary' because no such claim was made by Mr Hanrahan Junior, or any of the respondents, in evidence during either the s. 58 proceedings or the committal proceedings that followed.

74. Mr Hanrahan Junior then suggested for good measure that, during his Supreme Court appeal against the committal order, that Court had criticised the Council for failing to do more to identify the dumper of the waste on the Hanrahan lands. No such criticism is evident in any of the judgments given on that appeal. On the contrary, McKechnie J states in his judgment (at 173) that the Council had been unable to confirm the identity of the actual perpetrators of the dumping '[d]espite…the thoroughness of its work and the obviousness of its commitment.'

75. Mr Hanrahan Junior went on to state, entirely inconsistently, that the reason for the relevant delay was that he was anxious not to disclose the identity of the dumper until he was satisfied that he had as much evidence as possible in his possession to corroborate that claim. That assertion is difficult to evaluate, as Mr Hanrahan Junior did not provide any explanation concerning which, if any, part of the evidence given on the Hanrahans' behalf at trial was not available to him in, or shortly after, April 2011.

76. Finally, in re-examination, Mr Hanrahan Junior stated that it was important to note that there were a couple of ditches between his family home and the adjacent farmyard and lands, comprising a landscaped ditch around the house and another high ditch around the back of the shed in the farmyard. There is a hill between the quarry, on the one hand, and the family home and farmyard to the north, on the other, so that the quarry is not visible from either the farmyard or the family home. Moreover, there are hedges on both sides of the road beside the farmyard. While that is no doubt true, it does not go very far to explain how activity on the scale in question, both on the road to and from the farmyard and between the farmyard and the old quarry, with all of the attendant noise, fumes, odour and litter, could have passed completely unnoticed by persons in the vicinity generally and by the occupant or occupants of Mr Hanrahan Junior's family home, in particular.

ii. Mr Michael Reilly

77. The next witness called by the Hanrahans was Michael Reilly. He is principal in the firm of Michael Reilly & Associates, consulting engineers. In July 2013, he was retained on behalf of Mr Hanrahan Junior to advise him in relation to compliance with the Order made in the s. 58 proceedings. Mr Reilly agreed to act as project manager of the necessary remediation works. In that context, he in turn retained Mr Conor Walsh, an environmental and waste management consultant, of SLR Consulting Ireland, and Mr Donal Flannery, a health and safety consultant, of Flannery Health and Safety Limited. Neither of those two gentlemen gave evidence.

78. Mr Reilly gave evidence, broadly, as follows. The old quarry is not visible from Mr Hanrahan Junior's family home or the farmyard adjacent to it because there is a hill in between. The distance between the quarry and the shed in the farmyard is approximately 400 metres. Mr Reilly did not comment directly on the authorised officer's assertion that the top of the field (which I take to be the brow of the hill), from which the old quarry is directly visible, is 150 yards from the farmyard in which the shed is situated. The house, farmyard and road are not visible from the old quarry and vice versa. The house and farmyard are well screened.

79. The old quarry contained sand. That sand was fine, rather than sharp – a 'sea' rather than a 'river' type of sand. It was not suitable for building purposes. Being fine, it is kind to animals, and such sand is often used in equestrian arenas.

80. Mr Reilly stated that it is difficult to know how much of the sand and soil beneath the waste has been contaminated by leachate. Sand is a very porous or permeable material. For that reason, he suggested that the waste removal plan he had formulated on behalf of Mr Hanrahan Junior had to allow for significantly greater potential vehicle movements than would have been involved in the deposit of the waste. Extraction of the waste is also more difficult than its deposit because the downhill movements of laden vehicles are more challenging than uphill ones. It is difficult for a large articulated vehicle to brake on a grass downslope (there being no roadway of any kind between the farmyard and the old quarry), creating the risk of a jack-knife. I pause here to note that this seems a slightly peculiar observation, since all of the evidence in the case (from both the Council's witnesses in the s. 58 proceedings and the Hanrahans' witnesses at trial) is that the waste appears to have been transported no further than the farmyard by truck and to have been brought up the hill in the field (and down the other side to the old quarry) using tractors or track machines, or both.

81. Mr Reilly acknowledged that he was last on the lands approximately two years prior to giving evidence. He identified the waste that was on the site then (and which it is common case remains on the site now) as mixed municipal waste, often referred to as 'fines' or 'compost', It is a very fine waste, a by-product of waste disposal. Mr Reilly understands that there are about nine waste plants in the country capable of converting household and light industrial waste into that form and that the Greyhound premises at Crag Avenue, Clondalkin is one of them. The nearest plants to the Hanrahan lands that carry out that process are the said premises in Clondalkin, South-West Dublin and, just beyond that, a plant in Ballyfermot, West Dublin.

82. The waste concerned is a residue and requires to be taken to an approved landfill. Mr Reilly stated that, to a layperson, it would not have been immediately discernible what it was. It is glutinous in nature, dark grey in colour, and often has steam rising from it. Mr Reilly did not say how a 'layperson' is to be defined in the context of dealing with such waste.

83. Mr Reilly stated that he was involved in the preparation of the Hanrahans' discovery. That discovery included a booklet of 'delivery dockets', each headed '*Ronan Buckley, Haulage and Plant Hire, Castlemitchell, Athy, County Kildare*' ('the Buckley dockets'). That booklet records various deliveries, approximately 32 in total, between September 2010 and April 2011, in respect of which Greyhound is recorded as the customer.

84. Mr Reilly was then referred to the schedule to the Greyhound discovery. It lists a very substantial number of weighbridge dockets in respect of outgoing movements from Greyhound's Crag Avenue premises over the period March and April 2011. Mr Reilly had been involved in the inspection of the relevant documents at those premises on behalf of the Hanrahans. None of the deliveries recorded there corresponded with any of the deliveries recorded in the Buckley dockets. Though not a graphologist, Mr Reilly expressed the view that Ronan Buckley's signature on the relevant Buckley dockets is similar to his apparent signature on the Greyhound records of certain other loads that he collected from the Crag Avenue premises. Mr Reilly had custody of the original Buckley dockets before he carried out the inspection of the Greyhound discovery.

85. Mr Reilly noted that the Hanrahans have also discovered two other weighbridge dockets from Greyhound that were not contained within Greyhound's own discovery. Mr Reilly understood that these are dockets of the kind that Greyhound issued to drivers who did not have their own docket book with them. Mr Reilly understood that the Hanrahans had obtained those two dockets from Mr Buckley. They each record loads on '11/09/11' or, according to Mr Reilly, more probably, '11/04/11', depending on how you decipher the handwriting of the unknown author. Each describes the material concerned as 'compost'. Beside the space on each docket for the customer name is, what appears to be, the vehicle registration number '06 TN 3821'.

86. Under cross-examination, Mr Reilly conceded that he had no direct knowledge of who deposited the waste on the Hanrahan lands and, to that extent, could not assist on the liability issue.

87. Mr Reilly was reluctant to admit that the amount of time the waste is permitted to remain on the site is in any way proportionate to the risk of leachate causing pollution, which he said depends to some extent on other factors such as the prevailing weather and the nature of the waste material concerned. Ultimately, he did concede that there must be a broadly proportional relationship in that regard.

