

HANLON v. MINISTRY OF HOME AFFAIRS
FOR NORTHERN IRELAND¹

5 *Criminal Injuries—Compensation—Applicant suffering a criminal injury giving rise to less than three weeks' loss of earnings but to more than £50 total damage—Whether entitled to compensation—Criminal Injuries to Persons (Compensation) Act (Northern Ireland), 1968 (c.9), s.1(3) (c).*

10 *Statute—Construction—Words “whichever amount is the less” disregarded—Disjunctive word “or” read as conjunctive “and”—Criminal Injuries to Persons (Compensation) Act (Northern Ireland), 1968 (c.9), s.1(3)(c).*

15 By section 1(1) of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland), 1968, it is enacted that where any person sustains any criminal injury in Northern Ireland the county court may make an order for the payment of compensation to or for the benefit of the victim, and by subsection (3) of that section, it is provided that “No order shall be made under this section . . . (c) if the criminal injury “gives rise to a loss of less than three weeks' earnings on the part of the “victim or is one for which a total compensation of less than £50 would
20 “be payable, whichever amount is the less . . .”.

An applicant claimed compensation for a criminal injury as the result of which he lost ten days' wages, but for which it was found that he would have been entitled to a total compensation of £115. The county court judge dismissed the application.

25 *Held on appeal, that the words “whichever amount is the less” in section 1(3)(c) of the Act should be disregarded, and the word “or” should be read as “and”, so as to avoid anomalies and to give effect to what must clearly have been the intention of the Legislature, and accordingly that the applicant was entitled to compensation.*

30 *APPEAL from a decision of the Acting County Court Judge of Down.*

The facts appear sufficiently in the headnote and in the judgment of Jones J.

Nicholson for the appellant.

35 *Hutton for the Ministry.*

¹ In the High Court of Justice in Northern Ireland before Jones J. Oct. 28, Nov. 7, 1969.

Cur. adv. vult.

JONES J.: On May 15, 1969, Paul Hanlon of 3, St. Patrick's Drive, Downpatrick, the original applicant and now appellant in this application under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland), 1968 (hereinafter called "the 1968 Act") was coming home from a Civic Week dance in Ballynahinch, when he was attacked by a group of twelve youths and sustained personal injuries. The injuries in question consisted of lacerations of the face and bruising, and rendered him unfit for his work for ten days. These facts are agreed on behalf of the respondent Ministry as also are the damages which the appellant sustained, namely £20 for ten days' loss of wages, £20 in respect of certain items of clothing lost or damaged in, or as a result of, the attack and £75 general damages, making a total of £115 agreed damages. The learned county court judge held, however, that he could not make an order for compensation under the 1968 Act in view of section 1(3) thereof which provides, so far as material:—
"No order [that is an order for payment of compensation] shall be made under this section . . . (c) if the criminal injury gives rise to a loss of less than three weeks' earnings on the part of the victim or is one for which a total compensation of less than £50 would be payable, whichever amount is the less."

The learned county court judge held, as I am informed by counsel, that in view of the disjunctive "or" in line 2 of subsection (3)(c), the fact that the appellant only lost ten days' earnings prevented an order for compensation from being made in the appellant's favour despite the fact that the appellant's total loss was in excess of £50, and it is from that decision that the appellant now appeals to this court.

The history of this legislation is relevant. Prior to the passing of the 1968 Act the legislation under which compensation could be obtained for personal injuries caused maliciously consisted of the Grand Jury (Ireland) Act, 1836, the Local Government (Ireland) Act, 1898, the Criminal Injuries (Ireland) Acts, 1919 and 1920, and the Criminal Injuries Acts (Northern Ireland), 1956 to 1964. No doubt the reason for this legislation was not entirely the same as that which activated the passing of the 1968 Act but two things are clear, and are conceded by Mr. Hutton for the Ministry, namely, in the first place, that the general intention was to widen, by the 1968

Act, the circumstances under which compensation could be claimed and obtained and, secondly, that had the appellant's claim fallen to be considered under the provisions in force prior to the passing of the 1968 Act it would have succeeded without any question as it
5 was common ground that, with the one reservation relating to the point at issue in this case, all the requirements for a claim have been fulfilled by the appellant.

The next historical, or background, point concerns the position in England. For some time it had been urged in that jurisdiction
10 that provision should be made for compensating persons who suffer injury in the course, or as a result, of the commission by others of crimes. Such a provision was made in 1964 by way of a non-statutory scheme whereby, through the medium of a board,
15 ex gratia payments of compensation might be made to victims of crimes of violence. It is not necessary to go into that scheme in detail except to say that it most clearly confers a right to consideration for compensation, when—assuming the other requisites are fulfilled—the applicant has suffered three weeks' loss of wages or £50 in total loss. A statement of the position in England in this
20 respect is to be found in the 1969 cumulative supplement to Halsbury's Laws of England 3rd ed., vol. 10, p. 135, where it is stated:—"The injury must have given rise to at least three weeks' "loss of earnings or is an injury for which compensation of not "less than £50 would be awarded."

25 Apparently it was felt by the authorities in Northern Ireland that a similar scheme should be introduced in this jurisdiction. That was done in 1968, but in Northern Ireland it was achieved by Act of Parliament and the function of adjudication on claims was vested in the county court instead of in a board as in England.
30 And when the Northern Ireland Act came to be passed it was substituted for the former provisions of the then existing code whereby the victims of criminal injuries to the person could obtain compensation in certain circumstances. And it is conceded by Mr. Hutton, on behalf of the Ministry, that the intention which lay
35 behind the 1968 Act was to widen the right to compensation by bringing it generally into line with the English scheme and that the previous rights in Northern Ireland to compensation for criminal injuries to the person have, so to speak, merged in the new entitlement as contained in the 1968 Act.

