

A IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Royal Courts of Justice,

B Wednesday, 21st December, 1994.

Before:

C MR. JUSTICE IAN KENNEDY

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BUCKINGHAMSHIRE COUNTY COUNCIL

- v -

D JOHN ANTHONY DODDS and Anr.

- - - - -

E (Tape Transcription by Marten Walsh Cherer Ltd.,
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MR. B. SEFI (instructed by Messrs. Sharpe Pritchard,
London, WC1V 6HG) appeared for the Plaintiffs.

F MS. M. POOLEY (instructed by Messrs. B.P. Collins & Co.,
Gerrards Cross, Bucks.) appeared for the Defendants.

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G J U D G M E N T
(As approved by Judge)

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A MR. JUSTICE IAN KENNEDY: I have before me two notices of motion
by which the Buckinghamshire County Council seek the
B committal to prison of Mr. John Dodds for breaches of
undertakings and injunctions given and made on 24th April of
this year before and by Mr. Christopher Clarke Q.C. sitting
as a Deputy Judge. This application and indeed the
C proceedings before Mr. Clarke are part of a long running
battle between the Buckinghamshire County Council, in their
role as the authority responsible for planning and waste
D disposal matters within their county, and the Defendant in
respect of land at Westport Farm, Little Marlow in
Buckinghamshire. The part of Westport farm with which I have
been concerned has for many years been used for activities
foreign to farming, that is to say for use as a tip, for use
as a site where construction waste is stored and processed
and where activities ancillary to those are carried on.
E The dispute centers on whether or not Mr. Dodd has any, and
if so what, planning permissions to conduct the various
activities. The recent planning enquiry (though as I
F understand it the matter is not yet finalised) has found
that Mr. Dodd has a valid and continuing permission in
respect of an area of land of some 25 by 60 metres described
in this case and commonly in the litigation as "the
G footprint" on which he is entitled to store, sort and
process construction waste.

It is necessary to mention very briefly the background
to this case. Mr. Dodd's operations have been carried out

A through various limited companies. The first, called R.P.J.
Ltd. owns the vehicles and plant which are used for the
B purposes of the undertaking. Mr. Dodds explained, and this
I accept, that he has been careful over the years to
separate the ownership of the plant from the trading
business itself lest, the trading business failing, its
creditors should be able to satisfy themselves by seizing
any of the plant. The trading businesses have failed.
C First, there was R.W. Dodds Ltd., then there was R. Dodds
Ltd., each of those having collapsed.

D Presently there is a company which has been referred to
as W.E.L., Waste Enterprises Ltd. Again a little needs to
be said about that company. Mr. Dodds told me that about a
year ago he visited a trade fair in Germany and there saw
equipment which he believed he could imitate and improve
upon. For that purpose he bought a company which was
E renamed Waste Enterprises Ltd., and for a time at least some
efforts were made to use it in its intended role. R.P.J.
Ltd. had operator's licences for the various road haulage
vehicles which it either owned or had on hire purchase. Mr.
F Dodds had suffered a number of convictions, primarily it
appears for not having excise licences on his vehicles, and
to a lesser degree for operating vehicles without operator's
licences. Relatively new legislation, the Control of
G Pollution (Amendment) Act 1989, necessitated applications
for registration by those who were carriers of controlled
waste in the course of a business. Because it was known

A that Mr. Dodds with his personal history would not be
B regarded as an acceptable person for holding such a licence,
C arrangements were contrived whereby Waste Enterprises Ltd.
D should make an application for registration They did so not
E on their own ground in Buckinghamshire but in Camden giving
F as their address the premises of a jeweller or goldsmith in
G Hatton Garden, 18 Cross St. To this end Mr. Dodds
H surrendered his interests in the company in favour of
Anthony Mosley, who was until that time an employee of his
in his businesses. Mr. Mosley as secretary and the
jeweller/goldsmith as director applied for and were granted
the licence. I should add that there was another criticism
of Mr. Dodds, that, although his wife had at all material
been known as Mrs. Dodds, she was in connection with the
company described under her maiden name. Mr. Dodds told me
that this was because his accountant told him that a company
would sell better if its directors did not all bear the same
name. I find that evidence curious. That is the
background.

The matter came before Mr. Clarke. The County Council
were concerned to obtain orders to reinforce what they had
been seeking to achieve through various enforcement notices
and other planning powers. The undertakings that were given
by Mr. Dodd were that he should not "whether by himself his
servants or agents or any company controlled by him until
the trial of this action or further order cause or permit
the deposit of any material on the land to the west and

A south of the lines drawn on the plan (annexed to the order)
save as to the deposit of top soil to a height not exceeding
the levels prescribed by the said plan; not to cause or
B permit the deposit of controlled waste on land to the north
and east of the line drawn on the plan annexed hereto except
within an area which does not exceed 25 metres by 60 metres
and which does not extend further north than 30 metres from
the row of poplar trees highlighted on the plan", and,
C thirdly, "not to deposit any controlled waste within the
area referred to in undertaking 2 other than loads of
bricks, broken concrete, building blocks and tarmac with
minimal quantities of other materials which cannot
D practicably be separate from such loads."

