



THE COURT OF APPEAL

Neutral Citation Number: [2018] IECA 26

[2016 No. 240]

**The President
Finlay Geoghegan J.
Hogan J.**

BETWEEN

GLEN DONOGHUE

RESPONDENT

AND

HIS HONOUR JUDGE JAMES O'DONOGHUE AND IRELAND AND

THE ATTORNEY GENERAL

APPELLANT

JUDGMENT of the President delivered on 14th February 2018

Introduction

1. This is an appeal brought by Ireland and the Attorney General against the orders of the High Court that were perfected on 4th May 2016 for reasons that are contained in a judgment delivered by Barrett J. on 13th January 2016. The matter before the High Court was an application by Mr. Glen Donoghue for judicial review of an order of the Circuit Court made on 13th February 2015 in an appeal of a District Court order made pursuant to s. 1(1) of the Police Property Act 1897 ("the 1897 Act"). Mr. Donoghue had sought the return of a Range Rover vehicle that was seized by Garda Enda Waters on 16th December 2013 but he had been refused in the District Court and on appeal to the Circuit Court in circumstances and for reasons that I describe below. The case turns on the interpretation of the 1897 provision and the jurisdiction of the High Court to entertain the application in the circumstances as they obtained and to make the orders that are the subject of appeal.

2. Before proceeding further, I should mention in the interest of accuracy, but which is not something that affects the appeal, a difference between the judgment and the order that followed. In his judgment of January 2016, Barrett J. concluded firstly that he would grant an order of certiorari in respect of the order of the Circuit Court forfeiting the Range Rover to the State and, secondly, an order of mandamus directing the State to return the vehicle to Mr. Donoghue. However, in the order as perfected dated 4th May 2016 the following appears:

"[A]nd in lieu of directing that an Order of *Certiorari* do issue IT IS ORDERED that the aforesaid Order dated the 13th of February 2015 and all records and entries relating thereto be quashed without further Order

And it is Ordered that the second named Respondent delivered the said vehicle into the possession of the Applicant"

3. I mention also that for obvious reasons I avoid use of the litigation capacities of the parties in the hope of avoiding confusion. Mr. Glen Donoghue was the successful applicant in the High Court who therefore becomes the respondent in this court on appeal. The learned judge and the State parties were the respondents in the High Court but now the State Parties become the appellants. In that situation, the similarity of names is more easily overcome.

4. Mr. Glen Donoghue was in possession of the vehicle when it was seized by Garda Waters pursuant to s. 41 of the Road Traffic Act 1994 because he suspected that Mr Donoghue was driving at a time when he was disqualified. There is no issue as to the lawfulness of the seizure. Garda Waters brought an application under the 1897 Act and Mr. Donoghue applied for the return of the vehicle. However, the District Court and the Circuit Court on appeal were not satisfied that Mr. Donoghue had proved ownership, as they considered was required under the statute. We are concerned with the latter court, which as will be seen, drew a distinction between possession and ownership for the purpose of the Act.

5. The first issue in the appeal is the meaning of "owner" in s. 1 of the 1897 Act which is as follows:

"1.—(1) Where any property has come into the possession of the police in connexion with any criminal charge or under section sixty-six of the Metropolitan Police Act, 1839, section forty-eight of the Act of the session of the second and third years of Her present Majesty, chapter ninety-four (local), for regulating the police in the city of London, section one hundred and three of the Larceny Act, 1861, or section thirty-four of the Pawnbrokers Act, 1872, a court of summary jurisdiction may, on application, either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet.

(2) An order under this section shall not affect the right of any person to take within six months from the date of the order legal proceedings against any person in possession of property delivered by virtue of the order for the recovery of the property, but on the expiration of those six months the right shall cease."

6. The second issue is whether judicial review is available in circumstances where the assertion is that the court made an error in the course of exercising its own undoubted jurisdiction. Obviously, this does not arise if this court is satisfied that the interpretation placed on the section by the Circuit Court Judge was correct.

7. Thirdly, the question is whether mandamus is either an appropriate remedy available to Mr. Donoghue if his argument is correct and, in addition, whether it was open to the High Court to make a definitive ruling as to the vehicle's ownership, whatever the meaning of the term, in a judicial review application.

