

BENSON v. SECRETARY OF STATE ¹

A

Criminal injury to persons—Application for compensation by person injured—Death of applicant from other causes—Claim continued by widow—Whether right of action survived the injured person's death—Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 (1 Edw. 8 & 1 Geo. 6, c. 9), s. 14—Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (c. 9), s. 3 (2)

B

The applicant's husband sustained injuries which were directly attributable to a criminal offence and were a criminal injury within the meaning of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968. He subsequently died as a result of causes not attributable to the criminal injury, leaving the applicant as the administratrix of his estate. A case was stated to the Court of Appeal as to whether the claim for compensation under the said Act survived the death of the deceased for the benefit of his estate.

C

Held, that where a claim to compensation is based on a statutory right, the right survives the death of the claimant and passes to his personal representative; and it is not necessary to consider whether the claim came within section 14 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937.

D

The following cases are referred to in the judgments:

Attorney-General v. Canter [1939] 1 K.B. 318.

Darlington v. Roscoe & Sons [1970] 1 K.B. 219.

Finlay v. Chirney (1888) 20 Q.B.D. 494.

Glynn and Kennedy v. Clare County Council [1910] 2 I.R. 666.

E

Gould v. Belfast Corporation (1959) Unreported 11 March.

McCaughey (Forrest's Hotel, Moy) v. Secretary of State [1975] N.I. 133.

McManus v. Armagh County Council [1952] N.I. 38.

Peebles v. Oswaldwhistle U.D.C. [1896] 2 Q.B. 159.

Rose v. Ford [1937] A.C. 826.

Story v. Sheard [1892] 2 Q.B. 515.

Sugden v. Sugden [1957] 1 All E.R. 300.

F

United Collieries Ltd. v. Simpson [1909] A.C. 383.

Wheatley v. Lane (1669) 1 Wms.Saund. 216; 85 E.R. 228.

The following additional case was cited in argument:

Dean v. Weisengrund [1955] 2 Q.B. 120.

CASE STATED by the acting Recorder sitting at Belfast for the Belfast County Borough.

G

The following extracts are taken from the case stated:

"2. At the court held there on 12 February 1975 I heard an application by Elizabeth Patton Benson (hereinafter called 'the applicant') as personal representative of Ernest Morrison Benson deceased (hereinafter called 'the deceased') against the Secretary of State (hereinafter called 'the respondent') under the provisions of the Criminal Injuries to Persons

H

¹ In the Court of Appeal before Jones and Gibson L.JJ.: 2, 13 February 1976.

N.I.

Benson v. Secretary of State (C.A.)

A (Compensation) Act (Northern Ireland) 1968 (hereinafter called 'the 1968 Act') to decide whether a claim for compensation for personal injuries sustained by the deceased survived the death of the deceased for the benefit of his estate.

3. At the hearing the following facts were agreed or proved:

- B
- (a) On 19 August 1972 the deceased sustained injuries which were directly attributable to a criminal offence and were a criminal injury within the meaning of the 1968 Act.
 - (b) The sum of the compensation attributable to the criminal injuries which were sustained by the deceased was £300.
 - (c) The deceased died on 26 February 1973 due to causes not attributable to the aforementioned injuries.
 - (d) The applicant is the administratrix of the estate of the deceased.
- C

D 4. It was submitted on behalf of the applicant that the present claim was founded upon a statutory right and, as such, would at common law have survived the death of the victim. It was further submitted that if this view was wrong the claim was still preserved by section 14 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 (hereinafter called 'the 1937 Act').

E 5. It was submitted on behalf of the respondent that such claims for compensation for criminal injuries were not causes of action and therefore would not fall within the provisions of the 1937 Act. It was also submitted on behalf of the respondent that there was a distinction between statutory rights which were personal in nature and those which related to property and that it was understandable and reasonable that only the latter should survive the death of the claimant.

6. On 18 April 1975 I delivered judgment in favour of the applicant holding that the claim survived for the benefit of the estate of the deceased and accordingly I granted her an award of £300.

8. The question for the Court of Appeal is:

F Was I correct in law in holding that the claim for compensation under section 1 (1) (a) of the 1968 Act survives the death of the deceased for the benefit of his estate? "

R. D. Carswell Q.C. and *C. W. Dickson* for the appellant.

W. P. Doyle Q.C. and *E. A. Comerton Q.C.* for the respondent.

G

Cur. adv. vult.