I have not been concerned with the first of those
undertakings.

E As to the use of vehicles and the transport of
controlled waste, injunctions were made that Mr. Dodds
should not, again "whether by himself, his servants or
agents, transport any controlled waste in the course of any
business to or from any place in Great Britain until trial
F or further order", and, secondly, that he be restrained
"until the trial of the action or further order from causing
any person to transport any controlled waste in the course
of a business to or from any place in Great Britain unless
G that person is a registered carrier of controlled waste or
is acting under instructions from an employer who is a
registered carrier of controlled waste."

A I propose to deal first of all with those latter
B matters. Mr. Dodds says that he has no control over any of
C these companies. I do not believe that. He is undoubtedly
D the leaseholder and so everything that happens or does not
E happen on the farm is at his order or by his permission.
F Waste Enterprises Ltd. cannot put a vehicle on to his land
without his permission, cannot operate plant on his land, as
he says it does, without his permission, cannot take away
and sell any of the material on the land which is his.
Whatever may be the position so far as shareholding is
concerned, I am in no doubt whatsoever that Mr. Mosley, who
now has the equity in Waste Enterprises Ltd., dances to Mr.
Dodds' tune. But that is not an end of the problem because
the particular injunction with which I am concerned is the
second. The Plaintiffs presently take no point as to the
first. That restrains him from causing any person to
transport any controlled waste in the course of business to
or from any place in Great Britain unless that person is a
registered carrier of controlled waste or is acting under
instructions from an employer who is a registered carrier of
controlled waste.

G My conclusion on this can be shortly stated. It seems
H to me inescapable that the person who is carrying the waste
is Waste Enterprises Ltd. They have a licence, even though
they have obtained it in circumstances which reflect little
credit upon them, and so prima facie there is no breach.
Mr. Sefi argues that the only way of looking at this

A sensibly is to say that the carriage is being done by R.P.J.
and Waste Enterprises Ltd. in as much as R.P.J. have the
operator's licence and Waste Enterprises Ltd. have the waste
disposal licence, and without the conjunction of the two the
B matter cannot lawfully be carried out. It seems to me that
that last statement is perfectly correct, but my conclusion
is that the carriage of waste is not being lawfully carried
out. It is being carried out by Waste Enterprises Ltd. who
C are using goods vehicles in the course of a trade or
business for which they have no operator's licences.
Although I have not the least doubt that it is the Defendant
who is causing the transport of controlled waste, he is not
D doing so in circumstances which amount to a breach of the
injunction made by Mr. Christopher Clarke.

E I turn then to the breaches of undertaking. I have
recited the order made by Mr. Christopher Clarke. It must
be understood that the area which he defined he defined to
include, and include generously, the area on which the
Defendant had been carrying out his activities, the
F footprint. It is a lengthy oval as its dimensions suggest.
The lines which are referred to in the order are drawn on
the plan which I have and which accompanied the order.
There is a line running broadly north and south which
G extends the lefthand end of the workshops; so that that is a
line which can be precisely demonstrated. The line which
runs broadly northwest/southeast is not capable of such
H precise definition because it follows an uneven line of

A poplar trees. The line parallel to that, which is the
northward limit of activities, is shown on this plan by a
heavy black line. The order does not define the eastern
B boundary, but that is not necessary because the eastern
boundary is close to a line of poplar trees and can quite
easily be seen on the ground. There is no mistaking it.
Thus the position is that the Defendant is not to deposit
controlled waste otherwise than within the lozenge, but he
C can put the product of his operations on land to the east
and north of the boundary line. His operation, expressed
simply, is to crush the concrete, brick and tarmac which
comes to his site as contractor's waste, grade it and then
D sell it for road building and like purposes.

