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MOLLOY v SECRETARY OF STATE FOR NORTHERN IRELAND

In the High Court before Kelly LJ: 10 September 1990, 26 February 1991.

Criminal injuries to persons – Causation – Injury sustained during evacuation from site of suspect bomb – Whether cause of injury attributable to the 'prevention or attempted prevention of a criminal offence' – Criminal Injuries (Compensation) (Northern Ireland) Order 1977 (SI No 1248 NI 15), Art 2(2).

On 5 July 1987, the respondent was evacuated from her home as there was a suspect bomb in a nearby car. On returning to her house some time later, she fell on or near a pavement, fracturing her left femur and as a result, she suffered a number of disabling and painful consequences. The respondent made a claim in respect of her injury under the Criminal Injuries (Compensation)(Northern Ireland) Order 1977 and was awarded £20,000 compensation by the county court judge. The Secretary of State for Northern Ireland appealed the award and the respondent cross appealed claiming that the compensation awarded was inadequate.

Held, allowing the appeal and dismissing the respondent's cross appeal, that –

(1) The placing of a hoax bomb in a car was not a 'violent offence' within Article 2(2)(a) (see page 145C).

(2) The security forces, in dealing with the hoax bomb, were engaged in the prevention or attempted prevention of an offence within Article 2(2)(b) of the Order but it could not be said that the respondent, in co-operating with the security forces by evacuating her house at their request and remaining out until the 'all clear' was given, was so engaged (see page 146E). *R v Criminal Injuries Board ex parte Ince* [1973] 3 All ER 808, *Hutchinson v Secretary of State* [1988] NI 560, *Martin v Ministry of Home Affairs* [1979] NI 172 and *Niland v Secretary of State* [1982] NI 181 distinguished.

(3) It was a question of fact whether the respondent's injury was 'directly attributable' within the meaning of Article 2(2). The substantial and the effective cause of the respondent's fall was the act of putting her foot in a pothole and it was an act far too unconnected with and extraneous to the 'prevention or attempted prevention of an offence' to justify an award of compensation (see page 149A). *Martin v Ministry of Home Affairs* [1979] NI 172 and *O'Dowd and others v Secretary of State* [1982] NI 210 applied.

The following cases are referred to in the judgment:

Clarke v Secretary of State [1988] NI 124
Grant v Sun Shipping Co Ltd [1948] AC 549
Hutchinson v Secretary of State [1988] NI 560
Macgregor v Board of Agriculture for Scotland [1925] SC 613
Martin v Ministry of Home Affairs [1979] NI 172
Minister of Pensions v Chennell [1947] KB 250; [1946] 2 All ER 719
Niland v Secretary of State [1982] NI 181
O'Dowd and others v Secretary of State [1982] NI 210
R v Criminal Injuries Compensation Board, ex parte Ince [1973] 1 WLR 1334; [1973] 3 All ER 808

Stapley v Gypsum Mines Ltd [1953] AC 663; [1953] 3 WLR 279; [1953] 2 All ER 478

Whiteside v Secretary of State (unreported)

APPEAL by the Secretary of State for Northern Ireland from an award to Helena Margaret Molloy made under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. The facts appear sufficiently in the judgment.

PD Smith QC and *CD Morgan* (instructed by the *Crown Solicitor*) for the respondent.
TT Ferriss QC and *MJ Copeland* (instructed by *Brendan Kearney*) for the appellant.

Cur adv vult

KELLY LJ. Mrs Helena Margaret Molloy, aged 75 years, of 139 Urney Road, Clady, Strabane, ("the respondent") was awarded £20,000 compensation by the county court judge in respect of a claim for compensation for criminal injury under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. The Secretary of State has appealed on the ground that the injury she suffered was not a "criminal injury". She has cross-appealed alleging that the compensation awarded to her was inadequate.

The facts out of which the respondent's claim arises may be stated shortly. On 5 July 1987 about 2.15 am she was awakened by a knocking at her front door of her house. She answered the door and found a soldier there who told her, "there were bombs in the street" and to leave her house immediately. She put on a dressing gown and sandals and with her husband she left. Those neighbouring residents who were considered close enough to the danger were also alerted at the same time and they too evacuated their homes. What had led to this was the presence of a car in the street close to the army check point which was thought to contain a bomb. It transpired later that this was a deliberate hoax and there had been no explosive device in the car.