Background Facts

8. These are the facts that are set out in the statement grounding the application for judicial review and verified by a brief affidavit by Mr. Donoghue. It will be necessary to refer to the affidavit of Garda Waters, the notice party, and also to Mr. Glen Donoghue's response in the form of a replying affidavit thereto. First, I will refer to the facts as set out in the grounding statement.

9. Mr. Donoghue's statement sets out that the police property application came on for hearing before the Circuit Court on 19th November 2014. Garda Waters gave evidence that he seized the vehicle from Mr. Donoghue on 16th December 2013, having stopped Mr. Donoghue on the M4 Lucan bypass. He seized the vehicle pursuant to s. 41 of the Road Traffic Act 1994. There is no issue in the case as to the validity of the seizure. Garda Waters testified that he made enquiries with police in the United Kingdom and was informed that the vehicle had been reported stolen and it was believed to be the subject of a hire purchase agreement involving Santander Bank. The statement says that no evidence was adduced to suggest that Mr. Donoghue had any prior knowledge of these matters and it was not put to him during his evidence that he had any involvement in or knowledge of the theft. There is no dispute about that point. A witness from a debt recovery agency named EuroDebt was tendered *in lieu* of a witness from Santander, but the judge found that he was not in a position to prove or give evidence regarding the hire purchase agreement. The judge was not satisfied at that stage that there was any evidence of Santander's ownership before the court. That was the evidence adduced on behalf of Garda Waters.

10. Mr. Glen Donoghue gave evidence that he had possession of the vehicle when it was seized from him, a matter about which there is or could be no dispute. He said that he had brought it over from the United Kingdom two weeks prior to the seizure. He produced the UK Driver and Vehicle Licensing Agency Certificate issued in February 2014, showing him to be the keeper of the vehicle. He exhibits a book of relevant documentation with his verifying affidavit. The Certificate does not purport to establish ownership, but merely records the person who is the keeper of the vehicle as registered with the DVLA. Mr. Donoghue testified that he purchased the vehicle on 17th May 2013 in Lancashire from a Mr. Colin Benson, whose address he gave, for part cash and part exchange. He paid Stg. £3,500 and traded in three vehicles; a Mercedes, a Smart car and a BMW. He tendered a receipt and an affidavit from Mr. Benson, but the judge rejected the affidavit. The judge asked certain questions of Mr. Donoghue which he answered. On the closure of the evidence, counsel for Mr. Donoghue submitted that there was uncontroverted evidence of his possessory title to the vehicle which had not been bested by any satisfactory evidence from any third party asserting a superior title. The DVLA certificate was consistent with, not dispositive, of ownership and there was also evidence of a purchase for value.

11. The judge put the matter back because he wanted to hear someone from Santander and he wanted some clarity or further clarification in regard to the DVLA Certificate. Mr. Donoghue's solicitors in the meantime confirmed with the DVLA that there is not a register of vehicle ownership, but rather of keepers who are the persons charged with taxing and insuring vehicles. That is not in dispute. On 11th February 2015, two days before the scheduled resumed hearing on 13th February, the Chief State Solicitor wrote on behalf of Garda Waters to Mr. Donoghue's solicitors saying that:

"[i]t now transpires that Santander transferred their legal title in the Range Rover, the subject matter of this police property appeal, to Bluestone by agreement on 21st August 2013. Hence, an official from Bluestone, James Williamson, will be attending court on Friday morning and please find attached the relevant documentation from Bluestone by way of four electronic attachments."

12. At the resumed hearing on 15th February 2015, Mr. James Williamson gave evidence on behalf of Bluestone Portfolio Management (UK) Ltd. that Santander loans were sold to Bluestone and "sought to adduce a redacted 21 August 2013 copy Debt Assignment agreement between Santander Consumer (UK) plc and Bluestone Portfolio Management (UK) Ltd. with various other documents". Mr. Williamson accepted that he was not an officer of Santander and had no personal knowledge of the counterparty to the credit agreement or of the circumstances of its execution.

13. It was submitted on behalf of Mr. Glen Donoghue to the court that it was an inappropriate exercise of the court's discretion to admit evidence from Bluestone at that stage; that there was still no evidence before the court of the inception of any credit agreement establishing Santander's claim; that the consideration of the purported transfer of Santander's rights to Bluestone had been redacted from the agreement adduced in evidence so there was no evidence of consideration for any debt assignment before the court and the title was a relative concept. There was no question that the applicant, Mr. Donoghue had, at a minimum, established a possessory title to the vehicle and that such a title was good against all persons save those who could make out a superior title. On that basis, it was submitted, the court was not entitled to forfeit the property to the State.

