



**THE COURT OF APPEAL**

Neutral Citation Number: [2017] IECA 299

**Record No. 2017/233 & 2017/234**

**Birmingham J.  
Mahon J.  
Hedigan J.**

**BETWEEN/**

**GAVIN OWENS**

**APPLICANT / RESPONDENT**

**- AND -**

**PATRICK DOOLEY**

**APPLICANT / RESPONDENT**

**- AND-**

**THE DIRECTOR OF PUBLIC PROSECUTIONS, THE COMMISSIONER OF AN GARDA SÍOCHÁNA, THE MINISTER FOR JUSTICE AND  
EQUALITY**

**RESPONDENTS / APPELLANTS**

**JUDGMENT OF MR. JUSTICE MAHON DELIVERED ON THE 16TH DAY OF NOVEMBER 2017**

1. This is an appeal against the decision and order of Eagar J. of the 5th May 2017 wherein he quashed the committal warrants issued against the two respondents for non payment of fines imposed in the District Court. The High Court further directed that the first named appellant initiate proceedings under s. 7 of the Fines (Payments and Recovering) Act 2014 (herein the "2014 Act") in respect of the unpaid fines of the two respondents to date. The commencement date of the 2014 Act is the 11th January 2016.

2. Leave was granted to both respondents to seek judicial review of the decision to issue warrants committing both to prison for non payment of their fines, respectively on the 11th April 2016 and the 16th March 2016.

**Background**

3. The background to the application, and to this appeal, are two separate District Court cases. The first respondent, Mr. Owens, was convicted of driving without insurance contrary to s. 56 of the Road Traffic Act 1961. He was fined €500 and was ordered to pay that fine within a period of four months, and that in default of payment serve a period of imprisonment. The first respondent failed to pay the fine imposed within the period provided for by the District Court judge. This default occurred prior to the commencement of the 2014 Act (the 11th January 2016). A committal warrant was issued subsequent to the commencement of the 2014 Act pursuant to s. 1(1) of the Courts (No. 2) Act 1991 ("the 1991 Act") and s. 23 of the Petty Sessions (Ireland) Act 1851 ("the 1851 Act"), on the 14th March 2016.

4. The second respondent, Mr. Dooley, was convicted at Naas District Court of four separate offences contrary to s. 4 of the Criminal Justice, Theft and Fraud Offences Act 2001 on the 22nd July 2015. He was fined €500 in respect of each of these offences, and directed to pay within a period of 90 days with provision for imprisonment in default of payment. The fines were not paid within the prescribed period and committal warrants were issued by the District Judge at Naas District Court on 17th February 2016.

5. Both respondents challenged the lawfulness of the warrants on the basis that the provisions of the 2014 were not applied in the process of issuing same. Both respondents claimed that they had been lawfully deprived of the facilities and protections afforded to them under the 2014 Act.

6. In both cases, the period ordered by the District Court for the payment of the respective fines had expired prior to the commencement date of the 2014 Act. In both cases, committal warrants for non payment of the fines issues subsequent to the commencement date of the 2014 Act.

**Judgment of the High Court**

7. In the High Court, Eagar J. observed that it was open to the respondents to pay the fines at any time prior to the applications to issue the warrants. He held that accordingly the respondents ought to have been subject to the provisions of the 2014 Act. The kernel of the analysis of the High Court decision was that if the 2014 Act was to apply only prospectively, it would effectively create two separate processes for those subject to fines before and after the commencement of the 2014 Act. The learned High Court judge held that the appellants had failed to show how this would not lead to unfairness and injustice. He held that such an application would "*deprive the present appellants and society of the benefits brought about by the 2014 Act*". He considered that this would create a two tier system relating to non payment of fines and was doubtful that proceeding thus was constitutionally sound. Consequently the Court quashed both warrants and directed that the first named respondent (the D.P.P.) initiate s. 7 proceedings under the 2014 Act.

