

Judgment Title: Simmonds -v- Kilkenny Borough Council

Neutral Citation: [2007] IEHC 208

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Neutral Citation Number: [2007] IEHC 208

THE HIGH COURT

DUBLIN

[2004 No. 19731P]

TOBY SIMMONDS Plaintiff

and

KILKENNY BOROUGH COUNCIL, THE

COMMISSIONER OF AN GARDA SIOCHANA,

IRELAND AND THE ATTORNEY GENERAL Defendants

JUDGMENT OF MR. JUSTICE THOMAS C. SMYTH
DELIVERED ON FRIDAY, 15TH JUNE 2007

MR. JUSTICE T.C. SMYTH DELIVERED HIS JUDGMENT AS
FOLLOWS ON FRIDAY, 15TH JUNE 2007:

MR. JUSTICE SMYTH: The Plaintiff is a
wholesale and retail
merchant. He imports olives and other Mediterranean
foods from North Africa and much of Europe,
particularly southern Europe. He has been in business
for over a decade and in 1995/96 he had 25 people
working for him. His partner, the mother of his
children, runs a business in "the English Market" in
Cork as of 2007 and he attends several markets in
Ireland which are serviced by one full-time and three
part-time employees. He trades under the name of The
Real Olive Company. It is a successful, substantial
undertaking, for there are many franchises; in the year
to 2006 he imported olives alone to the value of €1m
approximately.

He was involved in the negotiation and establishment of

the Temple Bar Market in Dublin in 1997 and trades there regularly. In the Dublin area he or his employees or franchisees trade in Marlay Park, Leopardstown and Dalkey, and outside the capital in Naas, County Kildare and in Kerry at Sneen, Dingle and Kenmare. He also operates in Limerick and in County Cork with centres in Bantry, Skibbereen and Macroom; also in Ennis, County Clare and in Galway. In addition, his partner has a permanent stall or part of

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a premises in the Cork "English Market". All trade under the name The Real Olive Company.

The central distribution depot for the produce that the Plaintiff puts forth and the produce he imports, is a small farm (area unspecified in evidence), which has been converted from a milk creamery in Macroom, County Cork. The business of the Plaintiff, who at the time of the hearing of the action was 34 years old, so thrived that he sold "the business in Bantry and Macroom" to employees. One of the employees works out of the Plaintiff's premises and operates from there. Indeed so busy is the Plaintiff with the wholesale and

importing side of the business, that he only personally services a couple of markets.

The nature of the business the Plaintiff conducts (when he does conduct his own business) is to have a stall with wooden barrels of olives, Feta cheese and Mozarella, basil pestos and hummus made up at base and "various things with beans", sundried tomatoes, artichoke hearts which have been marinated with garlic and/or fresh herbs, a lot of which he grows at the farm. Essentially the basis of the business is the importation, not production of food, some of which, to an unspecified extent is subject to marination at the depot, and its presentation of those foods at markets.

The nature and extent of the extensive commercial

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enterprise of the Plaintiff differs in large measure both as to its nature and extent to that championed by Ms. Darina Allen called in his support. Her evidence was concerning the farmers markets which provided an outlet for fresh produce, a lot of homemade produce of fresh naturally-produced local food in season, and she

instanced homemade butter, maybe periwinkles and wild garlic and her advocacy of the farmers markets was that such products can be sold by the actual producers directly at the time they are in season. In short, she spoke of a facility for direct sale of local food for local people.

The Plaintiff called in evidence a Ms. Suzanne Crampton who had a memory of some years by of coming from the USA to visit her grandparents, who lived at Maidenhall some six miles outside Kilkenny, and of a wonderful childhood, where in those visits she helped her grandfather who depended on his market garden for his living. She described an idyllic childhood in an Eden of flowers, fruits and honey and going with her grandmother in the 1970s to the Market Yard where homemade jams, jellies, tarts and cakes and farm produce from the surrounding area was for sale, including some knitted garments. Specifically in reference to the Market Yard, she referred to leaving Maidenhall "early the next day to get into the Country Market". In reply in cross-examination she thought the market then was more extensive in that area than in

recent years.

