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Judgment: approved by the Court for handing down | *Delivered:* **27/05/10**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

TERENCE PATRICK EWING

Plaintiff/
Appellant:

-and-

TIMES NEWSPAPERS LIMITED

Defendant/
Respondent:

_____

McCLOSKEY J

I INTRODUCTION

[1] Having regard to the framework of the hearing conducted below, I initially considered that the main issue to be determined in this appeal should properly be framed in the following abstract terms: can a putative Plaintiff who has unsuccessfully made an *ex parte* application to the High Court to "*restore*" a Writ of Summons subsequently apply to the court for an order setting aside the order of refusal? Logically, if the court were to answer this question in the affirmative, it would be necessary then (a) to identify the principles and criteria to be applied and (b) to apply same to the concrete matrix of the instant case. I disentangled this core question from the somewhat dense and convoluted materials and submissions which have been assembled by the moving party, Mr Ewing , considered in the context of the moderately unusual background. I was reinforced in this approach by paragraph [8] of the reserved ruling of the Master, which recites, in material part:

> "*… Can Master Bell's order of 29th July 2008, refusing the Plaintiff's* ***ex parte*** *application to restore the Writ, be set aside? …*
>
> *I propose … to deal with this issue only …*".

The Master answered this question in the negative and ordered accordingly. Ultimately, as appears from what follows herein, I have concluded that this is the incorrect approach to the legal and factual matrix of which the court is seised, for the reasons hereinafter appearing, *at this stage*. I record, at this stage that Mr Ewing is an unrepresented litigant.

[2] In the particular circumstances of this litigation, in its present state of evolution, the premise adopted by both parties is that there is no actual Plaintiff and no actual Defendant . This premise is linked to the conclusions reached in this judgment. Rather, there is a putative Plaintiff (Terence Patrick Ewing, who represents himself) and a putative Defendant (Times Newspapers Limited, represented by Mr. MacMahon of counsel). I shall review the correctness of this premise presently. The court is seised of an appeal by Mr. Ewing against the aforementioned ruling and ensuing order of the Master. The impugned order contains two operative passages, framed in the following terms:

> "***And it is ordered*** *that the Plaintiff's application that the ex parte order of Master Bell made herein on 29th July 2008 be set aside.*
> *(b) And it is hereby dismissed.*
>
> ***And it is further ordered*** *that the Plaintiff's application … that the application filed on 21st July 2008 be dealt with inter partes rather than as an ex parte application be and it is hereby dismissed.*"

This order is the subject of an appeal by Mr. Ewing to this court.

II <u>RELEVANT CHRONOLOGY</u>

[3] The landmark events in the history of this litigation are the following:

(a) On 11th February 2007, the Sunday Times published an Article which Mr. Ewing alleges was defamatory of him.

(b) On 11th February 2008, Mr Ewing purported to issue a Writ of Summons [2008 No. 15921], endorsed with a series of claims for remedies arising out of the alleged libel.

(c) According to his first affidavit, Mr Ewing was then informed by a court official that it would be necessary to refer the Writ to the Master for directions. The affidavit continues:

> "*He also informed me that if I didn't wish to proceed with the Writ he could cancel it and as a result of not having an address for service at that time and no proof that the article had actually been separately published in Northern Ireland I decided that this would be the best course at that time. The court officer then put a cross over a seals of the court copy and my two copies*".

[The copy Writ included in the papers before the court accords with this description]. To like effect is the account contained in paragraphs 10 and 11 of Mr. Ewing's first skeleton argument:

> "*The Plaintiff at that stage decided that he didn't wish to pursue the Writ in view of the fact that he hadn't been able to locate a hard copy of the article in question, and the inconvenience accordingly of finding an address for service within Northern Ireland …*
>
> *The Court Officer informed him that he would withdraw the Writ by cancelling the seal, which he purported to do, and informed the Plaintiff that he would retain one copy of the Writ and other supporting documents for the court file*".

(d) According to the same affidavit, Mr. Ewing then continued his researches regarding the extent of publication of the alleged libel and:

> "*As a result of discovering that the article had after all been published in the Ulster edition* [of the Sunday Times, 11th February 2007], *I regretted agreeing to withdraw the Writ that I had issued in the High Court in Belfast*".

