THE HIGH COURT

On appeal from/

THE CIRCUIT COURT

NORTHERN CIRCUIT COUNTY OF DONEGAL

BETWEEN/

PAUL BRADLEY

PLAINTIFF

AND

THE COUNTY COUNCIL OF THE COUNTY OF DONEGAL

DEFENDANT

AND/

THE CIRCUIT COURT

Record No. 510/1988

NORTHERN CIRCUIT COUNTY OF DONEGAL

BETWEEN/

THE COUNTY COUNCIL OF
THE COUNTY OF DONEGAL

PLAINTIFF

AND

PAUL BRADLEY

DEFENDANT

Judgment delivered by O'Hanlon J., the 14th day of November, 1989.

The appeals in the two above-entitled actions were heard before me in Letterkenny on the 25th and 26th October, 1989, the second set of proceedings being proceedings remitted by the High Court for hearing in the Circuit Court in conjunction with the proceedings already initiated in the Circuit Court by Paul Bradley as Plaintiff against Donegal County Council as Defendant.

In the first action the Plaintiff, Paul Bradley, claims specific performance of an agreement for sale dated the 3rd November, 1987, whereby the Defendant agreed to purchase from the Plaintiff for the sum of £55,000 a Church Hall formerly attached to the Presbyterian Church in Buncrana, Co. Donegal. In the remitted action, Donegal County Council claim damages against the Vendor for alleged wilful neglect or default of the Vendor after the execution by the parties of the Agreement for Sale, whereby the building was extensively damaged by a fire which broke out on the 12th November, 1987, prior to the date fixed for completion of the sale.

The existence of the contract for sale is not in dispute, and the terms of that agreement, which incorporated the General Conditions of Sale (1978 Edition) of the Incorporated Law Society of Ireland, provided as follows in Clause 26 -

> "26. The property shall as to any damage from whatever cause arising after the date of the sale be at the sole risk of the Purchaser and no claim shall be made against the Vendor for any deterioration or damage unless occasioned by the Vendor's wilful neglect or default."

Essentially, the case is to determine whether the fire which was started by youths who broke into the hall some nine days after the Agreement for Sale had been executed by the County Council and while the copy Agreement signed by the Vendor was in transit on its way to the Solicitors for the Purchaser, can be attributed to "wilful neglect or default" on the part of the Vendor.

The parties had been in negotiation for several months prior to the completion of the Agreement for Sale, and representatives of the County Council had been to see the premises, both exterior and interior, on a few occasions before the deal was concluded. The Hall stands in the grounds of the Presbyterian Church in a fairly central position in the town of Buncrana, betweeen Lower Main Street and St. Mary's Road, and very close to the Court House, so it is in a built-up area, with a good deal of movement of persons and traffic in the adjoining roads and streets. It was acquired by the Plaintiff, Paul Bradley, who is a supermarket owner, in October, 1981, with the intention of using it as a D.I.Y. Store, but this project was postponed and eventually abandoned by him. In the intervening years between 1981 and 1987 he allowed a number of voluntary bodies to use the Hall - notably the Scouts, the St. Vincent de Paul Society, and the organisers of the local pantomime. During the course of the year 1987 the Plaintiff himself used the hall for storage purposes for shelving, display units, shop furniture and so forth, and during the short period which elapsed between the signing of the contract for sale and the outbreak of the fire he had introduced into the premises 200

cases of disposable nappies and 270 cases of firelighters.

There was evidence to show that when the break-in occurred on the 12th November, 1987, these goods were interfered with and some of the firelighters were deliberately set alight and this led to the destruction of the premises.

The County Council blame the Vendor for the fire on two grounds. In the first place they claim that the premises were inadequately secured to prevent the break-in by wrongdoers, which should have been anticipated when a building of this character was left vacant for long periods. Secondly, they claim that the Vendor was negligent in introducing onto the premises this large consignment of highly combustible materials without notice or forewarning to the Purchaser, thereby increasing very materially the risk of damage or destruction at a time when the Purchaser had not even been made aware that the Agreement for Sale had been completed by the Vendor and that the Purchaser was responsible for the safety of the premises.

The Hall was an old-style, long, single-storey building, rather church-like in appearance, with a large number of windows, most of them of the steel latticed type, with small panes of glass. This type of window would have been very difficult to break through, and they were strengthened further by wire mesh nailed over the windows to guard against casual breakages of the small panes of glass. Porches had been erected at each end of the building, giving access to the interior, and these had entrance doors with glass

fanlights overhead, and windows of the conventional type with panes of clear glass. An inner door separated each of the porch areas from the interior of the hall.

One of these porches had been effectively blocked off as a means of access to the hall, following a minor break-in which had occurred in the Summer of 1986. Apparently children had gained access through the fanlight over the door in the back porch and had scattered costumes belonging to the pantomime company and had written slogans and spilt some paint.

Thereafter, the broken fanlight was boarded up; the inside door leading from the porch to the hall was secured, and a lot of furniture was stored in the porch area itself to such an extent that access by that means to the hall was well-nigh impossible.

