

N.I.

A McCANN v. SECRETARY OF STATE¹

B *Criminal injury to persons—Applicant sustained criminal injury after pursuing assailants—Applicant previously involved in preparation of acts of terrorism—Whether respondent required to show such acts politically motivated—Whether appellant's conduct provocative or negligent—Criminal Injuries (Compensation) (Northern Ireland) Order 1977 (No. 1248, N.I. 15), Arts. 2(2), 5(2), 6(3)(b).*

C In 1981 the applicant was struck by a missile thrown from a group of youths. The applicant followed the youths into a nearby house and sustained a criminal injury after being assaulted. In 1973 the applicant was convicted of offences arising from the transport by him of a sten gun from one part of Belfast to another. The respondent argued that compensation was not payable to the applicant by virtue of article 6(3)(b) of the Criminal Injuries (Compensation) Order 1977² as he had been engaged in the preparation of an act of terrorism in 1973. The applicant argued that the respondent must prove that the applicant's act in 1973 was politically motivated to avail himself of article 6(3)(b).

D *Held*, dismissing the appeal, that the applicant was engaged in the preparation of an act of terrorism in 1973 and accordingly compensation was not payable. The respondent was not required to prove that such an act was politically motivated merely that it involved the use of violence for the purpose of putting the public or a section of the public in fear (see page 127F).

E Moreover the appellant had acted aggressively in pursuing the youths into the house and, if not barred by article 6(3), his claim would have been reduced under article 5 on account of his negligent and provocative behaviour (see page 128A).

The following cases are referred to in the judgment:

Dilworth v. Commissioner of Stamps (1899) A.C. 99 P.C.

F *Robinson v. Barton-Eccles Local Board* (1883) 8 App. Cas. 798 H.L.

APPEAL by Patrick McCann against the dismissal by the Recorder of Belfast of his claim for compensation under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. The facts appear sufficiently in the judgment of MacDermott J.

M. P. Kelly for the appellant.

G S. G. Quinn for the respondent.

Cur. adv. vult.

H MACDERMOTT J. This is an appeal by Patrick McCann against the dismissal at the Belfast Recorder's Court on 20 October 1982 of his claim for compensation under the provisions of the Criminal Injuries (Compensation)

¹ In the Queen's Bench Division before MacDermott J.: 6, 21 January 1983.

² See below page 126D.

(Northern Ireland) Order 1977. The claim was dismissed as the appellant failed to appear to prosecute his appeal under article 14 of this order.

The background facts can be simply stated and are not in dispute. Just after midnight—that is early in the morning of 14 March 1981—the appellant was walking up Divis Street, Belfast, towards his home which is in the Divis Flats. He had spent the evening drinking and talking with friends in the city centre. He says that as he passed John Street, which was on his left, he saw two rival groups of youths. Missiles started to fly and he was struck on his shoulder by a bottle. He was not hurt and though he believed that he had been hit accidentally he saw fit to pursue three or four of the youths up John Street towards the flats. The youths entered a house about half-way along John Street and the appellant followed to seek an explanation, being annoyed at being hit. In the front room of the house were a number of youths and the appellant was struck on the jaw by one of them—he could not say if it was the original bottle thrower. This blow was, he believed, with a broken ornament. In any event his chin was cut and, subsequently, at the Royal Victoria Hospital eleven stitches were put in the wound, which appears to have healed uneventfully, though he did not keep an appointment to have the stitches removed in hospital.

For the respondent Mr. Quinn accepted that the appellant sustained a criminal injury but argued firstly: that compensation is not payable as the appellant is a person to whom article 6(3)(b) applies: it reads:

“who has been engaged in the commission, preparation or instigation of acts of terrorism at any time whatsoever, or is so engaged”

and secondly: having regard to the provisions of article 5(2) no compensation should be paid in the circumstances. That sub-article reads:

“In determining whether any compensation should be paid and, if so, its amount, the Secretary of State shall have regard to all such circumstances as are relevant and, without prejudice to the generality of the foregoing, shall have regard to any provocative or negligent behaviour of the victim which contributed, directly or indirectly, to the criminal injury.”