JONES L.J. This matter comes before the court by way of a case stated by His Honour Judge Chambers Q.C., under section 2 of the County Court Appeals Act (Northern Ireland) 1964.

H The point at issue is a net, and short, one and arises from the following facts. On 19 August 1972 Ernest Morrison Benson sustained injuries in circumstances which attracted a valid claim under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (hereinafter called "the Act"). Notice of intention to apply for compensation under the Act

was given on 25 September 1972 and an application for compensation under the Act was made on the same day, that is 25 September 1972. On 26 February 1973 the applicant, Ernest Morrison Benson, died from causes unconnected with the injury sustained on 19 August 1972. Thereafter representation to the estate of the said Ernest Morrison Benson, deceased, was raised on 30 November 1973 and his application for compensation was continued in the name of Elizabeth Patton Benson, his widow and administratrix (hereinafter called "the respondent"). Subsequently, namely on 18 April 1975, at the Belfast Recorder's Court the case came on before Judge Chambers when compensation was agreed at the sum of £300 but subject to a point taken by the Secretary of State (hereinafter called "the appellant"), namely that the right to claim compensation did not survive the death of Mr. Benson and so died with him. This point was argued before Judge Chambers who decided that the claim did survive Mr. Benson's death on the ground that it was a statutory right to which the maxim *actio personalis moritur cum persona* did not apply. He also intimated that, had it been necessary for a determination of the case, he would have been disposed to hold that the claim survived the death of Mr. Benson because it was a "cause of action" within the meaning of section 14 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937. This decision evoked from the appellant an application for a case stated and, despite the confused and unsatisfactory form of application, Judge Chambers set out the material facts and the point of law involved with admirable clarity and to the case so stated and now before us he appended a copy of his helpful and careful judgment.

Mr. Comerton, for the respondent, contended that the claim survived Mr. Benson's death and could therefore be entertained by the court. He based this contention on two grounds. First, he said that the Act had conferred upon the late Mr. Benson the right to make a claim and, in the circumstances which obtained and were subsequently agreed, to receive compensation and that this right had vested in the late Mr. Benson prior to his death. And, secondly, he contended that the late Mr. Benson's right to apply for compensation under the Act constituted a cause of action and, as such, survived by virtue of section 14 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937.

I shall, in the first place, deal with Mr. Comerton's first contention. And here assistance is to be found in the authorities which I shall take in chronological order. The case of *Peebles v. Oswaldwhistle U.D.C.* [1896] 2 Q.B. 159, concerned an action for mandamus to compel the defendants to perform certain duties to which they were alleged to be subject under the Public Health Act 1875, section 15, and the Rivers Pollution Prevention Act 1876, section 7. Subsequent to the commencement of the action the plaintiff died and the point was taken that the action did not survive, but died with, him. The Court of Appeal (Lord Esher M.R. and A. L. Smith L.J.), however, held that as the alleged cause of action arose out of a statutory duty to the deceased it survived to his executors. The judgment of A. L. Smith L.J., at page 161, is interesting in that it refers to a note to the case of *Wheatley v. Lane* (1669) 1 Wms.Saund. 216; 85 E.R. 228 which reads as follows:

A “It was a principle of the common law, that if an injury were done either to the person or property of another, for which damages only could be recovered in satisfaction, the action died with the person to whom, or by whom, the wrong was done . . . but this rule was never extended to such personal actions as were founded upon any obligation, contract, debt, covenant, or any other duty to be performed; for there the action survived.”

B That decision appears to state a general principle which is very favourable to Mr. Comerton's contention.

C But as one proceeds the authorities move from the general to the particular. Thus in the case of *Darlington v. Roscoe & Sons* [1907] 1 K.B. 219, we find the English Court of Appeal saying that the statutory right to claim under the Workmen's Compensation Act 1897 in respect of the death of a workman, and the statutory duty on the employer to pay, survived the death of the dependant. As Farwell L.J. when speaking of the nature of such a proceeding, put it at page 230 of the report referred to:

“I prefer to say that it is neither tort nor contract, but a statutory duty; and to such a duty this Court has held that the maxim in question (that is ‘*actio personalis moritur cum persona*’) has no application.”