14. Judge O'Donoghue found that Mr. Glen Donoghue had made out a possessory title, but he was not satisfied that he was the "owner". He was further not satisfied that Bluestone or Santander had established title to the vehicle and he directed that it be forfeited to the State. That was the same order that had been made in the District Court and which was under appeal.

15. In the circumstances, Mr. Glen Donoghue sought a series of reliefs by way of judicial review. The High Court ultimately upheld his claim and made orders of *certiorari* and *mandamus*.

Affidavit of Garda Enda Waters

16. Garda Waters deposes that he seized the Range Rover from Mr. Glen Donoghue at the N4 Lucan bypass on 16th December 2013 pursuant to s. 41 of the Road Traffic Act 1994 on suspicion that Mr. Donoghue was a disqualified driver and was therefore uninsured. It later transpired that the vehicle had been reported stolen in England on 7th December 2010 by Santander Consumer Finance Group.

17. Garda Waters refers to the application that he brought under s. 1 of the 1897 Act to the District Court where he says that the judge was not satisfied as to who the owner appeared to be and therefore directed that the vehicle be forfeited to the State. Mr. Donoghue appealed and the matter was heard in the Circuit Court before the first respondent named in the title on 19th November 2014 and 13th February 2015. Garda Waters says that on 19th November 2014, he gave evidence to the court as follows:

"(i) I had seized the vehicle from the Applicant on 16th December 2013 pursuant to section 41 of the Road Traffic Acts on suspicion that the Applicant was a disqualified driver;

(ii) At that time, the Applicant neither admitted nor denied that [he] was disqualified from driving;

(iii) at that time, the Applicant had informed me that he had bought the vehicle two weeks previously;

- (iv) the vehicle had been reported stolen by Santander;
- (v) the details of a hire purchase agreement which suggested that Santander had legal title to the vehicle;
- (vi) the person who took out the finance on the vehicle with Santander was one Mr. Martin Baine, 4 Lundy Avenue, Manchester, M21 7JW and that this was not the identity of the Applicant."

18. The judge was not satisfied that a witness named Peter Kershaw from EuroDebt could provide evidence of the hire purchase agreement with Santander.

19. Mr. Glen Donoghue then gave evidence as follows:

- "(i) He had possession of the vehicle when it was seized from him;
- (ii) he was in the motor trade;
- (iii) he had purchased the vehicle on 17th May 2013 in good faith from a good friend of his, Mr. Colin Benson, who was also in the motor trade;
- (iv) he paid Stg. £3,500 together with a part-exchange of three other vehicles to purchase the vehicle the subject of the proceedings;
- (v) an affidavit of Colin Benson sworn on 4th November 2014 allegedly confirming the sale;
- (vi) an unheaded receipt dated 17th May 2013, allegedly specifying the sale price of Stg. £3,500 and a note of the three part-exchange vehicles – this receipt did not contain the licence plate numbers of these vehicles;
- (vii) a driver and vehicle licensing agency (DVLA) V5C certificate dated 11th February 2014 (the same date that notice of the Police Property Act application was served on him and subsequent to when the vehicle had been seized by An Garda Síochána) in which he is registered as 'keeper' of the vehicle – as distinct from the 'owner'."

The DVLA certificate also notes that the applicant was registered as keeper of the vehicle from 20th September 2013 and clearly reads: "this document is not proof of ownership".

20. The Garda continues describing what he says the applicant said when he was cross-examined:

- "(i) That he was not the registered owner of the vehicle;
- (ii) he offered no excuse for the discrepancy in the dates from the dates on the receipt of purchase (17th May 2013) to the date he was registered as keeper (20th September 2013);
- (iii) he stated that he was not the registered owner of the vehicles he gave in part-exchange either and that he could not recall the registration numbers of those vehicles;
- (iv) he neither admitted nor denied that he was disqualified from driving at the time he was stopped;
- (v) he had not done a finance check on the vehicle although he was in the motor trade himself;
- (vi) he had not done a finance check because he trusted his friend, Mr. Colin Benson;
- (vii) in response to the question: surely, it is not believable that for someone like yourself who has been in the motor trade most of your life, that you did not carry out one of the most routine checks, a finance check, that would have shown that the Range Rover was stolen and finance owing? Can you even recall the registration numbers of the vehicles you allegedly part-exchanged? The Applicant stated: 'do you remember the registration number of your first car?'"