88. Mr Reilly conceded that any information concerning the identity of the person dumping the waste was relevant information that should have been passed on to the Council immediately.

89. Mr Reilly said that there was no odour detectable when he visited the site in 2013. He pointed out that the strong, foul smell evident to the Council's authorised officers when they visited the farmyard on 6 April 2011 was attributable to the consignment of waste that they observed deposited beside the shed there on that date. He did not offer a view on the extent to which the strong, foul smell associated with the practice of depositing such waste at that location for onward transportation to the old quarry, would have been evident to persons on the adjoining roadway or in Mr Hanrahan's adjacent family home.

90. Mr Reilly stated that the farmyard was surrounded by a high concrete wall into which a solid gate from the roadway was set. Mr Reilly did not explain how that evidence is to be reconciled with his acknowledgement that, in April 2011, a gap was evident in the hedge at one side of the farmyard, from which gap waste-strewn tracks in the adjacent field led up the hill and down to the old quarry, surrounded by wind-blown litter. Nature had taken its course and those tracks had disappeared when Mr Reilly visited the site two years later. Mr Reilly acknowledged that the tracks in the photographs he was shown that were taken on 6 April 2011 appeared to have been made by a tractor type vehicle and were not consistent with those of an articulated lorry. He conceded that tracks visible in other photographs taken at the time were consistent with those of a track machine of some kind.

91. Mr Reilly conceded that, during his visit to Greyhound's Crag Avenue premises to inspect the relevant weighbridge documents, he did not visit the waste processing area and his evidence concerning the nature of the waste processed there is entirely based upon material he has read, as opposed to his own direct knowledge.

92. Mr Reilly further acknowledged that he had no direct evidence to give concerning the creation of the Buckley dockets.

93. In re-examination, Mr Reilly said that he did not believe there would have been much other traffic at the material time on the narrow country road on which the out farm and Mr Hanrahan's family home are situated. However, he acknowledged that the road runs in a broadly east-west direction at a location east of Templemore, south-west of Rathdowney, north-west of Johnstown and Urlingford, and not far west of the M8 national motorway. There was no evidence of any survey of traffic frequency on the road. Whether traffic movements on that road are frequent or infrequent, it is difficult to see how they are capable of supporting the Hanrahans' professed ignorance concerning the illegal dumping of substantial quantities of waste on their lands. If the relevant country road is, indeed, a narrow and normally very quiet one, then it is hard to understand how the significant movement of articulated lorries, tractors and low-loaders carrying track machines could have occurred entirely unnoticed by those living in the immediate vicinity. If, on the other hand, the road is more frequently used, then it is scarcely credible that all of that activity occurred unnoticed in the locality generally and, hence, that it occurred without being brought to the attention of the Hanrahans.

iii. Mr Ronan Buckley

94. The third witness to give evidence was Ronan Buckley. His evidence was as follows. He had not known Mr Hanrahan Junior until he was contacted by him about these proceedings. For six or seven years, he had run a haulage and plant hire business, which ceased trading two or three years ago because of a downturn in business due to the adverse economic climate. As a result, he lost everything. In 2011, he had four wagons and three or four drivers working for him. He also drove himself.

95. He did business with Greyhound and dealt with Mr Cormac Shields in that connection. Cormac Shields would contact him by telephone with details of loads and destinations. In response, Mr Buckley would go himself or send a driver. If neither he nor any of his drivers was available, he would often subcontract work to Kevin Flanagan.

96. The only work Mr Buckley did for Greyhound involved picking up loads from its Crag Avenue premises and delivering them wherever they directed him to. The procedure was that, on arrival, he would get his empty truck weighed at the weighbridge and then proceed to an enclosed area within the facility. He would already have received his instructions concerning the destination to which the load was to be delivered. He would reverse into the shed and his truck would be loaded from the side by a diesel-powered loading shovel, while he remained waiting in the cab. On the way out, he would return to the weighbridge, where his vehicle would be weighed again. The difference between the first and second weights recorded would give Greyhound and Mr Buckley the load weight.

97. At that point, Mr Buckley would give the man at the weighbridge his delivery docket booklet to fill out and sign. Each page in the

delivery docket booklet was in triplicate. The man at the weighbridge would tear the top (white) triplicate sheet out of the booklet, ostensibly for Greyhound's own records, before returning the book to Mr Buckley, together with a printout from the weighbridge that Mr Buckley would retain to assist in the preparation of his own invoices. The second (yellow) triplicate sheet would be clipped to the relevant invoice when Mr Buckley was billing Greyhound at the end of the month, and the final (blue) triplicate sheet is the one retained in the booklet for Mr Buckley's own records.

98. Each 'delivery docket' in the booklet is separately numbered and contains spaces to be filled in with the following information: (i) customer; (ii) order no.; (iii) site; (iv) material; (v) tons; (vi) truck reg.; (vii) driver; (viii) date; and (ix) 'signed/received by'. The foot of each docket bears the printed legend 'All Loads Must Be Signed For On Delivery.'

99. Mr Buckley said that in relation to the Buckley dockets at issue in this case, it was his practice to get the Greyhound weighbridge operator to sign them in the space marked 'signed/received by', even though Greyhound was the consignor and not the consignee or recipient of those loads. Mr Buckley stated that this was done because there was never anyone present on the Hanrahan lands to sign for those loads on delivery. When asked to comment on the first of the Buckley dockets, Mr Buckley said that the relevant load would not have gone to the Hanrahan lands because the entry on it, opposite the word 'material', is '1 load of plastic', and no loads of plastic were delivered to the Hanrahan lands. According to Mr Buckley, to the best of his recollection that load 'could have gone anywhere.' The same was true of the load referred to in the second docket in the series, because the material concerned is described as '1 load of rubble'. That, too, must have gone elsewhere for the same reason. The remainder of the loads covered by the relevant dockets are described as 'compost.' According to Mr Buckley, the date entered on the docket by the weighbridge operator in each case would be the date of consignment, not the date of delivery, although consignment and delivery would normally occur on the same day.

100. Mr Buckley said that he would have had many more similar delivery docket books. However, when he lost his business, he had to move out of his house into an apartment. During that process, he lost everything. He was lucky to discover the delivery docket book at issue. He found it purely by accident. It is the only booklet of dockets that has survived.

101. When asked to comment on the two Greyhound dockets discovered by the Hanrahans, Mr Buckley stated that those were dockets that Greyhound provided at the weighbridge to drivers who had neglected to bring their own docket books. He had found the relevant dockets at home.

102. Mr Buckley said that he has known Mr Flanagan for a good few years. At the relevant time, Mr Flanagan had people working for him and he was driving himself. Cormac Shields asked Mr Buckley to get a place 'to deposit stuff.' Mr Buckley asked Mr Flanagan if he knew of anyone who would take it. Mr Flanagan rang Mr Buckley later with the phone number of Mr Hanrahan Senior. Mr Buckley passed it on to Mr Shields, saying 'this man might take compost off you.'