~~Again~~ The control by the County Council has been exercised by
a Mr. Wicks, who has deposed the main evidence relied upon
by the Plaintiffs, who has taken photographs as events have
E happened to illustrate what he claims to have seen and who
has given evidence before me. Mr. Dodds has deposed to his
account, and has been cross-examined. He too has produced a
shorter series of photographs to illustrate points that he
F wishes to highlight. Having heard the two witnesses it is
right that I should give my assessment of them. It was
suggested to Mr. Wicks that he had an animus against the
G Defendant because he was seeking, loyal to his employers, to
carry out their intentions which were, first, to confine the
Defendant as closely as might be to such permissions as he
still retained, and, secondly, if they could lawfully do so

A to end his operation altogether. He agreed that those were
the ultimate aims of the County Council, but he said that he
did not have any personal animus against the Defendant, who
in many ways he liked. The impression Mr. Wicks formed on
B me was of a sensible, fair and honest public servant. I did
not detect any exaggeration and certainly no evidence that
he was behaving maliciously. The Defendant, as perhaps is
C apparent from some of the matters that I have already had to
outline, is a man whose businesses are such as (unless very
carefully controlled) to bring him in conflict with one sort
of regulation or another. He is a man who, as his actions
D have shown, will contrive means of defeating regulations.
He is a man who has some ability to talk himself out of
trouble, and to talk his interlocutor away from the point. I
find his evidence to be quite unreliable. I shall deal with
E specifics as I come to them.

F The first breach which is alleged is described in the
first notice of motion in this way, that between 19th May
and 7th June the Defendant caused or permitted the deposit
of approximately 100 tonnes of controlled waste, consisting
of soils and construction waste upon an area of land marked
green. This is the area which is shown in photograph number
6. The issue here is: is the material controlled waste, or
is it the product of the Defendant's operations? Mr. Wicks
G says that he looked at it. He saw that it was not a product
of any definable operation. It consisted in large part of
soil together with builders' rubble and some largish pieces
H

A of concrete. He said that when he arrived at the premises
on that day he found a machine sitting on the heap working
at it. He says that when one looks at the compacting that
has resulted from the operations of that vehicle it is
B perfectly apparent that the material is not what the
Defendant claims it is, namely Type 1. Type 1 is a defined
type of aggregate which meets certain specifications. They
appear on page 135 of the Plaintiff's bundle, and require
C all the material to pass through a 3 inch sieve, between 85%
and 100% to pass through an inch-and-a-half sieve and
different quantities to pass through distinctly finer
D sieves, something in the order of 3/8ths of an inch and then
1/8th inch, and thereafter permit some quantity of fines.
The measurements are in fact in metric but I have translated
them.

E The Defendant's affidavit in answer to this charge is
that the stockpile is a store of processed Type 1 crushed
concrete, the area on which the processed material is stored
having been used for this purpose since May. Then he
F continues with a description of the use which has been made
of this site over a very long period. He then in the middle
of the paragraph turns to another topic. In his evidence he
has explained that, shortly before Mr. Wicks came on site
and saw what he photographed, a piece of plant called the
G Hymac was being used to scrape up any potentially saleable
material because the company was in a bad way financially.
Mr. Dodds said that the lumpy appearance was the result of

A the machine's passing over the heap. He was later to agree
that, since he claimed to have sold that material as Type 1
aggregate, he was very fortunate that the purchaser did not
reject it out of hand, because it was only by courtesy that
B it could be so described.

I have myself speculated whether this heap might be the
result of the housekeeping about the site whereby little
bits of processed material or, for that matter, spillages
C from passing lorries might have been gathered together out
of tidiness. That was not the explanation offered by Mr.
Dodds, but in any event at 100 tonnes there is too much to
be explained in that fashion.

D I accept the Plaintiff's evidence. I have no doubt at
all that this was not processed material, but was something
which had been brought on to the site. It was waste
deposited in breach of the undertaking. I may here dispose
E of a point which has been raised by Mrs. Pooley from time to
time in her submissions, which is to ask why the Defendant
should break his undertaking in so obvious a way and right
under the noses, if they chose to go there, of the County
F Council. The answer to my mind is this, that he takes a
careless attitude to all his responsibilities in this field
and, notwithstanding the fact that there was an undertaking
and an injunction (which I have no doubt were carefully
G explained to him), he was content to trust to luck.

The next breach is referred to in paragraph 7 of the
evidence, and is that "between 28th April and 7th June he

A caused or permitted the deposit of miscellaneous controlled
waste including plastic, paper, timber, metal and vegetation
on an area of land at Westport Farm marked red." Now this
part of the land contained a large heap of picked out
B rubbish which had resulted from the Defendant's activities
over the years. It was agreed that construction waste will
inevitably contain a certain amount of extraneous matter
which cannot be put through the Defendant's processes but
C which must be removed and disposed of in one way or another.
The orders made in this case have made allowance for that
need, but the complaint in this respect is twofold. First
it is said that by the undertaking such rubbish ought not to
D have been added to the existing stockpile on the red land
but should have been confined to an area within the lozenge,
and, secondly, that material has been imported which is not
scavaging from ordinary contractors' waste but is quite
E obviously waste of a more general nature. The response to
this charge is that the Defendant misunderstood his
undertaking, and that he had been advised by his consultant
town planning expert that he could proceed in this way,
F notwithstanding the order, and, secondly, that such
additions as he did make were all scavagings from
contractors' waste. Thirdly, he argues that it would have
G been bad business to have introduced other waste because he
has to pay for it to be removed from the site by another
contractor, and that costs him £200, formerly £150, a load.

