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CREGAN v. SECRETARY OF STATE <sup>1</sup>

*Criminal injury to persons—Personal injuries caused by collision of two motor vehicles—Criminal offence—Offence arising from the driving or the use of one of the motor vehicles—Whether the motor vehicle was at the time of the commission of the offence being primarily used for the purpose of committing, or facilitating the commission of, some other offence—Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (c. 9) s. 11 (1)*

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By section 11 (1) of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 a criminal offence:

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“does not include an offence arising from the driving or user of a motor vehicle unless the motor vehicle was, at the time of the commission of the offence, being primarily used for the purpose of . . . (b) committing, or facilitating the commission of, some other offence.”

On the true construction of that section the “other offence” need not be a specific or identifiable offence nor need its commission be contemporaneous with the commission of the offence arising from the driving or user of the motor vehicle.

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No cases are referred to in the judgments.

CASE STATED by O'Donnell J. The following is an extract from the case stated:

“4. I made the following findings on the evidence before me:

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(a) On 23 November 1976 at approximately 7.40 p.m. the applicant/respondent was driving his car at Ladybrook Park, Belfast, when another car (‘the third party car’) was so driven that it came into collision with the applicant/respondent’s car and caused serious injuries to the applicant/respondent.

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(b) The manner of driving of the third party car was dangerous to other persons using the public highway. It was accepted by both sides that the driver was guilty of an offence arising from the driving of the car.

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(c) Two youths unlawfully by threat of force or by intimidation seized control of the third party car some little time before the collision at the shops at Ladybrook a short distance away. This was an area in which hijackings for terrorist purposes frequently occurred.

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(d) At the time of the said collision, the third party car was being driven to some place either for the purpose of the commission by the occupants of an offence of a terrorist nature or for the purpose of facilitating the commission of some such offence either immediately or at some future date. The place to which the car was being driven, the

<sup>1</sup> In the Court of Appeal before Lowry L.C.J., Lanes and McGonigal L.JJ.: Dec. 11, 1978.

precise offence in contemplation, the persons who were to commit it and the time when it was to be committed were unknown to the court.

5. (a) It was contended on behalf of the applicant/respondent that the "other offence" referred to in section 11 of the 1968 Act under the definition of "criminal offence" did not have to be contemporaneous with the driving, but could be one which was to be committed at some time in the future.

(b) It was contended on behalf of the respondent/appellant that the "other offence" had to be a specific and identifiable offence which was itself in the course of being committed and that the intention of Parliament in framing the definition in section 11 of the 1968 Act was to restrict cases where compensation was to be paid under that Act for injuries caused by the driving or user of motor vehicles to injuries so immediately and contemporaneously connected with the commission of crimes.

6. I held that I was satisfied on the balance of probabilities that the third party car had been hijacked for terrorist purposes, and that at the time of the accident the car was being driven to a place, either for the purpose of a terrorist crime or for the purpose of facilitating some terrorist crime either immediately or at some future date. I held that the words "facilitating the commission of some other offence" in the definition of criminal offence in section 11 of the 1968 Act are not restricted to facilitating the commission of offences being committed contemporaneously or in close temporal association with the act at the time of the accident. Accordingly, I held that the third party car was at the time of the commission of the driving offence being used primarily for the purpose of facilitating the commission of some other offence. I affirmed the award of the learned additional Recorder, and by consent of the parties varied the amount of compensation awarded from £60,000 to £50,000. . . .

8. The question of law for the opinion of the Court of Appeal is whether on the true construction of section 11 (1) of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 the phrase 'facilitating the commission of some other offence.'

(a) is capable of including an act facilitating the commission of an unidentifiable offence by unspecified persons at an indefinite time in the future; or

(b) is restricted to an act facilitating the commission of a specific and identifiable offence which is itself in the course of being committed; or

(c) has some other, and if so what, meaning."

*R. D. Carswell Q.C.* and *B. F. Kerr* for the appellant.

*J. M. A. Nicholson Q.C.* and *J. O. McNulty* for the respondent.

LOWRY L.C.J. On 23 November 1976 William Cregan ("the respondent") was driving his Ford Escort car along Ladybrook Park, Belfast, when a Jaguar car coming in the opposite direction collided with his car and caused him serious and permanent personal injuries. A short time earlier, and a short distance away, near the shops at Ladybrook Park (an area in which hijackings for terrorist purposes have frequently occurred), two

**A** youths apparently aged about 17 or 18, had hijacked the Jaguar from the wife of its owner, telling her that she would get the car back but that she was not to say anything. They also told her that they knew where she lived.