21. Garda Waters says that Mr. Benson did not give evidence, but it is the case that his affidavit was proffered but not accepted as evidence by Judge O'Donoghue. Garda Waters proceeds to describe the events on the second occasion of the hearing which was 13th February 2015. The letter of 11th February has been described in the record provided by Mr. O'Donoghue in his statement of grounds set out above. Garda Waters describes Mr. Williamson's evidence which was that the Range Rover was one of 1,500 vehicles that Bluestone bought in a debt portfolio from Santander. He produced documentation including a photocopy of Martin Baine's Driving Licence and the judge pointed out that the individual in the picture was clearly not Mr. Donoghue. Mr. Williamson gave evidence that the original finance agreement had been scanned to microfiche and subsequently shredded, as he said was common practice in England.

22. Garda Waters says that Judge O'Donoghue was satisfied with the purchase agreement from Santander and that he was of the view that the identification of Martin Baine advanced matters for Bluestone: "he accepted the evidence of James Williamson and said that Bluestone may have actual title to the vehicle". However, the judge "stated that he was not sufficiently satisfied to make an order for the delivery of the vehicle to Bluestone in the absence of the original finance agreement".

23. Garda Waters says in the penultimate paragraph:

"I say that the first Respondent, in his findings, stated that he did not believe the Applicant's evidence and that he believed the vehicle was stolen. In circumstances where the Applicant could not demonstrate to the first Respondent that he was the owner of the vehicle and where Bluestone could not furnish original documentation to the first Respondent, it was ordered that the vehicle be forfeited to the State."

24. Mr. Donoghue put in a replying affidavit to Garda Waters. He protested that the Garda's affidavit contained irrelevant material for a judicial review application and he did not propose and did not in fact reply to each of the factual statements contained in it. Mr. Donoghue rejected the complaint made by Garda Waters that his (Mr. Donoghue's) materials were in any way incomplete. He says

that some of the comments and factual statements are irrelevant: "for example, insofar as comments were made regarding the evidence of witnesses from debt collection agencies, ultimately the competing title claims were not upheld and this evidence is consequently of marginal relevance".

25. Mr. Donoghue emphasises the fact that the DVLA does not maintain a register of owners, but rather of keepers of vehicles. He refers to the evidence of Mr. Williamson and repeats the point that the crucial fact is that the judge was not satisfied as to Bluestone's claim. In his penultimate paragraph, he says the following:

"[w]hilst it is acknowledged that the first Respondent expressed a belief the vehicle had been stolen in the United Kingdom, for the avoidance of doubt, it should be made clear that it was never alleged that the Applicant was in any [way] responsible for or implicated in any theft of the vehicle. No such proposition was ever put to him and neither the Notice Party nor the first Respondent took issues with submissions to the court to this effect."

26. Mr. Donoghue concludes by saying that the judge accepted that he "was in possession of the vehicle at the time it was seized and had possessory title to same. The court did not accept any other party's superior title claim".

27. That is the factual material that was before the High Court for its consideration of the judicial review application by Mr. Donoghue.

The High Court Judgment

28. On 27th January 2016, the High Court quashed the order of the Circuit Court and ordered that the State return the vehicle to Mr Donoghue. The Court's judgment, giving the reasons for these orders, was delivered on 13th January 2016.

29. Barrett J. referred to the leading case, *Lyons & Co v. Metropolitan Police Commissioner* [1975] 1 QB 321, observing that there were significant differences in the facts of that case and in the instant one. It could reasonably be argued, the judge thought, that the two cases were not on a par at all. The court nevertheless told that the observations of Lord Widgery CJ. where "nonetheless of interest" on the meaning and effect of s. 1(1). The judge cited the following relevant and decisive passage from the judgment of Lord Widgery (at p. 325):

"I . . . would readily accept that in certain circumstances the word 'owner' can have a meaning different from the ordinary popular meaning. The popular meaning of 'owner' is a person who is entitled to the goods in question, a person whose goods they are, not simply the person who happens to have them in his hands at any given moment. I have little doubt that in section 1 'owner' is to be given that ordinary popular meaning, which lay justices would naturally give to it, using the word in the ordinary layman's sense. I think that conclusion is underlined by the fact that the draughtsman is distinguishing between 'possession' and 'ownership' because section 1(1), it will be remembered, begins with the phrase 'Where any property has come into the possession of the police'.