While the clear import of these averments is an acknowledgement by Mr Ewing that, at this juncture, no valid Writ existed, this is, of course, a question of law.

(e) By a written application bearing an officially stamped date of 21st July 2008, Mr Ewing sought the following order:

> "*That the Writ of Summons issued … on 11th February 2008 … be restored on the basis that it was not lawfully withdrawn by the Plaintiff under Order 21, Rule 2(1) and/or Rule 3(1) …by either service of a Notice of Discontinuance on the Defendant, leave of the court having been obtained*".

It is common case that the second form of relief sought in this application was unnecessary and can be disregarded for present purposes. Mr. Ewing's application was grounded on a lengthy affidavit, to which I have referred partly above.

(f) The relief sought by Mr. Ewing at this stage was articulated in paragraph 37 of his first affidavit in these terms:

> "*I therefore seek to continue with the original Writ of Summons issued by the High Court in Belfast and to amend the Writ to provide for an address for the service of documents within Northern Ireland and to add a claim for harassment …*".

(g) On 29th July 2008, Master Bell made an order couched in the following terms:

> "*Upon application of the solicitors for the intended Plaintiff for an order pursuant to Order* [] *of the Rules of the Supreme Court (Northern Ireland) 1980*
>
> *And upon reading the affidavit of Terence Patrick Ewing filed on 21st July 2008.*
>
> *It is ordered that the application be refused*".

(h) Next, almost one year later, by a summons bearing the officially stamped date of 12th July 2009, Mr Ewing sought the following order:

> "*An order that the ex parte order of Master Bell dated 29th July 2008 be set aside under Order 32, Rule 8 …*".

(i) In a reserved written ruling delivered on 23rd March 2010, Master McCorry dismissed Mr Ewing's application: see paragraph [1] *supra*.

[4] By his "Notice of Appeal", dated 23rd March 2010, Mr Ewing does not simply challenge the order of Master McCorry (see paragraphs 1 and 2). Rather, the Notice continues:

> "*Further or in the alternative …*
>
> *3.* [That] *the order of Master Bell dated 29th July 2010* [sic] *be set aside and that time be extended to appeal out of time if needed*".

In paragraph 4 of the Notice of Appeal, Mr. Ewing purports to seek a declaration that the Writ is still valid. At the outset of the hearing, he acknowledged that the court did not have the necessary evidential framework to consider this discrete matter as it involves a third party agency (the Northern Ireland Court Service) which has no standing in these proceedings at present and has provided no evidence before the court. In these circumstances, Mr. Ewing elected not to pursue paragraph 4 of the Notice. I record here the submission of Mr. MacMahon that the only avenue of challenge in this respect would be by an application for judicial review. I shall review the correctness of both parties' approaches to this discrete issue presently. By paragraph 5 of the Notice, Mr. Ewing seeks, further or alternatively, an extension of the relevant time limit under Article 6(1) of the Limitation (Northern Ireland) Order 1989. At an interim hearing on 15th April 2010, Gillen J struck out this paragraph and, in consequence, this discrete matter was not pursued upon the hearing of this appeal.

III <u>THE IMPUGNED ORDER OF THE MASTER</u>

[5] In a carefully and clearly reasoned reserved ruling, Master McCorry records that the only relief sought by Mr. Ewing was an order setting aside the order of Master Bell. This is beyond dispute, as the terms of the relevant summons confirm. Master McCorry then refers to Mr. Ewing's extensive written submissions, from which he distils the main arguments. The ruling continues:

> "*Counsel for the Defendant submits, I believe correctly, that a party can apply to the court and the court has power under Order 32, Rule 8 to set aside an ex parte order on the basis that the court had made its decision without having been provided with all the facts or had been mislead. However, Order 32, Rule 8 does not permit the Applicant to set aside a decision of a court on considering an ex parte application to refuse the relief sought. The Defendant contends that the proper course in those circumstances is appeal. This is because a refusal of an ex parte application is not a provisional order but a final order of dismissal of the application*".

It is clear that the Master acceded to this submission. Next the Master considers, and rejects, Mr. Ewing's contention that a Queen's Bench Master is not empowered to make an *ex parte* order "*on paper*". I interpret these words to connote without an oral hearing attended by the moving party. The Master then noted the powers to direct that an *ex parte* application be made by summons i.e. to proceed *inter-partes*; to require further affidavit evidence from the moving party; and/or to require the attendance of the moving party. Having done so, he dismisses this argument. Next, the Master records, and rejects, the argument that the moving party in an *ex parte* application should be permitted to be heard, in accordance with the English practice before the introduction of the Civil Procedure Rules. Finally, the Master rejects Mr. Ewing's purported analogy with a default judgment.