103. Considering the Council's evidence in the s. 58 proceedings that no material change occurred at the dump site after it was first discovered by the Council's authorised officers at approximately 3.40 p.m. on 6 April 2011, Counsel for the Hanrahans asked Mr Buckley to comment on those delivery dockets for loads of 'compost' apparently consigned on or after that date. There appear to be five in all; one dated '6/4/11'; two dated '7/4/11'; and two dated '8/4/11.' Insofar as it was suggested that the two Greyhound dockets were dated '11/4/11', it is noteworthy that many persons were present on the site that day to carry out investigations at the instigation of the Council. Mr Buckley said that he could not comment on the specific date of any delivery.

104. Mr Buckley stated that the loads that he and Mr Flanagan had done combined would not amount to 70 in number. He said that, in relation to the loads that they did do, they were directed by Cormac Shields of Greyhound who told them that the material was 'compost'.

105. Mr Buckley stated that Mr Flanagan told him how to get to the Hanrahan lands. He had never been there before. On arrival at the Hanrahan lands with each load, Mr Buckley said that he knew nothing about the movement of the stuff in each load beyond the shed in the yard where he tipped it out. He would back his lorry into the yard. He was never in the quarry.

106. Mr Buckley said that he first became aware that there was a problem when Mr Flanagan contacted him and asked him what type of waste they were transporting. Mr Buckley could not recall when that contact occurred. As a result, he rang Cormac Shields to make that enquiry, to which Mr Shields responded, 'Don't ever ring this phone again.' Mr Buckley rang Mr Shields back but he only said, 'What did I tell you?', before ending that call. Mr Buckley says that he never spoke to Mr Shields again after that and that Greyhound did not pay him for any of the work that he did for it 'at the latter end.'

107. There had been some suggestion that the two loads of 'compost' the subject of the two Greyhound dockets appeared to have been consigned on the 11/09/11. Mr Buckley stated that, in his view, the handwritten date on each of those dockets was '11/04/11' and not '11/09/11', although he was not the author of the handwritten entries on either docket.

108. Under cross-examination, Mr Buckley said that he always tipped each load of 'compost' in the farmyard. He opened the farmyard gate and then reversed in. He never saw anyone there. He never saw any activity there.

109. Mr Buckley was asked about an affidavit that he swore on 15 October 2012 on behalf of the respondents in the s. 58 proceedings. The affidavit was never filed in those proceedings but it was discovered by the Hanrahans in the context of the present action. Mr Buckley said that he had furnished it to the firm of solicitors then representing the Hanrahans at that firm's request, although he had not then met any of the Hanrahans. Counsel for Greyhound put it to Mr Buckley that, in that affidavit, he had referred to requests from Mr Shields to transport loads from Greyhound Waste in Clondalkin to the Hanrahan lands in December 2010 and January 2011, rather than in March and April 2011. Mr Buckley said in reply that he can't say when exactly he would have transported the relevant loads, only that he did so.

110. Once again, I pause here in the narrative of the evidence. I do so to note that, in my judgment, the more telling detail in Mr Buckley's affidavit is the description he provides concerning his knowledge of the nature of the loads he was transporting. It is worth quoting the relevant averments in full:

> '2. I say that I was an independent haulage contractor and operated from the above address for a number of years. In the course of my business, I did work for Greyhound Waste. The procedure was that Cormac Shields would ring me when the depot in Clondalkin was starting to get full and he would ask me to draw as many loads as possible from the depot in Clondalkin.
>
> 3. In particular, I remember that in or about December 2010 and again in January 2011 I received requests from Cormac

Shiels (sic) of Greyhound Waste to *collect waste* from the depot in Clondalkin *which waste* I delivered to a farm yard near Graigueadrisly, Rathdowney in the Count of Laois, which farm I now know is owned and or operated by one or other of the above-named Respondents. *The waste I collected was what Greyhound describe as "fines" which is screened household domestic waste*. I say that when I collected the waste I agreed a delivery rate with Cormac Shields and was paid by cheque drawn on an account in the name of Greyhound Waste. I say that I continued to draw *waste* to that farm until early February 2011.

4. I further say that when I was delivering *waste* to this farm I was also aware that another contractor who was also employed by Greyhound Waste was also delivering waste to this farm at the same time.' (emphasis added)

111. When the relevant averments were put to Mr Buckley, he simply contradicted them by stating that, while he accepted he did draw 'screened household domestic waste' for Greyhound, he would only have brought 'compost' from Greyhound to the Hanrahan lands. He said that he had an automatic tailgate on his lorry and that, when he arrived at the farmyard on the Hanrahan lands, he would just tip the load without looking at it. However, he did then acknowledge that when he went to the Greyhound yard he would look at what was being loaded and would know what it was.

112. At no stage in the course of the cross-examination of Mr Buckley was it suggested to him that he was either lying or wrong in his assertion that he had collected several loads of material - whether described as 'compost' or 'fines' - from the Greyhound premises at Crag Avenue in Clondalkin at the direction of Mr Cormac Shields of Greyhound for delivery to the Hanrahan lands.

(iv) Mr Patrick Horan

113. The fourth witness called by the Hanrahans was Patrick Horan. He gave evidence as follows.

114. He is a truck driver from Mountmellick, County Laois, with 20 to 25 years' experience. In 2011, he was working for Mr Buckley. In that capacity, he could recall doing deliveries from Greyhound Waste in Clondalkin to a yard on the Hanrahan lands. Mr Buckley, gave him directions to the lands. On each occasion, when he got there he would reverse his truck into the yard and unload it. He operated an automatic tailboard using a button on a console in the cab. He made such deliveries maybe eight or ten times. His truck had a load capacity of maybe six or eight tonnes. He thought he was transporting mushroom compost or peat compost. It was certainly a compost substsance.

115. Mr Buckley would ring Mr Horan, telling him where he needed to go to pick up a load, whether at the Greyhound premises or elsewhere. When picking up a load at Greyhound, Mr Horan would drive up onto the weighbridge. His truck weighed about 11 or 11 and a half tonnes empty. He would then proceed further onto the site where black coloured peat or compost was loaded onto his vehicle using a big loading shovel. He knew it was compost because that is what Mr Buckley had told him it was, and Mr Buckley had told him to make sure he only drew compost from that plant. Mr Horan would remain in the vehicle, while it was loaded. Once that was done, Mr Horan would drive back on to the weighbridge on the way out. With a typical load, his vehicle would probably weigh 19 and a half tonnes.

116. Mr Horan had some difficulty with reading and writing, so he would hand the weighbridge operator the docket book and the latter would fill it out. The weighbridge operator would keep the top copy of the docket, a white one. All loads had to be signed for by Greyhound.

117. According to Mr Horan, it might be nine or ten p.m. when he arrived at the Hanrahan lands with a load. Because he never expected anyone to be there, he would get the man at the weighbridge in Greyhound to sign for the load when he was leaving that premises. Mr Horan had no contact with a man named Cormac Shields in Greyhound. In the farmyard at the Hanrahan lands he never saw another human being. While there might be as many as eight days between the loads he delivered, on each occasion that he arrived at the farmyard with a load, there was no sign of the previous one. He never saw the quarry on the lands and did not know that it was there. He simply unloaded the material on the ground in the farmyard and left it there. He could not say whether he had delivered loads between 6 and 11 April 2011, only that, whenever he delivered loads, there was no one else present in the yard.