The justices in this case asked themselves whether the jewellers, who had received custody of the ring in the manner in which I have described, were to be regarded as the owner for the purpose of the section. They thought not. I think that they were right. I do not think that the claimants with the owner in the ordinary popular sense at all."

30. Barrett J. acknowledged that Lord Widgery had drawn a distinction between ownership and possession, but he considered that the distinction was specific to the factual context of that case. He did not appear to appreciate that the court in *Lyons* was engaging in statutory interpretation as to the meaning of the word owner. This is apparent from the following passage from the judgment of the High Court:

"[h]e draws a distinction, it is true, between 'ownership' and 'possession', but case-law can never be read separate from the facts, and the facts in *Lyons* were that the receiving jewellers were 'chancing their luck' and claiming ownership on the most tenuous of possession of what they clearly suspected from the outset was 'hot' property. No wonder, then, that Lord Widgery drew a distinction between possession and ownership in such a context. The man on the LUAS, the woman on the DART, they would undoubtedly be at one with him in this regard."

31. The judge then set out a series of facts, namely, that Mr. Donoghue traded vehicles and had handed over what the judge called hard cash for the Range Rover; that he was in possession of a UK DVLA certificate showing him as the keeper of the vehicle; that he had never been accused of complicity in the alleged theft of the vehicle; and that he had not had his possessory title "bested" by Bluestone notwithstanding that the Circuit Court had given that company the opportunity of doing so. Barrett J. then held that the ordinary man or woman on the train or the tram would in the circumstances have concluded that Mr. Donoghue fulfilled the criteria for ownership in the popular sense. The judge considered that this approach was consistent with the decision in *Lyons* and

"[t]o the extent that the learned Circuit Court Judge recognised a distinction between ownership and possession in the context of Mr Donoghue, this Court respectfully considers that he misapplied the logic of Lord Widgery in *Lyons*, the case that the State itself contends to be a defining case in this area of the law in the United Kingdom, and so erred in law."

32. Concerning the jurisdictional issue that arose because the Circuit Court decision was made on appeal from the District Court, Barrett J. stated that traditionally "not every error committed by a lower tribunal will affect the jurisdiction of the tribunal so as to invalidate the resulting decision". He felt however that a new regime had been ushered in by the decision of the Supreme Court in *The State (Holland) v. Kennedy* [1977] IR 393. Moreover, *certiorari* had always been available in cases of significant, clear, severe or extreme errors of law and that "the most intellectually coherent approach, consistent with *Holland* and the wider trend of later jurisprudence, is and has been to treat errors of law as going to jurisdiction, save where they are quite incidental to that determination, rather than engaging in a confusing and artificial distinction between severe and ordinary errors". In this case, the court concluded that the Circuit Court had applied the wrong legal test to the facts and that was a significant with significant consequence which could not be allowed to stand. The court accordingly decided to grant firstly an order of *certiorari* in respect of the Circuit Court order and, secondly, an order of *mandamus* directing the state to deliver the vehicle to Mr. Donoghue.

Submissions/Arguments

33. The State appellants submit that proceedings in the High Court were in effect and in reality an appeal from the decision of the Circuit Court. The decision made by the Circuit Court Judge was lawful, *intra vires*, valid and based on findings and inferences that he made based on the evidence that he heard. The Circuit Judge did not believe the applicant Mr. Donoghue. On the authority of *Lyons v. Commissioner* [1975] the meaning of "owner" for the purpose of the Act is the ordinary popular meaning and not some other legal

inferential meaning:

"I have listened to Mr. Harrap's argument and would readily accepted that in certain circumstances the word "owner" can have a meaning different from the ordinary popular meaning. The popular meaning of 'owner' is a person who is entitled to the goods in question, a person whose goods they are, not simply the person who happens to have them in his hands at any given moment. I have little doubt that in section 1 'owner' is to be given their ordinary popular meaning, which lay justices would naturally give to it, using the word in the ordinary Lehmann's sense. I think that conclusion is underlined by the fact that the drafts man is distinguishing between 'possession' and 'ownership' because section 1(1), it will be remembered, begins with the phrase 'Where any property has come into the possession of the police'"