IV CONSIDERATIONS AND CONCLUSIONS

[6] In common with Master McCorry, I do not propose to rehearse Mr. Ewing's submissions *in extenso.* I have considered fully those aspects of his written and oral submissions which, duly disentangled, appear to have a bearing on the subject matter of this appeal. Mr. Ewing's primary contention is that Master Bell's order can be set aside by virtue of Order 32, Rule 8, which provides:

> "*The court may set aside an order made ex parte*".

Mr. Ewing explicitly accepts that the application made by him to Master Bell was *ex parte* and that the consequential order was also *ex parte*. He argues, however, that Master Bell's order is provisional, rather than final, with the result that an application to set aside rather than an appeal, is the appropriate mode of challenge. Simultaneously he argues that he enjoys the dual remedies of an application to set aside and an appeal. He also invokes his right of access to the court under Article 6 ECHR. He accepts unequivocally that the Writ purportedly issued by him is defective, as it omitted an address for service in Northern Ireland – in contravention of Order 6, Rule 4. He argues that this is an irregularity within the meaning of Order 2, Rule 1, which does not render the Writ a nullity.

[7] I have also considered the written and oral arguments presented to the court by Mr. MacMahon, on behalf of the putative Defendant. These are helpfully condensed in paragraph [10] of Master McCorry's ruling. His submissions draw to the attention of the court the passage in The Supreme Court Practice, Volume 1, at paragraph 58/1/3:

> "*An appeal from the refusal of a Master to make an ex parte order lies to the judge in chambers. On the other hand, where the Master has granted an order ex parte, the proper course is not to appeal, but to apply to him or another Master to set aside such order*".

The same text contains the following passage concerning Order 32, Rule 8:

> "*Rule 6 embodies a fundamental rule of practice that a party affected by an ex parte order may apply to the court to discharge it, inasmuch as he has not had an opportunity of being heard …*
>
> *The court has an inherent jurisdiction to revoke leave given ex parte …*
>
> ***By its nature, an ex parte order is essentially a provisional order made by the judge on the basis of evidence and submissions emanating from one side only and there is therefore no basis for making a definitive order and accordingly when the judge reviews his provisional order in light of the evidence and argument advanced by the opposite party, he is not hearing an appeal from himself and is in no way inhibited from discharging or varying his original order ...*** *"*.

[My emphasis].

To like effect is the statement in the Northern Ireland text, Civil Proceedings in the Supreme Court (Valentine, paragraph 11.12):

> "*The Applicant can appeal against refusal as with any interlocutory order, but the Respondent should apply to set it aside rather than appeal …*
>
> *On such applications the court has the advantage of hearing both parties and can freely review the order*".

Mr. MacMahon's submissions seem to me to give rise to the proposition that where an *ex parte* application elicits some kind of positive outcome for the moving party, only another party, duly affected thereby, may apply to set the order aside. Such an application is frequently (though not invariably) grounded on a contention that the moving party misled the court.

[8] It is clear that the phenomenon of *ex parte* applications in the High Court gives rise to a dichotomy of provisional orders and final orders. It is submitted by Mr. MacMahon that an order made **refusing** the relief sought is final in nature and, in consequence, can be challenged only by the channel of an appeal; whereas an order in favour of the moving party is provisional, challengeable by an affected party via an application to vary or set aside. The passages in The Supreme Court Practice [paragraph 32/6/30] and Valentine (*Op Cit,* paragraph 11.2) support this submission, which is further underpinned by the judgment of the Master of the Rolls in ***WEA Records –v- Visions Channel*** [1983] 1 WLR 721, at p. 727:

> "*In terms of jurisdiction, there can be no doubt that this court can hear an appeal of an order made by the High Court upon an ex parte application. This jurisdiction is conferred by Section 16(1) of the Supreme Court Act 1981. Equally there is no doubt that the High Court has power to review and to discharge or vary any order which has been made ex parte. This jurisdiction is inherent in the provisional nature of any order made ex parte and is reflected in RSC Order 32, Rule 6 …*
>
> *As I have said, ex parte orders are essentially provisional in nature. They are made by the judge on the basis of evidence and submissions emanating from one side only …*
>
> *This being the case it is difficult, if not impossible, to think of circumstances in which it would be proper to appeal to this court against an ex parte order without first giving the judge who made it … an opportunity of reviewing it in the light of argument from the Defendant and reaching a decision*".