118. Under cross-examination, Mr Horan said that the last time he had seen the Buckley docket book before it was produced to him in court would have been four or five years ago. Mr Buckley had contacted him about the case about a month or two months prior to his appearance as a witness. He could recall driving one of the trucks, the registration of which appears on one of the dockets in the docket book. The docket number was 212, the truck registration number was 06 TN 3821, the date of consignment was 27 March 2011, and the material in the load is described as 'compost', so he thought he had probably delivered that load to the Hanrahan lands on that date. There was never anyone at the lands to sign for a load. If there had been, Mr Horan would have got that person to sign a docket. Mr Horan confirmed that there was nothing on the docket, or any docket, to show that the load concerned had been delivered to the Hanrahan lands.

119. Mr Horan knew Mr Flanagan only as another truck driver who he would occasionally meet on the road, 'having coffee at a filling station or whatever.' He understood that Mr Flanagan was involved in reclamation and plant hire. He thought that Mr Flanagan might have had a low-loader vehicle that would have been capable of transporting track machines. He was not aware until told during the trial of the action that Mr Flanagan had also been involved in drawing loads from Greyhound to the Hanrahan lands. He had no direct knowledge of Mr Flanagan's involvement.

120. It was not suggested to Mr Horan in cross-examination that, in asserting that he delivered several loads of material from Greyhound's premises at Crag Avenue to the Hanrahan lands, he was either lying or mistaken.

(v) Mr Kevin Flanagan

121. The last witness called by the Hanrahans was Mr Kevin Flanagan. He gave evidence in the following terms.

122. Throughout his adult life, he worked as a truck driver. He had also been involved in plant hire for about 10 years. Those businesses failed in the recession and he was forced to sell everything. He now fixes machines for a living.

123. Although he now lives in Mountmellick, he had known Mr Hanrahan Senior down through the years, because he used to live in Rathdowney. He would have done land reclamation, the construction of tanks and yards, and other contract work for farmers. He was familiar with the Hanrahan lands. He remembered the area of the old quarry or pit. In 2011, it hadn't been used in years. It was a relatively small area, dug out in some places and not in others.

124. Mr Flanagan had known Mr Buckley for years through his plant hire work.

125. Mr Flanagan says that he 'would have had a conversation with Mr Hanrahan Senior about levelling up his quarry or pit.' He told Mr Hanrahan Senior that there would be compost available to fill up the hollows and holes there. According to Mr Flanagan, 'that's how the process started'.

126. Mr Flanagan transported several loads from Greyhound to the site. He did so at the request of Mr Buckley. On each of these occasions, he unloaded the material beside the shed in the farmyard. He never brought material across the field to the quarry. He was not involved in whatever vehicle movements created the tracks between the farmyard and the quarry. He did not see those tracks at the time.

127. Mr Flanagan said that he understood that he was drawing compost to fill in the land at the quarry, 'to get it back to arable land.' Mr Buckley told him that. Mr Buckley and himself would frequently do loads for one another.

128. He would pick up loads at the Greyhound premises in Clondalkin. His own work would bring him everywhere and anywhere around the area. Mr Buckley would ring him occasionally, saying 'if you are in the area, pick up a load in Clondalkin and bring it down to Rathdowney.' On arrival at the Clondalkin premises, he would weigh in his vehicle. He would stay in the cab while the vehicle was loaded and then have a docket signed on the way out. The process would take minutes. There was no delay. It was in and out.

129. Mr Flanagan said that he would fill in what he was going to get, then what he got. When the docket was signed at the weighbridge, he would tear out a white triplicate page and hand it in. When it came to the bit at the bottom of the docket, he got that signed by Greyhound because he was working for Mr Buckley and the important thing for him was to prove to Mr Buckley that he had picked up the load at Greyhound as requested. Mr Flanagan said that he had never seen the Buckley docket book prior to the trial. He stated that his handwriting doesn't appear anywhere in it.

130. Mr Flanagan never saw anyone at the Hanrahan lands. He was not there many times, although he cannot say how many trips he made. It was a long time ago and he hadn't kept any books from that period. Those trips would all have been in or around March and April of 2011. At the end of that period, Mr Flanagan got a phone call from Mr Hanrahan Junior, who asked him, 'What is going on?' Mr Hanrahan Junior told him that the stuff on the Hanrahan lands was not 'what is should be.' Mr Flanagan had not previously known Mr Hanrahan Junior although he had dug out the foundations for Mr Hanrahan's family home some years earlier.

131. According to Mr Flanagan, he and Mr Hanrahan Junior drove up to the Greyhound premises at Crag Avenue a short time afterwards. Mr Hanrahan Junior blocked the weighbridge there by driving his vehicle up onto it. Eventually, Cormac Shields came out to speak to them. Mr Flanagan had never met Mr Shields before. Mr Hanrahan Junior was irate and wanted answers but did not get them. Mr Hanrahan Junior and Mr Flanagan wanted to come to some agreement with Mr Shields about the removal by Greyhound of the material dumped on the Hanrahan lands. At some point in the conversation, Mr Shields gave Mr Flanagan his mobile phone number. Mr Flanagan subsequently rang Mr Shields on that number several times 'to see what we were going to do'.

132. Mr Flanagan said that he felt a bit responsible for bringing the waste to the Hanrahan lands although he did so on the basis that it was supposed to be compost. Mr Flanagan felt he had put his own head on the chopping block. On that basis, he made inquiries of various other parties to see if they could assist in removing the waste from the Hanrahan lands. He went to see a man in Waterford or New Ross who did waste removal and got figures from him for the removal of the waste on the Hanrahan lands. He rang Mr Shields but Mr Shields wouldn't have any of it. Mr Shields wouldn't help Mr Hanrahan Junior and Mr Flanagan at all.

133. Mr Flanagan stated that he has no records from that period. He probably would have binned them. If he was doing a load or job for Mr Buckley, he would have been given a docket book like the one in court, which he would have returned to Mr Buckley afterwards. For that reason, it was his belief that there must be at least one other docket book in which loads from Greyhound to the Hanrahan lands were recorded. Once he returned Mr Buckley's docket book, he would not see the docket in relation to the load concerned again. He would prepare an invoice of his own that, as a sub-contractor, he would submit to Mr Buckley, as contractor. The probability is that he would have sent Mr Buckley a single invoice with the eight loads approximately that he did for him set out on it. He would have binned his own records long ago, as he never thought he might need them years later.

134. I pause here to note how strange that last portion of Mr Flanagan's evidence is. According to his earlier evidence (and that of Mr Hanrahan Junior), he knew that Mr Hanrahan Junior was in serious dispute with Greyhound from a date no later than their visit to the Greyhound premises, which each of them describes as having occurred very shortly after the Council's discovery of the illegal dump on the Hanrahan lands on 6 April 2011. Yet Mr Flanagan was content to state on oath that he never thought that he might need his records of the deliveries that he carried out from the Greyhound premises at Crag Avenue, Clondalkin, to the Hanrahan lands, with the result that he was happy to bin those records shortly afterwards. Similarly, it is very difficult to see why Mr Flanagan could not have put Mr Hanrahan Junior immediately and directly in contact with Mr Buckley, with a view to securing Mr Buckley's evidence and records of his dealings with Greyhound.