34. The distinctions made by the High Court between the instant case and *Lyons v. Commissioner* based on the facts are not sound as a matter of logic; neither do they address the principle of that decision. The High Court judge applied an ordinary meaning test in an inappropriate manner by referring to certain selected facts that a hypothetical ordinary person might consider relevant to ownership, but the judge or message to take into account other relevant matters that pointed to a different conclusion. The authorities relied on by Mr. Donoghue do not support his case. The question for the Circuit Court was not as to who had the better title, but rather as to who was the owner of the vehicle. The appellant argues that the Circuit Court Judge did not make an error in his decision on the application; however, assuming for the purpose of argument that he had made an error, it was not open to Mr. Donoghue to get judicial review because it was made within jurisdiction. Although there can be errors of law that are so fundamental that they go to jurisdiction, in which circumstances judicial review would be available, that does not apply to the circumstances of this case. It is clear that there is not another appeal available to the High Court from a District Court appeal heard in the Circuit Court. It cannot be said that the facts could not have given rise to the decision; indeed, the facts were such that it is clear that the judge made the correct decision. On any basis, the decision in question cannot be said to have been wholly grounded on an error of law. There was no basis on which the High Court was entitled to make an order of mandamus, which is a discretionary remedy available only in circumstances where the body in question has failed to fulfil a duty that it is obliged by statute to do. The duty that the Circuit Court had was to hear and determine the appeal under s. 1(1) which it did. Granting mandamus, as it did in this case, was tantamount to usurping the jurisdiction of the lower court, to use the language of *Lennon v. District Judge Clifford* [1992] 1 IR 382 per O'Hanlon J. at p.385/386 where he endorsed a relevant passage in *Chief Constable of the North Wales Police v. Evans* [1982] 1 WLR 1155 at p.1173 and then concluded by saying: "[j]udicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power".

35. Counsel for Mr. Donoghue submits that the High Court correctly decided the case on the basis that there had been a fundamental error of law going to jurisdiction by the Circuit Court judge in distinguishing "between possessory title and ownership, in a context in which no superior title had been established". Furthermore, the facts of the case support the respondent's contention that the High Court did not err in its approach.

Discussion

Section 1 of the Police Property Act 1897

36. The analysis of this provision by Lord Widgery CJ. in *Lyons* has received general acceptance and for a good reason, as it seems to me. The point that the judge made as to the use in subsection (1) of the words "possession" and "owner" indicates a key distinction. The judgment in the passage quoted by Barrett J. analyses and interprets s. 1 of the 1897 Act. Differences between the facts of that case and the instant circumstances do not and cannot affect the interpretation of the particular words. I cannot agree with the High Court that the different factual circumstances invalidate the effect of the judgment. Neither can I understand how the judgment in *Lyons* could be construed as a justification for a decision on the facts as to the weight to be attached to them by reference to a lay person. I think it is clear that Lord Widgery was ascertaining the meaning of the word "owner" in the section. He was doing that against a background of legal principle in which a person in possession of goods has rights as against the world with the exception of the true owner or a person with a better title. Did the word "owner", as it appeared in s. 1, mean a person with a possessory title or did it mean something different, namely, the true owner? For the reasons that the learned judge succinctly explained, he found the meaning to be the latter.

37. In my view, that long-established persuasive authority should be followed. I see no reason to depart from the logic employed. In my opinion, the High Court was correct in thinking that in general possession is a sufficient basis for claiming detainee or other property interest, including return in circumstances, for example, of bailment. However, that is not the question. The issue is as to what is required by s. 1 of the 1897 Act. As a point of statutory interpretation, the fact that the 1897 Act refers separately to possession and ownership indicates that it was intended that a claimant should be able to satisfy the test of ownership.

38. I agree with the submission made on behalf of the State parties that the other authorities cited in the argument on behalf of Mr. Glen Donoghue do not invalidate the analysis of the section which Lord Widgery conducted in *Lyons*. The first of these, *Webb v. Chief Constable of Merseyside Police* [2000] QB 427, was not a Police Property Act 1897 case at all, but rather involved a matter of private law in which the concept of possessory title was relevant. *Costello v. Chief Constable of Derbyshire Constabulary* [2001] 1 WLR 1437, similarly, was not a Police Property Act case that was determined on the basis of private law. The police did not have any right to retain the property.