The statement of Sir John Donaldson MR in ***WEA*** was approved by the Privy Council in ***Minister of Foreign Affairs –v- Vehicle Supplies Limited*** [1991] 1 WLR 550, at p. 555:

> "*An ex parte order is, in its nature, provisional only and Carey JA was plainly right in following and adopting what was said to his effect by Sir John Donaldson MR …*".

That was a case where a *successful* application was made *ex parte,* generating an order granting leave to apply for judicial review, followed by an application by the affected party to set aside the order, based on new evidence not previously considered by the court.

[9] The sources considered in paragraph [8] above provide some support for the proposition that where an *ex parte* application elicits some kind of positive outcome for the moving party, an application to vary or set aside the ensuing order can be made only by some other duly affected party. However, it is noteworthy that none of the textbook references or judicial pronouncements formulates a principle in these *absolute* terms and I have some reservations about the breadth of the proposition ventilated. In particular, it would be of doubtful application in a case where the moving party subsequently desired to bring to the attention of the court something of a material nature, such as newly discovered or previously suppressed relevant evidence. Of course, I recognise that in the context of the present litigation, the question is whether a wholly unsuccessful *ex parte* moving party can subsequently

apply to vary or set aside an order from which he obtained no benefit of any kind. Once again, I would question whether this is precluded by an *absolute* prohibition .

[10] Where questions of High Court practice and procedure arise, one is instinctively wary of prescribing *absolute* rules or prohibitions, particularly where the inherent jurisdiction of the court is, at least partly, in play (as here ,per Sir John Donaldson MR in ***WEA***, *supra*) and in light of the over-riding objective enshrined in Order 1, Rule 1A. At the apex of the pyramid established by the latter is an objective, to be contrasted with a mere aspiration, that the rules of court should be operated and interpreted with a view to dealing with each case justly, in the sense in which this is (inexhaustively) explained in the outworkings of Rule 1A(2). Furthermore, the inherent jurisdiction of the court, when in play, possesses the intrinsic traits of flexibility and adaptability. In confronting the abstract question posed in paragraph [1] and in light of the observations in paragraph [9] above, I consider some reflection on the inherent jurisdiction of the High Court appropriate.

[11] Sir I. H. Jacob's illuminating essay "The Inherent Jurisdiction of the Court" [Volume 53, Current Legal Problems 1970, p. 23], begins with the proclamation:

> "*The inherent jurisdiction of the* [High] *Court may be invoked in an apparently inexhaustible variety of circumstances and may be exercised in different ways. This peculiar concept is indeed so amorphous and ubiquitous and so pervasive in its operation that it seems to defy the challenge to determine its quality and to establish its limits*".

Continuing, the author suggests that the juridical basis of the High Court's inherent jurisdiction is rooted in "*… the very nature of the court as a superior court of law*" [p. 27]. He continues:

> "*For the essential character of a superior court of law necessarily involves that it should be invested with* ***a power to maintain its authority and to prevent its process being obstructed and abused ...***
>
> *The juridical basis of this jurisdiction is therefore the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner*".

[Emphasis added].

Developing this theme, the author suggests that the inherent jurisdiction of the High Court to control its own process embraces powers to regulate its process and proceedings; to prevent abuses of its processes; and to compel observance of its process. Simultaneously, the author cautions against an unduly mechanistic approach, suggesting that the overarching touchstone is "*the needs of the court to fulfil*

its judicial functions in the administration of justice" [p. 33]. I refer also to the reflections of Carswell J in ***Braithwaite -v- Anley Maritime Agencies*** [1990] NI 63, at pp. 69-70 especially, in passages which include a tribute to Sir I. H. Jacob as "*one of the foremost authorities on matters of procedure*".