The witness's memory was of five stalls, whereas there are now four. I attribute this difference, if of any importance, to the effect of time on memory. It may well be that prior to the introduction of parking fees and the arrival of Dunnes Stores and later Superquinn in that area, that the former activity and numbers dealing with the producers in the Country Market was greater and could have given the impression of a more extensive market.

The Plaintiff made his first foray, through his employee, one Morris, in Kilkenny in 1995. It was a short-lived affair or experiment because there was not enough business, and the Plaintiff and/or Mr. Morris considered "the situation was wrong". Apparently the 1995/96 experience was centred on or took place in "the Market Yard". This is now a public car park. The Plaintiff in evidence stated that some weeks before the hearing of the action, he found the old Weigh Masters room in the Market Yard. In this regard I heard the

evidence of Mr. Donal O'Brien, Town Clerk to the first Defendant ("the Defendant") from 1980 to 2005, who gave evidence that the premises referred to by the Plaintiff as the Weigh Masters room in the Market Yard was occupied by a sergeant of An Garda Síochána who used to check the weights and measures in the Brewery and Avonmore and the like. Where the evidence of the

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Plaintiff differs from that of Mr. O'Brien on any material fact referable to the historic use of any place in the boundaries of the Defendant, I have preferred that of Mr. O'Brien whose detailed knowledge and experience I found as more reliable evidence. Indeed Mr. O'Brien was able to recall specifically the name of the sergeant, whose original duties had their origin in the Weights and Measures Act, 1878 (41 and 42 Vic. c. 49); "the weights and measures man" was a feature of the lives of shopkeepers and those who sold goods by weight to ensure that the weights were true and accurate.

I am satisfied and find as a fact upon the evidence on which I can rely that in the year 1980 there were no

casual trade bye-laws because there was no street or market trading at that time in Kilkenny and had not been for quite some time before 1980. In 1984/85, after an incident in which a large number of traders appeared one day on John's Green (which is adjacent to the railway station), it was decided to regulate the situation and bring in casual trading bye-laws. At that time, an area generally used as a public car park was designated as the casual trading area and bye-laws were drawn up which survived challenge in court. However, "the market" effectively disappeared after a short time.

In the 1990s, notwithstanding the coming into effect of

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the Casual Trading Act, 1980 and thereafter of 1995, no bye-laws were brought into existence by the Defendant because there was effectively no market or street trading being carried on. However, all this changed in 2002 when a group of traders began, and maintained on a consistent basis, to hold a market or street trading at an area known as the Parade. Then, in consultation with the several traders, bye-laws were

drawn up and adopted on 8th December 2003 and are known as the Kilkenny Borough Council, Casual Trading Bye-Laws, 2003. The purpose of the bye-laws is to permit of a controlled and orderly market for those persons who have no fixed permanent buildings from which they trade, at a modest charge of approximately €5 per week. The Defendant reserved to itself the right to vary the location, times, products for sale and fees to be charged to reflect any decision that may be taken in the interest of the proper planning and development of the city.

I am satisfied and find as a fact that the Defendant sought to arrive at a consensus with the traders, and did so as to the location of the area for the market or trading area and other relevant facilities and terms. The designation of the area for trading purposes was of importance because prior to the coming into effect of the bye-laws, trading was taking place outside the railings on the public road and this was causing a certain amount of problems, not unlike those reflected

referred to by Dr. O'Drisceoil in his evidence (T. 18/04/07 q.336). While these were not expressly stated in evidence, the city of the Kilkenny of 1608/09 or mid-19th century both as to its population and means of transport differs significantly, if not radically, from what exists in the 21st century. The confusion and congestion of traffic I infer led to the safe and sensible suggestion of allocating a paved pedestrian area, referred to in evidence as The Mayor's Walk being part of the Parade, inside the railings within which the buying and selling of goods could take place safely. All persons who applied to trade in the designated area received licences. The Plaintiff was the only trader who did not apply for a licence and therefore none issued to him.