The respondent sought compensation for his injuries under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, relying on the definition of a criminal injury in section 11 (1) which says:

- B** “ ‘Criminal injury’ means an injury (including an injury which results in death) directly attributable to:
- (a) a criminal offence; or
  - (b) the lawful arrest or attempted arrest of an offender or suspected offender, or to the prevention or attempted prevention of an offence, or to the giving of help to any constable who is engaged in arresting or attempting to arrest an offender or suspected offender or in preventing or attempting to prevent an offence ”;
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A criminal offence is there defined as:

- “ any act or omission for which a person (if he were of full age and capacity) might be fined or sentenced to imprisonment, but does not include an offence arising from the driving or user of a motor vehicle unless the motor vehicle was, at the time of the commission of the offence, being primarily used for the purpose of:
- (a) causing injury; or
  - (b) committing, or facilitating the commission of, some other offence; or
  - (c) avoiding arrest, or escaping detection, in connection with some other offence ”;
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The learned county court judge awarded £60,000 compensation, and the Secretary of State (whom I shall refer to as “ the appellant ”) appealed to the High Court.

O’Donnell J., who heard the appeal, made the following findings of fact on the evidence before him:

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- (a) On 23 November, 1976, at approximately 7.40 p.m. the applicant/respondent was driving his car at Ladybrook Park, Belfast, when another car (“ the third party car ”) was so driven that it came into collision with the applicant/respondent’s car and caused serious injuries to the applicant/respondent.
  - (b) The manner of driving of the third party car was dangerous to other persons using the public highway. It was accepted by both sides that the driver was guilty of an offence arising from the driving of the car.
  - (c) Two youths unlawfully by threat of forces or by intimidation seized control of the third party car some little time before the collision at the shops at Ladybrook a short distance away. This was an area in which hijackings for terrorist purposes frequently occurred.
  - (d) At the time of the said collision, the third party car was being driven to some place either for the purpose of the commission by the occupants of an offence of a terrorist nature or for the purpose
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of facilitating the commission of some such offence either immediately or at some future date. The place to which the car was being driven, the precise offence in contemplation, the persons who were to commit it and the time when it was to be committed were unknown to the court.

The appellant, while conceding that the respondent's injuries were caused by the dangerous driving of the Jaguar (which constituted an offence arising from the driving of a motor vehicle), contended that it was wrong to infer that the car was at the time of the commission of the offence being primarily used for the purpose of:

- (a) causing injury; or
- (b) committing, or facilitating the commission of, some other offence; or
- (c) avoiding arrest, or escaping detection, in connection with some other offence.

In support of that contention he argued that the "other offence" had to be a specific and identifiable offence which was itself in the course of being committed, and that the intention of Parliament in framing the definition in section 11 was to restrict cases where compensation was to be paid under the Act for injuries caused by the driving or user of motor vehicles to injuries immediately and contemporaneously connected with the commission of crimes.

The learned judge rejected this argument and affirmed the decree (the amount of which was altered by consent to £50,000), but, at the request of the appellant, stated a case on the point for the opinion of this court.

Mr. Carswell, who in this court appeared with Mr. Kerr for the appellant, contended that purposes (a) and (b) above involve the contemporaneous use of the vehicle in the course of causing injury or committing, or facilitating the commission of, the "other offence" referred to in (b), and that use for purpose (c) contemplates that the "other offence" has already been committed: on this interpretation, he argued, the learned judge's findings of fact in the case stated did not support a decree.

I do not accept this interpretation, because there is, in my opinion, nothing in the definition of a criminal offence to exclude a reference to the future in regard to purpose (a) or (b), and this proposition is strengthened by the fact that purpose (c) most naturally refers to the past.

The appellant argued that the word "facilitating" in (b) means "aiding and abetting" and therefore adds nothing to the contemporaneous flavour of the word "committing."

Assuming for the sake of argument that "facilitating" is a synonym for "aiding and abetting," I do not forget that section 1 (1) of the Criminal Law Act (Northern Ireland) 1967 abolished the distinction between felony and misdemeanour and between aiders and abettors and accessories before and after the fact. Nor would I readily concede the appellant's premise that one can use a vehicle "for the purpose of committing" an offence only by using it *in or during* the commission of that offence.

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

Lowry L.C.J.

**A** I would answer the questions in the case stated in favour of the respondent and would dismiss the appeal.

JONES L.J. I concur and have nothing to add.

McGONIGAL L.J. I also concur.

*Order accordingly.*

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Solicitor for the appellant: *R. C. Carvill.*

Solicitor for the respondent: *James Fitzpatrick & Co.*

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