A I have been shown a letter written by that town
planning adviser which, it is said, amounts to advice that
the Defendant could proceed in this way. It is sufficient
B to say that even on its most favourable construction it does
no such thing. The letter makes clear what is obvious to
everybody, that the material does have to be set on a pile
until there is sufficient to be taken away or sufficient to
C go into containers. But in terms of amounting to any advice
that it was proper to continue doing it on this particular
site (the red land) after the giving of the undertaking the
letter is silent. I am satisfied that in that respect Mr.
D Dodds again took a chance. It is right to say that once
these proceedings were begun and when he consulted his
solicitors and counsel (who had acted for him in the giving
of these undertakings) they very quickly disabused him of
E this notion. Thereafter a skip was obtained into which the
material could be placed.

F What is the material? Mr. Wicks said, and he
illustrates this by photographs 1 and 2 attached to his
evidence, that the material has not been picked out of
contractors' waste because it does not have that particular
G dirty character which one would expect if material had been
in close contact with lumps of concrete, pieces of tarmac
and the like. Moreover, a lot of the items do not have the
appearance of being crushed as he would have expected if
they had been. To this the answer is made that if you take
any rubbish from the bottom of a skip you will not expect to

A find it in pristine condition because of the weight of
whatever may be above it, and to a degree this it seems to
me is a valid point. But when, for example, I look at
B photograph 5, which was a picture taken on 28th July and a
little in advance of the time I am presently considering,
there is in the foreground and just behind the path a whole
series of orangy-coloured material which may be old rusty
C corrugated iron or it may be wood, I cannot detect, but
certainly the quantity of whatever it is is quite
inconsistent with having come by chance in different loads of
material.

D The Defendant in giving evidence added two other
points. He said that there was a certain amount of waste
which he described as domestic waste which was generated
within the workshops of his business. If a spare part came
E for one of his lorries, it would come in a cardboard box and
the cardboard box would be thrown away. Tarmac, his
neighbours on the site, from time to time would put rubbish
on this heap, and also both his employees and Tarmac's
F employees would discard newspapers, and no doubt plastic
drink bottles and so on, and that these would be added. If
that was all there was, it would I think be taking too
G precise a point on this undertaking to complain about a
sackful of old newspapers. However much the Council are
entitled to have the undertaking enforced according to its
true tenor I think it would be plainly absurd to complain
H of, for example, an empty box of matches. It is a question

A of degree, and so I say if that domestic waste is all there
was then I would not be troubled, but I am quite satisfied
that it was not. I am satisfied and satisfied beyond any
B doubt that Mr. Wicks is right, the material there is not
just scavagings. It must have come there deliberately, and
I draw the inference that it has come there either at the
instance of or by tolerance of the Defendant. So much for
ground 2.

C So far as ground 3 is concerned this charges that on
7th June Mr. Dodds "caused or permitted the deposit of a
D lorry load of controlled waste upon a stock pile not less
than 40 metres to the north of the row of poplars on the
area of Westport Farm shown on the plan annexed hererto and
marked red." This is another aspect of the same piece of
ground, and the complaint here depends upon a particular
E photograph, photograph number 1. Mr. Wick's evidence is
that that is the product of a lorry. He saw it unloaded.
He saw a quantity of it being loaded again into the lorry,
which one sees in the photograph, which is picking up
F rubbish and taking it away. Again, I have no doubt that
here again there is a breach of the undertaking, but if this
one had stood alone I would not have attached much
G significance to it because in as much as it was deposited
and then taken away within a very short space of time it
would, it seems to me, be unreal to suggest that that would
by itself have justified a motion of the present sort.

A I pass therefore to the fourth matter complained of
which is that between 28th June and 28th July Mr. Dodds
"caused or permitted the deposit of controlled waste upon a
stockpile not less than 80 metres to the north of the row of
B poplars upon an area of land shown marked blue." This is
described by Mr. Wicks in paragraph 14 of his affidavit and
in photograph 16 of the same bundle of photographs. This is
taken at the extreme northeast corner of the site. There
C there is a conveyor which goes to a grader and washer.
There is a dispute between the Plaintiffs and the Defendant
as to whether he is within permission in using that grader
for any of his purposes. For the purposes of this present
D application the question has been confined to this: is the
material which is there the product of his operations, in
which case (whatever may be the position as to planning)
there is no breach of the undertaking, or is it waste
E material brought there in connection with his business?
When Mr. Wicks was cross-examined about what he saw on 28th
July it was put to him that the material was there for
washing, that is to say the material to the left, what looks
F to the untutored eye to be a heap of soil. The material to
the right, it was suggested, must have been brought there by
Tarmac, the neighbours, and originated from their washing
G out of their own mobile concrete mixers. It is obviously
important that the drums of concrete mixers should not dry
out with any concrete mix inside them. When they have been
emptied at the delivery point a small quantity of water is