[12] The decision in ***Riniker –v- University College London*** [1999] WL 477711 is a notable example of the exercise of the court's inherent jurisdiction, in a context not very far removed from that of the present case, where the Plaintiff complained about the conduct and inaction of court officials in issuing her Writ, resulting in the expiry of a statutory limitation period. While the Writ was formally issued on 14th August 1998, she invited the court, successfully, to order that it should be treated as having been issued over two weeks previously, on 28th July 1998. The then governing rule of court – Order 6, Rule 7(3) – mirrored its current Northern Irish equivalent, Order 6, Rule 6(4), which provides:

> "*Issue of a Writ takes place upon its being sealed by an officer of the office out of which it is issued.*"

Evans LJ, delivering the judgment of the Court of Appeal, summarised the factual matrix in these terms:

> "*[17] In the present case, the draft Writ was in the custody of a Proper Officer of the court on 28 July and it is now accepted that the endorsement was in proper form. In those circumstances, the issue of the Writ could not be refused …*
>
> *Therefore, the Writ could and should have been issued then. The failure to do so was entirely the responsibility of the official …* ".

His Lordship continued:

> "*[18] … if the court has power to grant the relief which* [the Plaintiff] *claimed, then the basis of its jurisdiction to do so is the fact that an error was made for which the court was responsible and which it has power to remedy in accordance with its practices and rules …*".

Pausing at this juncture, I would observe that as this is a case where there was no specifically applicable rule of court to be invoked, this passage must be construed as an acknowledgement of the court's inherent jurisdiction. This is confirmed in a later paragraph:

> "*[31] In my judgment, the court does have power to make the kind of direction which the Plaintiff seeks here. I would ascribe this power to the inherent jurisdiction of the*

> *court rather than to the specific authority given by Order 2, Rule 1 …*
>
> ***The possibility of error for which the court is responsible is left to its inherent jurisdiction to remedy. The inherent jurisdiction ... in my judgment ... continues, in suitably limited circumstances, today***".

[Emphasis added].

[13] The key element in the matrix in ***Riniker*** was defaulting conduct on the part of a court official. The present case is, in my view, analogous (though not, of course, identical), as was tacitly recognised by the learned Master in paragraph [6] of his ruling:

> "*The officer … had sealed the Writ but then noticed that the Plaintiff resided outside the jurisdiction and that a valid address for service within the jurisdiction had not been provided and he defaced the Writ by putting a pen through the seal. On his own description of what occurred the Plaintiff may dispute why the Writ was defaced but he accepts that this occurred. For the sake of clarity, I should state at this point that there is nothing in the Rules of Court, or in any Practice Direction … or in any direction given to staff … which would authorise a member of staff to issue a defective Writ. A court officer has no authority to issue a Writ of Summons which does not contain an address for service within the jurisdiction*".

It seems to me that, by the same token, a court officer has no authority to "*cancel*" a duly issued Writ of Summons – and no proposition to the contrary emerges from the Rules of the Court of Judicature, the arguments of the Defendant, any decided case brought to the attention of the court or the Master's ruling. A disgruntled Defendant who complains about the validity of a Writ can, if so advised, apply to the court for appropriate relief and this will be the subject of *a judicial adjudication*. No such adjudication occurred in the present case. Both the initiation and the termination of proceedings in the High Court are events of significant moment and solemnity, a reflection which contrasts sharply with the informal and impromptu act of "cancellation"by biro which a court employee purported to execute in the present instance.

[14] At this juncture, it is appropriate to consider Order 2, Rule 1(1), which provides:

> "*Where … at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of … manner, form or content or in any other respect,* ***the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein*****".**

[Emphasis added].

By Order 2, Rule 1(2), the court is invested with very wide powers to deal with any failure falling within Rule 1(1). In the present case, the relevant failing was the absence from Mr. Ewing's Writ of an address for service within the jurisdiction of Northern Ireland. In my view, three of the main considerations underpinning Order 2, Rule 1(1) are a policy of preference for substance over form, a recognition of the scope for simple human error and the principle of presumptive validity (*omnia praesumuntur rite esse acta sunt*). The failing in the instant case was in contravention of Order 6, Rule 4(1) and (2). The question of whether this failing was an irregularity within the meaning of Order 2, Rule 1(1), being "*a failure to comply with the requirements of these Rules … in respect of … manner, form or content …*", was not determined by the Master and, in consequence, lies outwith the framework of this appeal. While there is plainly an arguable (and , perhaps , potent) case to this effect, I am not proposing to determine this discrete issue, for reasons which shall become apparent.

