

DEPARTMENT OF THE ENVIRONMENT

Complainant/Appellant

- AND -

RONALD POOLE

Defendant/Respondent

Case stated by Mark Hamill, Deputy Resident Magistrate, in respect of an adjudication of a Magistrates' Court sitting at Armagh on the 17th day of April 1998.

1. The following complaint was made against the Defendant/Respondent - Defendant between the 28th day of August 1997 and the 29th day of January 1998 at Crewbeg Road/Corernagh Road, Crewbeg in the said district and county, having been served with a notice under Article 71 of the Road (NI) Order 1993 on the 6th day of August 1997 requiring him as owner of wooden posts and link fencing to remove them from the road within 21 days of the date of service of the notice, did fail to comply with the requirements of the notice and is guilty of an offence, contrary to Article 58(4) of the Roads (NI) Order 1993.
2. I heard the said complaint at Armagh Magistrates' Court on the 17th day of April 1998.
3. Having been appraised by the representatives of the Complainant and the Respondent of the background to the summons under Article 71 of the Roads Order (NI) 1993 and it being agreed between the parties that the nett issue was whether the land upon which the Respondent had erected a fence was a road within the meaning of the 1993 Order, I agreed to the suggestion of the parties that I should travel with them to the site in question in order to view the scene.

This course of action was adopted because maps and photographs produced by the representatives of the Respondent failed to adequately picture the scene.

Dispatched to the applicant on the 10th day of September 1998

R. H. Adanson
Clerk of Petty Sessions

5. I travelled with the representatives of the parties to the scene and examined the fence in question. It was erected on a large oval patch of grass adjacent to a tarmac road. I listened to the comments each representative of the parties had to make at the scene.
6. When the Court re-convened at Armagh the representatives of the Complainant and the Respondent agreed not to call evidence but each made short submissions as to whether the land in question was a road within the meaning of the 1993 Order.
7. I was asked by the representative of the Respondent to consider Land Registry Folio 5266 whereby the Respondent's father dedicated the lands in the Schedule to that folio for use as a public highway. I was also referred by the Respondent's representative to the case of Sean Brady -v- Department of the Environment and the Northern Ireland Housing Executive [1990] NI 200 and to Article 2 of the Roads (NI) Order 1993 which defines "Road".
8. I decided that:
 - (a) this was a criminal matter and that the onus was on the Complainant to establish the facts beyond reasonable doubt;
 - (b) that the verge is part of the road for the purposes of the 1993 Order;
 - (c) that the Complainant had failed to satisfy me that the land upon which the fence had been erected was a road. I accordingly dismissed the Summons.
9. I commented that the only reason the Defendant/Respondent had been able to erect the fence in the first place was because he was the owner of the land in question. It is inaccurate to aver that I took into account the ownership of the land in reaching my decision.

CONCLUSION

10. The question for the Court of Appeal is:

Having regard to the provisions of Article 71 of the Roads (NI) Order 1993 and to the definition of "Road" within that Order, was I correct in law in deciding that the Complainant/Appellant had failed to satisfy me that the land upon which the fence was erected was a road?



MARK HAMILL

DEPUTY RESIDENT MAGISTRATE

APPENDICES

1. Appendix 1: Summons
2. Appendix 2: Notice under Article 71 of the Roads (Northern Ireland) Order 1993 dated 4th August 1997
3. Appendix 3: Booklet of photographs taken by the Complainant on 17th September 1996.
4. Appendix 4: Booklet of photographs taken by the Complainant on 22nd December 1997.