A put into the mixer's barrel which then continues to rotate,
so rinsing itself, during the return journey. The resultant
slurry must go somewhere, and it goes into a pit. What then
B becomes of it has not been described. If it stays wet then
presumably the concrete does not harden for a considerable
time. But if it does harden it would not be expected to
C harden, says Mr. Wicks, in such a way as the pieces which he
saw in the righthand heap have hardened. They were, he
says, full of dirt and were plainly contractor's waste.
They could not, he said, have come from a pit such as would
be used by Tarmac. They were something quite different.

D The Defendant dealt with this first of all in his
affidavit in paragraph 9 (at page 157 of his bundle) where
he said this:

E "Mr. Wicks refers to photograph 16 in exhibit
'NW13' which shows the excavator feeding the gravel
washing plant. On the hopper there is a grid through
which lumps of concrete and brick cannot go through and
which are wiped off by the excavator. This material is
then transported around to the crusher where it is
F processed, producing sand and shingle which are
subsequently washed to make gravel products. It is
very difficult to see the soil in the photograph as it
is probably first grade size, i.e. mainly small stones
of 10mm. to 40mm. diameter. These are washed to make
gravel products and result from producing top soil."

Then he goes on to paragraph 15.

G When he came to give his evidence he said something
entirely new (to the evident surprise of his own counsel),
when he said that in early July 1994 he had had a contract
to supply Legoland with a large quantity of material called
6F1, and to facilitate that a quantity of the material was

A shot at that point and near the weighbridge. When lorries
came off his site with quantities of 6F1 and they were
overweight the appropriate amount could be slipped there.
If, on the other hand, they were underweight the weight
B could be made up from that heap. One has only to look at
that heap to see that that explanation does not even begin
to make sense. It seems to me perfectly evident, as Mr.
Wicks said was the case, that this material had in fact
C spilled down. From where the excavator is sitting it
appears to be continuous right the way across. The material
does not have the homogenous character of a material which
would be fit to be sold. I am equally satisfied that the
D material to the right of the hopper is not washings. Having
rejected the Defendant's account as to how those two
materials came to be there, it seems to me that there is no
other sensible excuse, and I draw the inference that they
E have been imported on to the site, even though they do not
make a great deal of sense sited where they are.

F I now turn to what is perhaps the most important part of
this case and concerns the orange land. Here there are a
whole series of complaints, some of them in this first
notice and others which arose after the first notice was
G served. The orange land lies to the south of the permitted
area. The first complaint in this regard is a specific one,
and it concerns three lorry loads of wet concrete which were
discarded between 19th May and 7th June. Those are the
H dates which mark Mr. Wick's visits. The photograph which he

A took which illustrates what he found is photograph 7. The
three lorry loads, which he has perhaps rather unfortunately
B photographed from quite a distance, are seen in the middle
of the photograph. They are of the usual dirty concrete
C colour. He said that he had no doubt that those had been
deposited as lorry loads of wet concrete. When cross-
D examined he was not able to say whether they were still wet
when he saw them, by which he meant he did not try and put
E his foot into them. He insisted that the heap bore the
unmistakable appearance of material which had been shot
while it was wet. The Defendant's explanation in his
F affidavit does not condescend to this point, because he
discusses dragging up material across this particular place.
But the Defendant's answer in evidence is to say if Mr.
Wicks is right someone has thrown away £900 worth of
material, and that would be quite foolish and does not
happen. Therefore, he says, Mr. Wicks is either lying or
wrong-headed. I do not believe he is either. I do not
believe that anyone of any experience at all would have
difficulty in recognising wet concrete or concrete discarded
when it was in a wet or plastic state. I am quite satisfied
that there was such a breach.

G That brings me to breaches 6, 7 and 8 which are in the
second notice of motion. This area, lying as it does to the
south of the southern boundary, is beside the row of poplar
trees, the western end of which is shown in photographs 7,
H 8, 9 and 10 and shown again in photographs 17 and 18.