**Submissions of the appellant**

8. It was submitted on behalf of the appellant that there were no express transitional arrangements within the 2014 Act. Counsel submitted that in those circumstances the 2014 Act should be considered to operate prospectively only. It was argued that had the Oireachtas intended for the 2014 Act to operate retrospectively in relation to a sentence imposed prior to its commencement, it would expressly have provided for this. Counsel submitted that the 2014 Act introduced a new process by which fines are imposed and enforced

9. Counsel on behalf of the appellant argued that the relevant legislative provisions in operation prior to the commencement of the 2014 Act provided a judicial discretion to impose a custodial sentence where a fine was not paid within the time specified, and it must

be seen as substantive in nature rather than merely procedural. Counsel went on to compare the previous regime with its replacement as implemented with the enactment of the 2014 Act. The 2014 Act is a substantial reform of the system for the imposition and enforcement of fines in this jurisdiction. It is clear that under the 2014 Act imprisonment for the non payment of fines is a last resort. There are a number of new procedural safeguards that have been implemented such as the requirement for the Court to consider making an attachment order or a community service order in lieu of imprisonment. Counsel drew the Court's attention to the concept of "due date for payment". Section 2 of the 2014 Act defines this as:-

" *"due date for payment", in relation to a fine, means:-*

*(a) if the fined person has opted to pay the full fine under section 6 (1)(a)(i), the date by which the fine is required to be paid in accordance with the order of the court that imposed the fine, and*

*(b) if the fined person has opted to pay the fine by instalments under section 6 (1)(a)(ii), in respect of each such instalment, the date by which the instalment is required to be paid;"*

10. Counsel argued that this concept of "due date for payment" is of central significance in the scheme of default triggering imprisonment, and consequentially in this appeal, as it is argued that it cannot be referable to any fine imposed under the system in place prior to the commencement of the 2014 Act. Counsel submitted that it cannot be applicable because of the dates the fines were imposed, which pre-dated the commencement of the 2014 Act, and therefore neither respondent could have exercised the options inherent in the concept of "due date for payment", namely single payment of the fine or payment in instalments. Counsel submitted that consequentially none of the other sentencing options would have been available. It is argued that the date of the default under this new system is inherently bound up with the operation of the new procedures as a whole. Counsel further argued that this was clear in various other parts of s. 7 of the 2014 Act. Section 7(4) provides that a notice issued by the appropriate Court officer is the means by which a defaulter is brought back before the Court. This arises in a situation where a *fined person fails to pay the fine by the due date for payment*. Section 7(1) provides that subject to s.s. (3) and (5), that where a person has failed to pay the fine by the due date for payment the Court shall make an attachment order, a recovery order or a community service order. Counsel submitted that all these provisions for the enforcement and imposition of fines are new to the 2014 Act and therefore must be applied prospectively.

11. Counsel drew the Court's attention to changes made to the 1986 Act by the 2014 Act. He submitted that s. 2 of the 1986 Act which gives the Court the power to order imprisonment in the case of default in payment of a fine, has been substantially amended by s. 20 of the 2014 Act. Section 2 of the 1986 Act remains the statutory basis for imprisonment in default of a payment. However, the new s. 2 references the "due date for payment" as the date by which the default is referable. It is only when a person has not paid their fine by this date that imprisonment is possible. Counsel submitted that as a matter of law this power of imprisonment can only be relevant to a conviction and imposition of a penalty that has happened after the commencement of the 2014 Act. The 2014 Act reduces the maximum periods of imprisonment that a District Court judge can impose. Counsel submitted that this is a matter of such substance that it cannot be construed as a provision that is operable in respect of fines imposed and / or default periods of imprisonment ordered prior to commencement.

12. It was argued that the 2014 Act made profound changes to the regime for enforcing fines and consequentially it is in effect repealing s. 2 of the 1986 Act within the meaning of the Interpretation Act 2005. Section 2 of the 2005 Act defines 'repeal' as including "revoke, recede, abrogate or cancel". Counsel also relied on the dicta of O'Flaherty J. in *DPP v. Gilligan* [1993] 1 I.R. 92. The judgment in that case stated:-

*"However, it is clear that in amending the original s. 33 of the Larceny Act, 1916, the Act of 1990 was bringing about a repeal of that section and its replacement by a new section. As it is put in Bennion: Statutory Interpretation: "To amend an Act or enactment is to alter its legal meaning. The repeal of an enactment constitutes the amendment of the Act containing it." (para. 170 at page 418) "To 'repeal' an Act is to cause it to cease to be a part of the corpus juris or body of law. To 'repeal' an enactment is to cause it to cease to be in law a part of the Act containing it. A repeal may be either express or implied. The repeal of an enactment constitutes the amendment of the Act containing it." (para. 178 at page 429). See, too, the inter-connection between repeal and substitution in s. 19 of the Interpretation Act, 1937.*

