HUTCHINSON v. SECRETARY OF STATE[1]

Criminal Injuries to persons—Causation—Applicant a police officer—Fell climbing wall while in pursuit of suspected terrorist—Whether injury "directly attributable"—Criminal Injuries (Compensation) (Northern Ireland) Order 1977, (S.I. No. 1248, N.I. 15), art. 2(2).

The applicant was a police officer who was on duty in Londonderry at a time when the city was disturbed. The police had information that a bomb attack would be mounted on the police within the city walls. The applicant was at an entrance to the Cathedral when he saw one, and possibly another, figure inside the grounds and decided to pursue. The entrances being closed, the applicant tried to climb over a wall, but slipped from the top of the wall and injured his back on a metal crash barrier.

The Secretary of State rejected the applicant's claim for compensation on the ground that his injury did not constitute a criminal injury within the meaning of article 2(2) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1977.

Held, that the applicant's injury was directly attributable to his attempted prevention of crime and consequently, there being no negligent behaviour on his part, he was entitled to compensation (see page 564F).

per Carswell J. There is no basic conflict in principle behind the differing phraseology used by the courts in stating a test of causation: they have been concerned to propound a test that would exclude injuries sustained in the course of a police officer's duties which are the common lot of mankind, such as slipping on ice, and at the same time include those which result from unusually hazardous activities in which the officer has to engage in order to perform those duties (see page 564C).

The following cases are referred to in the judgment:

Grant v. *Sun Shipping Co. Ltd.* [1948] A.C. 549; [1948] 2 All E.R. 238 H.L.
Martin v. *Ministry of Home Affairs* [1979] N.I. 172 C.A.
Niland v. *Secretary of State* [1982] N.I. 181 H.C.
O'Dowd v. *Secretary of State* [1982] N.I. 210 C.A.
R. v. *Criminal Injuries Compensation Board, ex parte Ince* [1973] 3 All E.R. 808 C.A.
Stapley v. *Gypsum Mines Ltd.* [1953] A.C. 663; [1953] 3 W.L.R. 279; 2 All E.R. 478 H.L.

APPEAL by the Secretary of State for Northern Ireland, respondent, from the decision of the Recorder of Londonderry awarding compensation under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977 to Peter Christopher McKinley Hutchinson, applicant. The facts appear sufficiently in the judgment of Carswell J.

J. O. McNulty Q.C. and *D. J. Hopley* for the appellant (respondent).
P. Coghlin Q.C. and *J. J. Mallon* for the respondent (applicant).

Cur. adv. vult.

[1]In the High Court before Carswell J.: 5, 6 September, 14 October 1988.

CARSWELL J. The applicant was on duty as a police inspector in Londonderry when he sustained an injury to his back in a fall. In consequence of the injury he has been discharged from the RUC on medical grounds, and has suffered from persisting symptoms. He claims that the circumstances of the injury were such as to entitle him to criminal injury compensation of a substantial amount.

On the evening of 19 October 1985 the applicant and Sergeant Cummings were in a police vehicle in the vicinity of St. Columb's Cathedral, Londonderry. The centre of the city was disturbed that evening. A serious bomb explosion had occurred in Shipquay Street. The police were expecting on the basis of information received that a blast bomb attack would be mounted upon the members of the police cordon within the city walls. The area around the Cathedral was one of the most likely locations for such an attack to take place. The applicant and Seargeant Cummings were at the main entrance to the Cathedral when the applicant saw one figure inside the grounds, and thought that there was possibly another behind. They decided to pursue them, and at the sergeant's suggestion drove to St. Columb's Court, at the end of which was another entrance whose gates were usually open.

When they reached St. Columb's Court they moved on foot to the end of the street, where a flight of steps led up to the gates, which turned out to be closed. The officers sought to gain access to the Cathedral grounds by scaling the wall, via the side of the steps. Sergeant Cummings got over the wall beside the left hand gate pillar. The applicant was following him and was on top of the wall when he slipped and fell some ten feet to the street. In his fall he came down on the centre of his back upon a metal crash barrier used for crowd control. The sergeant continued his pursuit, but without success. The applicant lay where he fell until he returned and helped him into the car and thence to hospital.

The Secretary of State rejected the claim on the ground that the applicant's injury did not constitute a criminal injury within the terms of the Criminal Injuries (Compensation) (Northern Ireland) Order 1977, and his counsel so argued on this appeal. It is necessary therefore to examine the legislation and the authorities.

