

THE HIGH COURT

2000 13487 P

BETWEEN

DONALL MURRAY AND AIR AMBULANCE SERVICES LTD.

PLAINTIFFS

AND

SANDRA FITZGERALD, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

AS CONSOLIDATED PURSUANT TO ORDER DATED 30TH DAY OF JULY, 2007 INCORPORATING OTHER PROCEEDINGS

Judgment of Mr Justice Michael White delivered the 18th of January 2012

1. The defendants have issued a motion dated 8th July, 2011, originally returnable for 18th July, 2011, seeking the following orders:-
 - (1) An order dismissing the plaintiff's claim pursuant to the inherent jurisdiction of the court on the grounds that the claim is frivolous and vexatious.
 - (2) An order dismissing the plaintiff's claim on the basis that the maintenance of the claim constitutes an abuse of the court.
 - (3) An order staying the proceedings until awards of costs made separately in respect of these proceedings on 2nd February, 2010; 23rd July 2010, 16th February, 2011, in favour of the defendants are discharged.
 2. The motion is grounded on the affidavit of Pamela Hanley, Solicitor of 8th June, 2011 and a further affidavit of Pamela Hanley sworn on 9th September, 2011. The plaintiff, Donall Murray, has filed a replying affidavit sworn on 22nd August, 2011.
- The History of the Proceedings**
3. The plaintiff issued ten separate High Court plenary summonses commencing with record No. 2000/13487P dated 20th November, 2000 and culminating in plenary summons 2005/309P issued on 31st January, 2005.
 4. By order of this Court on 30th July, 2007, the ten sets of proceedings instituted by the plaintiff were ordered to be consolidated and a consolidated Statement of Claim was delivered on 9th January, 2008. The substance of the claim was that on various dates members of An Garda Síochána had acted in a very improper way by stopping the plaintiff when driving vehicles and proceeded to initiate summonses for prosecutions pursuant to the Road Traffic Acts which the plaintiff alleges were malicious and without lack of reasonable and probable cause.
 5. The plaintiff also claimed that An Garda Síochána failed to properly investigate allegations by the plaintiff of harassment, criminal assaults and threats of a third party between 1991 and May 1995, and claimed overt acts of conspiracy to injure him over a period of time between 16th January, 1992 and 26th January, 2001. He also claimed a further conspiracy against him by various members of An Garda Síochána by overt acts and abuse of their powers.
 6. By order of the High Court on 27th February, 2009, a request for the trial of a preliminary issue was refused and costs were awarded against the plaintiff in favour of the defendants.
 7. By order of the High Court on 1st February, 2010, paras. 43 – 56 of the Consolidated Statement of Claim were struck out on the grounds that same were barred by virtue of the provisions of the Statute of Limitations 1957, as amended. The court further directed that paras. 10 – 22 of the Statement of Claim be tried by judge alone. It was ordered that the balance of the claim proceed by way of trial by judge and jury. Costs were reserved.
 8. The balance of the claim to be heard by judge and jury is set out at paras. 1 – 9, 23 – 42 and 57 – 72 of the Consolidated Statement of Claim. This jury trial commenced on 2nd February, 2010. After the opening of the trial by counsel for the plaintiff, counsel for the defendants applied to discharge the jury. Ryan J. in his ruling stated:-

"I have a duty to ensure a fair trial both for Mr. Murray and for the defendants. I cannot allow manifest breaches of procedure of the known rules of opening a case, I cannot permit that where the cumulative effect in my view is to jeopardise the chances of getting justice in the case. If one were to endeavour to climb back by putting the matter straight the problem is not just that it would be extremely difficult to ensure fairness, the problem is to try to do so without further undermining the plaintiff himself in the case.

In the circumstances the decision is clear, it seems to me. This is an impossible task to try to remedy the harm that has been done and the breaches as I say, I am not for one saying that they were deliberately done but this Jury has got to be discharged because I cannot see any way in which one could remedy the serious errors which have been made and I propose to discharge the jury reluctantly but irresistibly in the circumstances".

9. An order was made discharging the jury and that the plaintiff do pay to the defendants the full costs of one day of the trial said

costs to be taxed in default of agreement.

10. The non-jury portion of the action at paras. 10 – 22 of the Consolidated Statement of Claim was heard by Ryan J. over a period of six days and he delivered a written judgment on 23rd July, 2010, dismissing the plaintiff's claim as pleaded in paras. 10 – 22 of the said Statement of Claim and ordered that the plaintiff pay to the defendants the costs including reserved costs of those proceedings when taxed and ascertained.

