Neutral Citation: [2015] IEHC 807

THE HIGH COURT

[2014 No. 146 EXT]

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

PABLO TELLARINI PRIETO

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered on the 16th day of November, 2015.

1. The potential for release of persons charged with offences from pre-trial detention is a common, if not universal, feature of criminal justice systems around the world. In this jurisdiction, pre-trial release from detention is commonly known as release on bail. Accused persons released on bail enter a recognisance agreeing to turn up in court. Other conditions may also be imposed. Failure to appear in court in accordance with the recognisance is an offence in this jurisdiction under s. 13 of the Criminal Justice Act, 1984 ("the Act of 1984"). There is no statutory provision which makes it a criminal offence not to comply with other conditions of bail, such as a requirement to sign on at a Garda station, in breach of recognisance.

2. The respondent is sought by the United Kingdom ("U.K.") for prosecution on a number of different offences pursuant to a European Arrest Warrant ("EAW"). Having been charged with an offence of assault, he was released on bail from the Edinburgh Sheriff Court on conditions, *inter alia*, that he "(a) appears at the appointed time at every diet relating to the offence with which he is charged of which he is given due notice or at which he is required by [the Criminal Procedure (Scotland) Act, 1995] to appear and (b) that he attend at St. Leonard's Police Station between every Monday and Wednesday between the hours of 7pm and 8pm and every Saturday between the hours of 12 noon and 2pm." No monetary commitment or agreement was entered into by the respondent.

3. Two questions arise for consideration: (a) whether the failure to attend court corresponds either with an offence contrary to s. 13 of the Criminal Justice Act, 1984 or, with the offence of criminal contempt of court and (b) whether the failure to sign on at the police station corresponds with a criminal contempt of court in this jurisdiction?

The Application for Surrender under the European Arrest Warrant Act, 2003
4. The respondent did not appear in the Edinburgh Sheriff Court as required under the bail conditions. On 5th June, 2014, the Sheriff of Lothian and Borders at Edinburgh issued an EAW for the respondent herein. The EAW was endorsed for execution by the High Court on 29th July, 2014. The respondent was duly arrested on foot of that EAW on 22nd September, 2015. In accordance with s. 10 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), a person shall, subject to and in accordance with the provisions of this Act, be arrested and surrendered to the issuing state.

The issues under Section 16 of the Act of 2003 as amended
5. The surrender shall be refused if the conditions set out in s. 16 are not satisfied. I am satisfied that the EAW was endorsed for execution. I am also satisfied that the person who appears before me is the person in respect of whom the EAW has issued.

Sections 21A, 22, 23 and 24 of the Act of 2003 as amended
6. Having scrutinised the documentation before me, I am satisfied that I am not required to refuse his surrender under the above provisions of the Act of 2003 as amended.

Part 3 of the Act of 2003 as amended
7. Apart from the provisions of s. 38 and s. 45 of Part 3 of the Act of 2003, which will be addressed further below, I am satisfied that I am not required to refuse the surrender of the respondent under any other section contained in Part 3 of the said Act.

Section 38
8. Surrender is not prohibited under s. 38 of the Act of 2003 if the offence either a) corresponds with an offence in this jurisdiction or b) the issuing judicial authority has indicated that it is a list offence within the meaning of Article 2 para. 2 of the Framework Decision of 13th June, 2002 on the European Arrest Warrant and surrender procedures between Member States ("the 2002 Framework Decision") and that in each case specific minimum gravity terms have been met.

Charge 1 (Case 1)
9. The EAW is a prosecution warrant and seeks the respondent's surrender for 15 offences in total (but see further below). The first alleged offence, Charge 1 (Case 1), is what may be termed the substantive offence in Scotland. The EAW indicates this as an offence charging assault to severe injury which is a common law offence in Scotland. Under para. E 1 of the EAW, which contains the list offences, the issuing judicial authority has indicated that it is an offence of grievous bodily injury. The Scottish judicial authority also filled in para. E 2 and referred therein to the crime of assault. E 2 provides for a full description of offence(s) not covered by section E 1. In those circumstances, it appears to be a statement that they are not relying upon the designation of grievous bodily injury. Where there is no clear indication emanating from the issuing judicial authority that E 1 is being relied upon, correspondence with an offence in this jurisdiction has to be established.

10. I am satisfied that the description of the offence, setting out as it does, that the respondent allegedly attacked without warning another man from behind and stabbed him with a knife to his right shoulder and in his armpit, used the mobile telephone of the injured party to call the emergency services and left in possession of the mobile telephone having kicked the injured party in the head, corresponds with the offence of assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997.