The material part of Article 2(2) of the 1977 Order defines a criminal injury as:

> "An injury (including an injury which results in death) directly attributable to—
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> (a) a violent offence;
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> (b) the lawful arrest or attempted arrest of an offender or suspected offender, or the prevention or attempted prevention of an offence. . . ."

Counsel submitted on behalf of the applicant that when he fell he was attempting to prevent an offence which he thought was about to be committed, namely, an armed attack upon members of the Security Forces by terrorists stationed in the grounds of St Columb's Cathedral.

The ambit of the phrase "directly attributable" in the comparable wording of section 11(1) of the Criminal Injuries to Persons (Compensation)

Act (Northern Ireland) 1968 was considered by the Court of Appeal in *Martin* v. *Ministry of Home Affairs* [1979] N.I. 172 (decided in 1970). The court held that in giving proper force and effect to the words one must look for a causa causans of the injury and not merely a causa sine qua non. The meaning of the Phrase adopted by the English Court of Appeal in *R.* v. *Criminal Injuries Compensation Board, ex parte Ince* [1973] 3 All E.R. 808 appeared to be such that a wider range of claims would be admissible. Lord Denning M.R. held that "directly attributable" did not mean "solely attributable". Megaw L.J. propounded the following definition at page 815D:

> "First, there is the question of the meaning of the phrase 'directly attributable to'. In my judgment, personal injury is directly attributable to any of the matters (crime of violence, arrest of an offender, attempted prevention of an offence, or any of the other matters set out in para. 5 of the scheme), if such matter is, on the basis of all the relevant facts, a substantial cause of personal injury. It does not need to be the sole cause. By the word 'substantial' I mean that the relationship between the particular cause and the personal injury is such that a reasonable person, applying his common sense, would fairly and seriously regard it as being a cause. I do not think that one need go further in seeking an attempted exposition than the statement regarding causation made by Lord Reid in *Stapley* v. *Gypsum Mines Ltd.*:
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> > 'If there is any valid logical or scientific theory of causation, it is quite irrelevant in this connection. In a court of law, this question must be decided as a properly instructed and reasonable jury would decide it. As Lord Du Parcq said in *Grant* v. *Sun Shipping Co. Ltd:* "A jury would not have profited by a direction couched in the language of logicians, and expounding theories of causation, with or without the aid of Latin maxims." The question must be determined by applying common sense to the facts of each particular case.'
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> In that particular case, as here, it was not a question of ascertaining one, single, dominant cause. It was a question of more than one possible cause being relevant in respect of one particular event."

The apparent differences in definition were reconciled by Hutton J. in *Niland* v. *Secretary of State* [1982] N.I. 181, in which he examined the phraseology used in each decision and expressed the view that there was no basic conflict in principle between the judgments in each, a view supported by Lord Lowry L.C.J. in *O'Dowd* v. *Secretary of State* [1982] N.I. 210, 214. Hutton J. also held that a claimant did not have to prove that an offence was in fact about to take place.

In matters of causation stating the test to be applied tends to be rather easier than its actual application, like Lord Macnaghten's famous aphorism about the rule in *Shelley's* case. I would call in aid the examples given by Lord MacDermott L.C.J. in *Martin* v. *Ministry of Home Affairs* at page 177.

> "A, for example, goes to the aid of a constable who is having difficulty in making an arrest with the result that A is knocked down and injured unwittingly by the constable in the course of the struggle. A's injury would seem to be within paragraph (b) and section 1(3)(a). The con-

stable's act resulted in injury and the giving of help to the constable was a causa causans. Again, B is a constable who in the execution of his duty has to arrest a person who makes off and gets out on the parapet of a high building in the course of the pursuit. B in an effort to effect an arrest follows the fugitive into a position of peril, loses his balance and falls to his death. As at present advised, I see no reason why such a case should not qualify for compensation under the Act of 1968. But take instead the case where constable C's pursuit of an offender takes him along a path presenting no particular danger. As he runs he happens to fall and hurt himself. Is his injury directly attributable to the attempted arrest? And is it the result of the act of the person pursued in running away? And would it make any difference if the path of flight and pursuit was over rough and dangerous ground?