*Accordingly, we hold that the amendment brought about by s. 3 of the Act of 1990 constitutes a "repeal" of the existing section and, therefore, s. 21, sub-s. 1 (e) of the Interpretation Act, 1937, applies."*

13. It was contended that there had been a repeal of the s. 2 of the 1986 Act creating the profound changes that were made. Counsel argued that in such circumstances, s. 27(2) of the Interpretation Act 2005 permits the continuance of the substantive liability imposed pursuant to that previous section of s. 2(1) of the 1986 Act which applied before the commencement of the 2014 Act. Section 27(2) of the Interpretation Act provides as follows:-

*"(2) Where an enactment is repealed, any legal proceedings (civil or criminal) in respect of a right, privilege, obligation or liability acquired, accrued or incurred under, or an offence against or contravention of, the enactment may be instituted, continued or enforced, and any penalty, forfeiture or punishment in respect of such offence or contravention may be imposed and carried out, as if the enactment had not been repealed."*

14. Counsel further submitted that at common law there is a strong presumption against legislation that is retrospective in nature. He cited *Chestvale Properties v. Glackin* [1993] 3 I.R. 35, where it was held by the High Court, at p. 43:-

*"At common law there was a presumption, a strong presumption, that a statute is intended by Parliament to operate prospectively and not retrospectively. This presumption is based on the proposition that, ordinarily, the retrospective operation of a statute would cause injustice and that Parliament could not be presumed to have intended such a consequence."*

15. It was also maintained that the absence of any transitional provisions in the 2014 Act, and because of the language used in the Act, it cannot be said that this presumption does not exist in this case. Counsel submitted that the 2014 Act introduced substantive changes as well as procedural changes, and that this was accepted by Eagar J.. Counsel argued that the High Court was in error in finding that the 2014 Act had retrospective effect.

#### **Submissions of the Respondents**

16. Counsel on behalf of both respondents submitted that the 2014 Act did not interfere to any great degree with the actual mechanism for the issuing of committal warrants for the default of payment of fines. Instead, the 2014 Act seeks to graft a number of

procedural safeguards onto the pre existing mechanism. Section 22 of the 2014 amends s. 1 of the 1991 Act by the insertion of a new s. 1A. Section 1A of the 1991 Act now states:-

*"1A. The operation of section 1 of this Act, and of section 23 of the Petty Sessions (Ireland) Act 1851, in so far as they relate to any penal sum referred to therein, shall, from the commencement of section 7 of the Fines (Payment and Recovery) Act 2014, be subject to the operation of the provisions of the Fines (Payment and Recovery) Act 2014, in so far as those provisions relate to such penal sum, and such section 1 and such section 23 shall, with all necessary modifications, be construed accordingly."*

17. Counsel suggested that whilst the wording of this new section may not be as clear as it could be, it provides that any fine which is subject to the operation of the 1991 Act and the 1951 Act shall be subject to the provisions of the 2014 Act from its commencement. The only purpose of this new s. 1A is to ensure that the 2014 Act also applies to pre existing summary fines.

18. Further, it was accepted by the respondents that it undoubtedly was the case that the issue of the "due date for payment" is inherent to the 2014 Act. However, it was submitted that it cannot be said that such a concept is incapable of being accommodated within the pre existing mechanism of the current scheme. It was suggested that when one examines s. 6 of the 2014 Act, which is referenced in the definition of a "due date for payment" it is clear that it is the "relevant date for payment". This, it is said, is a concept which is readily capable of being applied and adapted to the explicitly identified period that arises in respect of any fine which was imposed prior to commencement.

19. In relation to the presumption against retrospectivity, it was submitted that this presumption only arises in circumstances where the new legislation imposes new obligations, duties or attaches new disabilities in relation to past transactions. Counsel cited the paragraph prior to the one cited by the appellant in *Chestvale* as an example of this. In that paragraph, Murphy J. stated:-

*"Legislation is said to operate retrospectively where it "takes away or impairs a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past". This definition has been accepted and applied by the Supreme Court in Hamilton v. Hamilton [1982] I.R. 466."*