11. The civil jury trial was listed again for hearing on 15th February, 2011 before Dunne J. Prior to the opening of the jury trial on 15th February, 2011, submissions were made to the trial judge. Counsel for the plaintiff had given in advance to counsel for the defendants the draft of his opening address and the defendants addressed the trial judge, who gave a ruling on the matter. That gave clear guidance to counsel for the plaintiff in respect of his opening, the most important statement of the ruling being:-

"It is important that counsel keeps his opening speech within the 4 walls of the case before the Court".

12. The learned Judge made clear that the draft opening speech as furnished to the Court contained matters where a risk of prejudice to the trial would arise.

13. After the opening by counsel on behalf of the plaintiff, counsel for the defendants applied to the trial judge to discharge the jury. After submissions the trial judge reserved her ruling to the following day Wednesday, 16th February, 2011. In her ruling, the trial judge stated that counsel for the plaintiff in his opening speech despite advice from the trial judge had put prejudicial matter before the jury and the judge had no option but to withdraw the case from the jury. The learned judge stated:-

"In my view all this was highly prejudicial. Added to that, the other matters which I have referred to have resulted in a situation where I regret to say I have come to the view that the cumulative effect of the matters complained of by the Defendants in the Plaintiffs opening speech to the jury is such that I have reached the conclusion that prejudicial matters have been placed before the jury such that I do not believe that the situation can be put right by appropriate directions given to the jury. I reiterate that I would not have reached this view solely on the basis that the Plaintiff failed to inform the jury of basic matters which traditionally are mentioned by Counsel for the Plaintiffs such as the role of judge and jury, the onus of proof, the standard of proof and the ingredients of the torts at issue before the Court. They are clearly matters which, in my view, even with difficulty in some cases could be rectified by the Trial Judge. However the other matters to which I have referred and set out in detail above in relation to such matters as the impugning of the Court Orders, telling the jury of matters in such a way as to indicate that there are matters about which the jury will be left in the dark, the complaint made about the State lawyers blocking the proceedings and so on (I don't need to reiterate everything here) are such that I feel I am left with no option but to withdraw the case from the jury. I do so with some regret, bearing in mind that I understand that this is the second time that this has happened but it is my function and role to ensure that there is a fair trial for both sides. I cannot do that in circumstances where I am satisfied"

That prejudicial matter has been put before the jury which should not have been put before the jury.

14. By order of the court of 16th February, 2011, an order was made that the jury do stand discharged and the action was adjourned. It was ordered that the plaintiff do pay to the defendants' costs of the trial to be taxed in default of agreement.

15. The defendants have exhibited in the affidavit of Pamela Hanley sworn on the 9th September, 2011, a copy of a file which was sent directly to the Commissioner of An Garda Síochána, by the plaintiff. Included in the file is a list of persons stated to have received the file.

16. Page 3 of the file states:-

"The crime of (gang) rape has been committed by An Garda Síochána. The rapists continue to have the protection of your office. Fact (supporting documents and evidence herewith). Despite the best efforts of the victims...(there are 2 victims in this rape case)... to acquire justice (21 years effort). The Plaintiffs (the rape victims in this case) have been denied any fair hearing in the High Court; have been denied any fair judicial attention to evidence in fact and in law presented at all or ever. The Plaintiffs (the victims) has been entirely and unfairly mistreated by the Judicial system and your office to the extent that Judges, 3 times and more have displayed bias and discrimination against the victims (the Plaintiffs in the case) by awarding costs to the rapists (the Defendants in this case who are; the Gardaí, Ireland and the Attorney General) 3 times over in the middle of a major High Court rape trial (supporting documented evidence herewith). This is clearly another attempt by the State and your office to scupper justice and further skin the victims (supporting documentation herewith). It is unacceptable".

17. Miss Hanley avers that this file does not suggest that the litigation is likely to be conducted in a more satisfactory and fair manner in the future.

18. When the motion presently before the court came before MacMenamin J., he was asked by counsel for the plaintiff to furnish a preliminary ruling in writing as to the jurisdiction of the court to strike out the proceedings in certain circumstances and he agreed to comply with this request and delivered a very helpful ruling on 3rd October, 2011, setting out the jurisdiction in respect of O. 19, r. 27 and 28 and the inherent jurisdiction of the court.

19. The subject matter of the outstanding claim pending in the Civil Jury List is an allegation by the plaintiff in respect of malicious prosecution arising out of a number of road traffic prosecutions and an allegation that members of the Garda Síochána in Dun Laoghaire collectively conspired against the plaintiff.

20. It is useful to set out the actual record in respect of those prosecutions, the subject matter of this claim and set out in the Statement of Claim.