11. In the particulars set out, there is a reference to both assault and theft. However, there is also a statement that there is insufficient evidence to seek a conviction for theft. The statutory or common law ingredients of theft are not set out in the EAW

unlike the statutory or common law ingredients of the other offences for which he is sought. It is not entirely clear why the issuing judicial authority felt the need to refer to the theft matter in circumstances where they were of the view that there was insufficient proof thereof. However, I am satisfied he is not being sought for the offence of theft. I am satisfied that Case 1 (Charge 1) is being prosecuted as a single offence by virtue of the various statements in the warrant. The facts alleged against him correspond with an offence in this jurisdiction. I am also satisfied that the minimum gravity terms have been met in relation to this offence. Therefore, I find that his surrender on this offence is not prohibited in this jurisdiction.

The alleged offences relating to bail

12. The respondent is also charged with an offence of failure to appear at a procedural hearing on 7th January, 2014. The EAW states that a warrant was taken at Edinburgh Sheriff Court on 22nd January, 2014. This alleged offence is listed as Case 1 (Charge 2). The next alleged offence is listed as Case 2 (single charge). This alleges that, having been released on bail in Case 1 above with the special condition of bail to sign on every Monday and Wednesday at St. Leonard's police station, the accused failed to comply with the condition on 19th and 22nd June, 2013. A warrant was taken at Edinburgh Sheriff Court on 6th August, 2013. Then he is sought in relation to the offences listed under Case 3 (12 charges). This indicates, as with Case 2 above, that the accused again failed to comply with the twice weekly sign on condition of bail imposed on him. He was reported for failure to comply with the condition on twelve occasions between 1st July, 2013 and 27th July, 2013 inclusive.

13. The EAW itself referred explicitly to fourteen charges. However, the detail given referred to a total of fifteen charges. The central authority wrote seeking an explanation for this reference. The Crown Office and Procurator Fiscal Scotland wrote back saying that the warrant relates to fifteen offences and a statement was made that the warrant should read "this warrant relates to a total of fifteen offences." The Crown Office and Procurator Fiscal Scotland apologised for the typographical error in section E. I am satisfied that this is a typographical error and it does not in any way invalidate the warrant or prohibit surrender. The nature and number of the offences for which he is sought can clearly be gleaned from the EAW.

14. At the initial hearing into this matter, counsel for the respondent submitted that neither type of bail offence corresponded with an offence under s. 13 of the Criminal Justice Act, 1984. She also submitted that a breach of a bail bond was not a criminal contempt of court. In those circumstances, she submitted there was no correspondence. Counsel quite properly drew the attention of the court to a decision of Peart J. which had held that a failure to appear in a court in Scotland corresponded with an offence in this jurisdiction. It was submitted that there was no detail of the allegation of the failure to appear in Scotland and that it was, therefore, not a precedent binding on this court. In light of the duty on the court under s. 5 of the Act of 2003 to consider the underlying acts or omissions alleged against a respondent, a decision of the High Court could only amount to binding precedent where the facts are set out in sufficient detail to permit another court to be sure that the same facts are at issue in the instant case.

15. The Court will proceed to deal individually with the different type of bail offences.

Case 2 (single charge) and Case 3 (12 charges) - The failure to sign on

16. There is no statutory offence in this jurisdiction of failing to comply with a condition of bail; the only possible corresponding offence is criminal contempt of court. At the conclusion of the initial hearing of this case, in which the minister had relied upon contempt of court as a corresponding offence, I requested the issuing judicial authority, or the issuing state, to provide me with additional documentation in answer to the following questions:

> (a) Is it alleged that in the above cases that the requested person entered into a recognisance?
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> (b) Is it alleged that he entered the recognisance before a court?
>
> (c) Is it alleged that the recognisance required him to appear before court?
>
> (d) If so is the offence alleging breach, failure to appear, in accordance with that recognisance?

17. The Procurator Fiscal replied with admirable speed, stating that he believed "that the 'recognisance' you refer to is the accused's agreement to comply with conditions of bail set by the court. It is not a term used by our courts, but in short I believe the answer to your questions to be 'yes'."

18. Attached to the response was a copy of the bail order issued to the respondent by Edinburgh Sheriff Court. The conditions were as set out above. It was stated that the respondent's release on bail was conditional on him agreeing at court in front of a sheriff to abide by the conditions of bail in the bail order. The warrant for his failure to appear could only issue when the court was satisfied that he had failed to appear at court without reasonable excuse.