135. Mr Flanagan went on to state that he does not believe that he was paid by Mr Buckley for the relevant work.

136. Under cross-examination, Mr Flanagan acknowledged that he had spoken to Mr Hanrahan Senior at the outset of these events, although he was not clear about whether he had approached Mr Hanrahan Senior or Mr Hanrahan Senior had approached him. In either event, Mr Hanrahan Senior spoke to him about levelling the old quarry. Mr Flanagan told Mr Hanrahan Senior that there would be compost available for that purpose. On that basis, he would have passed on Mr Hanrahan Senior's number to Mr Buckley. However, Mr Flanagan did not subsequently do any of the envisaged levelling work at the old quarry.

137. Further in cross-examination, Mr Flanagan said that he wasn't aware that sand could still be drawn from the quarry; he did not know why Mr Hanrahan Senior would want to fill in the old quarry with compost in those circumstances; he had not been told by Mr Hanrahan Senior that the lands were leased to his son, Mr Hanrahan Junior; he had not been told by Mr Hanrahan Senior that he had retired from farming; he was not aware of any arrangement between any of the Hanrahans and a man called 'Mr O'Connor' of 'Acorn Plant and Machinery Hire' to permit the latter to draw sand from the old quarry; and he did not wish to comment on how unusual it would be for Mr Hanrahan Senior to make an agreement with 'Mr O'Connor' permitting sand to be drawn from the quarry, on the one hand, while at the same time making an agreement with Greyhound to provide compost to fill in the quarry, on the other.

138. Still further in cross-examination, Mr Flanagan acknowledged that Mr Hanrahan Junior would have known everything that he knew about the apparent arrangements between Mr Hanrahan Senior and Greyhound from the time of their first discussions very shortly after the discovery of the illegal dump on 6 April 2011. Mr Flanagan also acknowledged that he had made statements to the firm of solicitors then representing Mr Hanrahan Senior, Mrs Hanrahan (and, perhaps also, Mr Hanrahan Junior) on 11 and 15 October 2013.

The Hanrahans have made discovery of those statements in these proceedings, although they have asserted privilege (presumably, litigation privilege) against any inspection of them. Mr Flanagan conceded that he has never contacted the authorities concerning any of these matters, nor has any authority contacted him.

139. After Mr Flanagan's evidence, the Hanrahans rested their case.

Application to Dismiss
140. Counsel for Greyhound then applied for an order dismissing the proceedings. In accordance with the principles laid down by the Supreme Court in *O'Toole v Heavey* [1993] 2 IR 544, I asked Counsel whether, in the event of the refusal of that application, Greyhound intended to go into evidence. Counsel for Greyhound informed the Court that it did not.

141. Accordingly, the question for resolution is whether at this stage the plaintiffs have discharged the burden of proof they bear to satisfy the court on the balance of probabilities that they are entitled to judgment; *O'Donovan v Southern Health Board* [2001] 3 IR 385, following *O'Toole v Heavey* [1993] 2 IR 544 at 567-7.

Findings of fact
i. did the Hanrahans authorise the dumping?

142. The first question of fact that must be resolved is whether the Hanrahans have established, on the balance of probabilities, that neither of them, nor anyone on their behalf, authorised the dumping of the waste on their lands and that they were unaware of that activity until notified of it by the Council.

143. The only evidence before the court on that question is the testimony of Mr Hanrahan Junior. I regret to say that I found Mr Hanrahan Junior to be an entirely unreliable witness, whose testimony stretched credulity beyond breaking point on several issues.

144. In assessing the credibility of Mr Hanrahan Junior's evidence, I start from the proposition that it is innately improbable that the dumping on the Hanrahan lands of processed waste on the scale acknowledged here could have occurred over several weeks or, quite possibly, months without the Hanrahans' knowledge.

145. For all of the reasons that I have already flagged in summarising his evidence, I do not accept Mr Hanrahan Junior's explanation for his professed ignorance in that regard. Those reasons include the following. First, I do not accept Mr Hanrahan Junior's uncorroborated assertions that, at the material time, he had moved out of the family home due to a temporary estrangement from his wife, which led to a permanent estrangement from his father, and that he was then living in Dublin and working extensively abroad, being only coincidentally - though inexplicably - present on the home farm when an attempt was made to serve his parents with the s. 58 proceedings there on 18 November 2011 and when he was personally served with those proceedings there four days later.

146. Second, I do not accept Mr Hanrahan Junior's further assertion that both he and his father had been taken in by a mysterious figure, 'Mr O'Connor', who has since completely vanished, nor do I accept the different and inconsistent version of events later presented as part of the Hanrahans' case through the evidence of Messrs Buckley, Horan and Flanagan.

147. Third, I do not accept the proposition that Mr Hanrahan Senior perjured himself in the s. 58 proceedings, a claim made for the first time by Mr Hanrahan Junior only after his father's death. And fourth, I view Mr Hanrahan Junior's attempts to challenge key parts of the Council's evidence against him in the s. 58 proceedings now, in circumstances where he failed or neglected to challenge that evidence then, as deeply damaging to his credibility.

148. It follows I am satisfied that, on the balance of probabilities, the Hanrahans did know of the large scale operation whereby municipal waste weighing between 960 and 1,840 tonnes arrived in lorry load after lorry load at the farmyard on their lands and was unloaded there, before being loaded onto a tractor and trailer (or some similar type of vehicle) and transported a further 400 metres across their lands to the old quarry, where it was deposited using a track machine of some kind. And the ineluctable inference I draw from that finding is that the Hanrahans authorised that activity in a manner and in circumstances that they remain unwilling to disclose but which must have involved the receipt by one or more of them of some payment, benefit or privilege as consideration for doing so.

ii. Is Greyhound the producer of the waste?

149. The direct evidence on this issue is that of Messrs Buckley, Flanagan and Horan. Each of those three witnesses testified that he collected several loads of material from the Greyhound premises at Crag Avenue, Clondalkin, County Dublin and transported them in his lorry to the farmyard on the Hanrahan lands at Graigueadrisly, depositing the material there. Mr Buckley gave evidence that these collections and deliveries occurred at the direction of a Mr Cormac Shields of Greyhound. Mr Flanagan testified that a man representing himself as Cormac Shields of Greyhound spoke with Mr Hanrahan Junior and himself at the Crag Avenue premises when they visited it shortly after the Council discovered the illegal dump on the Hanrahan lands in April 2011. It was never suggested to any of those witnesses that he was untruthful or mistaken in that evidence.

150. Mr Reilly, the consultant engineer instructed on behalf of the Hanrahans, identified the waste in the old quarry on the Hanrahan lands – some 400 metres from the farmyard - as mixed municipal waste of the type referred to as 'fines' or 'compost', before expressing the view that there are approximately nine waste plants in the country capable of converting household and light industrial waste into that form, and that the Greyhound premises at Crag Avenue, Clondalkin, County Dublin is one of them; indeed, the one nearest to the Hanrahan lands. While Mr Reilly accepted that he had no direct evidence of the operations at the Crag Avenue site, neither his expertise nor his research on the point was directly challenged.