Incident No. 1

Prosecuting Garda – Garda Sandra Fitzgerald

Alleged date of offences: 2/5/1999 at Marine Drive, Dun Laoghaire –

Vehicle 99 D 11213

Summonses applied for on the 21st June, 1999.

Summonses issued on 6th December, 1999.

Hearing in the District Court 4th April, 2000 – Case No. 1999/7643.

There was no appeal to the Circuit Court.

21. At para. 5 of the consolidated Statement of Claim the plaintiff alleges that on 4th April, 2000 the said charges were dismissed by Judge Kirby at Dun Laoghaire District Court following Submissions made on behalf of the plaintiff.

22. The orders of the court were as follows:-

(1) Case No. S1999/7643 Charge No. 5.

On 2nd May, 1999, at Marine Road, Dun Laoghaire, Co. Dublin a public road in the Dublin Metropolitan District were the driver of vehicle registration number 99 D 11213 which was parked on a footway in contravention of Bye Law 6 (1) of the Dublin Area Traffic and Parking Bye Laws 1986. It was adjudged that the said Defendant be convicted of said offence and pay a fine of €75 within 90 days.

(2) Case No. S1999/7643 Charge No. 1.

The allegation of driving without insurance of vehicle registration number 99 D 11213 on 2nd May, 1999 at Marine Road, Dun Laoghaire, Co. Dublin Contrary to Section 56 (3) the Road Traffic Act 1961 was dismissed.

(3) Case No. S1999/7643 Charge No. 2.

The offence of failing to produce a Certificate of Insurance on 2nd May, 1999 at Marine Road, Dun Laoghaire, Co. Dublin or within 10 days in respect of vehicle registration number 99 D 11213 Contrary to the provisions of Section 69 (1) of the Road Traffic Acts 1961, was adjudged to be taken into consideration with the order imposed in Case 1999/7643 Complaint No. 5.

(4) Case No. 1999/7643 Charge No. 3.

An offence contrary to s. 38(1) of the Road Traffic Act 1961, not holding a driving licence in respect of vehicle registration number 99 D 11213 at Marine Road, Dun Laoghaire on 2nd May, 1999 was adjudged to be taken into consideration with the order imposed in case 1999/7643 complaint No. 5.

23. In respect of the allegation of failing to produce a driving license the order exhibited is one of 22nd February 2000 adjourning the matter to 4th of April 2000, so the court cannot confirm that order.

Incident No. 2

Prosecuting Garda: Garda Declan Hartley

Alleged date of offence: 11th July, 2000.

Location: Church Road, Ballybrack, Co. Dublin.

Vehicle 90 D 24748

District Court date 26th January, 2001.

Date of appeal to the Circuit Court 19th April, 2002.

24. The orders of the court were:-

(1) Case No. S2000/76046 – Charge No. 4 – appeal Reference A2001/344 Allegation of an offence of driving without insurance Contrary to s. 56(3) Road Traffic Act 1961, using vehicle registration number 90 D 24748 on 11th July, 2000, at Church Road, Ballybrack, Co. Dublin. The District Court ordered imprisonment for 60 days and disqualification for 4 years. On appeal the Circuit Court on 19th April, 2002, affirmed the conviction of the District Court but varied the order of the District Court by increasing fine to €1,000 in lieu of a prison sentence. Affirm the order for disqualification but reduce the disqualification to 2 years.

(2) Case No. S2000/76046 Charge No. 1.

An offence contrary to s. 13(1) Roads Act 1920, on 11th July, 2000 at Church Road, Ballybrack, Co. Dublin used a vehicle 90 D 24748 upon which the license as required by the Roads Act 1920 and the Finance Acts was not in force. It was adjudged that the offence be taken into consideration with the order imposed in case 2000/76046 Complaint No. 4. This was affirmed on appeal to the Circuit Court.

(3) Case No. S2000/76046 Charge No. 2.

An offence contrary to ss. 73(1) and 76 of the Finance Act 1976, of using vehicle 90 D 24748 at Church Road, Ballybrack on 11th July, 2000, when there was not fixed to and exhibited on the vehicle a tax disc was adjudged taken into consideration with the order imposed in case 2000/76046 Complaint No. 4 at Dun Laoghaire District Court on 26th January, 2001. At the appeal hearing in the Circuit Court on 19th April, 2002 this order was affirmed.

(4) Case No. S2000/76046 Charge No. 3.

An offence of fraudulently altering and using a license issued under the Roads Acts at Church Road, Ballybrack on 11th July, 2000, was adjudged in the District Court on 26th January, 2001, to be taken into consideration with the Order imposed in Case 2000/76046 Complaint No. 4. On appeal to the Circuit Court on 19th April, 2002, this order was affirmed.