An incident occurred on 17th July 2004, upon the details of which no case is made as such - however, the action of the Plaintiff is alleged to arise from the assertion of the Plaintiff that there was "a market right" over and above and distinct from any right or rights which may arise under the Casual Trading Acts and/or any Bye-laws arising thereunder. The issue of an inquiry as to the existence or abandonment of "a

market right" was taken up by the Plaintiff under the Freedom of Information Act. I am satisfied and find as a matter of fact that when Mr. O'Brien, who was the Town Clerk between 1980 and 2005, was dealing with the

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Plaintiff in correspondence and telephone enquiries, he was under the pardonable impression that the Plaintiff was representing the traders (T. 19/04/07 p.46/7 q.169) but upon enquiry to such traders it became clear that the Plaintiff was representing only himself. When Mr. Tyrell (who succeeded Mr. O'Brien as Town Clerk) who was the official dealing with the enquiries under the Freedom of Information Act, replied to a letter of 2nd December 2002 from the Plaintiff he did so in the context in which it was received. The context was of a person who was then researching historical markets and market rights in Kilkenny. Such response as was made is not determinative of the legal issues involved nor does such create any form of the estoppel as against the Defendant (Dublin Corporation V. McGrath [1978] ILRM 208 applied).

In summary, there are now only two areas in Kilkenny

where persons who do not have shops or fixed permanent places from which to trade do in fact trade:

1. The sheds on the edge of the courthouse area in what was referred to in historical documents and still known as The Market Yard; where the country market(s) have lettings in respect of which they pay rents. These sheds were re-roofed by the Defendant in the 1990s at a cost of approximately £30,000. Save for these sheds at one side, the Market Yard is a designated large car park, used as such, and is not

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designated as a casual trading area.

2. Inside the railings on the Parade which is a designated casual trading area.

Dr. O'Drisceoil, a professional historian whose broad specialty is in Modern Irish History is a co-author of a history of markets in Cork City. He embarked on a body of research, though extensive, not exhaustive, in relation to the evaluation of the market situation in

Kilkenny. His two preliminary sources were Royal Commission Reports and the Minutes Books of the Corporation and of its Markets Committee - he had recourse to other sources such as maps and newspapers.

This fascinating evidence is unnecessary to recount in detail save to note that the Defendant was enfranchised and enabled by Royal Charters of 1608/09 to hold markets. The franchise was superceded by the Kilkenny Markets Act, 1861. The evidence of Dr. O'Drisceoil on his examination of the archival material of the Defendants refers over the years to "tolls" - such argument as arose in reference to the use of the word in my judgment is odious. In the light of the shorter Oxford Dictionary (Ed. 1985: Onions) which records the expression as "A general term for a definite payment exacted by a king, ruler or lord, or by the state or the local authority, by virtue of sovereignty or lordship, or in the nature for protection" and

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historically was so especially. Indeed Dr. O'Drisceoil correctly notes in his evidence (T. 18/04/07 p.72 q.336 1.12) quoting from the Royal Commission that:

"Tolls were taken in kind, so much on a barrel of corn; but customs were a pecuniary charge." "

Such understanding of the word tolls is noted in the Dictionary as obsolete or rare. Little wonder that Mr. O'Brien saw the charges for some facilities in terms of rents or charges and saw the expression "tolls" as historical (T. 19/04/07 P. 50 Q. 186; p.87/88 q.395). While some form of market may have survived when put on a statutory basis in the early 1860s, it appears to have died out in the 1920s save for the Country Market sheds and for some time into 1950s/1960s, tolls were collected in respect of the selling of cattle in the Fair Green - the cesser of which is the subject of separate litigation between the Defendants and Kilkenny Farmers Co-op Livestock Markets.