D And that view is strongly, indeed conclusively, supported by the decision of the House of Lords in *United Collieries Ltd. v. Simpson* [1909] A.C. 383. That was also a case under the Workmen's Compensation Act, then the 1906 Act, and it was held that the right of a dependant to bring a claim survived the dependant. And in the course of his speech Lord Macnaghten observed at page 391 of the report:

E “With Lord McLaren, I put aside the semblance of argument founded on the maxim ‘*Actio personalis moritur cum persona*.’ The application of that maxim is limited to actions in which remedy is sought for a tort, or for something which involves, at any rate, the notion of wrongdoing.”

F So far we have got a general statement of principle, that is in *Peebles'* case and two cases decided under the Workmen's Compensation Code in a manner consistent with the principle. But then we come to the case of *Glynn and Kennedy v. Clare County Council* [1910] 2 I.R. 666, wherein we find the same principle being applied to a claim for compensation for malicious damage, the very same type of case as this now before us.

G These decisions presented Mr. Carswell with the problem of finding distinctions between the cases in which they were pronounced and the present case. As regards the Workmen's Compensation cases he contended that they stood on a footing different from the present case inasmuch as they involved claims for quantified sums which were in no sense in the nature of unliquidated compensation, and as regards the malicious damage case of *Glynn and Kennedy* he pointed to the distinction that it concerned damage to property and not personal injury. I do not consider these distinctions to be valid. It seems to me that, so far from supporting by analogy the distinction based on the “quantified sum” contention, the decision in *Peebles'* case enunciates a general principle which covers the decisions in *Darlington*

v. Roscoe & Sons, United Collieries Ltd. v. Simpson and Glynn and Kennedy v. Clare County Council. And Mr. Carswell was unable to point to any provision or authority which drew a distinction, material to this case as regards the Workmen's Compensation Cases, between a quantified and a non-quantified sum or, as regards the *Clare County Council* case, between a "damage to property" and a "personal injury" case. During the whole course of the hearing the nearest we came to seeing anything like an authority favourable to the appellant on the general problem confronting him was when our attention was drawn to the case of *Story v. Sheard* [1892] 2 Q.B. 515. I do not however regard that decision as a material factor against the respondent's claim in this case as the present proceedings are founded on a particular statutory right and are not in the nature of an action for tort. As Cherry L.J. (as he then was) said in *Glynn and Kennedy v. Clare County Council* (supra) at page 677 "there is no actio." Accordingly it is not necessary further to deal with *Story's* case though I am bound to say that I would have thought the proceedings therein to be more in the nature of a prosecution than of an action for tort.

Accordingly I take the view that the statutory right to apply, in appropriate circumstances, for compensation for non-fatal criminal injury is a right which survives the death of the claimant and this is certainly not in conflict with the decision of Curran J. (as he then was) in *McManus v. Armagh County Council and Another* [1952] N.I. 38, followed by Gibson J. (as he then was) in *Gould v. Belfast Corporation* [1969] (unreported).

That disposes of the case as it is not necessary to go further to answer the question put by the learned county court judge. And accordingly I would answer that question in the affirmative.

But the learned county court judge did touch on the position created by section 14 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 and arguments—if only as making the point as part of the respondent's "secondary armament"—were addressed to this court thereon. No doubt there are dicta which suggest that the object of section 14 was to abolish the doctrine "actio personalis moritur cum persona"—see *Attorney General v. Canter* [1939] 1 K.B. 318, 327 and *Rose v. Ford* [1937] A.C. 826, 842—and also to the effect that a claim such as that now under consideration does not fall within the maxim. But that was not the only object of the section. And it would seem from the observations of Denning L.J. in *Sugden v. Sugden* [1957] 1 All E.R. 300, 302 that the term "cause of action" could be wide enough to cover the right to proceed under the Criminal Injury Code. At the same time Curran J. (as he then was) took the view in *McManus'* case (supra) that section 14 of the 1937 Act did not apply to that case and this court held in the case of *McCaughey (Forrest's Hotel, Moy) v. Secretary of State* [1975] N.I. 133, that compensation awarded under the Criminal Injury Acts was not damages within section 17 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 which moved Mr. Carswell to observe that it might be regarded as somewhat anomalous for a claim of this nature to fall within section 14 and outside section 17. In all those circumstances and as the resolution of this problem is not necessary to a proper determination of this case, I take the view that this particular aspect of the

- A matter should best be allowed to stand over until at some future time a case arises in which its resolution is necessary when it could have the advantage of consideration by the full court.