That being the state of the matter, one comes to the kernel of the case. The appellant sustained injuries which caused him a loss of less than three weeks' earnings, (actually a loss of ten days earnings) and, in all, his loss exceeded £50: in fact it amounted to £115. In England, as is agreed by counsel, had the case arisen in that jurisdiction, the appellant would have been entitled to recover the sum of £115 as compensation. The learned county court judge, however, when confronted with paragraph (c) of section 1(3) held that he must construe it strictly or literally and that as the appellant had lost less than three weeks' earnings, then on a disjunctive reading of the word "or" he had no alternative but to hold that the claim must fail. For convenience, I repeat the relevant part of section 1 (3):—"No order [that is an order for payment of compensation] shall be made under this section . . . "(c) if the criminal "injury gives rise to a loss of less than three weeks' earnings on the "part of the victim or is one for which a total compensation of less "than £50 would be payable, whichever amount is the less."

Mr. Nicholson, for the appellant, contends—and Mr. Hutton for the Ministry does not seek to dispute—that such a construction as that which the learned county court judge placed on the paragraph would create serious anomalies, and indeed injustices. The measure or basis of compensation is set out in section 4 of the 1968 Act and it is quite clear that, whether or not it squares off entirely with assessments of damages at common law, it certainly includes compensation for pain and suffering and loss of amenity. Therefore Mr. Nicholson says that it would constitute a gross anomaly, and work a great injustice, if a person, in circumstances which would basically fall within the 1968 Act, lost, say, an eye or a thumb but, by reason of the nature of his employment, he was able to get back to work within three weeks and thereby be deprived of compensation under the 1968 Act because he fell within one of the branches of the disentitling paragraphs, namely, that he had sustained a loss of less than three weeks' earnings. He also put the case of the old age pensioner who does not earn wages, or the child who is too young to earn who might sustain a terrible criminal injury. And Mr. Hutton does not seek to dispute that the instances contemplated by Mr. Nicholson are, so to speak, reasonable, hypothetical cases to take, and he also accepts that to exclude them from the cover given by the 1968 Act would be quite contrary to the intention of the 1968 Act.

In that state of the matter, I approach section 1(3)(c) to see if it can be construed in accordance with the commonly accepted intention of the legislation. Well the first point which strikes me about paragraph (c) is that the words "whichever amount is the less" do not seem to fit the plan of the paragraph as it stands even accepting that "or" should be read in the disjunctive sense. The third subsection as it stands, prescribes that an order shall not be made if the loss is less than three weeks' earnings *or* is one which would attract total compensation of less than £50. One therefore has the alternative excluding conditions and I cannot see what effect the words "whichever amount is the less" can have. That being so, it seems to me that there is adequate authority on which to base a construction of the paragraph which disregards those words. This would seem to be within the principles set out in Maxwell on the Interpretation of Statutes, 12th ed. pp. 228-231; and Morton J., as he then was, did something very much the same—and in relation to the words "whichever is the later"—in the case of *In re Pointer*.¹

But then one has to face the position presented by the use of the word "or" in paragraph (c) of section 1(3)—"if the criminal injury gives rise to a loss of less than three weeks' earnings on the part of the victim *or* is one for which a total compensation of less than £50 would be payable . . .".

Now, it is common case that the intention of the 1968 Act was to achieve a position similar to that in force in England under the 1964 scheme, at least in so far as the minimum qualifying loss is concerned. It is also common case that, having regard to the intention of the statute, paragraph (c) of section 1(3) could work an anomaly, indeed an absurdity, if "or" is read strictly in its disjunctive sense. Mr. Nicholson accordingly adopts what Lindley L.J. said in the *Duke of Buccleuch's* case²:—"You are not so to construe the Act of Parliament as to reduce it to rank absurdity . . . "You must give it such a meaning as will carry out its objects." And Mr. Nicholson goes on to say that if you read "and" in place of "or", paragraph (c)—of course with the words "whichever amount is the less" disregarded—falls into place and would operate to conform with the agreed intention of the Act. There is no doubt that there is authority for such an approach: see Maxwell

¹ [1941] Ch. 60; [1940] 1 All E.R. 372.

² (1889) 15 P.D. 86, 96.

on Interpretation of Statutes (supra) at p. 232 et seq.; *John G. Stein & Co. Ltd. v. O'Hanlon*,³ *R. F. Brown & Co. Ltd. v. Harrison*,⁴ and that being so it seems to me that if ever there was a case in which this should be done, it is this case.

Accordingly I have come to the conclusion that the correct construction to place on paragraph (c) of section 1(3) of the 1968 Act is that the case may be maintainable if either there is three weeks' loss of earnings or the total compensation exceeds £50; and as that is the position here, and as it is agreed that all the other requirements of a valid claim are present, I reverse the decision of the court below and enter a decree in favour of the applicant for £115 with costs here and below and such witnesses' expenses as may be agreed between the solicitors or, if the solicitors cannot agree, as may be determined by the Registrar.

Appeal allowed. 15

Solicitor for the applicants: *J. Murland & Co.*

Solicitor for the Ministry: *Chief Crown Solicitor.*

J.P.

³ [1965] A.C. 890, 904; [1965] 2 W.L.R. 496; [1965] 1 All E.R. 547.

⁴ (1927) 137 L.T. 549; 43 T.L.R. 394.