19. At the resumed hearing, counsel for the minister submitted that in light of the decision of *The People (DPP) v. J.McD*. [2014] IECA 18 that he could not put forward criminal contempt of court as a corresponding offence on the failing to sign on. Having read the decision, I am not convinced that it amounts to a definitive finding that a failure to comply with a bail condition could not amount to a criminal contempt of court. Indeed, at para. 15 of the judgment, the Court of Appeal observed that the court was being required to address the issue in a situation where there had been no real analysis or debate in the Central Criminal Court as to the nature of the contempt that was under consideration, whether civil or criminal, and no attempt had been made to place this contempt on the scale of possible contempts.

20. Moreover at para. 16, the Court of Appeal state that *"…insofar as the focus on the 7th October, 2014, in part at least, was on a breach of an undertaking it seems that the court was dealing with a civil contempt, as distinct from a criminal contempt and certainly as distinct from a criminal contempt in the face of the court."* In those circumstances, the Court of Appeal decided that, the court below having dealt with the matter as a breach of undertaking, it must have been a civil contempt. That is entirely understandable in circumstances where breaches of undertaking given to courts have historically been held to amount to civil contempts of court. The mere fact that an undertaking had been given in a criminal court did not of itself elevate the matter to a level of criminal contempt of court. Thus, it is necessary to delve deeper into whether a failure to sign on, such as is alleged in Scotland, would if it occurred in this jurisdiction, amount to a criminal contempt.

21. Counsel on both sides endeavoured to assist the court with respect to the issue of contempt of court. Neither counsel has been able to point to any case in which breach of conditions of a bail bond (leaving aside the issue of a failure to appear in court) was held to be a criminal contempt of court.

22. The case of *The People (DPP) v. J.McD*. refers back to the discussion by Fennelly J., in *Laois County Council v. Hanrahan* [2014] IESC 34, concerning what has now been called a hybrid contempt. This type of situation arises where courts, in response to an

application for attachment and committal on the civil side, have decided that the behaviour of the respondent calls for the imposition of punishment over and above the coercive purpose of the committal jurisdiction. That case, and indeed the other cases cited in the decision in J.McD., deal with the court's power to impose a punitive sanction in the case of what is nonetheless fundamentally a civil contempt. In my view, the cases do not assist in the determination of the dividing line between what is a civil and a criminal contempt.

23. The most helpful document in seeking to understand the distinction between civil and criminal contempt is the Law Reform Commission's Consultation Paper on Contempt of Court dated July 1991. In brief, that paper sets out four general circumstances in which criminal contempt of court can be found. The first is "Contempt in the Face of the Court" and it is under that heading that non-attendance at court is posited. The second is "Scandalising the Court" which is clearly not relevant to the present issue. The third is "The Sub Judice Rule", also not at issue here. The final matter is entitled "Acts Other Than Publication, Which Interfere with the Course of Justice".

24. Under that final heading, the Consultation Paper refers to the wide-ranging powers of the courts to deal with abuse of the court's process. The paper states that generally the court will be slow to invoke the contempt jurisdiction; nonetheless the jurisdiction remains in reserve. According to the paper, the contempt jurisdiction has tended to be used in cases such as forging or altering the process itself, falsehoods intended to deceive the court, and acts of misuse of process which prejudice other persons. Certain examples are given. Indeed, the case of The State (Quinn) v. Ryan [1965] I.R. 70 is cited as an example of the Supreme Court invoking the concept of contempt of court in relation to conduct by the Garda authorities which have the likely effect of frustrating the administration of justice. It will be recalled that this case related to the removal of an individual from the jurisdiction on an arrest warrant from the U.K. without giving him an opportunity to challenge it before the courts.

25. The Law Reform Commission observes in the Consultation Paper that the categories of interference with the administration of justice are not closed. Thus, the mere fact that there is no direct precedent to cover the impugned conduct is not, per se, a reason for holding that the contempt jurisdiction has no application. It is said that provided the courts maintain a cautious approach as to the need for real prejudice to the administration of justice, this open endedness should not prove oppressive.

26. Overall then, the issue of whether a failure to abide by a condition to sign on at a Garda station is a contempt of court can only be resolved by determining if it comes within the categories of criminal contempt of court set out above. The fact that the failure to sign on took place in the context of an agreement being entered into before the court in criminal proceedings would appear not, by itself, to make the breach a criminal contempt. Indeed, the undertaking in *J.McD.*, given as it was in criminal proceedings and designed to ensure compliance with bail, also had the same link to the proceedings as a recognisance or bail bond would have. As I have discussed above, this is not a decisive precedence as the Court of Appeal was of the view that the focus in the Central Criminal Court had been on the breach as a civil breach of undertaking. It is necessary to look further to see if such a breach of agreement before a criminal court in relation to bail actually does amount to criminal contempt.