[15] The effect of the analysis and conclusion in paragraph [13] above impacts on the question initially framed in paragraph [1] of this judgment which becomes, duly particularised: in circumstances where a court official improperly and ineffectively purported to cancel Mr. Ewing's Writ, such act being a nullity, with the result that same remained *prima facie* valid and subsisting in July 2008, when the Master's (first) order refused an application to "*restore*" it, can such order be set aside at Mr. Ewing's request? *If this were the correct question*, I would be inclined to answer it affirmatively, drawing on the court's inherent jurisdiction, in particular its power to ensure observance of its process (which was disregarded by the court employee) and reasoning by analogy with the decision in ***Riniker***.

[16] However, I consider this to be the wrong question, since the effect of the analysis above is that the Writ of Summons was *prima facie* valid and subsisting at the time of Mr. Ewing's application to and order by Master Bell. If this were so, the application was unnecessary and the resulting order otiose and meaningless. It was of no legal effect, being based on a non-existent and purely fictional invalidity. Accordingly, the question of whether it was provisional or final simply would not arise. It would follow logically that Mr. Ewing's application to set aside Master Bell's order, which was dismissed by the order of Master McCorry under appeal to this court, has generated an order which ,*prima facie* , does not impact on the

proposition that Mr. Ewing's Writ was valid and subsisting when the original impugned order was made. If this premise is correct, Mr. Ewing's application to Master Bell was misconceived and it is this misconception which lies at the heart of everything that has materialised subsequently.

[17] I consider that it is neither possible nor appropriate for this court to make **a final** determination about whether the Writ was valid and subsisting at the time of Master Bell's order, for two reasons. The first is that the evidential framework may not be complete, related to which is the fact that an interested agency (the Northern Ireland Court Service) has no standing in these proceedings at present. The second is that the court is not seised of this question within the framework of the present appeal. Furthermore, this question will raise issues relating to the provisions regulating the duration and renewal of Writs contained in Order 6, Rule 7 and the ensuing passage of time. These observations are a reflection of the narrow scope of the hearing conducted before Master McCorry, as recorded in paragraph [8] of his ruling. Furthermore, I consider it of no little significance that Master McCorry would plainly have preferred to proceed in a different logical sequence if he had considered himself at liberty to do so.

[18] In these circumstances, the focus is on paragraph 4 of Mr. Ewing's Notice of Appeal which seeks, in terms, an Order that the Writ remains valid and subsisting. This novel claim for relief did not exist when the learned Master made the impugned decision. As regards this discrete claim for relief, the absence of any evidence from Northern Ireland Court Service may conceivably be of no moment, given the court's view, expressed above, that the employee concerned acted without legal authority. A fuller exposition of the circumstances in which and reasons for which this occurred is unlikely to affect this assessment, which is largely clinical and objective in nature. However, I say nothing further about this discrete issue, given the potential for additional evidence bearing thereon, coupled with fuller argument from both parties.

[19] I propose to treat paragraph 4 of Mr. Ewing's Notice of Appeal as a fresh, freestanding application to the court. It seems to me , provisionally at least , that the court has inherent jurisdiction to hear and determine such an application and that an application for judicial review [a remedy of last resort] is not required for this purpose . Given the appeal provisions contained in Order 58, Rule 1 it is plainly desirable that this application should be heard by a Master at first instance, rather than by this court, which exercises a mainly (though not exclusively) appellate jurisdiction in matters of this kind. In light of all of the foregoing, I consider that it would be inappropriate either to allow or dismiss the present appeal, at this stage. Rather, this is plainly an appropriate case for the exercise of the court's power in Section 22(a) of the Interpretation Act (Northern Ireland) 1954 to remit the matter to the Master, with a direction to consider and determine paragraph 4 of Mr. Ewing's Notice of Appeal as if same were a fresh, freestanding application, issued on 23rd March 2010, giving effect insofar as may be material and appropriate to this

judgment. This appeal will stand adjourned in the meantime. I propose to order accordingly.

[20] As the outcome contained in this judgment steers a course which differs from that advocated by both parties and gives rise to an adjournment, postponing the court's final decision, I shall reserve costs at this stage.