20. It was further submitted on behalf of the respondents that none of the new provisions that had been introduced by the 2014 Act could be regarded as making an act unlawful that was previously lawful at the time of its commission, nor denied the subject of any vested or substantive rights. Counsel submitted that it was simply the procedure by which the fine may be enforced that has been amended and therefore any change that has been implemented is inherently procedural in nature. A comparison was made as between the current proceedings with the case of *Cork County Council and Froggat and Others v. Slattery Pre Cast Concrete and Others* [2008] IEHC 291. In that case, an issue arose as to what was the appropriate limitation period vis a vis the enforcement proceedings under s. 160 of the Planning and Development Act 2000 in light of the fact that it had been extended from a period of five years to a period of seven years in subsequent legislation. Emphasis was placed on the following passage from Clarke J. (as he then was) at para. 4.6 of the judgment:-

*"4.6 It seems to me that there can be no question of it being said that there has been retrospective interference with the rights or entitlements of an individual whose wrongful actions remained capable of being subject to enforcement proceedings as of the date of a statutory amendment, where the effect of the amendment concerned is simply to prolong the period during which enforcement proceedings could be taken. Such a change brings about no alteration in any rights or entitlements. The relevant amendment simply extends the period during which enforcement proceedings, which were capable of being brought as of the date of the amendment concerned, can be maintained. There is no right or entitlement to have those proceedings brought within any particular period of time, subject only to the existing statute law. A change in that statute law which has the effect of extending the time within which such "live" proceedings can be brought is, in my view, not properly characterised as retrospective at all."*

21. It was also submitted that comparing that case with the present case is a useful analogy in that in the same way that an unauthorised development remains unauthorised, a fine subsists irrespective of the manner in which it may be executed or collected. In the instant case, the two respondents remain obliged to pay the fine in the same amount. Counsel submitted that the measures implemented by the commencement of the 2014 Act simply relate to the mechanism by which this obligation is enforced. The provisions that are under consideration are inherently procedural and consequently there is a presumption that they apply to all proceedings from the date upon which the 2014 Act commenced.

22. In relation to the Interpretation Act, counsel for the respondents maintained that s. 27(2) which the appellant referred to only contemplates the continuation of the actual offence provisions, which in this case would be s. 56 of the Road Traffic Act 1961 for the first respondent, and s. 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001 for the second respondent. Therefore, if either of these provisions had been repealed, the fine would remain in place even though the offence was no longer on the statute books. It was submitted however that the statute which the appellant argues has been repealed, simply provides the procedure by which the fines in question could be enforced. Counsel submitted that the High Court was entirely correct in quashing the committal warrants and contends that the appeal should be dismissed.

## **Discussion and decision**

23. By way of preliminary observation, it is worth noting that there has been no challenge to the conviction and sentence of either respondent. It is not disputed that either is in default or in breach of the District Court orders made against them, or that the sentences they received were unlawful. Therefore, the essential issue in this case is whether or not the provisions of the 2014 Act are applicable to the respondents' circumstances where the conviction and fines imposed and time for payment elapsed prior to the 2014 Act, but where the committal warrants for non-payment were issued and fell to be executed thereafter.

24. It is useful to briefly set out the law on enforcement of fines in Ireland prior to the enactment of the 2014 Act. Section 2 of the Courts (No. 2) Act 1986 provided for the power of a Court to imprison a person in default of payment of a fine. Section 23 of the Petty Sessions (Ireland) Act 1851, as amended by the Courts No. 2 Act 1991, provided for the issuing of committal warrants to enforce an order of imprisonment. Before the commencement of the 2014 Act, the relevant part of s. 2 of the 1986 Act provided:-

*"2.(1) Where on summary conviction a fine is imposed a court may order that, in default of due payment of the fine, the person liable to pay the fine shall be imprisoned for a term not exceeding the appropriate period specified in the following scale"*

25. The section went on to identify the periods of imprisonment applicable to particular categories of fines.

26. The introduction by the legislature of the 2014 Act was primarily prompted by a desire to reduce the extent to which defaulters of fines imposed by the Courts found themselves incarcerated in prison and, usually, in practice, because of prison over-crowding, then being freed almost immediately. The cost and inconvenience for the gardaí and the prison authorities was considered to be needlessly high. The enactment of the 2014 legislation was preceded by an almost unified political and public demand for an alternative system for the collection and enforcement of fines compared to the then existing system which was heavily reliant on imprisonment.

27. Such was the force of that universal demand for change that it might be reasonably suggested that greater care ought to have been taken by the legislature to expressly provide for retrospectivity if such was intended, and if so, incorporate clear transitional provisions in the 2014 legislation.