Dr. O'Drisceoil's researches revealed that prior to the Act of 1861 there is reference in the historical documents "to markets here, there and everywhere" (T. 18/04/07 p.77 q.348). It appears from the Rents and Tolls Schedule in the accounts of the Defendant that there was an ouncel on the Parade. In 1886 there

were charges in respect of coal [perhaps from Castlecomer], hay and straw for every load weighed on

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the weighing machine, and the 1891 Royal Commission Report makes it clear that coal, hay and straw were sold and/or weighed on the Parade, which was an entitlement; although weighing of corn, hay and coal giving rise to receipts in the form of tolls may have been carried out on some undefined basis or regularity on the Parade. The position in 1950s/1960s is as indicated to me in the course of the evidence and in the course of the records.

Other than sparse records up to the early 1920s, there is no reliable evidence thereafter other than in respect of the cattle market in the Fair Green and the Country Market in the sheds in the Market Yard of any clearly identifiable market existing in Kilkenny. For the events from 1980 to 2005, I rely upon and accept the evidence of Mr. O'Brien, not because of his title or official position with the Defendant, but because of his local detailed first-hand knowledge and find the facts in accordance with his evidence.

The Casual Trading Acts and the regulations and bye-laws thereunder were clearly designed to create a designated area for the buying and selling of goods. They are designed to regulate such activity. The Plaintiff said in evidence that he welcomes regulation and that it is better to be in a regulated market than in a free-for-all (T. 18/04.07 p.49 q.242). The Plaintiff's case although based on seeking "a market

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right" had, it appears, only one real objection to the casual trading area. He had a "feeling" that because the designated area was off the street in a paved area behind railings of some 5/6 feet in height which can be clearly seen through, "it is sort of hidden" and "it certainly removes the business" (T. 18/04/07 p.51). The subjective "feeling" may be genuine, but the objective fact that the demand for trading bays increased from 20 to 25 does not give credence to the notion that the location or its size or configuration removes business - rather the contrary. I think it is not unreasonable that both traders and customers might well prefer to conduct their business off a road or

street with traffic going to and fro or parking about them.

Legal Submissions:

The Plaintiff's submissions were that there is a legal and factual basis for the granting of a declaration that there is a market right in Kilkenny and that the market right has existed by virtue of statute and that in the absence of an express repeal or a completed process of the extinguishment thereof. Furthermore, the non-user or any form of desuetude is insufficient for the right to be "lost" to the public. It was further contended that "the market right" of the Plaintiff has been nullified by the actions of the Defendant on 24th March 2004 when his stall was

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dismantled, impounded and cash taken by the Gardaí (later returned) because he did not have a casual trading licence. Mr. Rogers SC for the Plaintiff said that the nub of the Plaintiff's claim was that there was a market right in Kilkenny and it has effectively

been obliterated. He submitted that the right or market right are such that cannot be abrogated except by a formal withdrawal by Parliament by one of the systems or methods arranged by Parliament in another statute.

The Plaintiff contended that the market rights to trade on Saturdays in the Borough of Kilkenny had its origin in a Royal patent of 1609 and was confirmed by the provisions of the Kilkenny Markets Act, 1861 which created the general market of Kilkenny. The Plaintiff's response to the invocation of the Casual Trading Act, 1995 is to contend that this line of argument is predicated on a misunderstanding of the three statutory codes stated to govern the sale of goods at places to which the public have access as a right.

The right to trade in a market is a common law entitlement as propounded by the Plaintiff. That right is subject in this case to a statutory overlay found in the provisions of the Kilkenny Markets Act, 1861 and the Markets and Fair Clauses Act, 1847 and the Public