The respondent and her husband passed the period of the evacuation by calling into some neighbours houses situate away from the suspect device. At other times they would stay out on the street observing and chatting with others. Eventually at about 6.00 am they began to make their way back to the cordon to inquire when they might go back into their house. On the way to the cordon in Main Street, Clady, the respondent fell and fractured the neck of her left femur. She was admitted to Altnagelvin Hospital, successfully operated on and discharged on 17 July 1987. Unfortunately she has suffered some disabling and painful consequences. She has pain in the hip and spine when walking. She needs a stick to help her walk. And she has contracted shingles which, in medical opinion, was a probable consequence of her accident.

Her case was that this injury and its consequences constituted a "criminal injury" as defined by Article 2(2) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1977.

What caused her to fall? Mr Ferris, in opening her case, stated that her fall was caused by or contributed to by nervousness and fatigue and she was

cold and agitated. The evidence did not on balance bear this out. She had been an active lady before the accident notwithstanding her age. She said she had had no problems with getting about even in cold wintry days. In fact she said she was "able to fly up and down to the shops". She had played bowls twice per week.

On the night of the evacuation she said it was a "nice night", "clear", and "a fine summer's morning". Although she said she was cold, she seemed to resile from that in cross-examination. As to what caused her to fall, she said in direct evidence and I para-phrase it:

> "I fell at the end of the footpath, between the footpath on to the roadway. I wasn't on the roadway when I fell. I didn't know what caused me to fall. It must have been nerves. I don't know."

Cross-examination by Mr Smith for the appellant however, introduced a new element. She said to him:

> "I felt well enough to go back home at 6.00 am - no explosion of any kind – it turned out to be a hoax – I went back – I thought it was all over. It was daylight. It was a fine summer's morning. It wasn't cold. I was proceeding towards the cordon when I fell. I was stepping from the footpath on to the road when I put my foot down in the hole, the gravel was loose. I knew I was going to fall. It was the hole and gravel that caused me to fall. I felt alright just before I fell. What caused the problem was this hole with gravel."

This version of her fall led me to look more closely at the earlier recorded accounts given by her to the police, and the doctors and in her application for compensation in an attempt to find some consistency as to how she came to fall.

In her statement to the police, dated 2 September 1987, she said:

> "I went to a neighbour's house and waited until approximately 6.10 am when I then returned to the cordon to see if I could return home. I stepped from the road onto the footpath, my left leg left me, causing me to fall to the ground."

In her Notice of Intention to apply for compensation dated 27 July 1987:

> "I was evacuated from my home at about 2.15 am as there was supposed to be a bomb in a car. On my way onto a footpath I fell and broke my hip."

In her application for compensation dated 20 August 1987 it was stated:

> "I was evacuated from my home in the early hours of the morning and was tired, the reason for the evacuation was the report of a bomb in a parked car. I sustained the injury when I was stepping hurriedly on to a footpath."

Dr J O'Reilly, her medical practitioner recorded this version of her fall in his report dated 7 October 1987:

> "This 71 year old lady sustained an injury on 5 July 1987. It appears that she was ordered from her home because of a bomb scare at approximately

2.15 am and when she was returning to her home at 6.00 am she fell on the footpath and sustained a fracture of the neck of her left femur."

Yet another contributory factor in her fall was recorded by Mr T K Day FRCS in his report dated 26 January 1988 to her solicitor:

"Your client alleges that at approximately 2.15 am on 05.07.87 she was requested to leave her home at 139 Urney Road, by military on account of a suspect bomb in a vehicle in the adjacent car park. She alleges she was returning to her home at approximately 6.15 am when she lost her footing when stepping from the road on to the wet pavement causing her to fall onto her left hip."

In her account, of her fall, however, to Mr Richard Wray FRCS, she gave the same version as she gave in cross-examination. He noted:

"Mrs Molloy told me that she had been asked to leave her home following a bomb alert. She feels that her left foot went onto some grit that was in a pothole and as a result of that she slipped and fell sustaining an injury to the region of her left hip".