(5) Case No. S2000/76046 Charge No. 5.

In respect of a offence of failing to produce a Certificate of Insurance in respect of driving vehicle 90 D 24748 at Church Road, Ballybrack on 11th July, 2000, contrary to s. 69(1) of the Road Traffic Act 1961, as amended. It was adjudged that this offence be taken into consideration with the order imposed in case 2000/76046 Complaint No. 4. On appeal to the Circuit Court on 19th April, 2002, this order was affirmed.

(6) Case No. S2000/76046 Charge No. 6.

In respect of not displaying on the vehicle an Insurance Disc in contravention of Regulation 5 and s. 11 of the Road Traffic Act 1961, in respect of vehicle 90 D 24748 at Church Road, Ballybrack on 11th July, 2000, it was adjudged that this offence be taken into consideration with the order imposed in case 2000/76046 Complaint No. 4 at Dun Laoghaire District Court on 26th January, 2001, on appeal to the Circuit Court on 19th April, 2002 this order was affirmed.

25. At paras. 8 and 9 of the Statement of Claim the plaintiff deals with an allegation of use of a fraudulent tax disc only and asserts that the learned District Judge declined to adjudicate upon the matter on the day and the prosecution have not re-entered the matters for prosecution.

Incident No. 3

Prosecuting Garda, Garda Maurice Gill

Alleged date of offence: 23rd August, 2000

Location Coolevin, Ballybrack, Co. Dublin

District Court hearing and Orders Dun Laoghaire District Court 26th January, 2001 – appeal to the Circuit Court – Circuit Court Dublin 19th April, 2002.

(1) Case No. S2000/92858 – Charge No. 1.

An allegation of an offence Contrary to s. 56 of the Road Traffic Act 1961, having no insurance to drive vehicle 90 D 24748 on 23rd August, 2000, at Coolevin, Ballybrack, Co. Dublin. At the District Court hearing on 26th January, 2001, the plaintiff, Donall Murray, was convicted – imprisoned for a period of 60 days and disqualified from driving for a period of 4 years. On appeal to the Circuit Court on 19th April, 2002, the appeal was allowed and the District Court conviction reversed.

(2) Case No. S2000/92858 Charge No. 2.

An allegation of failing to produce insurance contrary to the provisions of s. 69 (1) Road Traffic Act 1961, in respect of vehicle registration number 90 D 24748 on 23rd August, 2000 at Coolevin, Ballybrack was adjudged taken into consideration with the order imposed in case S2000/92858 Charge No. 1. In the Circuit Court on 19th April, 2002, the court found the Charge proved but it being of the opinion that having regard to the extenuating circumstances under which the offence was committed, it was inexpedient to inflict any punishment. The Court dismissed the charge under the Probation of Offenders Act 1907 Section 1(1).

(3) Case No. S2000/92858 Charge No. 3.

An offence contrary to s. 38(1) of the Road Traffic Act 1961, driving vehicle number 90 D 24748 at Coolevin, Ballybrack on 23rd August, 2000 without a driving license. In the District Court on 26th January, 2001, it was adjudged that the said offence be taken into consideration with the order imposed in case S2000/92858 Complaint No. 1. On appeal to the Circuit Court on 19th April, 2002, the appeal was allowed and the District Court conviction reversed.

(4) Case No. S2000/92858 Charge No. 4.

This was an offence of failing to produce driving license contrary to s. 40 of the Road Traffic Act 1961, in respect of vehicle registration number 90 D 24748 at Coolevin, Ballybrack on 23rd August, 2000. It was adjudged that the said offence be taken into consideration with the order imposed in case S2000/92858 Complaint No. 1 at the District Court on 26th January, 2001.

On appeal to the Circuit Court on 19th April, 2002 the court found the charge proved but being of the opinion that having regard to the extenuating circumstances under which the offence was committed, it was inexpedient to inflict any

punishment and dismissed the charge under the Probation of Offenders Act 1907 Section 1(1).

(5) Case No. S2000/92858 Charge No. 5.

This was an offence of not displaying an insurance disc on vehicle 90 D 24748 at Coolevin, Ballybrack on 23rd August, 2000 in contravention of Regulation 5 and s. 11 of the Road Traffic Act 1961. At Dun Laoghaire District Court on 26th January, 2001, it was adjudged that the said offence be taken into consideration with the order imposed on case S2000/92858 Complaint No. 1.

On appeal to the Circuit Court on 19th April, 2002 the Circuit Court affirmed the conviction but varied the Order of the District Court by imposing a fine of €150, allow 20 days to pay and in default 5 days imprisonment in Mountjoy Prison.