27. A contempt in the face of the court by definition, requires the contempt to be before or in the face of the court. A failure to sign on at a police station is a breach of the agreement with the court that takes place outside the court. The "policing" of the bail bond is not something that the court is equipped to deal with on its own. The court can only have knowledge of the breach if it is brought to its attention. Therefore, it is not an offence of contempt in the face of the court.

28. A failure to sign on in breach of the agreement is not an abuse of the court's process, as the failure to sign on does not *per se* interfere with the ability of the court to proceed with its functions. The court, if so minded, can continue to hear the proceedings, and indeed be unaware of the breach of the condition, if the person actually shows up in court. Similarly, it may not amount to an interference with the administration of justice; justice may proceed where a person actually turns up in court in answer to their bail. However, a failure to sign on at a Garda station may be evidence of an intention to interfere with the administration of justice in the future and may on that basis justify a revocation of bail already granted. Evidence of intention to interfere with the administration of justice is a different thing to the act itself amounting to a contempt of court. The failure to sign on at a police station is not of itself a contempt of court.

29. As there is no precedent for a breach of a bail bond (leaving aside a failure to appear in court) amounting to a criminal contempt of court and, as the failure to sign on at a police station does not come within any recognised category of criminal contempt, such as in the face of the court or an interference with the administration of justice, I find that there is no corresponding offence in this jurisdiction with the offence of failure to comply with the obligation to sign on at the police station in Scotland.

Case 1 (Charge 1) - Failure to appear at the Edinburgh Sheriff Court

30. Section 13 ss.1 of the Criminal Justice Act, 1984 provides: "If a person who has been released on bail in criminal proceedings fails to appear before a court in accordance with his recognisance, he shall be guilty of an offence…"

31. The respondent is a person who has been released on bail in criminal proceedings and has failed to appear in court. If that was all that was required to be proven by s. 13 ss.1, correspondence of offences would be established. Section 13 ss. 1 has a further requirement and that is that the failure to appear must be in breach of recognisance.

32. In the context of these proceedings, the issue is whether the failure by the respondent to appear in the Scottish court is a failure to appear "in accordance with his recognisance." Counsel for the respondent argued that this vital element is missing. Counsel pointed to the wording of the reply from the Scottish authorities, namely that recognisance is not a term used in Scotland. In those circumstances, she submitted that no correspondence can be found.

33. In my view, the High Court, as executing judicial authority, is required to look at the factual elements of what is alleged. The word "recognisance" may not be in use in other jurisdictions but, if the same concept is applicable in their courts, then there may well be correspondence on the facts. It is important to bear in mind what McKechnie J. said in Attorney General v. Pocevicius [2015] IESC 59 at para. 41: "*…it is self-evident that the meaning of terms, so commonly understood in this jurisdiction, may have an unrelated or quite distinct meaning elsewhere. The evidence in this case clearly demonstrates this point. Consequently, one must be very careful not to approach terms solely or perhaps even predominantly, through the lens of domestic jurisprudence."*

34. In this case, it was this Court that used the word "recognisance" in its communication with the issuing judicial authority. A recognisance is the agreement that an accused enters into in this jurisdiction prior to release on bail (although at issue here is the nature and extent of that agreement). It is not necessary that Scottish law knows or uses that word, what is at issue is whether the factual components of the alleged offence in Scotland correspond with an offence in this jurisdiction.

35. Counsel for the minister and counsel for the respondent differ in their interpretation of the phrase 'recognisance'. The starting

point is the same, however, that the Act of 1984 does not provide an explicit definition of recognisance. Counsel for the respondent refers to O'Connor's *"The Irish Justice of the Peace"* (Vol. I., 2nd Ed. 1915). At p. 269, it is stated that *"a recognisance is the acknowledgment of a debt due to the King, defeasible upon the happening of a certain event, e.g. the appearance of the party in court pursuant to the terms of the condition."* The rest of the chapter in O'Connor's *"The Irish Justice of the Peace"* deals with matters clearly involving the monetary aspects of the bond. Counsel also referred to the Bail Act, 1997, as amended, and to the references therein to monetary amounts.