I was satisfied from her evidence before me that it was the act of putting her foot into the pothole and on to the loose gravel it contained, that caused her to fall. Although this came from what was put to her by Mr Smith in cross-examination I was satisfied from the manner in which she accepted this that this was indeed the truth of the matter. She was alert and composed at all times in the witness box. She fully understood what was being put to her when she made this admission. It came clearly and readily from her during a measured but fair cross-examination. I was satisfied also that nervousness or fatigue did not contribute to her fall.

Nevertheless, Mr Ferris submitted that even if I should hold that her fall was caused by the pothole, she had sustained a "criminal injury" as defined in the Order and was entitled to compensation.

I turn to the familiar definition of "criminal injury" in Article 2(2) of the Order:

"'criminal injury' means an injury ... directly attributable to -

(a) a violent offence;

(b) the lawful arrest or attempted arrest of an offender or suspected offender, or the prevention or attempted prevention of an offence, or the giving of help to any constable, member of Her Majesty's forces or prison officer who is engaged in arresting or attempting to arrest an offender or suspected offender or in preventing or attempting to prevent an offence;"

The parameters of this definition have received considerable judicial examination. (see *Martin v Ministry of Home Affairs* [1979] NI 172; *O'Dowd and others v Secretary of State* [1982] NI 210; *Niland v Secretary of State* [1982] NI 181; *Whiteside v Secretary of State* (unreported); *Hutchinson v Secretary of State* [1988] NI 560; *Clarke v Secretary of State* [1988] NI 124; the learned article by His Honour William Johnson QC in *Injuries directly related to a Criminal Offence* 32 NILQ 264 (1981);

R v Criminal Injuries Compensation Board, ex parte Ince [1973] 3 All ER 808 (where paragraph 5 of the English Compensation for Criminal Injuries Scheme, similar to Article 2(2) of the 1977 Order, was considered); *Macgregor v the Board of Agriculture for Scotland* [1925] SC 613 (where "directly attributable" in section 10(6) of the Agriculture Act 1920 was considered)).

Notwithstanding this wealth of authority, the particular facts of this case makes it necessary for me to tread some of this ground again.

The respondent's argument in its reliance on the definition of "criminal injury" in Article 2(2) was couched in general terms but it did not, I think, seek to bring her case within paragraph (a), the first limb of Article 2(2), that is, that her fall was "directly attributable to ... a violent offence". I think it would have been difficult to do so. The violent offences to which 2(2)(a) relates are the specific crimes listed in Article 2(2) under the definition of "violent offence". The placing of a hoax bomb in a car with the intent of inducing the belief that it is likely to explode, is an offence under Article 3(1) of the Criminal Law (Amendment) (Northern Ireland) Order 1977 and is not one of those so listed. True the list concludes with "a related offence" but I do not consider the placing of a hoax bomb to be "related" to any of the listed offences.

The weight of the respondent's case appeared to come under the second limb, paragraph (b), of Article 2(2), that is, that her injury was "directly attributable ... to the prevention or attempted prevention of an offence". Under (b), "offence" is not prefaced by "violent" and therefore the prevention or attempted prevention need not be of a violent offence.

Mr Ferris did not seek to strain language by offering the submission that the activities of the security forces on the night in dealing with the suspect bomb were for "the prevention or the attempted prevention of the placing of a hoax bomb". He considered that he did not need to. He submitted that the security forces were engaged in what they believed was the prevention or attempted prevention of a bomb explosion and the authorities showed that the fact that the bomb was hoax and that no explosion was about to or could take place was, in law, immaterial. He relied, for this submission, on the decision of the Court of Appeal in England in *Ince* (supra). In that case, in response to a radio message that a Territorial Army depot was being broken into, a police officer drove as fast as he could to the depot but was fatally injured when his car, driving against traffic lights showing red, collided with another car at the junction. It turned out that no one had been attempting to break into the depot. The Board considered that the deceased had not been engaged in the "prevention or attempted prevention of an offence" since no offence was about to take place. The Court of Appeal held that this was wrong in law. Lord Denning, MR, said at 812h:

> "I do not think the scheme should be interpreted in so narrow a fashion. Take the claim about prevention or attempted prevention of an offence. It cannot be necessary that an offence should *actually* have been committed. If it had been *prevented*, it never has been committed, and never will be committed. ... If the police officer honestly believes that an offence is about to take place and he himself takes action to prevent it, then his action comes within the words: '... the prevention or attempted prevention of an offence'."