151. On behalf of Greyhound, it was put to each of those witnesses that the documentary evidence relied upon by the Hanrahans in the form of the Buckley dockets was inconclusive in terms of what it purported to record and, further, inconsistent with their evidence and with the established facts in certain material respects. The principal such inconsistency is that there are dockets purporting to record the collection of loads from Greyhound on as many as seven occasions after the Council discovered the illegal dump on the Hanrahan lands on 6 April 2011, despite the unchallenged evidence of the Council that no material change was noted on the Hanrahan lands after that date. It was also put to each of those witnesses without demur that the relevant weighbridge documentation discovered by Greyhound contains no entry equivalent to the contents of any of the Buckley dockets.

152. Counsel for the Hanrahans, citing McGrath, *Evidence*, 2nd edn (Dublin, 2014) at para 3-52, submits that 'it is well established that a court is entitled to draw an adverse inference from the failure of a party to call a witness who is available to give evidence in relation to a fact in issue'; *M'Queen v Great Western Railway* (1875) LR 10 QB 569 at 574 and *R. v IRC*, ex p. TC *Coombs & Co.*

[1991] 2 AC 283 at 300, the latter cited with approval by this court in *Crofter Properties Ltd v Genport Ltd* [2002] 4 IR 73 at 85.

153. In *Wisniewski v Central Manchester H.A.* [1998] Lloyd's Rep Med 223, the Court of Appeal of England and Wales summarised the relevant principles in a manner subsequently endorsed by this court in both *Fyffes plc v DCC plc* [2009] 2 IR 417 at 508 and *Nolan v Carrick* [2013] IEHC 523 at [44]. It did so in the following terms:

> '(1) In certain circumstances the court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
>
> (2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
>
> (4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.'

154. As the Supreme Court pointed out in *Whelan v AIB* [2014] IESC 3, if the foregoing principles are to be properly applied, both the relevant witness (or witnesses) and the specific inference (or inferences) to be drawn from the absence of each such witness must be clearly identified.

155. In this case, the Hanrahans have clearly identified Mr Cormac Shields as the relevant witness. The specific inference they ask the court to draw from his absence as a witness at trial is that he directed the transportation of the waste at issue on behalf of Greyhound from its plant at Crag Avenue, Clondalkin, County Dublin to the Hanrahan lands at Rathdowney, County Laois to dispose of, or hold it, there in a manner likely to cause environmental pollution.

156. I am satisfied that the evidence adduced on the question, namely the relevant testimony of Mr Buckley, Mr Flanagan and Mr Hanrahan Junior, is sufficient to give rise to a case to answer. I am further satisfied that Greyhound has not proffered any explanation or reason for Mr Shields' absence or silence, whether satisfactory or not. In the circumstances, I conclude that it is appropriate to draw the inference contended for.

157. At the end of the trial, Greyhound submitted that no evidence had been given that the waste delivered to the farmyard was the waste subsequently discovered in the old quarry. Presumably, the court is being invited to conclude that an essential link in the chain of evidence is therefore missing. I cannot accept that submission. The Council's uncontroverted evidence of rutted, waste-pitted tracks leading from the farmyard to the old quarry across a litter strewn field, provides a more than ample foundation for the conclusion, on the balance of probabilities, that the waste delivered to the farmyard and the waste later found in the old quarry are one and the same.

158. The penultimate observation I wish to make before setting out my conclusion on this issue is the following one. This case presents a particular kind of controversy in civil litigation broadly analogous to the situation in criminal litigation where a 'cut-throat defence' is mounted. Thus, the court has been presented with the evidence of various witnesses, the lawfulness or propriety of whose conduct is in question, vigorously pointing the finger of blame in the direction of other persons while steadfastly insisting on the innocent nature of their own involvement, or their lack of any involvement, in the relevant events. Confronted with such defences in criminal cases, judges and jurors alike often tend to reject those parts of a witness's testimony that are self-exculpatory, while accepting the credibility of other parts of the same testimony that are inculpatory of others. I find myself in that position concerning the evidence of several of the witnesses of fact in this case.

159. Hence, it may be just as well for Messrs Buckley, Flanagan and Horan that I am not required to express any view on the assertion of each as an experienced haulier that he genuinely believed that he was collecting loads of non-waste 'compost' from a waste management facility and delivering them to the Hanrahan lands to be properly deployed for land reclamation purposes, rather than dumped as waste in an unlicensed landfill, simply because in each case someone else had told him so. I have already expressed my view on the evidence of Mr Hanrahan Junior concerning his professed ignorance of the resulting large-scale waste disposal activity on the Hanrahan farmlands. Much of the thrust of Greyhound's defence of the action involved exposing the innate implausibility of those claims, presumably on the basis that, if those aspects of the relevant witnesses' testimony were rejected as unworthy of credit, so too would be their direct evidence identifying Greyhound as the producer and consignor of the waste. As I hope I have explained, it seems to me that such an undifferentiated approach to the evidence, while no doubt often appropriate, is not the correct one in every case. It certainly does not accord with my assessment of the evidence in this case.

160. Finally, I should make it clear that I do not attach very much weight or significance either way to the documentary evidence presented. The Buckley dockets, if genuine, represent the rough and ready record of a trade that does not exclude the unlettered. The authors of the various entries on the different dockets remain unidentified. To the extent that the purported delivery dates on certain of those dockets put them in conflict with the Council's evidence concerning the date after which no further loads arrived at the Hanrahan lands, I do not think that is sufficient to undermine the testimony of each of the relevant witnesses that, while he cannot vouch for the accuracy of the dates in the docket book, he did collect several loads of what was plainly waste from the Greyhound premises at Crag Avenue in Clondalkin and did deliver them to the farmyard on the Hanrahan lands. Similarly, I do not think that the absence of any weighbridge documents among Greyhound's records corresponding to any of the loads recorded in the Buckley dockets counts for very much. The disposal of waste in a manner that causes, or is likely to cause, environmental pollution is unlawful. It would be quite astonishing if any entity engaged in that activity kept any records, much less meticulous ones, concerning it.

161. For the reasons I have given, I conclude that Greyhound was the waste producer, as that term is defined under the 1996 Act, of the waste that was illegally dumped in the old quarry on the Hanrahan lands.

The private law claims

162. Against the background of the facts as I have found them to be, I must now consider the Hanrahans' private law claims against Greyhound of trespass, negligence and breach of duty (including breach of statutory duty), and nuisance.

163. I have found that the Hanrahans did know of the large-scale disposal and holding of waste at the old quarry on their lands in a

manner causing, or likely to cause, environmental pollution, and that they must have authorised that activity in exchange for some payment, benefit or privilege.

164. Accordingly, a fundamental question arises concerning whether the Hanrahans are debarred by their own wrongful conduct from obtaining any of the private law reliefs that they seek.

165. The venerable common law doctrine of *ex turpi causa non oritur actio* - loosely translated as 'from a dishonourable cause an action does not arise' - is relevant here. The scope of the doctrine in Irish law is very thoroughly discussed under the heading 'Illegality' in the chapter on 'Defences' in McMahon and Binchy, *Law of Torts*, 4th edn, (Dublin, 2013) at paras. 20.108 to 20.125.