Health (Ireland) Act, 1878 and other statutes. I do

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not refer to the latter Acts which were the subject of clear-cut submissions on behalf of the Defendant which make it unnecessary to do so. The point, however, is made that market trading is to be distinguished from street trading which is governed by the Street Trading Act, 1926. Furthermore, it is contended that the Casual Trading Act, 1995 is a statutory code governing that which was once described as "hawking", and was formally governed by the Hawkers Act, 1888. The Hawkers Act, 1888 was repealed by the Casual Trading Act, 1980 which in turn was repealed by the Casual Trading Act, 1995, such was the submission of the Plaintiff. The Plaintiff contends that it is a mistaken approach to seek to apply the provisions of one code to the activities which are governed by another and that all three of the codes, or stated to be codes, must be distinguished from occasional trading which is governed by the Occasional Trading Act, 1979 which refers to occasional trading by selling goods by retail at a premises or place not being a public road or an area to which the public has access as of right, and of which

the person selling has been in occupation for a continuous period of for not less than three months.

Pease and Chitty's Law of Markets and Fairs (5th Ed) at p.1 states as follows:

"A market at common law is a franchise right of having a concourse of buyers and sellers to dispose of commodities in respect of which the franchise was

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given. No-one can have, in law, a franchise of a market, or 'a free market' as it is sometimes called, without a grant from the Crown or the authority of Parliament. The franchise gives the holder the sole and exclusive right of holding markets within certain limits: And although any person, provided he does not interfere with the existing market rights, may make provisions for a concourse of buyers and sellers upon his land, such a concourse, if not held under franchise or statute, is not a market in law and will not enjoy the privileges of a franchise market."

The right of a member of the public to attend a market is referred to in Halsbury's Laws of England (4th Ed.) at para. 623 as follows:

" At all times when a market ought lawfully to be held, every member of the public has, of common right, the liberty to enter and frequent the marketplace for the purpose of bringing there and exposing for sale and selling, or of buying, such commodities as are vendable in the market."

In the instant case, the Defendant contends that the enactment of the Kilkenny Market Act, 1861 removed and extinguished any existing markets for the sale of fruit or agricultural produce to the Market Yard. It clearly established that the effect of a local Act for the regulation of a market or fair originally created by grant is to extinguish the franchise and substitute for the parliamentary right. In this regard reliance was placed on the case of Manchester Corporation v. Lyons

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[1882] 22 Ch.D 287 in which under an Act of 1884 Manchester Corporation purchased the manorial rights of the Manor of Manchester. Among those rights was an ancient franchise to hold a market on Saturdays. The Manchester Market Act, 1846 empowered the Corporation to hold markets on such days as they should think fit at a place and within the borough which they should

appropriate as marketplaces and to charge tolls.

It was held by the Court of Appeal that the effect of the Act was to give the Corporation new rights of holding markets in substitution for the old franchise and that the old franchise was extinguished. Again, in *Windsor v. Taylor* [1899] AC 41 by prescription the appellants had the right to take certain tolls. A local Act was enacted in 1734 and another in 1819 and the House of Lords held that the prescriptive right to take tolls had been merged in and extinguished by the statutory rights. Treating of this topic in the course of the judgments Lord Halsbury stated (at p.45):

"It is therefore clear to my mind beyond question that the nature of the right itself is completely altered by turning it into a statutory right and that right must continue, if it does continue, by virtue of the statute without any power or revival or reverting back to its original nature."

To the like effect is the judgment of Lord Watson at p.47 wherein he states as follows:

"Well, my Lords, what appears to me to have been affected by that part of the enacting clause of this statute is simply to create what it was quite competent for them to do - a statutory authority in the form of and in substitution for the right of franchise which was previously available to Mayor, Bailiffs and Burgess. The effect of that substitution of a new statutory authority for the authority derived from the franchise only was, I apprehend, on the clearest authority to determine - to put an end to it."

This topic is also treated in Halsbury's Laws of England (3rd Ed) at para. 308 wherein it is stated as follows:

"A franchise market or fair or franchise tolls may be extinguished by an act of Parliament which creates the like rights or larger or different rights of the like nature or character in favour of the grantee provided the Act so intends...."

Again Pease and Chitty, to which I have referred, at p.102 states:

"All franchises are liable to be extinguished by act of Parliament, and a market or fair created by statute can only be extinguished by statute."