In the same case, Megaw LJ said at 814h:

> "Clearly it cannot be argued that an offence must actually have been committed, for that would make nonsense of the reference to 'prevention of an offence;' and 'offence' cannot have a different meaning in the part of the phrase which relates to prevention of an offence from its meaning in the part of the phrase which relates to attempted prevention of an offence."

The decision in *Ince* was followed by Hutton J (as he then was) in *Niland* and it received the approval of our Court of Appeal in *O'Dowd*.

Niland is factually more in point. There, the applicant was engaged, as a member of a bomb disposal team, in dealing with an abandoned car in which a suspect explosive device was thought to be, when a hook attached to the car to remove it from its position, flew back and struck him causing him serious injury. It was later found that there was no bomb in or about the car. Hutton J followed *Ince* and held that the applicant, at the material time, was engaged in "the giving of help to ... a member of Her Majesty's forces ... engaged in preventing or attempting to prevent an offence".

On the weight of these authorities I accept the starting point of the respondent's argument, that on the night of the respondent's fall, the security forces in dealing with the hoax bomb, were engaged in "the prevention or attempted prevention of an offence."

Can the respondent go on to say that her fall was "directly attributable" to this?

Before that however, I do not think it can sensibly be said that her act of co-operating with the security forces, that is, by evacuating her house at their request, and remaining out until the "all clear" was given, meant that she herself was engaged in "the prevention or attempted prevention of an offence" or "the giving of help ... to any member of Her Majesty's forces who was engaged in preventing or attempting to prevent an offence". In this respect she was quite unlike the claimants in *Ince*, *Hutchinson*, *Martin* who as police officers or in the case of *Niland*, as a soldier, were actually and positively engaged in the prevention or attempted prevention of the offence. There were direct activists in the prevention, whereas she was not. That placement, in itself, puts her further back in the causal link.

"Directly attributable" was considered by the Court of Appeal in *Martin*. In that case, the claimant was a police officer who arrested three burglars on the roof of certain premises. In order to take one of them down, he stepped from a higher part of the roof on to a lower part which was asbestos sheeted. When he stepped on it, it gave way and he fell through it on to a concrete floor 15 feet below. The Court of Appeal held that his injury was not "directly attributable" to "the lawful arrest or attempted arrest of an offender" (section 11(1) of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, but the same words as Article 2(2)(b) of the 1977 Order). Jones J (as he then was) said at 175B:

> "... I take the view that in giving proper force and effect to the words 'directly attributable' in section 11(1) of the 1968 Act one must look for a causa causans of the injury and not merely a causa sine qua non."

Lord MacDermott agreed and went on to say at 177D:

"Here it seems to me that the weakness of the asbestos roof cannot be ascribed to the act or omission of anyone and that the injury it brought about was not directly attributable to the arrest. The arrest – and I am prepared to assume that it occupied more than a moment of time – was not a causa causans and the act of the offenders, or the one of them who was being helped to descend, in taking to the roof was not an act which resulted in injury. The true causa causans was the failure of the roof to bear the weight upon it and, in all the circumstances that was a causa sine qua non and nothing more."

The English Court of Appeal in *Ince* did not employ the terms, "causa causans" and "causa sine qua non" but their interpretation of "directly attributable" although differently expressed, implied as much. Lord Denning at 812j said:

"In my opinion 'directly attributable' does not mean 'solely attributable'. It means directly attributable, in whole or in part, to the state of affairs as PC Ince assumed them to be. If the death of PC Ince was directly attributable to his answering the call for help, it does not cease to be so attributable because he was negligent or foolish in crossing the lights. In such case there were two causes: (i) the call for help; (ii) his negligence or foolishness. His widow can rely on the first, even though the second exists. Just as in pension cases, so in these compensation cases, "even if the intervening cause is the negligence or wrongful act of the injured person or a third party', the injury may still be attributable to the original event and give rise to a claim for compensation. It only ceases to be so when the intervening event is so powerful a cause as to reduce the original event to a piece of the history: see *Minister of Pensions v Chennell*."