166. The leading decision in the area is that of this court in *Anderson v Cooke* [2005] 2 IR 607. In addressing the defence (at 613), Finnegan P first pointed to the limitation contained in s. 57(1) of the Civil Liability Act 1961, whereby '[i]t shall not be a defence in an action of tort merely to show that the plaintiff is in breach of the civil law', before observing that the effect of that provision is to modify but not abolish the defence. In their work, already cited, McMahon and Binchy comment (at para. 20.119) that the achievement of the section as a qualification upon the defence is a barely measurable one 'since no court in any common-law jurisdiction has ever maintained the draconian policy of dismissing a claim automatically on proof of some illegality on the plaintiff's part.' The real question is in what circumstances is wrongful conduct or a breach of the civil law sufficient to trigger the defence?

167. Finnegan P went on to note that, in *O'Connor v McDonnell* (Unreported, High Court, 30th June, 1970), Murnaghan J cited with approval the following statement of the law by Lord Mansfield in *Holman v Johnson* (1775) 1 Cowp. 341:

> 'No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act if from the plaintiff's own stating or otherwise the cause of action appears to arise *ex turpi causa* or the transgression of a positive law of the country then the court says he has no right to be assisted. It is upon that ground that the court goes: not for the sake of the defendant.'

168. Having surveyed the leading cases across the common-law world on the contemporary parameters of the defence, and having commented that the maxim is more likely to have application in circumstances of joint illegal activity, Finnegan P concluded that the maxim is based on public policy and that it is therefore necessary: first, to examine the policy of the statute or common law under which the relevant party's illegal conduct arises; and then, to determine if a duty of care (or, presumably, some other basis of tortious liability) exists in that context.

169. What is the public policy underpinning the Waste Management Act 1996? At the risk of being trite, the long title of the Act confirms that its purposes include; 'to make provision in relation to the prevention, management and control of waste'; and 'to give effect to provisions of certain acts adopted by institutions of the European Communities in respect of those matters.'

170. As Professor Scannell points out in her work *Environmental and Land Use Law*, (Dublin, 2006) at para 8-20 and para 8-223, the 1996 Act was enacted to reform and codify existing legislation on waste management; to implement various European Directives and one Regulation on waste; and to provide the framework for further subordinate legislation on waste management. One of the most important Directives implemented was Directive 75/442/EEC amended by 91/156/EEC on waste ('the Waste Management Directive' or 'WFD'). Article 4 of the WFD requires Member States to take the necessary measures to ensure that waste is disposed of without harming human health and the environment and without using methods that could harm the environment and, in particular:

> (a) without risk to water, air, soil, plants and animals;
>
> (b) without causing a nuisance through noise and odours; and
>
> (c) without adversely affecting the countryside or places of special interest.

171. In my judgment it would be entirely contrary to the policy of the 1996 Act to permit any person who has willingly engaged in holding waste in a manner causing, or likely to cause, environmental pollution to escape his share of responsibility for the discovery of that unlawful conduct by asserting that the willing disposer and co-holder of that waste owes a duty of care (or bears some other form of tortious liability) to protect or insulate him from the public law consequences of their joint enterprise.

172. To adapt the example given by Lord Reid in *National Coal Board v England* [1954] AC 403 at 409, this is not so much the equivalent of a case where a burglar who sues another for negligence in his use of explosives to crack a safe is destined to lose, as it is the equivalent of a case where a burglar who sues another for failing to protect him from liability to make restitution is more certain still to fail in his action.

173. For these reasons, I conclude that the defence of *ex turpi causa* is made out. Accordingly, the Hanrahans private law claims against Greyhound cannot be permitted to proceed, not for the sake of Greyhound but to enforce the principle that a grave and proximate transgression of the law of the State prevents the assertion of a private law right in connection with it.

The public law claims

174. In addition to their various private law claims in tort, the Hanrahans seek a declaration that Greyhound dumped waste on the Hanrahan lands in contravention of the provisions of the 1996 Act, and an Order against Greyhound pursuant to s. 57 of that Act.

175. Yet s. 57(2) of the 1996 Act provides:

> 'An application for an order under this section shall be by motion….'

176. It is thus clear that, in seeking an order under s. 57 of the 1996 Act in plenary proceedings commenced by way of plenary summons, rather than in summary proceedings commenced by way of originating notice of motion, the Hanrahans are in breach of the requirements of that Act.

177. Can the Hanrahans' position in that regard be ameliorated by the application of any rule of court or the exercise of some discretion vested in the court? In *John Ronan & Sons v Clean Build Limited (In liquidation) & Ors* [2011] IEHC 350, Clarke J was confronted with what was, in many ways, the obverse of the situation here. There, proceedings under ss. 57 and 58 of the 1996 Act had been brought in a summary manner by originating notice of motion as the Act requires. Having noted that in many cases that is the appropriate procedure to follow, Clarke J pointed out that there are some cases where the summary nature of the process gets in the way of an effective hearing and that the case before him was one such, in that a more effective process would have been a full

plenary hearing with the advantage of the procedures adopted in the commercial court, because of the complexities of the evidence adduced and the liability issues arising.

178. Clarke J observed that there are cases in which a more efficient process than the one under the 1996 Act could have been devised if the court were given a discretion to convert the proceedings into plenary proceedings, which would allow all necessary parties to be joined in a single action, and would allow witness statements which focus on the issues that require to be decided at trial to be filed, thus removing any earlier affidavit evidence, which is no longer relevant, from the picture. However, Clarke J. went on to point out that the current state of procedural law does not permit such a measure.

179. In this case, the Hanrahans have arrogated to themselves the right to commence proceedings under the 1996 Act in a manner that the Act itself does not allow. The result has been, at best, the creation of some procedural confusion and, at worst, an abuse of process. The subject matter of these proceedings – the illegal dumping of the waste at issue on the Hanrahan lands - has already been the subject of s. 58 proceedings, properly brought in accordance with the requirements of the Act. The plaintiffs in these proceedings (the Hanrahans) were two of the three respondents in those proceedings, and yet they did not then seek to ventilate the claims they make against Greyhound now.

180. In the circumstances, even if the public law aspect of the Hanrahans' claim had been brought in the manner the 1996 Act requires, and even if the Court had the discretion thereafter to convert the action into plenary proceedings (which it does not), in my view this would still be a case in which such an application should be refused because it is one in which, in the words of Clarke J, 'the existing summary process is best suited to achieving a speedy and efficient result.'

181. The Hanrahans' attempt to circumvent (or ignore) the procedural requirements of the 1996 Act, by launching separate plenary proceedings invoking the provisions of that Act after the conclusion of the s. 58 proceedings in which they have already been involved, also runs counter to the requirements of the rule in *Henderson v Henderson* (1843) 3 Hare 100, 67 ER 313, as elucidated and applied by the Supreme Court in *A.A. v. Medical Council* [2003] 4 IR 302, whereby parties to litigation are required to bring forward their whole case and will not be permitted to open the same subject of litigation afterwards merely because they have - from negligence, inadvertence or even accident - omitted part of their case.

182. The *John Ronan & Sons* case, already cited, illustrates what seems to me to be the correct approach to litigation under s. 57 or s. 58 of the 1996 Act, where a respondent alleges that another party bears responsibility for the holding, recovery or disposal of waste causing environmental pollution. The respondents concerned should bring summary proceedings within the framework of the 1996 Act promptly against that party and, once that has been done, whatever order is appropriate can then be made consolidating, joining or linking the two sets of proceedings.