Mr. Quinn’s first point is founded on the fact that in 1973, when aged 15, the appellant pleaded guilty to three charges arising out of an incident when the appellant and a friend, McGrady, were playing about Leeson Street. They were approached by a man and required to carry a loaded sten gun to the Ardoyne. In evidence the appellant sought to suggest that he was acting under duress but his evidence was far from impressive. In any event he pleaded guilty to (1) an offence under section 17 of the Firearms Act (Northern Ireland) 1969—carrying a firearm; (2) an offence under section 19(a) of the same Act—being in possession of a firearm and ammunition in suspicious circumstances; and (3) an offence under section 3(4) of that Act—possession of a prohibited weapon. His sentence was one of Borstal training.

For the appellant Mr. Kelly argues that his client was not in 1973 engaged in acts of terrorism and that even if his possession of the sten gun and ammunition could be so described his involvement does not fall within the words “commission, preparation or instigation”. “Terrorism” is defined in

A article 2(2)—it means “the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear.”

B Mr. Kelly argues that the effect of this definition is that the Crown, to avail itself of article 6(3)(b), must prove political motivation as the words “and includes” must be read conjunctively with the previous phrase. On the face of the words used I ventured to doubt if this were the correct construction. I have since reminded myself that the words “and includes” are often used to enlarge the meaning of a definition beyond the limits imposed by the words initially used. Thus at page 270 of the 12th Edition of Maxwell’s *The Interpretation of Statutes* there occurs the following passage:

C “Sometimes, it is provided that a word shall ‘mean’ what the definition section says it shall mean: in this case, the word is restricted to the scope indicated in the definition section. Sometimes, however, the word ‘include’ is used ‘in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.’ In other words, the word in respect of which ‘includes’ is used bears both its extended statutory meaning and ‘its ordinary, popular, and natural sense whenever that would be properly applicable’.”

The quoted passages come from *Dilworth v. Commissioner of Stamps* (1899) A.C. 99 per Lord Watson at pages 105, 106, and *Robinson v. Burton-Eccles Local Board* (1883) 8 App. Cas. 798 per Earl of Selborne L.C. at page 801.

E In this type of case it would often be impossible to prove political motivation. However the consequences of a certain construction do not determine how the statute should be construed. In this case applying recognised principles of construction I have no doubt that in this definition “includes” is meant to and does enlarge the meaning of the words previously used.

F Thus the question is—was the appellant in 1973 engaged in acts involving the use of violence for the purpose of putting the public or a section of it in fear? Before answering this question it is necessary to ask if the appellant’s act was one of “commission, preparation or instigation”. Mr. Quinn relies, in my view rightly, solely on the word “preparation”. There is nothing in article 6 or in the definition article, 2, which suggests that the preparatory act has to be performed by the person who has committed or is to commit the act of violence. In my judgment carrying a loaded sten gun across a part of Belfast in times of lawless activity involving the use of such a weapon is an act of preparation for an act of terrorism to be committed by someone.

G I am thus satisfied that the appellant is a person who was engaged in the preparation of an act of terrorism in 1973. The fact that he was only 15 and the fact that the event occurred ten years ago are of no avail in avoiding the mandatory terms of article 6(3).

H Accordingly, in my judgment, compensation is not payable to the appellant. Consequently it is not necessary to consider the impact of article 5. In deference to the arguments presented to me, I would simply say that in acting as he did the appellant was not only acting foolishly but acting

aggressively. He was, I am satisfied, seeking not an explanation but retri-
bution. At the same time that does not justify his unknown assailant's assault
on him. No doubt if he had not entered the house the appellant would not
have been injured but his negligent and provocative behaviour would not, in
my judgment, debar him from all compensation. If this were the only point
in the case I would reduce his compensation to 50% of its full value by reason
of his negligent and provocative behaviour.

However, by reason of the application of article 6(3)(b) I affirm the
dismiss.

Appeal dismissed.

Solicitor for the appellant: *Trevor Smyth.*
Solicitor for the respondent: *George Brown.*

P.S.G.