A Photograph 17 shows the position relatively close to the
making of the injunction on 6th May, and there is a very
large stockpile of processed material. One can see that to
its left there is very little material. So again when
B photograph 7 (the next in sequence) was taken. But when
photograph 8 was taken on 23rd June, although one can see
the top of the heap which dated from May over the material
in the foreground, a large quantity estimated in hundreds of
C tonnes has arrived to make that foreground. There is more
again on 28th June, self-evidently more again on 28th July.
That large heap of rubbish is seen again from a different
angle in photograph 18. That is all contractors' waste. Of
D that there is no room for any argument at all. It is
incidentally also shown in photographs 1, 2 and 3 with the
second affidavit. Where did that come from? Importation,
say the Plaintiffs. No, says the Defendant, that comes from
E dragging material from the top of the existing heaps by
means of the drag line machine which operates from within
the footprint. The machine has an operating radius of 100
F feet, and can lob out its bucket and so draw material
towards it which is then scooped up and tipped into dumper
trucks to be taken to the crushing machine. This is a more
efficient and cheaper operation, says Mr. Dodds, than using
G digger trucks and taking those directly to the machine.
That that is so I do not doubt. Mr. Wicks said he could see
no area whatever from which material had been taken which
would explain the arrival of material at this point.

A I indicated in the course of the proceedings, and there
was no dissent from the Plaintiffs, that if all this
Defendant had done was to move the material from further
B away from the permitted scene of operations closer towards
it as part of a process of drawing everything within the
footprint it would be churlish, even if strictly correct, to
complain. But Mr. Wicks says that is not what happened. At
C one stage the Defendant suggested that the material seen
here might have come from an area known as the Twin Peaks
which lies to the west of the site, but I have now been
shown photographs of the Twin Peaks. They are quite
distinct. They are in general of small graded material.
D They quite obviously have been there for years. One of them
is distinguished by a dark soil, coloured like loam; the
other has a clayey or sandy appearance. It is quite plain,
and I am entirely satisfied, that nothing has come thence.

E Accordingly, I find myself in a position where I reject
Mr. Dodds' explanation of this material. It seems to me
self-evident that this material has arrived newly at this
F site. It has not grown grass. Nothing has happened on it
to suggest it has been there for any length of time. For
those reasons I am quite satisfied that the breaches
G complained of in paragraphs 6, 7 and 8 have been proved. As
I say, these are substantial breaches because they involve
very large quantities. This is not just the irresponsible
H deposit of a load or two.

A Then I come to the ninth matter of complaint. This is
a further reference to the red ground where the rubbish,
whether picked or original, had been placed. This complaint
depends upon photograph 4 which shows that a greater
B quantity is present than was there previously. In large
part there is no advantage to be gained in debating afresh
the arguments as to this particular point. I am satisfied
that this has been used for the deposit of material which
C has come from outside the site and is not simply
scavangings. The same is true in relation to complaint
number 10 which depends upon photograph 5 which was the
D photograph that I referred to earlier, which appears to show
what is either a substantial quantity of corrugated iron or
something with that irony colour.

E The next complaint, number 11, deals with the purple
land which lies to the left. The complaint is that between
28th April and 28th June Mr. Dodds "caused or permitted
substantial deposits of controlled waste including bricks,
concrete and soil on an area of land at Westport Farm to the
west of the line drawn on the said order and shown on the
F plan marked purple." In his affidavit Mr. Wicks dealt with
this, saying: "Construction waste, including bricks,
concrete and soil had been tipped in the area marked purple
since my visit of 28th April. It is shown in photograph
G 12." The two photographs are taken as near as makes no
matter from the same spot. There is a difference in that
the trees are now fully out and vegetation has grown on the
H

A earth. But if one takes a little time to compare the two
photographs one can identify objects in the middle ground
which show that there has been no significant alteration to
what was deposited there. What Mr. Wicks was referring to
B was the yellow coloured material in the right foreground of
his second photograph which is an addition to what is seen
in the earlier photograph. It is plain that something has
been added. The beam which is seen in the earlier
C photograph has been removed. It may or may not be the
one lying in the ditch. Mr. Dodds' answer in his affidavit
was uncertain, and he says that he had not understood what
it was that Mr. Wicks was complaining about. At one point
D in his evidence he was constrained to say that he had been
in great difficulty because he had not had coloured
photographs, but then, corrected very properly by his own
counsel and indeed by the Plaintiff's counsel, he conceded
E that he had had coloured photographs. A moment's trouble
taken looking at those coloured photographs would have shown
what the true position was. There was in my view no
difficulty in anybody working out for themselves what it
F must be that the County Council were complaining about
However that may be, Mr. Wicks' present explanation is that
there lay over the far side of the lefthand part of the main
assembly of soil and rubbish a deposit of black sand which
G he was able to sell to a nearby film company at Elstree for
a film they were making, and that the two lorry loads, as
Mr. Wicks assesses it, are simply material which has been

A moved about on the site so as to make a road to allow
access.