26. The plaintiff deals with this matter at paras. 23, 24 and 25 of the Consolidated Statement of Claim, wherein the plaintiff alleges malicious prosecution and inappropriate behaviour by Garda Maurice Gill. This prosecution relates to events covered by Ryan J. in his judgment dealing with the non-jury matters at paras. 10 to 22 of the Statement of Claim. Ryan J. delivered his judgment on 23rd July, 2010, and made a number of findings of facts in respect of these events.

Incident No. 4

Garda Arthur O'Neill

Date of alleged offence 30th August, 2000.

Vehicle 88 D 40166

Location Castle Street, Dalkey

(1) Case No. S2000/93391 Charge No. 1

Allegation of no insurance contrary to s. 56 of the Road Traffic Act 1961 in respect of vehicle 88 D 40166 at Castle Street, Dalkey on 30th August, 2000. It was adjudged in the District Court that he be convicted of the offence and imprisoned for a period of 60 days and that he be disqualified from holding a driving license for a period of 4 years.

On appeal to the Circuit Court on 19th April, 2002 the appeal was allowed and the District Court conviction reversed.

(2) Case No. S2000/93391 Charge No. 2

Offence contrary to s. 13 of the Roads Act 1920, no tax disc in respect of vehicle 88 D 40166 Castle Street, Dalkey on 30th August, 2000, at the District Court in Dun Laoghaire on 26th January, 2011, it was adjudged that the said offence be taken into consideration with the order imposed in case S2000/93391 Complaint No. 1.

On appeal to the Circuit Court on 19th April, 2002 this appeal was allowed and the District Court conviction was reversed.

(3) Case No. S2000/93391 Charge No. 3.

An offence contrary to s. 71 of the Finance Act 1976 using a vehicle 88 D 40166 in a public place at Castle Street, Dalkey on 30th August, 2000, while the excise duty was unpaid. At Dun Laoghaire District Court on 26th January, 2001 it was adjudged that the said offence be taken into consideration with the order imposed in case No. S2000/93391 Complaint No. 1.

On appeal to the Circuit Court on the 19th April, 2002 the appeal was allowed and the District Court conviction was reversed.

(4) Case No. S2000/93391 Charge No. 4

Offence contrary to s. 73 of the Finance Act 1976, of failing to display a tax disc on vehicle 88 D 40166 at Castle Street, Dalkey on 30th August, 2002. It was adjudged at the District Court in Dun Laoghaire on 26th January, 2001 that the offence be taken into consideration with the order imposed in case S2000/93391 Complaint no 1.

On appeal to the Circuit Court on the 19th April, 2002 the appeal was allowed and the District Court conviction was reversed.

27. This matter was dealt with at Paragraphs 27, 28 and 29 of the Statement of Claim, and para 46 to 51 of the defence. There is a conflict of evidence as to the alleged events.

Incident No. 5

Prosecuting Garda: Garda Raymond P. O'Connor

Alleged dates of offences: 31st October, 2000

Location Saval Park Road, Dalkey

Dun Laoghaire District Court 26th January, 2001

Dublin Circuit Court 19th April, 2002.

(1) Case No 2001/14857 – Charge No. 12.

Offence Contrary to s. 56 of the Road Traffic Act 1961 – No insurance in respect of vehicle registration number 88 D 40166 at Saval Park Road, Dalkey on 31st October, 2000, he was convicted and sentenced to 60 days in Mountjoy and disqualified from holding a driving license for a period of 4 years.

On appeal to the Circuit Court on the 19th April, 2002 the Order was affirmed but varied to vacate the order of imprisonment. He was ordered to keep the peace for 2 years. It is not clear what happened to the disqualification.

(2) Case No 2001/14857 – Charge No. 1.

Displaying an insurance disc from another vehicle 87 D 2408 on vehicle registration number 88 D 40166 at Saval Park Road on 31st October, 2000 contrary to Section 11 of the RTA 1961 was taken into consideration in the District Court and affirmed in the Circuit Court on appeal.

(3) Case No 2001/14857 – Charge No. 2.

Failing to stop contrary to s. 109 of the Road Traffic Act 1961, was taken into consideration in the District Court and this was affirmed in the Circuit Court on appeal.

(4) Case No 2001/14857 – Charge No. 3.

No road tax user contrary to s. 73 Finance Act 1976 as amended was taken into consideration in the District Court and this Order was affirmed in the Circuit Court on appeal.