It is clear from the situation prevailing in Kilkenny prior to the enactment of the 1861 Act, that the intention of the Act, to be garnered from the documentation available, was to construct a new general

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market for the sale of fruit and other agricultural produce and other matters in Kilkenny and to move the existing markets from the streets to that market.

Furthermore, s. 28 of the Act specifically provided that as soon as the market was constructed and open, it was lawful for the Corporation to remove the market and marketplaces to the general market and thereupon those markets would be discontinued and extinguished. It is equally clear from the evidence to the Commission in 1888 and referred to in the course of the legal submissions and referred to also by Dr. O'Drisceoil that this is what occurred.

I, therefore, find as a matter of law that the rights under the Charter or otherwise were removed to the Market Yard by the 1861 Act and were thereupon extinguished. What the 1886 Act did was to enable the

Defendant to "set up a market" and to control it and its location. So this is what occurred as a matter of the fact. Accordingly, there is no longer a market right to trade at the Parade or any other place in the borough under the Charter of James I of 1608/09.

It was submitted by the Plaintiff that if a fair or market becomes unfrequented and is, therefore, to that extent discontinued, the right remains unimpaired (Markets of Devonshire v. O'Brien [1887] 19 IR 380 at c. 89 per Chatteron v. C). I do not see this authority as in any way overriding the determination that once an

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Act is enacted, the franchise right ceases and the right (if any) is a statutory right. The real argument in this case centred on the distinction between "a market right" and casual trading. The Plaintiff contending that in the Casual Trading Act, 1980, s. 1 defines-

"'A market right' means a right conferred by franchise or statute to hold a fair or market, that is to say a concourse of buyers and sellers to dispose of commodities."

Specifically s. 2(2) provides-

"Casual trading does not include-
(h) selling at a market or a fair in
pursuance of a market right."

It is this distinction that the Plaintiff submits his
market right is one derivative from the 1861 Act and in
particular the second proviso of s. 27 thereof which
provides as follows-

"Provided also that it shall be lawful
for the Corporation to retain and use
for the purposes of this Act and as a
market or markets thereunder any market
or marketplace how held or so used by
them. "

This statute is enabling and the section empowers them
to raise Rents, Tolls, Customs and Dues. The power
given in the section to construct the general market
was on the basis that all of the several markets,

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except the meat market, would be discontinued and
extinguished. I have considered the recent English
case of R (Hayes) v. Stafford Borough Council [2007] 1

WLR 1365 which although considering the question of a "market" does so in the context of criminal law to specific statutory provisions. It is a case wholly distinguishable from that of the Plaintiff in these proceedings.

The Casual Trading Act, 1995 repealed the Act of 1980 of the same title and while it again defines "market right" in the same terms as the Act of 1980, it very pointedly and deliberately removes as an exclusion from the expression casual trading in s. 2(2) selling at a market or fair in pursuance of a market right. This difference from the 1980 Act is fundamental and clear.

In my judgment I find as a fact that other than for the sale of corn, hay and coal, there was post 1861 no market at the Parade for the merchandise or the variety of merchandise contended for by the Plaintiff in this case and also as a matter of law that the Plaintiff has no market right at that or any location in Kilkenny.

S. 2(21) of the Casual Trading Act, 1980 and indeed of 1995, which is the referable Act, defines both "casual

trading" as-

"Selling goods by retail at a place,
including a public road to which the

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public have access as of right, or any
other place that is a casual trading
area."

The decision in *Skibbereen UDC. v. Quill* [1986] IR 126 referred to in the argument is perfectly understandable in the context in which it was decided. That concerned the sale of beads or baubles or other trinkets and paraphernalia in a market designed for amenities and commodities of quite a different character.

However, the effect of the 1995 Act is that selling at a market or fair will still require a casual trading licence if it comes within the definition of casual trading, viz. selling goods by retail at a public place or at any place which is a casual trading area.