Megaw LJ at 815d said:

"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* [1953] AC 663, 681:

> '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 concluded 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.'

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." A

In *O'Dowd and others v Secretary of State* [1982] NI 210, Lord Lowry LCJ gathered together the authorities and gave further refinement to the meaning of "directly attributable". In giving the judgment of the Court of Appeal, he said at 213F:

"*Martin v Ministry of Home Affairs* supra is a binding authority of the B meaning of the vital words 'directly attributable'. In that case the Court held without equivocation that, if the claimant is to succeed, the event relied on (which was there the arrest of an offender and is here the shooting) must be the *causa causans*. Both members of the Court relied on that phrase, in contrast to causa sine qua non as the true reciprocal expression of 'directly attributable'. Both also relied on *MacGregor v* C *The Board of Agriculture for Scotland* [1925] SC 613 where Lord Alness Lord Justice Clerk, spoke (page 620 of the 'effective or immediate cause' and also of the *causa causans* in contrast to the *causa sine qua non*. Elsewhere (page 623) Lord Anderson speaks of 'the immediate cause of the loss – the *causa causans*'. It is therefore clear from the language used, as well as from the facts of the case, that the learned judges of the Second Division were, consistently with the language appropriate to the law of D tort, speaking of the effective cause and not, in principle, confirming their outlook to the 'immediate cause', as meaning the proximate cause with no act intervening between the *causa causans* and the damage."

Lord Lowry went on to say at 214H:

"Without further burdening this judgment with examples of reported E cases, it is safe to say that an act can be an effective cause (*causa causans*) of damage, even if it is preceded, accompanied, or followed by another act (whether negligent or not) of the injured party or a third party; whether the act complained of *is* a *causa causans* is a question of fact or degree. There will, admittedly, be a few occasions on which there is only one reasonable answer to that question, one way or the other."

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The answer to the question in the instant case then becomes a question of fact.

It seems to me that these authorities instruct me to ask, as the critical question in the instant case, what was the effective cause of the respondent's fall? And they instruct me to answer that question in a common sense way. Further, if that form of the critical question fails to illuminate the answer adequately in any particular case, the authorities provide it in the form G expressed by Megaw LJ in *Ince* (supra). He would ask what would a reasonable person, applying common sense, regard as the substantial cause?

I am quite satisfied that the effective cause, the substantial cause the causa causans of the respondent's fall was the act of putting her foot in the pothole. If it can be said that there was a causal connection between her evacuation of her house, her sojourn outside and the walk back home on the H one hand and the prevention or attempted prevention of a bomb exploding, on the other, then I consider, in the words of Lord Denning in *Ince*, that the

act of stepping into the pothole was "an intervening event ... so powerful a cause as to reduce the original event to a piece of the history".

It was an act, in my opinion, far too unconnected with and extraneous to the "prevention or attempted prevention of an offence" to justify an award of compensation under the criminal injury code.

While the interpretation of "directly attributable to" will be applied to the particular circumstances of each case, my conclusion does find support, I think, in some of the factual examples given in *Martin's* case. And yet in those examples the unsuccessful claimant posed was the person actively engaged in preventing or attempting to prevent the offence. In *Martin* Jones J said at 175F:

> "... 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 stepped 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 side-walk."

And there is also Lord MacDermott's example in *Martin* at 177C:

> "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 the flight and pursuit was over rough and dangerous ground?"

It is clear, I would respectfully say, from Lord MacDermott's judgment that he would have given a negative answer to these questions.

My decision therefore is that the appellant must succeed in his appeal and that the award made by the learned county court judge be set aside. It follows that the respondent's appeal is dismissed.

Order accordingly
PSG