(5) Case No 2001/14857 – Charge No. 5

Non display of disc contrary to s. 73 of the Finance Act 1976, was taken into consideration in the District Court, this was affirmed in the Circuit Court on appeal

(6) Case no 2001/14857 – Charge No. 6.

Failure to produce Insurance Certificate contrary to s. 69 RTA was taken into in the District Court and this Order was varied in the Circuit Court on appeal, when s. 1(1) of the Probation of Offenders Act 1907, was applied.

(7) Case No. C2001/14857 – Charge No. 7

An offence of no driving license Contrary to s. 38 of the Road Traffic Act 1961, in respect of vehicle 88 D 40166 at Saval Park Road, Dalkey, Co. Dublin on 31st October, 2000. At Dun Laoghaire District Court on 26th January, 2001, the offence was taken into consideration with the order imposed in case C2001/14857 Complaint No. 12. On appeal to the Circuit Court the District court conviction was reversed.

(8) Case No. C2001/14857 Charge No. 8

Offence of failing to produce a driving license Contrary to s. 40 of the Road Traffic Act 1961, in respect of vehicle registration number 88 D 40166 at Saval Park Road, Dalkey on 31st October, 2000. At Dun Laoghaire District Court on 26th January, 2001, it was adjudged that this offence be taken into consideration with the Order imposed in Case No. 2001/14857 Complaint No. 12.

On appeal to the Circuit Court on 19th April, 2002 the order was varied and s. 1(1) of the Probation of Offenders Act 1907 was applied.

(9) Case No. 2001/14857 Charge No. 11

An offence contrary to s. 2 of the Non Fatal Offences against the Person Act 1997 – Assault on Garda Martha McEnery at Saval Park Road, Dalkey on 31st October, 2000. At Dun Laoghaire District Court on 26th January, 2011 he was convicted and imprisoned for 30 days.

On appeal to the Circuit Court on the 19th April, 2002 the appeal was allowed and the District Court conviction was reversed.

28. In respect of the events of 31st October, 2000, the plaintiff has set out at paras. 30 to 39 of the Statement of Claim serious allegations in respect of the behaviour of the Garda Síochána on that date and in respect of the prosecution of these offences.

Incident No. 6

29. At paras. 41 and 42 of the Statement of Claim, the Plaintiff alleges that Garda Declan Hartley maliciously applied for a summons in respect of an incident on 23rd December 2000. The defendants assert in their defence at paras. 76 to 80 that the incident occurred on 23rd August, 2000, that the garda lawfully demanded insurance, it was not produced, a summons was issued but struck out when the insurance certificate was produced. There is a conflict of evidence as how this occurred.

30. The plaintiff, Mr. Murray, has also alleged in the Statement of Claim that he was stopped without justification on 23rd August, 2000.

31. During the submissions to the Court an issue arose about the status of an order of "Taking into consideration" and an order

pursuant to s. 1(1) of the Probation of Offenders Act 1907.

32. The jurisdiction to take matters into consideration is contained in s. 8 of the Criminal Justice Act 1951, which states:-

"(1) Where a person, on being convicted of an offence, admits himself guilty of any other offence and asks to have it taken into consideration in awarding punishment, the Court may take it into consideration accordingly.

(2) If the Court takes an offence into consideration, a note of that fact shall be made and filed with the record of the sentence, and the accused shall not be prosecuted for that offence, unless his conviction is reversed on appeal."

An offence dealt with in this way is not a dismissal, although it should only be used in accordance with the section.

33. Section 1(1) Of the Probation of Offenders Act 1907 provides:-

(1) Where any person is charged before a Court of summary jurisdiction with an offence punishable by such Court, and the Court thinks that the charge is proved, but is of opinion that having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the Court may, without proceeding to a conviction, make an order either:-

(i) dismissing the information or charge; or

(ii) discharging the offender conditionally on his entering into a recognizance, with or without sureties to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order."

When a charge is dismissed under the Probation of Offenders Act, although a conviction is not recorded against the offender, his character is not entirely without blemish. Evidence that the Act has been previously applied may be tendered in evidence of character where an offender is subsequently convicted of another offence. [Woods: District Court Practice and Procedure]

The Jurisdiction of the Court to Strikeout Proceedings

Order 19, Rule 28

"The Court may Order any pleading to be struck out, on the grounds that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may Order the action to be stayed or dismissed or Judgment to be entered accordingly as may be just".

34. The pleading in Rule 28 means the whole pleading, in this case the Plenary Summons and Statement of Claim.

35. The Court in dealing with an Application pursuant to O.19, r. 28 must deal with it on the pleadings only, and ignore any other extraneous evidence. Documentation referred to in the plenary summons and Statement of Claim can be examined.