183. Alternatively, it is at least possible that, had the Hanrahans instead brought the information and evidence upon which they now seek to rely to the attention of the Council promptly in 2011, the Council's s. 58 proceedings might well have included Greyhound as a respondent. For the reasons already given, I am not persuaded by the Hanrahans' assertions that they were prevented from adopting that course either by the necessity to gather evidence against Greyhound over a longer time frame or by the asserted failures of their solicitors or of the Council to act on the information that Mr Hanrahan Junior alleges he provided to them at the time.

184. Having failed to adopt either course, it is not now open to the Hanrahans to bring a separate plenary action after the conclusion of the Council's s. 58 proceedings, seeking their own reliefs under the 1996 Act against Greyhound in respect of the same events.

185. The problem in this case goes further than the obvious mischief that that rule in *Henderson v Henderson* is intended to address i.e. the bringing of a multiplicity of actions where a single set of proceedings should do. There is a further, more insidious, mischief here.

186. In the s. 58 proceedings, the Council adduced evidence of the statements after caution of Mr Hanrahan Junior. The respondents to those proceedings (Mr and Mrs Hanrahan, and Mr Hanrahan Junior) were fully entitled to contest that aspect of the evidence against them but did not do so. After hearing all the evidence, Hedigan J made an order pursuant to s. 58 of the 1996 Act against each of the respondents. That Order includes the recital that each of the three Hanrahans is a 'waste holder', within the meaning of that term under the 1996 Act. While the respondents lodged a notice of appeal against that order, they later withdrew it. Accordingly, that issue has been finally determined against the Hanrahans by a court of competent jurisdiction.

187. The Hanrahans have brought the present action against Greyhound only. They have not made the Council a party to it. Yet, in his evidence to the court in these proceedings, Mr Hanrahan Junior now denies on oath that he made cautioned statements in the terms attributed to him by certain authorised officers of the Council. The Hanrahans now submit that, while the affidavits in the s. 58 proceedings constitute evidence in these proceedings by agreement between the parties, only limited weight can be given to any averments they contain that Mr Hanrahan Junior has purported to contradict in his viva voce evidence at trial.

188. The Hanrahans contend, in effect, that it was incumbent on Greyhound to have the Council's chief deponent in the s. 58 proceedings available to give evidence at the trial of this action to provide for the contingency that the Hanrahans, having failed to challenge that evidence in those proceedings, might purport to do so now. The Hanrahans submit that, as the person concerned was not called as a witness by Greyhound, her affidavit evidence in the s. 58 proceedings should be treated in these proceedings as equivalent to the evidence in chief of a witness who has died prior to cross-examination. Accordingly, relying on the analysis of the position where a witness is unavailable for cross-examination due to death or illness set out in McGrath, *Evidence*, 2nd edn. (Dublin, 2014) at para. 3-145, and the authorities cited there, the Hanrahans say that the conflicting evidence of the deponent concerned may be considered by the court but should be given little weight.

189. To accept that submission in the circumstances I have just described would be to permit the Hanrahans to launch a collateral attack upon the decision and order of Hedigan J. in the s. 58 proceedings. It would be an abuse of the process of the court to permit the Hanrahans to raise or relitigate the issue of their status as waste holders or the findings of fact that led the court to that conclusion; *Breathnach v Ireland (No. 2)* [1993] 2 IR 448, applying *Kelly v Ireland* [1986] ILRM 318, following *Hunter v Chief Constable of West Midlands* [1982] A.C. 529. It is important to note that this is not a case of fresh evidence about the Hanrahans' status as waste holders under the 1996 Act, which, if it were otherwise, might bring the present claim within a potential exception to the public policy rule against collateral attacks on earlier decisions.

190. Applying the principles that I have just described to the circumstances of the present case, I conclude as follows. First, the Hanrahans are not entitled to seek any relief under the 1996 Act in these proceedings. Second, the Hanrahans cannot use these proceedings as the occasion for mounting a collateral attack upon the earlier unchallenged decision of this court that the Hanrahans are each waste holders of the waste at issue.

191. It is thus unnecessary to consider the argument advanced by Greyhound that, even if the court is satisfied on the evidence presented that Greyhound was the source of the waste found on the Hanrahan lands on 6 April 2011 (and it is), that would not bring Greyhound's conduct within the terms of s. 57 of the 1996 Act, because that section only captures 'holding, recovering or disposing' of waste at any time from the commencement of the proceedings to the date of hearing, being in this case the holding, recovering or disposing of waste between 20 September 2013 and 8 December 2015. Greyhound's argument appears to be that, even if it were found to have disposed of the waste concerned, it would have to have done so on or before 6 April 2011 and, thus, cannot on any view be considered to have been 'holding, recovering or disposing of' the waste at the time when these proceedings were instituted on 20 September 2013 or at any time since then.

192. While what follows is necessarily obiter, it seems to me that the submission concerned is misconceived. It is based on the following dicta in the judgment of Clarke J in *Cork County Council v O'Regan* [2009] 3 IR 39 (at 46):

> 'I am of the clear view that, in order to establish the conditions necessary for the making of an order under s. 57, it is necessary for an applicant to establish that those conditions were present at any time from the commencement of the proceedings to the date of hearing.'

193. In relying on that passage as authority for the proposition that any 'holding, recovering or disposing of' waste prior to the commencement of proceedings cannot fall within the scope of s. 57, Greyhound makes an incorrect assumption; namely that, even if it had produced the relevant waste and disposed of it on the Hanrahan lands prior to 6 April 2011, it could not be the holder of the said waste after that date.

194. That assumption is incorrect for the following reason. Clarke J delivered judgment in *O'Regan* on 17 June 2005. In the subsequent case of *John Ronan & Sons Ltd*, already cited, the same judge pointed out that the definition of 'holder' under s. 5 of the 1996 Act was amended by Article 19 of the Waste Management (Registration of Brokers and Dealers) Regulations 2008, so that, with effect from 1 July 2008, 'waste holder' means 'the waste producer or the person who is in possession of the waste.' Section 5 of the 1996 defines 'waste producer' as 'anyone – (a) whose activities produce waste (in this Act referred to as the 'original waste producer'), or (b) who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of such waste.'

195. It follows that, as the producer of the waste later dumped on the Hanrahan lands, Greyhound was a holder of that waste at all material times up to and including 6 April 2011 and remains a holder of it today, whether it is in physical possession of the waste or not.

Conclusion

196. Considering certain of the findings of fact in this judgment, it may be that some further action remains possible in accordance with the procedures stipulated under the 1996 Act. While it is not a matter for this court, it may be that, if the Hanrahans are now prepared to offer the Council the evidence and co-operation they have so far withheld from it, the Council may be able to assist or, indeed, to act in that regard.

197. Nonetheless, for the reasons I have given, I am satisfied that the plaintiffs have failed to discharge the burden of proof they bear to satisfy the court on the balance of probabilities that they are entitled to judgment in respect of any of the reliefs that they seek in the present action. I will therefore order that the proceedings be dismissed.