B I reject that explanation. It was put quite plainly in
cross-examination that there is not only a trackway in the
foreground, there is a trackway in the middle ground, and
that second trackway leads or appears to lead to a cutting
C in the bank of soil and debris. The cutting may be seen as
a back-sight, and is about an inch and a half in from the
left margin of the photograph. The sides of that cutting
appear as if soil has slipped down in the way that loose
soil does. This cutting cannot be seen at all so clearly in
D the second photograph, number 12, because the slight change
of angle has blinded that view. I am wholly satisfied that
the explanation for those two loads of material is not that
given by the Defendant. These are importations.

E I should say also that there are two respects in
connection with this issue where the Defendant has shown his
evidence to be wholly unreliable. No one having to that
point disputed that the purple area was outside the
permitted area for depositing, no point having been taken
F with Mr. Wicks that his photographs had been taken within
the permitted area, the Defendant claimed that, because one
could not see the gable end of the workshop in either of
these photographs, they were taken within the permitted
G area. Later in his evidence he claimed to remember that he
thought the reason for the beam being where it was was to
define for himself the line across which he should not go.

A That last piece of evidence to my mind was utterly
destructive of his credit.

B I pass to the grounds which are set out in the second
notice of motion. As to ground 1 -- and very little time
has been spent on the matters in this second notice -- this
C complains of a further accretion of rubbish on the red land
which I find to be a breach. There is undoubtedly a
different picture by 7th October on the blue land. The
same considerations apply, plainly a breach. I have already
discussed and given my conclusions on the sequence of
photographs which depict the position that obtained on the
orange land with the very substantial deposits which are
D shown there.

These reasons therefore lead me to conclude that this
Defendant is in breach of his undertaking and so in contempt
of court, and I would now wish to hear from you, Mrs.
E Pooley, anything that you may wish to say as to the
appropriate way of dealing with it or as to mitigation.

F MS. POOLEY: My Lord, as I understand it my Lord has a range of
measures available to you to. You can commit for a definite
time to prison. You can make an order for committal
suspended. You can fine and ask for security for good
behaviour. You can of course adopt a more lenient course of
granting another injunction to restrain from repetition of
the act. I would of course ask you, my Lord, that you do
not make an order to commit to prison, because though I am
very well aware of the serious view that you take of this
and though I know you do not accept it, it has been the
contention for Mr. Dodds that he has not treated this matter
G light heartedly. Yet it has to be said that, although it
does not affect the breaches, the situation has to an extent
changed and he has now got permission, albeit to be
appealed, but as your Lordship is well aware that appeal
will not as from today on the letter granting him
H permission...

A MR. JUSTICE IAN KENNEDY: Yes.

MS. POOLEY: He also has permission to carry out the waste recycling process. It seems, my Lord, that the relationship between Mr. Dodds and Bucks has deteriorated, and Mr. Dodds is not careful enough to consult Bucks. Bucks do not see the reason to consult Mr. Dodds because they think he takes no notice of what they have to say.

B MR. JUSTICE IAN KENNEDY: That I can understand, but as you appreciate, and I am sure you will make it clear to your client, the point is not now that he is in conflict with Bucks, but the point is he is in conflict with the court.

MS. POOLEY: My Lord, yes.

C MR. JUSTICE IAN KENNEDY: As I understand it your contention is, that these particular breaches apart, the overall appearance of the site demonstrates an improvement.

MS. POOLEY: My Lord, yes. In fact my learned friend very kindly pointed that out in his opening, that a lot had been achieved.

D MR. JUSTICE IAN KENNEDY: Yes he did.

MS. POOLEY: Notwithstanding the prosecutions in the Magistrates' Court it was accepted that the levels achieved are within a metre overall of the required restoration levels.

E MR. JUSTICE IAN KENNEDY: Has he got to go down another metre still then?

MS. POOLEY: He has got to go down between a third -- in fact I am not quite sure of the position on that

MR. SEFI: The position on that, my Lord, is that there is a much wider area than that upon which...

F MR. JUSTICE IAN KENNEDY: Of course there is.

MR. SEFI: I mean many many acres which have a metre too high. But the real gravamen of the problem is nearer to the working site.

G MR. JUSTICE IAN KENNEDY: But is the overall appearance of the farm getting better or getting worse?

MR. SEFI: Getting better, certainly it is getting better. I concede that, but there is still an enormous amount to be done.

A MR. JUSTICE IAN KENNEDY: I think your best argument, if I may
say so, would be to suggest, since these are grave matters,
that the point would be sufficiently made if -- since it
seems to me it is impossible to overlook particularly the
orange affair -- any committal were to be suspended because
overall he has been improving matters, and you might care to
argue that if he knew that a load tipped in breach of his
undertakings would result in his going to Bedford or
B wherever it may be that would ensure that there are no
further breaches and would help to concentrate his mind.

MS. POOLEY: My Lord, yes. That is what I would say.