- B GIBSON L.J. The net issue in this appeal is whether a right to claim compensation for personal injury arising from a criminal injury conferred by the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 survives the death of the victim so as to enable his personal representative to recover.

Though counsel for each party referred to various sections of the Act as perhaps indicating one way or the other, I do not think that the contents of the statute lend any real guidance.

- C The applicant's main argument is that as the right to compensation for malicious injury is conferred by statute it does not die with the victim because there is a general rule that statutory rights survive death. As a subsidiary argument he contended that the claim is a "cause of action" within section 14 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 and, therefore, survives for the benefit of the victim's estate. Mr. Carswell on behalf of the respondent conceded that where a statute provides for a quantified sum to be paid by way of compensation the authorities establish that the claim will survive. The decisions in *Darlington v. Roscoe* [1907] 1 K.B. 219 and *United Collieries Ltd. v. Simpson* [1909] A.C. 383 fall within this category; but that where, as here, the compensation, if any, has to be assessed by the court he submits that there is no apparent statutory intention that the compensation should relieve any person except the victim who has sustained the injury and, therefore, the claim should not be extended so as to entitle his estate to benefit. Mr. Carswell further denied that an application for compensation under the Criminal Injury code was an "action" and therefore it followed in his submission that the right to bring such a claim could not be a "cause of action" within section 14 of the Act of 1937.

- F An aid to deciding whether a statutory claim survives death in the absence of any clear indication in the statute is, I think, afforded by considering generally the question of how far under the common law purely personal claims survived death. This takes one back to a consideration of the origins and scope of the doctrine *actio personalis moritur cum persona*. No one knows with any certainty when or how this maxim came to be adopted by the courts as a statement of accepted principle. Bowen L.J. in *Finlay v. Chirney*, 20 Q.B.D. 494, 502 described its origin as "obscure and post-classical," by which I understand he meant it had its origin in Roman law. The scope of the doctrine, of course, depends upon what is an "actio personalis," and indeed in the context of a classical derivation it has been suggested that it is a corruption of "actio poenalis." However that may be, it became a doctrine of the common law in the form I have cited. At first it applied to a very wide spectrum of claims, and indeed the survival of a cause of action beyond death was the exception in the earliest English law.
- H A justification in early days for limiting a claim to the life of the original parties to the wrong may have been found in the fact that suits for civil injuries were vindictive and quasi-criminal in their character and such a

process was scarcely appropriate to be prosecuted by or against the estate of a party to the delict. In 1330 by 4 Ed. III C.7 the rule was limited so as to permit the survival of claims where there had been trespass to goods. Judicially the rule was further confined so as not to apply to cases of damage to land and it would appear never to have applied to actions founded upon any obligation, contract, debt, covenant or other duty—see *Wheatley v. Lane*, 1 Wms.Saund. 216n. Indeed as the understanding developed that the principle to be applied in civil cases was compensatory and not punitive any solid basis for limiting claims to the lifetime of the original parties substantially disappeared. For many years prior to 1938 it was recognised that the principle *actio personalis moritur cum persona* was for practical purposes confined to actions in tort. Moreover as it was a doctrine of the common law it was applicable only to common law claims or to claims in equity to which it was extended by analogy but never, so far as I know, was it applied to claims made under statutory authority. I consider the statement of Cozens Hardy L.J. in *Darlington v. Roscoe* at p. 229 is well founded. I quote: “the case of *Peebles v. Oswaldwhistle U.D.C.* [1896] 2 Q.B. 159 is, I think, an authority that, where a statutory right is conferred on a person as in the present case, that right is one which passes to his legal personal representative and can be enforced by him.” As I find no indication to the contrary in the present statute, I regard the claim which was conferred on the deceased victim as now vested in the applicant as his personal representative. I may say that I see no distinction in principle and no justification in reason for holding that a claim for a quantified sum would survive, whereas a claim which required to be assessed would not.

Having regard to my conclusion on the main point I do not consider it necessary to consider whether the claim would in any event come within the terms of section 14 of the 1937 Act or whether it should be confined to actions for tort and other such non-statutory wrongs which were the only cases in which the remedy was required.

I would, therefore, also answer the question yes.

Order accordingly.

Solicitor for the appellant: *Crown Solicitor*

Solicitors for the respondent: *Campbell and O’Rawe*

S. M. M.