In relation to the other porch, through which access was apparently gained to the hall by the wrong-doers responsible for starting the fire in November, 1987, the outside door was secured by no less than three padlocks and one ordinary lock. The inside door leading from the porch to the hall was left unlocked. The windows were boarded up on the inside and there was a wire mesh covering the glazed portion of the windows on the outside. The person who had carried out the work of securing the porches was Neil Doherty, the pantomime producer, and he gave evidence of nailing up the chipboard to block the windows in the year 1982; he said that, in addition, wooden battens were nailed across the base of the windows to prevent the chipboard being knocked in. While one

window had been forced in on the day of the fire, the other was still in tact after the fire, secured in the manner described by the witnesses, and the Garda evidence was to the effect that even heavy blows with a hammer were not sufficient to break through the wooden sheeting. The fanlight over the door on the front porch was also fortified with wire netting and wooden or metal braces in such a way as to prevent access through the fanlight to the interior.

Having regard to all this evidence I am of opinion that the hall was, at all material times, protected and fortified with all the care and diligence which a prudent property-owner would exercise to prevent wrong-doers gaining access to the interior at any time of day or night and that under this heading there should not be a finding of wilful neglect or default against the Vendor in the present proceedings.

The further complaint is made that the fire risk was increased inordinately by the storage in the building of the stocks of nappies and firelighters already referrred to and that this should not have been done in the interval between the signing of the contract and the closing of the sale without putting the purchaser on notice of what was being done. However, the purchaser is deemed to have been on notice from the time when the agreement for sale was executed on behalf of the County Council and returned to the vendor's solicitor, that under the express terms of the agreement the premises were at the risk of the purchaser from whatever was to be regarded as the date of completion of the agreement. Insofar as the contents of the building were concerned,

persons acting for and on behalf of the purchaser had been through the premises and must have been aware that large quantities of highly-combustible materials were stored there at all material times, before ever the agreement came to be executed. Apart from shop fittings and furnishings put there by the vendor, the pantomime group also had costumes and other equipment which Mr. Doherty valued at over £10,000 located there, and the St. Vincent de Paul Society also used the premises for the storage of furniture, beds and clothing.

I would consider that the premises were quite suitable for the storage of all these articles, having regard to the fact that the danger of accidental fire was negligible, and that very comprehensive steps had been taken to prevent wrongdoers gaining access to the premises and causing damage thereon. The location of the property in the middle of the town of Buncrana was some additional guarantee of its safety and the Garda evidence was to the effect that the crime rate in the area was very low, as was also the incidence of vandalism in the town.

The vendor, whose supermarket premises were in close proximity to the hall, said that he passed by the hall twice daily and he or members of his staff had been in the hall on the 4th, 6th and 9th November during the period immediately prior to the fire.

In all the circumstances of the present case I think it would be unfair to bring in a finding of "wilful neglect or default" against the vendor in a situation where a fire was

caused by the malicious or wanton activities of some third parties who had broken and entered a properly-secured premises within a few short days after the purchaser had executed the agreement for sale. The negotiations for the sale had been protracted over a period of many months, during which time the County Manager and other representatives of the purchaser had visited and inspected the premises and had taken no point about the storage therein of large quantities of highly-inflammable materials.

I therfore propose to affirm the Order of the learned Circuit Court Judge granting specific performance of the agreement for sale of the 3rd November, 1987, but I will vary the remainder of the said Order and refuse the application for abatement of the purchase price to be paid for the said premises based on the allegation that damage was caused to the property by wilful neglect or default on the part of the vendor.

I will allow the Plaintiff the costs of the Equity proceedings brought for the specific performance of the said agreement, both in the Circuit Court and on appeal to the High Court, but I propose to make no Order in relation to the action for damages initiated in the High Court and remitted for hearing to the Circuit Court, leaving each party to abide their own costs of the said proceedings, as it should, in my opinion, have been possible for the parties to agree on a form of procedure which would have enabled all the issues arising for determination between them to be resolved by a single set of proceedings in the Circuit Court.

The parties will have liberty to apply as may be necessary to the learned Circuit Court Judge if any problem arises in giving effect to the order for specific performance. In relation to the claim for interest on the purchase-money I express the view that it should not continue beyond the 28th February, 1988, (by which time the purchaser had offered to complete the transaction and to place the purchase-moneys on joint deposit pending resolution of the Court proceedings); a further three weeks should now be allowed from today's date before any additional claim for payment of interest could arise under the Agreement for Sale.

R.J. O'Hanlon

14th November, 1989.

Counsel for the Plaintiff (Paul Bradley):- Andrew Bradley S.C.
Michael Carson B.L.

(instructed by C.S. Kelly & Co., Solicitors)

Counsel for the Defendant (Donegal Co. Council):-
Eoin McGonigal S.C.
Damien Crawford B.L.

(instructed by V.P. McMullin & Son, Solicitors)

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