28. It is the case that the legislature has on many occasions enacted legislation increasing maximum fines and terms of imprisonment or otherwise altering or changing previous legislative provisions in respect of various offences but without retrospective effect, so that, in practice, similar offences attracted different penalties depending upon whether they were committed prior to or subsequent to, a particular date. That said, it is contended by the respondents that what has been provided for in the 2014 Act is merely a change in the process by which the payment of fines are collected and enforced, rather than any alteration to the penalty imposed.

29. Section 22 of the 2014 Act requires close scrutiny. It amends s. 1 of the Courts (No. 2) Act 1991 by means of the insertion of a new section, s. 1A. The 1991 Act, which allows for the issuing of committal warrants in respect of unpaid fines, now provides:-

"1A. The operation of section 1 of this Act, and of section 23 of the Petty Sessions (Ireland) Act 1851, in so far as they relate to any penal sum referred to therein, shall, from the commencement of section 7 of the Fines (Payment and Recovery) Act 2014, be subject to the operation of the provisions of the Fines (Payment and Recovery) Act 2014 in so far as those provisions relate to such penal sum, and such section 1 and such section 23 shall, with all necessary modifications, be construed accordingly." (emphasis added)

30. The new section 1A refers to any penal sum. The term Any penal sum and the context in which it is used clearly includes the fines imposed on both respondents. The words such penal sum referred to later in the section is simply and obviously a reference to the earlier words any penal sum. The main body of the new section 1A provides that such fines are subject to the provisions of the 2014 Act from the date of commencement of that legislation. It is therefore difficult to understand the basis upon which the fines imposed in these cases are not directly covered by the provisions of the new section 1A.

31. In *Chestvale Properties Limited v. Glackin* [1992] 3 I.R. 35, at p. 43, Murphy J. stated:-

" , under the heading "The argument On Retrospectivity"

*Legislation is said to operate retrospectively where it "takes away or impairs a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past". This definition has been accepted and applied by the Supreme Court in Hamilton v. Hamilton [1982] I.R. 466.*

*At common law there was a presumption, a strong presumption, that a statute is intended by Parliament to operate prospectively and not retrospectively. This presumption is based on the proposition that, ordinarily, the retrospective operation of a statute would cause injustice and that Parliament could not be presumed to have intended such a consequence."*

32. In *Cork County Council v. Slattery Pre Cast Concrete / Froggat v. Slattery Pre Cast Concrete* [2008] IEHC 291, Clarke J. (as he then was) said:-

*"It does not seem to me that any such amendment can properly be characterised as being retrospective in nature. Unauthorised development is unlawful. It is open to enforcement. When a limitation period expires there may be an argument as to whether the re-opening of such a limitation period might amount to a retrospective measure. It is, of course, the case that Article 15 of the Constitution prohibits retrospective criminal legislation. Furthermore, it has consistently been held, as a matter of construction, that the courts will lean against a construction creating retrospective effect in respect of civil matters. However, there is no prohibition as such on retrospective civil legislation although obviously, on the facts of an individual case, there might be a constitutional infirmity resulting from an express and disproportionate retrospective element to legislation..."*

33. The 2014 Act does not impose or remove any pre existing right or liability. It does not impose any additional sanction or punishment in respect of a crime committed prior to its commencement. What it does do, in reality, is to alter the procedures by which an order of the Court, imposed prior to the commencement of the 2014 Act, is enforced subsequent to the commencement of that Act. If anything, it replaces the pre 2014 Act procedure of enforcing a penalty imposed by a court but with less penal effect in that it renders imprisonment less likely. It replaces a harsher process with one considerably more benign, albeit arguably more effective in the context of the collection of fines.

34. In both the instant cases the fines were imposed by the District Court, and the periods in which the payment of the fines to be effected had elapsed prior to the commencement of the 2014 Act. In both cases the only outstanding matters as of the date of the commencement of that Act concerned the issue of warrants to imprison for failure to pay the fines. Those warrants duly issued on dates after the commencement of the 2014 Act.