36. Counsel for the minister submitted that the meaning of recognisance is an agreement to turn up and is wider than a monetary matter. In particular, counsel relied upon Murdoch's Dictionary of Irish Law and on the amendments to the Bail Act brought about by s. 8 of the Criminal Justice Act, 2007. Murdoch's Dictionary of Irish Law defines a recognisance as *"an obligation or bond made before a court of record (qv) binding a person (called the recognisor) to perform some act, e.g to appear before a court or to keep the peace or to be of good behaviour, or to ensure the attendance of an accused at his trial."* There is then a reference to RSC O.84 rr. 16-17. Despite the reliance by counsel for the minister on the lack of any reference to monetary obligation in the context of the obligation or bond, it must be noted that the cited rule of the Rules of the Superior Courts treat a recognisance as a monetary bond. Order 84 r.17 states "no recognisance shall be forfeited or estreated without an order of the court…". Only money or money's worth can be forfeited or estreated. Similarly, the implication of O.44 r.1 of the Circuit Court Rules is that a recognisance is a monetary amount.

37. Counsel relies, however, on the form set out in the District Court Rules relating to bail (S.I. 105/2009). That form refers to a monetary condition but has an asterisk which says "This condition is required where a money or security condition is included in any bail bond." Those forms must be read in light of the District Court Rules. Order 18 r. 1, as amended by S.I. 41 of 2008 entitled District Court (Criminal Justice Act 2007) Rules 2008, now provides: "Subject to rule 2, a Judge shall admit to bail a person charged before him or her with an offence if it appears to that Judge in accordance with the Criminal Procedure Act 1967 and Bail Act 1997 to be a case in which bail ought to be allowed and if such person is granted bail, the Judge shall determine the amount (if any) conditioned by such bail and whether the bail shall be with or without a surety or sureties, the amount (if any) in which each surety (if any) shall be bound, and any other conditions of bail. The provisions of this Order which relate to the payment of money or the giving of security shall not apply where bail is allowed otherwise than conditioned on an amount of money."

38. The reference to the amount "if any" indicates that under the District Court Rules, a monetary amount appears no longer to be required in any recognisance. The Rules are subject to the provisions of the Bail Act, 1997 which they seek to implement. It is necessary to examine the provisions of the Bail Act, 1997.

39. As originally drafted, s. 5 of the Bail Act, 1997 provided that "where a court admits a person who is in custody to bail, the person shall not be released until (a) an amount equal to one third, or (b) such greater amount as the court may determine, of any recognisance entered into by a person in connection therewith has been paid into court by the person." In this provision, recognisance is equated with a form of monetary payment. The particular statutory requirement to pay into court a sum equal to one third of the recognisance presented difficulties in the day to day administration of bail. Section 5 was then amended by s. 33 of the Courts and Court Officers Act, 2002 ("the Act of 2002") to give the court discretion as regards the requirement to pay part of the recognisance into court. Ancillary amendments to the Bail Act, 1997 were also made by the Act of 2002 to reflect this new discretion.

40. Section 5 of the Bail Act, 1997 as amended by the Act of 2002 stated at ss. 1 that:

> "Where a court admits a person who is in custody to bail, the court may, having regard to the circumstances of the case, including the means of the person and the nature of the offence in relation to which the person is in custody, order that the person shall not be released until— (a) an amount equal to one third, or (b) such greater amount as the court may determine, of any recognisance entered into by a person in connection therewith has been paid into court by the person."

Subsection 3 of s. 5 of the Bail Act, 1997 as amended by the Act of 2002 states:

> "Where a person charged with an offence is admitted to bail by a court and— (a) he or she is discharged in relation to that offence pursuant to section 8 (5) of the Act of 1967 or otherwise, (b) a *nolle prosequi* is entered by the prosecutor in respect of the offence, or (c) he or she is convicted or found not guilty of the offence charged or of some other offence of which the accused might on that charge be found guilty, and if the conditions of any recognisance entered into by a person in connection therewith have been duly complied with, the court before which the accused person was bound by his or her recognisance to appear shall make an order that the amount (if any) of any recognisance paid into court by any person in connection therewith shall be repaid to the person and shall discharge any order made under subsection (2) and release any security accepted by the court under that subsection."

These amendments did not appear to change the identification of recognisance with monetary agreement. The reference to the "amount (if any)" of any recognisance is a reference to "any recognisance paid into court". Indeed it is arguable that the reference to "recognisance *paid into court"* amounts to a confusion of terminology, it is not the recognisance that is paid into court but part of the monetary amount identified in the recognisance that is to be paid into court.

41. The next amendment was brought about by s. 8 of the Criminal Justice Act, 2007. Section 8 of the Criminal Justice Act, 2007 amended s. 5 of the Act of 1997, by substituting the following words in ss. 1, namely "any moneys to be paid into court under a recognisance" for the words "any recognisance" in the original. As a result of the 2007 amendment, s. 5 ss. 1 now reads:

> "Where a court admits a person who is in custody to bail[, the court may, having regard to the circumstances of the case, including the means of the person and the nature of the offence in relation to which the person is in custody, order that] the person shall not be released until— (a) an amount equal to one third, or (b) such greater amount as the court may determine, of any moneys to be paid into court under a recognisance entered into by a person in connection therewith has been paid into court by the person."