Accordingly, even if the Plaintiff has or had a market right at the Parade, which in my judgment he does not, it is subject to regulation and requires a casual trading licence. In this regard Mr. David Kennedy SC

for the Defendant drew my attention to the judgment of Griffin J in Hand v. Dublin Corporation [\[1991\] 1 IR 409](#) and the very lucid exposition by Finnegan J (as he then was) in the first instant decision in Bridgeman v. Limerick Corporation (The High Court, 2nd June 2002). The Supreme Court decision affirmed the decision of the High Court is reported at [\[2001\] 2 IR 517](#). That case did not have to consider many of the matters specific to this case and in my view is quite distinguishable from the instant case.

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Insofar as the Market Yard is concerned, there is no credible sustainable evidence, other than the Country Market carrying on business in the sheds, of any market there held since 18th July 1995, the date of the enactment of the Casual Trading Act, and more particularly since the coming into effect of the provisions of s. 7(4) of the Act of 1995.

S.I. 267/1995 - Casual Trading Act, 1995 (Commencement) Order, 1995, brings into effect all sections of the Act save ss. 6 and 17(1)(b) on 1st May 1996. S. 17(4) of the Act provides as follows-

"Where, after the commencement of this section, a market right in respect of a market or fair in the functional area of a local authority remains unexercised for a period of not less than 10 years, then the market right concerned shall stand extinguished."

Other than the colourful attempt to exercise through one Danny Morris dependent on elements of hearsay evidence, such market rights as may have existed in the Market Yard at an unspecified date in 1995 when he was challenged by a traffic warden on the attempt, no evidence exists of the exercise of any market right in the Market Yard.

I am satisfied and find as a fact and as a matter of law that there was no concourse of buyers or sellers to dispose of commodities. There is no evidence that on the date or dates (and this was not clear on the

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evidence) to which the Plaintiff referred that there was any concourse or assemblage of people or crowd or throng. The most the evidence conveyed to me was of a single seller who sought to assert or establish some form of market right by a token gesture of presence in

response to either the 1995 Act in 1995 or in 2003 in response to the correspondence in 2003 which presented itself as an enquiry referable to historical research. The only other piece of evidence, somewhat imprecise (T 18/04/07 p.16 q.86 et seq) was one Thursday in July of 2003 (date unspecified - see p.17 q.74 l.14, perhaps 19th July 2003, p.17 q.77 l.29 in response to leading question unobjected by the Defendant). In my judgment neither of these represent a situation of the carrying on of a market.

I therefore find as a matter of fact and as of law that such market right as may have existed in the Market Yard has been extinguished by operation of law and no other market right, save such as may be said to exist there in the sheds, does exist in Kilkenny. There is no market right in the Parade in respect of any of the goods sought to be referred to in these proceedings.

END OF JUDGMENT

Approved: TC Smyth J.

MR. JUSTICE SMYTH: That is the end of my judgment. I realise it is

long. It is written from a range of manuscript notes.

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It will available, I hope, to the parties within a few days and I will put the matter in to enable counsel on both sides to consider the matter, to enable the solicitors to have a copy of it and to speak to their clients, and return the matter to this Court for mention on Wednesday, 27th June.

MR. KENNEDY: May it please the court.

MR. JUSTICE SMYTH: I will have the copy

literally as soon as can

be, and I would be obliged for whoever is taking responsibility, if it is joint, to see that as soon as it becomes available, that the stenographer's charges are discharged for much of the assistance I gained was from having the transcript because unfortunately so many of these cases cannot be dealt with immediately at the end of the hearing, and while one's impressions and notes don't change of the hearing, the precise wording of the evidence, which have I have referred to, is clearly of importance.

MR. KENNEDY: The Defendants will attend to that, and I will sort it

with Mr. Rogers then. There is the Tralee case, can that be put in for mention?

MR. JUSTICE SMYTH: I will put it in for mention on the 27th and see what people wish to do about it.

THE HEARING WAS THEN CONCLUDED