35. The respondents maintain that the committal warrants were invalid on the basis that there was a failure to comply with the provisions of s. 7 of the 2014 Act. Section 7 provides a number of options to a Court where there is a failure to pay a fine by the due date for payment, including making a recovery order, an attachment order or a community service order. The other sub sections of s. 7 provide for the taking of a number of steps by the Court before the issuing of a notice warning the person that a warrant may be issued for his arrest unless he appears before the Court as required by the notice. Failure to appeal can trigger the issue of an arrest warrant. In general terms, the 2014 Act largely removes the threat of imprisonment for failure to pay a fine, or at least makes it less likely, in contrast with the position prior to its commencement date, and only provides for imprisonment refusing to attend Court when so notified to do so or for failing to cooperate with Court orders made pursuant to the 2014 Act.

36. Section 22 of the 2014 Act amends s. 1 of the Courts (No. 2) Act 1991 by means of the insertion of a new s. 1A. Section 1 of the 1991 Act provides as follows:-

"(1) Subject to subsection (2) of this section, in all cases of summary jurisdiction whenever an order has been made,

*upon the conviction of any person for an offence, for the payment of a penal sum or the performance of a condition and the penal sum has not been paid or the condition has not been performed, a warrant of committal to imprisonment for the non payment of the penal sum or the non performance of the condition may be issued by a justice of the District Court...not later than six months from the expiration of the time fixed by the said order for the payment of the penal sum or the performance of the condition..."*

37. The fines imposed on both respondents were imposed pursuant to s. 1 of the 1991 Act

38. Section 23 of the Petty Sessions (Ireland) Act 1851 provides as follows:

*In all cases of summary jurisdiction, whenever an order shall be made upon the conviction of any person for an offence, the justices shall issue the proper warrant for its execution forthwith when the imprisonment is to take place immediately, or at the time fixed by the order for the imprisonment to take place where it is not to be immediate, or directly upon the nonpayment of any penal sum or the nonperformance of any condition at the time and in the manner fixed by the order for that purpose, or at furthest upon the next court date after the expiration of the time so fixed for the imprisonment, payment, or performance of a condition, as the case may be, unless the imprisonment or penal sum shall have been remitted by the Crown or other competent Authority in the interval; and whenever an order shall be made in any case of a civil nature, and the same shall not be obeyed, the justice shall issue the proper warrant for its execution at any time after the time fixed for the compliance with its directions..."*

39. Section 23 of the 1851 Act was amended by s. 1 of the 1991 Act by providing for a period of not more than six months after the expiration of the time provided for the payment of the fine in which a warrant may be issued. Section 1 of the 1991 Act also provided for retrospectivity in respect of Court orders made prior to its enactment. In respect of such orders s. 1(1)(b) of the 1991 Act effectively provided an additional six month period for the issue of a warrant for the non payment of a fine where the period directed for the payment of the fine had not expired between the 1st July 1989 and the date of passing of the 1991 Act, being the 16th July 1991. Section 1 of the 1991 provided clarity as to retrospectivity and its extent.

40. Turning again to consider s. 22 of the 2014 Act, and which the respondents maintain retrospectively captures a process for the enforcement of the collection of their fines post the commencement of that Act, the section states unequivocally that the operation of the relevant sections of the 1851 and 1991 Acts shall, from the commencement of Section 7 of the Fines (Payment and Recovery) Act 2014 be subject to the operation of the provisions of the Fines (Payment and Recovery) Act 2014. This provision relates to any penal sum referred to in the said sections of the 1851 and in 1991 Acts. The reference to *to such penal sum* in the new s. 1A clearly refers to, and is one and the same as, the term *any penal sum* earlier referred to.

41. The appellant contends that *such penal sum* is merely a reference to a penal sum to which the 2014 Act refers. It is argued that *such penal sum* cannot refer to a fine imposed prior to the commencement of the 2014 Act and when the Orders for the imposition of such fines carried a term of imprisonment in default in the absence of payment (as was the pre 2014 Act procedure).

42. Were this contention correct it would mean that s. 22 of the 2014 Act was superfluous, if not entirely meaningless. If, as is contended by the appellants, the term *such penal sum* was confined to a fine imposed subsequent to the commencement of the 2014 Act, why include such a provision at all? Such fines (that is the post 2014 Act fines) were clearly and adequately provided for in other sections of the 2014 Act and did not require any additional provision, such as s. 22.

43. I find it exceedingly difficult to think of any explanation for the inclusion of s. 22 of the 2014 Act other than for the purposes of creating retrospectively. That said, and as already stated, greater care and clarity might have been exercised in the drafting of the legislation, and in particular s. 22, to put its retrospective effect beyond question.