Subsection 2 of s. 5 now reads as a result of the 2007 amendment:

> (a) Where a court requires payment of moneys into court by a person or any surety as a condition of a recognisance, it may accept as security, in lieu of such payment, any instrument that it considers to be adequate evidence of the title of a person to property (other than land or any estate, right or interest in or over land).] (b) Where a bank, building society, credit union or post office deposit book is accepted as security by a court by virtue of paragraph (a), the court shall make an order directing the bank, building society or credit union concerned or An Post, as the case may be, not to permit the moneys on deposit to be reduced below— (i) an amount equal to the amount required to be paid into court, or

(ii) the amount then on deposit, whichever is the lesser."

Subsection 3 now reads as a result of the 2007 amendment:

> "Where a person charged with an offence is admitted to bail by a court and— (a) he or she is discharged in relation to that offence pursuant to section 8 (5) of the Act of 1967 or otherwise, (b) a *nolle prosequi* is entered by the prosecutor in respect of the offence, or (c) he or she is convicted or found not guilty of the offence charged or of some other offence of which the accused might on that charge be found guilty, and if the conditions of any recognisance entered into by a person in connection therewith have been duly complied with, the court before which the accused person was bound by his or her recognisance to appear shall make an order that [the amount (if any) of any [moneys paid] into court] by any person in connection therewith shall be repaid to the person and shall discharge any order made under subsection (2) and release any security accepted by the court under that subsection."

42. It is urged on behalf of the minister, that the effect of this is to divorce recognisance from a monetary obligation. This amendment does not make such straightforward amendment. The reference to "moneys to be paid into court" is a reference to an order of court that moneys be paid into court prior to the release on bail. This amendment, in my view, clarified that it was the moneys, or part thereof, set by the recognisance that is to be paid into court. It respects the concept of the recognisance as an agreement while acknowledging that it has a monetary amount. Therefore, these amendments do not change the understanding of recognisance as an acknowledgement of a monetary debt in the event of the happening of a certain event.

43. Other sections of the Bail Act, 1997 also refer to recognisances. Section 5 (2)(a) provides: "where a court requires payment of moneys into court by a person or any surety as a condition of a recognisance, it may accept as security…" . This subsection does not interfere with the link between recognisance and monetary debt. It permits the court to accept a security in lieu of payment of money into court where such the court requires such payment of money. Furthermore, s. 5(3) also provides for the repayment of moneys paid into court on completion of the proceedings.

44. Section 6 is headed "conditions of bail" and it lists the type of conditions that may be imposed "where an accused person is admitted to bail on his or her entering into a recognisance." Once again, a distinction is drawn between the recognisance and the conditions of bail themselves.

45. Section 9 of the Bail Act, 1997 was amended by s. 48(b) of the Criminal Justice (Miscellaneous Provisions) Act, 2009. Under the original s. 9, there was a direct link between monetary debt and recognisance. As originally enacted, s. 9(1) provided:

> "[w]here an accused person who is admitted to bail on his or her entering into a recognisance with or without a surety or sureties conditioned for his or her appearance before a specified court on a specified date and at a specified time and place fails to appear in accordance with his or her recognisance and the court issues a warrant for the arrest of the person, the court shall order the recognisance of the accused person and the recognisance of any surety or sureties to be estreated and shall order the forfeiture of the amount paid into court by the accused person and any surety or sureties."

46. The newly substituted s. 9 provides:

> "Where an accused person or a person who is appealing against a sentence of imprisonment imposed by the District Court (in either case referred to in this section as ' the person ') is admitted to bail on entering into a recognisance conditioned for his or her appearance before a specified court on a specified date at a specified time and place, and the person—
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> (a) fails to appear in accordance with the recognisance, or
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> (b) is brought before the court in accordance with subsection (7) and the court is satisfied that the person has contravened a condition of the recognisance,
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> the court may order—
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> (i) that any moneys conditioned to be paid under the recognisance by the person or any surety be estreated in such amount and within such period as the court thinks fit,
>
> (ii) that any sums paid into court by the person or any surety be forfeited in such amount or amounts as the court thinks fit,
>
> (iii) where a bank, building society, credit union or an An Post deposit book has been accepted as security for the amount of the recognisance, that the entity concerned pay into court that amount, or such lesser amount as the court thinks fit, from the moneys held by the person or any surety on deposit therein, and
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> (iv) where necessary for estreatment, that a receiver be appointed to take possession or control of the property of the person or any surety and to manage or otherwise deal with it in accordance with the directions of the court."