These examples appear to me to indicate that under paragraph (b) the issue for decision may well be a matter of degree, with the dividing line only to be found by the light of the facts and circumstances of the particular case."

I would refer also to a passage from the judgment of Jones J. at pages 175–6.

"Having arrived at that point it seems to me that the facts of any case may well confront one with the task of resolving a question of degree. And I do not think that one can draw any clear line between an injury received before an arrest is effected and one which, in point of time, follows the arrest, though, in practice, the condition of direct attributability may be easier of fulfilment before, rather than after, an arrest has been made. Thus, in the case posed by Mr. Cahill, it might possibly be that an injury received by a constable in an accidental fall sustained when, in an effort to arrest him, the constable was pursuing an escaping malefactor could be said, on the facts of a particular case, to be directly attributable to the subsequent arrest. But also if a malefactor had climbed to some extremely inaccessible and dangerous place, let us suppose the upper and more exposed parts of a tower such as the G.P.O. tower in London, and a policeman followed him in order to arrest him but, having arrested him and when the prisoner was 'coming quietly', fell due to the danger of the place, in such circumstances it might possibly be said, depending of course on the detailed facts of the particular case, that the resulting injury to the policeman was directly attributable to the arrest. But in my view such a result would only be possible if there were an adequate finding by the tribunal of fact as to the danger of the place in question and the risk involved. On the other hand while a purely accidental injury to an intending arrestor, prior to arrest, might in certain circumstances be held to be directly attributable to an arrest or attempted arrest, the arresting policeman might be in a more difficult position, from the standpoint of compensation under the 1968 Act, if he had effected the arrest in normal conditions of no particular danger or difficulty and had then injured himself accidentally, as for example if he had slipped on an icy patch on the road when conducting his captive to the police station—or if he had fallen through a defective manhole in the sidewalk. Of course each case depends on its own facts as found by the tribunal of fact, and

one should, I think, be cautious lest one pays undue attention to analogies.

It therefore seems to me that, in determining what is a causa causans, as distinct from a causa sine qua non, in any case such as this, close attention must be paid to the facts as found by the county court judge. Well, in the present case the judge did not make any finding that the place where the affair occurred was one of particular danger or that the appellant's presence there with his captive created any particular risk or hazard. The roof on to which the appellant went does not appear to have been a very high roof and he seems to have experienced no difficulty in getting there. In my view, on the facts found, the appellant's fall through the roof cannot be said to have been a fall directly attributable to the arrest or to any of the other matters mentioned in (a) or (b) of section 11(1)."

The Court of Appeal was concerned to propound a test that would exclude injuries sustained in the course of a police officer's duties which are the common lot of mankind, such as slipping on ice, and at the same time include those which result from unusually hazardous activities in which the officer has to engage in order to perform those duties. As the members of the court tacitly recognised, every application of the principles of causation involves an element of selection of competing causes and distinctions which critics might assail as capricious may turn upon the form in which facts are found. In *Martin's* case itself a different result might have been produced by greater emphasis upon the danger inherent in walking upon a fragile roof and the necessity for the applicant to venture upon it in order to effect the arrest. In any given case, as Lord MacDermott remarked in the passage which I cited earlier, it may be a matter of degree on which side of the dividing line it falls. A court should, one hopes, be able to decide this without being reduced to reliance upon nothing but that concept of final resort, judicial common sense, a method of decision gently deprecated by Hart & Honoré, *Causation in the Law*, (2nd ed.) page 26.

I consider that if one applies the test of selection of the causa causans, it may be said that the reason why the applicant was on the wall at all was his pursuit of suspected terrorists, which puts him in the same category as one of Lord MacDermott's examples. Again, if one asks whether the attempted prevention of crime was a substantial cause of his fall, supposing that test to differ in any way from the other, the answer comes down in favour of the applicant. I accordingly hold that the applicant's injury was directly attributable to his attempted prevention of crime, and consequently he is entitled to compensation. It was not suggested that the fall was attributable to any degree to negligent behaviour on his part, and he is therefore entitled to recover in full.

[His Lordship then considered the applicant's injuries and assessed damages at £84,884 for loss of earnings plus £25,000 for pain and suffering and loss of amenity.]

Appeal dismissed

Solicitors for the appellant (respondent): *Crown Solicitor.*
Solicitors for the respondent (applicant): *Ramsey & McKenna.*

W.D.T.