36. In *Aer Rianta c.p.t -v- Ryanair Limited* [2004] I.R Denham J. at p. 519 states:-

"Jurisdiction under O 19 R 28 to strike out pleadings is one a Court is slow to exercise. A Court will exercise caution in utilising this jurisdiction.

However if a Court is convinced that a claim will fail such pleadings will be struck out.

An Application by way of Motion under O19 R 28 is decided on the assumption that the statements in the Statement of Claim are true and will be proved at the trial. Thus this motion relates to and is grounded on the Statement of Claim of the Plaintiff".

37. At p. 510 of the judgment Denham J. stated:-

"I am satisfied that the clear words of O 19 R 28 refer to single documents and no parts of a pleading. I am satisfied that on the plain meaning with the words O 19 R 28 applies to a pleading in its entirety and not to part of a pleading. Accordingly under O 19 R 28 the Court has jurisdiction to strike out an entire pleading, an entire document, for example a Statement of Claim, but not a portion of it."

38. The words frivolous or vexatious have a particular meaning in law as stated by Barron J. in *James Farley v. Ireland* and others *ex tempore* judgment of the Supreme Court delivered on 1st May, 1997 where he stated:-

"So far as the legality of the matter is concerned frivolous and vexatious are legal terms, they are not pejorative in any sense or possibly in the sense that Mr. Farley may think they are. It is merely a question of saying that so far as the Plaintiff is concerned if he has no reasonable chance of succeeding then the law says that it is frivolous to bring the case. Similarly it is a hardship on the Defendant to have to take steps to defend something which cannot succeed and the law calls that vexatious".

39. The real purpose of "frivolous and vexatious" is set out in the judgment of the Supreme Court in *Fay v. Tegral Pipes Limited* [2005] 2 I.R. at 266. McCracken J. stated:-

"While the words 'frivolous and vexatious' are frequently used in relation to Applications such as this, the real purpose of the jurisdiction is to ensure that there will not be an abuse of the process of the Courts. Such abuse cannot be permitted for two reasons. Firstly the Courts are entitled to ensure that the privilege of access to the Courts which is of considerable constitutional importance in relation to genuine disputes between parties, will only be used for the resolution of genuine disputes and not as a forum for lost causes which no matter how strongly the party concerned may feel about them, nevertheless have no basis for a complaint in law. The second and equally important purpose of the jurisdiction is

to ensure that litigants will not be subjected to the time consuming, expensive and worrying process of being asked to defend a claim which cannot succeed”.

The Inherent Jurisdiction of the Court

40. In the High Court case *Barry v. Buckley* [1981] IR at 308 Costello J. stated:-

“That apart from Order 19, the Court has an inherent jurisdiction to stay proceedings and, on applications made to exercise it, the Court is not limited to the pleadings of the parties but is free to hear evidence on affidavit relating to the issues in the case; see Wiley’s *Judicature Acts* (1906) at PP 34-37 and the *Supreme Court practice* (1979) at Para 18/19/10. The principles in which the Court exercises this jurisdiction are well established. Basically its jurisdiction exists to ensure that an abuse of the process of the Courts does not take place. So if the proceedings are frivolous or vexatious they will be stayed. They will also be stayed if it is clear that the Plaintiff’s claim must fail per Buckley L.J. in *Goodson v. Grierson* at P 765”.

41. In applying this jurisdiction, the court has to be careful to ensure that it is exercised in undisputed matters of fact, and clear legal principles.

42. The court must also be careful to ascertain whether or not the plaintiff’s case can be remedied by some amendment of the pleadings and also be confident that no matter what may arise in discovery where at the time of the action the plaintiff’s case could not succeed. Generally speaking the jurisdiction is exercised in circumstances where the facts are clear.

43. In exercising its jurisdiction under R. 19, r. 28 and its inherent jurisdiction there is bound to be a certain overlap.

44. In exercising its inherent jurisdiction in assessing the question as to whether the proceedings are vexatious the court is entitled to look at the whole history of the dispute.

45. In *Riordan v. An Taoiseach & Ors* [2001] 4 I.R. at 465 O Caoimh J. stated:-

“An assessment of the question whether the proceedings are vexatious the Court is entitled to look at the whole history of the matter and it is not confined to a consideration as to whether the pleadings disclose a cause of action. The court is entitled in the assessment of whether proceedings are vexatious to consider whether they have been brought without any reasonable ground. The court has to determine whether the proceedings being brought are being brought without any reasonable ground or have been brought habitually and persistently without reasonable ground.”