44. The case of *Toss Limited v. DPP and Others* (Unreported, High Court, Blayney J., 24th November 1987) was concerned with the constitutional validity of the Courts (No. 3) Act 1988. In the course of his judgment, Blayney J. considered the issue of retrospectivity, and more particularly whether the procedure for issuing a summons introduced by the 1986 Act could be availed of in prosecuting an offence alleged to have been committed before the Act was passed, and in respect of which the complaint had also been made before the Act was passed. He said:-

*"To put the question more briefly, is the 1986 Act retrospective in its effect? Mr. O'Reilly submitted that it is not and he referred me to Hamilton .v Hamilton [1982] I.R. 466 and Doyle .v. An Taoiseach[1986] I.L.R.M. 695, but in my opinion these decisions do not apply because the 1986 Act deals with procedure only and that puts it into a different category from Acts which deal with substantive rights. And that it does deal with procedure only is I think clear from what Kingsmill - Moore J. said in regard to a Summons in A.G. (McDonnell) .v. Higgins [1964] I.R. 374, at page 391:-*

*"Neither summons nor warrant to arrest, consequent on the information, confer jurisdiction. They are merely processes to compel the attendance of the person accused of the offence."*

*Are statutes which deal with procedure only retrospective in effect? It appears to be well settled that they are. In Rex .v. Chandra Dharma [1905] 2 KB 335 the Defendant was convicted of an offence under Section 5(1) of the Criminal Law (Amendment) Act 1885. At the date of the commission of the offence, the prosecution had to be commenced within three months. Section 7 of the Prevention of Cruelty to Children Act 1904, passed after the commission of the offence, extended the time limit from three months to six months. It was held that the Defendant had been properly convicted even though the prosecution had not been commenced within three months of the commission of the offence as Section 27 related to procedure only and was therefore retrospective. Lord Alverstone C.J. said in his judgment at page 338:-*

*"The rule is clearly established that, apart from any special circumstances appearing on the face of the statute in question, statutes which make alterations in procedure are retrospective. It has been held that a statute shortening the time within which proceedings can be taken is retrospective, and it seems to me that it is impossible to give any good reason why a statute extending the time within which proceedings may be taken should not also be held to be retrospective."*

45. While much of the argument on both sides concerned the issue of retrospectivity, it is arguable that where legislation merely replaces or alters a procedure there is no retrospectivity. The Concise Oxford Dictionary definition of 'retrospective' is "of a Statute or legal decision taking effect from a date in the past". In *Chestvale v. Glackin* [1993] 3 I.R. 35, Murphy J. said:-

*"Legislation is said to operate retrospectively where it "takes away or impairs a new obligation, or imposes a new duty,*

*or attaches a new disability in respect to transactions or considerations already past". This definition has been accepted and applied by the Supreme Court in Hamilton v. Hamilton [1982] I.R. 466."*

46. In the instant cases, the convictions of both respondents occurred prior to the commencement of the 2014 Act, and it was not a case of a person being found guilty of an offence created by a new piece of legislation which had not been an offence prior to the enactment of that legislation. Sanctions imposed on the respondents, being the imposition of fines, were not altered by the new legislation. What was altered was the process by which such fines would be collected. The process introduced by the 2014 Act had the prospect of imprisonment for non-payment being rendered much less likely than if that legislation had not been enacted, or if the pre 2014 Act procedure continued to apply subsequent to its commencement. The fact that the new enforcement procedure applies to fine defaulters, such as the respondents, is to their benefit.

47. It seems to me that the process provided for in the 2014 Act for the enforcement of fines is concerned with procedure. Its intent is similar to that provided for in the pre 2014 legislation procedure in that both were designed to enforce the payment of fines imposed by the Courts in respect of criminal offences. All that has happened since the commencement of the 2014 Act, and more particularly in the instant cases, is that a new, albeit more complex and lengthy procedure to collect unpaid fines has been introduced by the legislature.

48. I would therefore dismiss the appeals, save to the following extent. I would quash the Orders made in the High Court directing the Director of Public Prosecutions to initiate proceedings under s. 7 of the 2014 Act in respect of the unpaid fines to date. It should remain a matter for decision by the Director to proceed as she believes appropriate, including a decision to initiate such proceedings should she so decide.