47. A primary effect of the new s. 9 was to give the court discretion in terms of estreatment and forfeiture. Greater clarity was provided to the types of order that the court may make following a failure to appear or where the person is arrested for breach of condition.

48. Section 9(1)(ii) and (iii) relate to a situation where money has been ordered to be paid into court or a security in lieu of such payment being ordered. It is the reference in s. 9(1)(i) to "any moneys" being conditioned to be paid under the recognisance that raises the question of whether this means that a recognisance no longer is required to be a monetary one. In my view, this cannot be read in isolation but must be seen in the context of the rest of the section and, indeed, the rest of the Act. The other subsections of s. 9 refer to forfeiture of money or orders to be made against financial institutions. Forfeiture occurs in circumstances where money has been paid into court. Section 5 permits the court to order payment into court of a greater amount than one third of the recognisance. That discretion permits the court to order that the entire amount be paid into court. Where all the money is required to be paid into court, that means that there is no (other) money conditioned to be paid under the recognisance. Therefore, there will be no other money subject to estreatment. That is the reason why the term "any moneys" is used in s. 9(1)(i), as in the circumstances just outlined there will be no money liable to estreatment. This amendment is not an explicit indication that there has been a change to the meaning of recognisance.

49. I find that recognisance in this jurisdiction historically meant an acknowledgement of a monetary debt due to the State, which was no longer payable if the person met the condition, usually by turning up in court. At this point, the provisions of s. 32 of the Criminal Procedure Act, 1967 should also be noted. Section 37 provides: "Where a person has failed to appear before a court in accordance with his recognisance, any proceedings to estreat the recognisance shall be taken in that court." Under those provisions, it can be seen that s. 32 envisages that recognisance involved a monetary amount and is an explicit acknowledgement that a recognisance involved a monetary debt.

50. As initially drafted, the Bail Act, 1997 explicitly referred to recognisance in a manner which unequivocally demonstrated that a recognisance was to be understood as a monetary debt. While the subsequent amendments to the Bail Act, 1997 were nuanced in their reference to the term recognisance, there was no express alternation to the meaning of recognisance.

51. I have considered that the District Court Rules Committee have, in the amended Order 18 r.1, taken the view that a monetary recognisance is not required. In interpreting the Bail Act, 1997, as amended, I am required to apply the statutory canons of construction, to give the words of the Act their ordinary and natural meaning and to interpret them in the context of the Act as a whole. The interpretation given to the Act by the District Court Rules Committee cannot be a determinative factor as to how a court should interpret the provisions of an Act. In light of the historical understanding of the word recognisance, which had a common law and statutory basis (see O'Connor's *"The Irish Justice of the Peace",* Vol. I., 2nd Ed., 1915), the reference in the Criminal Procedure Act, 1967, and the initial provisions of the Bail Act, 1997, I do not find any of the amendments to the Bail Act, 1997 expressly or by implication amend that natural and ordinary meaning of the word recognisance. A recognisance is an acknowledgment of a debt conditioned upon the happening of a certain event. That was the legal, and indeed common meaning it had prior to the Bail Act. It is perhaps for that reason that it was felt that no definition was required in the Bail Act, 1997.

52. A major change in the Bail Act, 1997 was to provide for the payment of money into court or the acceptance of security in lieu of the payment into court. The recognisance was still a debt conditional upon the happening of a certain event. Greater security was achieved by payment of money into court or provision of other security in lieu (and thereby greater incentive to a person released on bail to turn up). But the money could only be estreated or forfeited on the happening of the event. The amendment of s. 9 reflected the variety of orders open to the court on foot of those charges. It did not alter the fundamental nature of recognisance as involving a monetary commitment on behalf of an accused conditional upon the happening of a certain event, usually a failure to turn up in court or breach of another condition.

53. In reaching this conclusion, it has not been necessary to apply a strict rule of construction to the legislation (as is required, because a failure to appear in accordance with recognisance is a criminal offence under s. 13 of the said Act). The application of a strict rule of construction would give even greater force to the argument that the amendments do not demonstrate a clear intention to amend the meaning of the word recognisance.

54. No monetary commitment to turn up was required of this respondent in Scotland. In that sense, he did not enter into a recognisance. In those circumstances, I am satisfied that there is no correspondence with s. 13 of the Act of 1984.