46. *Dygun v. Odishaw* (Unreported, Alberta Court of Queen’s Bench Judicial District of Edmonton, 3rd August, 2000) referred to a decision of the Ontario High Court in *Re Lang Michener & Fabian* [1987] 37 D.L.R. (4th) 685 at 691 where the following matters have been indicated as tending to show that a proceeding is vexatious:-

- (a) The bringing up of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction.
- (b) Where it’s obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief.
- (c) Where the action is brought for an improper purpose including the harassment and oppression of other parties by multi various proceedings brought for purposes other than the assertion of legitimate rights.
- (d) Where issues tend to be rolled forward in subsequent actions and repeated in supplemented of and with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings.
- (e) Where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings.
- (f) Where the respondent persistently takes on unsuccessful appeals from judicial decisions.

Conclusion

47. The defendants have made application to this Court based on a cumulative pattern of behaviour which they allege amounts to an abuse of process and have invoked the inherent jurisdiction of the court to strike out the proceedings.

48. No application was made to strike out prior to the cases going to trial.

49. The plaintiff asserts that he has a good cause of action and will be deprived of his right to have it tried before a judge and jury.

50. In his affidavit sworn on 22nd August, 2011, he accepts he is impecunious, but attributes this to the unlawful activities of the Garda authorities. He criticises the defendants for not seeking to enforce the previous costs orders.

51. This Court has no doubt that the plaintiff is unable to discharge the costs orders. There are four separate costs orders in these proceedings. No exact figure has been furnished to the court but the amount will be very substantial.

52. The behaviour of the plaintiffs counsel at the second jury trial before Dunne J. on 15th and 16th February, 2011, was in this Courts opinion a serious abuse of the process of the Courts. Despite submissions from counsel for the defendants and a ruling from the trial judge, and a previous aborted jury trial because of prejudice in the opening by counsel, he proceeded to open the case to the jury in a manner which was prejudicial.

53. I have considered the speech to the jury which is set out at pp. 46 to 89 of the transcript of 15th February, 2011, and it does not conform to a proper opening in a civil jury trial. It has no structure it comprises of rambling comment alleged statements of fact about the very subject matter of the action namely the road traffic summonses which the plaintiff alleges are malicious and where the

Gardaí involved are alleged to have engaged in a conspiracy.

54. One would have expected that each of these summonses would be carefully explained to the jury, and the outcomes of the prosecution in respect of same explained. The plaintiff has two recorded convictions for no insurance affirmed by the Circuit Court on appeal, two separate RTA offences where fines were imposed, eleven matters taken into consideration and three matters where s. 1(1) of the Probation of Offenders act was applied. There were ten dismissals including two for insurance and one for assault. These relate to the matters I can identify in the Statement of Claim.

55. Acting as an advocate in a civil jury trial alleging the torts of malicious prosecution and conspiracy against the State's police force is a serious and responsible undertaking. It requires considerable skill, sensitivity and knowledge of the law.

56. Our jurisprudence in respect of prejudice is well established. A judge sitting alone can ignore prejudicial matter, but great care is needed before a jury.

57. I certainly cannot come to the conclusion that these are proceedings without chance of success, but I am satisfied that they have been improperly conducted at huge financial loss to the defendants.

58. I am at a complete loss as to why the instructing solicitor did not take immediate and decisive action subsequent to 16th February, 2011, by retaining new counsel and immediately apologising to the court and the defendants for the difficulties that occurred on 15th and 16th February. I can only presume that this advice was given and rejected by the plaintiff.

59. The problem has been compounded by the scandalous file distributed widely by the plaintiff, and exhibited before this court an extract from which I have quoted.

60. I note from the written submissions of counsel for the defendants at paras. 18 and 19 that McMenamin J. enquired whether the plaintiff wished to continue to retain counsel in light of the criticisms of his two openings so that a different counsel who was not involved could argue the motion. That did not happen the motion was argued before this court for two days on 1st and 2nd December last by the same counsel who made clear to the court that he would be the advocate in the jury trial if allowed to proceed. From the pleadings it is clear that counsel for the plaintiff has been retained since the original road traffic prosecutions in the District Court.

61. I am certain that if the action is permitted to be heard before a jury again with the same counsel the same problem will arise.

62. In the High Court decision *Cavern Systems Dublin Ltd v. Clontarf Residents Association and Dublin Corporation* [1984] ILRM 24, a decision of Costello J., it was established that if proceedings are conducted in a vexatious manner in the absence of reasonable cause to justify what happened in the case the court could dismiss the claim.

63. The defendants in the circumstances of the history of these proceedings are entitled to an order pursuant to the inherent jurisdiction of the court. I accordingly strike out the proceedings.