C MR. JUSTICE IAN KENNEDY: But if I were to take that course I
would propose to add to his undertakings, so that there
shall be no further argument about it, a further injunction
that if any material is intended to be taken from the point
at which it presently is to the working area it should be
taken there as one operation so that there cannot hereafter
be any debate about stopping on the way. That will simply
make matters more precise.

D Mr. Sefi, it appears to me that the advantage of doing that
would be that it diminishes the possibility of arguments in
the future.

MR. SEFI: I am listening to your Lordship.

MR. JUSTICE IAN KENNEDY: And reading at the same time. Why do
you not read first.

E MR. SEFI: My Lord, although the mischief which you wish to
avoid is obviously captured by that expedient it creates
another question in Mr. Wick's estimation in that it might
actually inhibit the speed at which this problem is solved.
If there were any more from one part of the site to the
lozenge itself it may not be merely convenient to bring the
stuff near and lay bare land which needs to be laid bare and
then cover it with top soil and seed it and so forth.

F MR. JUSTICE IAN KENNEDY: Very well, if it is likely to produce
more harm than good that is that.

MR. SEFI: That seems to be the view of the Plaintiffs, my Lord.

MS. POOLEY: Would your Lordship deal then with the
undertakings.

G MR. JUSTICE IAN KENNEDY: The undertakings will remain in force.

MS. POOLEY: Indeed.

A MR. JUSTICE IAN KENNEDY: And the injunctions will remain in full force, though no doubt next term Mr. Seti will be thinking about it.

B Would you stand up please, Mr. Dodds. Mr. Dodds, you must understand that although hitherto you have been at war with the County Council in a number of respects you are not at war with the court, and if you think you are you will lose each time. When an order is made or an undertaking is given it is a solemn matter and the court enforces this by periods of imprisonment. Your breaches, particularly those in relation to the orange land, are very grave indeed. The imprisonment that I impose is two months' imprisonment, but that will be suspended upon these conditions: that you commit no further breach of the undertakings that you have given and they will also be suspended for a period of two years. I do that because, as it seems to me, if two years pass without any further infringements of the court's orders then you are entitled to say that you have made amends. You must also pay the taxed costs of these proceedings.

C MS. POOLEY: My Lord, I do not think you realised Mr. Dodds is legally aided and I need taxation.

D MR. JUSTICE IAN KENNEDY: He is legally aided, is he. What about his shares -- has he disclosed his shares?

E MR. SEFI: The Magistrate has referred his legal aid application in the Magistrates' Court to the Director of Public Prosecutions. We, the Plaintiffs, although we are discomfited by having a legally aided Defendant, have no knowledge of whatever he has said to the Legal Aid Board.

MR. JUSTICE IAN KENNEDY: No, of course you do not.

MR. SEFI: Certainly the evidence which was put before the Magistrate, and he gave evidence to the Magistrate which would have indicated that he was well outside the legal aid financial limits.

F MR. JUSTICE IAN KENNEDY: What I shall do is that I will say that he is to pay the costs of this hearing, the amount of those costs to be determined. The enquiry as to what is the proper sum will be deferred pending your solicitors advising the Legal Aid Board that the evidence which I have heard shows that he is the owner effectively of RPJ Ltd. with its assets of vehicles and plant and that they may choose to consider what steps require to be taken in the light of the application which was made to them for legal aid. I will leave it that upon their reporting the application can be brought back before the court for determination of the amount at the Plaintiff's election. Of course if it should come about that the Legal Aid Board revoke his certificate

A then I think the best thing is that I should add a term to the order that in the event that the certificate is revoked the order for costs should be effective forthwith, because there is no point in coming back simply to do that.

MR. SEFI: Does your Lordship envisage that it will be determined by yourself or the Master? I do not know what the practice is in the Queen's Bench Division.

B MR. JUSTICE IAN KENNEDY: The same thought was going through my mind. I think probably the wisest thing is to say it is to come back before a judge. I think that is the better course.

C MR. SEFI: Can I just ask that you invite or direct the Defendant's solicitors to notify the Legal Aid Board about also the half share in the property in Nickel Road in addition to his house.

MR. JUSTICE IAN KENNEDY: Yes, I am sorry, I had forgotten that. He said he was the part owner subject to mortgage. He said he and his brother subject to a mortgage.

D MS. POOLEY: My Lord, this has gone before the Legal Aid Board already.

MR. JUSTICE IAN KENNEDY: Do they know that he has got plants which have cost a great deal of money? Do they know all that? I very much doubt it. Presumably also I imagine the lease has no value.

E MR. SEFI: No, and that is subject to the landlord objecting to the grant of a new tenancy, rather unsurprisingly.

MR. JUSTICE IAN KENNEDY: Well, and his ownership of the land, so I think that your solicitor ought to ensure that those matters are dealt with, because somebody operating a business which employs 27 people, as I find, is not a person who at first sight is eligible for legal aid.

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