Criminal Contempt of Court

55. Counsel for the minister puts forward the offence of criminal contempt of court as a corresponding offence. He relies upon the Law Reform Commission's Consultation Paper and refers in particular to p. 10 thereof and the heading "Non-attendance at Court." The passage referring to "non-attendance of parties in court" relates to participants in legal proceedings: it cover mores than the appearance of an accused. The Consultation Paper states that non-attendance has been held in some cases to be capable of constituting contempt in the face of the court. An argument against this is that the absentee cannot be considered as having done anything in the face of the court, whereas the counter-argument is that the non-attendance is capable of amounting to an insult to the court, the locus of the insult being the court itself.

56. An example in the Consultation Paper is that of the High Court (Costello J.) decision In *re Kelly* [1984] I.L.R.M. 424. It was held that attempting to induce a witness not to attend court constituted contempt in the face of the court. The witness in that case had been under subpoena to attend court. The Supreme Court in overturning the conviction stated at pp. 431-432:

> "This Court is satisfied that in cases of contempt in the face of the court a High Court judge has jurisdiction to deal with the matter summarily and to impose punishment where it is necessary to do so to protect the administration of justice.
>
> Assuming for the purpose of this appeal that the allegations made in the present case would, if proved, amount to contempt in the face of the court, this Court is of opinion that, having regard to the sequence in which witnesses gave their evidence and adverting in particular to the fact that Mr McGoldrick had completed his evidence in the Companies Act matter, the necessity for the judge to hear and determine the contempt issue did not exist."

57. The finding of the Supreme Court raises issues of whether the offence of criminal contempt in circumstances of non-attendance still exits but it is only the jurisdiction to try summarily that is dependent upon the necessity to protect the administration of justice. Yet, in *Morris v. Crown Office* [1970] 1 All E.R. 1079, cited on behalf of the minister in this case, Salmon L.J. stated: *"The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented…."*

58. Therefore, while arguably there could have been a non-summary manner in which to try the accused persons In *re Kelly*, the basis for the offence of contempt of court is interference with the administration of justice. While the alleged breach of the undertaking amounts to civil contempt (as occurred in the Central Criminal Court in *J.McD.*), is it also a criminal contempt because a) it is in the face of the court and b) it is an interference with the administration of justice? On the basis of the decision In *Re Kelly*, I am satisfied that the failure to appear is quite rightly said to take place in the face of the court.

59. In addressing the issue of the interference with the administration of justice, counsel for the respondent submitted that the facts set out in the warrant were ill-defined, pointing in particular to the statement that he failed to appear at a procedural hearing. That, she submitted, did not amount to a contempt of court as the court could have proceeded in his absence. It was submitted that on the evidence, no interference with the administration of justice has been shown. The submission that the court could have proceeded in the absence of the respondent is not accepted. In the first place, there is no evidence that the court in Scotland could have so proceeded, and indeed the evidence that exists is that the court could not, hence the warrant was issued for his arrest.

60. When considering the issue of correspondence of offences, the focus must be on a transposition of the facts as if they occurred in this jurisdiction. Hence, the issue is whether the failure to appear at a procedural hearing in this jurisdiction, contrary to an agreement entered into before the court, amounts to an interference with the administration of justice in this jurisdiction and hence a

criminal contempt of court. The issue is not whether the failure to appear is an offence against the administration of justice in Scotland but whether the transposed facts would so amount to an interference with the administration of justice here and, in the particular circumstances, a contempt in the face of the court.

61. In this jurisdiction, a person who agrees to be bound by a condition of release on bail that they will turn up at every court sitting when their criminal case is listed and who does not turn up is interfering with the administration of justice. Even where the case might proceed in his or her absence, for example in the case of some summary matters, there is an interference with the administration of justice by the very fact of the failure to appear. The court before which the proceedings are listed, will be obstructed in any number of ways, from perhaps being forced to put the matter back to second calling, to having to hear an application for a bench warrant or absence, to proceed in the person's absence and where a sentence may be imposed there is an interference with the administration of justice because the person is not present. The release on the agreement of the person to turn up in court requires that the person abide by that condition. The administration of justice in criminal matters has a default position that the person be present at those proceedings. It is an interference with the administration of justice for an accused person, having been released from custody and having agreed to turn up in court, to voluntarily absent him or herself.

62. The offence under Case 1 (Charge 2) does not correspond with an offence under s.13 ss. 1 of the Criminal Justice Act, 1984, but corresponds with the offence of criminal contempt of court. In those circumstances and for the reasons set out above, he may be surrendered on this offence.

Conclusion
63. For the reasons set out above, I may make an Order under s. 16 of the Act of 2003 for the surrender of the respondent on Case 1 (Count 1) and Case 1 (Count 2) to such person in the issuing state as is duly authorised to receive him. I refuse his surrender on the remaining 13 charges.