39. *Haley v. Chief Constable of Northumbria Police* [2002] EWHC 1942 was, admittedly, a case concerning the Police Property Act. Nothing in it, however, dissents from the leading authority as above quoted. The case is fact dependent as the High Court declared in sending the case back for further consideration by the Magistrates who had stated the case. The High Court held that the Magistrates were incorrect to consider that the absence of frame and engine numbers of vehicles meant that "the vehicles could never become legal".

40. The final case is *Mitchell v. Farrelly*, (Unreported, Ex tempore, 24th October 1997) a decision of Shanley J. in the High Court. That case concerned cash held by the Gardaí which they had found in suspicious circumstances, as they maintained. The High Court held that the applicant had given an explanation which the Gardaí were not in a position to contradict. The court said that the District Court had been wrong to reject the submission that possession gave rise to a presumption of ownership. There was no competing claim in the case.

41. A problem about the alternative interpretation is that it would make many applications under the 1897 Act a matter of routine or more or less rubber stamping. This is because any seizure is going to involve a person in possession and the whole point of the legislation is to give the court an opportunity of deciding who on the evidence appears to be the actual owner. I agree that there would be circumstances when the proof is less than 100% convincing and the court has to deal in probabilities. But all that Mr. Donoghue has shown is that he was at most entitled to possession of the vehicle, not – as s. 1 of the 1897 Act requires – that he

was its owner.

42. The essential point as it seems to me is that the 1897 Act provides a summary procedure whereby the District Court may on the application of a Garda or a claimant make an order for the delivery of property in the possession of the Gardaí to the person appearing to the court to be the owner of it. It is a facility for disposing of property held by police in a manner that is lawful.

43. I am satisfied that the Circuit Court was correct in its understanding of the meaning of the expression 'owner' in s. 1 of the 1897 Act. It seems to me that this is a procedural provision that is available for the purpose of facilitating summary recovery and restoration of property in the possession of the Gardaí. They come into possession of property in a large number and variety of circumstances and there is almost invariably no question that the Gardaí or the State has any ownership or entitlement to the property otherwise than as a default recipient of forfeited goods or property when nobody else is in a position to establish ownership.

44. In the circumstances, I think that the High Court was wrong to think that mere possession was sufficient to establish ownership within the meaning of section 1.

Jurisdiction

45. If it was the case in the instant appeal that the Circuit Court had misunderstood the meaning of s.1(1) of the 1897 Act, I think it is difficult to argue that the disappointed applicant could not seek judicial review of that decision. A person who was able to say that the Circuit Court disposed of his case because of an interpretation of a statute that the applicant was able to demonstrate was incorrect, according to established and clear authority, would seem to me to be entitled to seek correction of the law and a return to the deciding court for consideration of the case by reference to the correct interpretation. These remarks are in the context of the present appeal entirely *obiter* because I do not think that the Circuit Court was wrong.

Mandamus

46. In any case, was it appropriate for the High Court to make an order of mandamus? I agree with the submission made by the State parties. I do not think that it was appropriate to make such an order, even if the High Court actually did something that technically stopped short of *mandamus*. The reality is, I think, that there is no difference. This remedy is, as the submission makes clear, intended for use in quite different circumstances.

47. There is also a separate reason for holding that the High Court was wrong to embark on the disposition of the case or, rather, on the disposition of the vehicle rather than the disposition of the case. Barrett J. set out a version of the facts which was not incorrect, but incomplete. They were not the full facts or circumstances of the case, but the court set out a sufficient basis of fact to establish that Mr. Donoghue was indeed the person who was in possession of the goods at the time when they were seized by Garda Waters. However, there was no doubt whatsoever as to those facts. They could not have been in doubt because they were the very basis that gave rise to the application to the District Court and then Circuit Court and to the judicial review in the first place. The process could not have happened if the vehicle had not been seized by Garda Waters and the whole chain of litigation could not have happened if Mr. Donoghue had not been driving his or this Range Rover at the time. The problem is that the High Court had simply no jurisdiction to embark on a Police Property Act application which is what it seems to have done, or alternatively a conversion or detainue action. The most that the High Court could have done was to send the matter back to the Circuit Court for reconsideration of the case in light of the interpretation of s. 1(1) of the 1897 Act that the High Court had declared to be the correct one.

Conclusion

48. Accordingly, for the reasons above stated, I would allow the appeal and set aside the orders made by the High Court and refuse judicial review.