Neutral Citation Number: [2008] IEHC 223

THE HIGH COURT

2001 No. 18512 P

BETWEEN

BRIAN KELLY

PLAINTIFF

AND

THE MINISTER FOR DEFENCE AND THE ATTORNEY GENERAL

DEFENDANTS

Judgment delivered by Ms. Justice Dunne on the 8th day of July, 2008

1. The defendants herein have sought to review the taxation of costs in the above entitled proceedings pursuant to O. 99, r. 38(3) of the Rules of the Superior Courts in respect of a ruling of the Taxing Master on the 10th December, 2007. The background to this application is that proceedings were commenced by the plaintiff in 2001 against the defendants in respect of an "army deafness" claim. The proceedings were listed for hearing before the High Court on the 22nd June, 2005. On that date, the proceedings were settled for the sum of €9,500. The order of the court made herein on that date (O'Leary J.) stated as follows:-

> "And it appearing that a settlement has been reached herein.
>
> By consent it is ordered that the plaintiff's costs including reserved costs be taxed, that the defendant's do pay the said costs on the Circuit Court scale when taxed and ascertained and that this action be struck out of the list.
>
> And the court doth certify for senior counsel."

2. The matter came before the Taxing Master pursuant to a summons to tax dated 24th January, 2006. An issue arose as to whether is was appropriate to restrict the plaintiff's costs by virtue of s. 17(3) of the Courts Act, 1981, which has the effect of restricting the costs that may be recovered where the amount of damages is between the Euro equivalent of IR£5,000 and IR£15,000 as is the case herein. Following the determination of this issue as a preliminary issue the Taxing Master on the 14th July, 2006 ruled that s. 17(3) did not apply in the circumstances of the case. A notice of objections was filed by the defendants on the 4th December, 2006 and further submissions were filed by the parties and the matter came on for hearing before the Taxing Master on the 27th June, 2007, and a further ruling was made on the 30th July, 2007, which was not delivered until the 10th December, 2007. The defendant's objections were rejected by the Taxing Master. Thereafter this notice of motion was issued seeking to review the taxation herein.

3. Accordingly, a net issue now arises in relation to this taxation, namely the applicability of s. 17(3) of the 1981 Act, in circumstances where proceedings are compromised. Unfortunately it appears that the issue is one on which there is a difference of opinion as between the two Taxing Master's.

4. No issue arises between the parties as to the principles applicable on a review of taxation. Order 99, r. 37(18) of the Rules of the Superior Courts provide:-

> "On every taxation the Taxing Master shall allow all such costs, charges and expenses as shall appear to him to have been necessary or proper for the attainment of justice or for enforcing or defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Master to have been incurred or increased through over-caution, negligence or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons or by other unusual expenses."

5. O. 99, r. 38(3) of the Rules, provides for the review of decisions of the Taxing Master by the High Court in the following terms:-

> "Any party who is dissatisfied with the decision of the Taxing Master as to any items which have been objected to as aforesaid or with the amount thereof, may within twenty-one days from the date of the determination of the hearing of the objections or such other time as the Court or the Taxing Master may allow, apply to the court for an order to review the taxation as to the same items and the Court may thereupon make such order as may seem just. …"

6. The role of the court as provided for under O. 99, r. 38(3) has been further modified by s. 27(3) of the Courts and Court Officers Act 1995, which provides as follows:-

> "The High Court may review a decision of a Taxing Master of the High Court … made in the exercise of his or her powers under this section, to allow or disallow any costs, charges, fees or expenses provided only that the High Court is satisfied that the Taxing Master, … has erred as to the amount of the allowance or disallowance so that the decision of the Taxing Master … is unjust. …"

7. This provision was considered in the case of *Smyth v. Tunney* [1999] 1 I.L.R.M. 211. In his judgment McCracken J. set out the standard of review under s. 27(3) as follows at p 213:-

> "The principle, upon which I must act, therefore, is not simply to decide whether the Taxing Master erred, but also, if I am to alter his decision, I must find that his taxation was unjust. I cannot approach this issue on the basis of trying to assess what costs I would have awarded had I been the Taxing Master."

8. In the case of *Bloomer v. The Incorporated Law Society of Ireland*, [2000] 1 I.R. 383, the passage quoted above was cited with approval where Geoghegan J. expounded on the approach to be taken by the court at p. 387 of his judgment:-

> "In considering whether the Taxing Master erred, I must see whether in arriving at his decision he had regard or excessive regard to some factor which he either should not have had any regard to or to which he should have had much less regard. I then have to consider whether there was some significant factor to which the Taxing Master ought to have had regard and to which he either had no regard at all or insufficient regard. Those are examples of errors of principle in the consideration of the facts but of course the Court must also consider whether the Taxing Master has fallen into error in either law or jurisdiction.
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> If this Court finds that the Taxing Master has erred in the sense described, this Court then has to address the second question which is whether the taxation was unjust. In relation to any given item in the taxation which is in controversy,

> the justice or injustice of the decision will be determined by the amount. If after falling into error, the Taxing Master in fact arrives at the correct figures or at a figure within a range which it might have reasonably have been open to him to have arrived at, the Court should not interfere. The decision may not be exactly the same as the decision which the Court would have made but it cannot be described as an unjust decision."

9. Whilst Geoghegan J. approved of the comments of McCracken J. in the *Smyth* case referred to above there is an apparent difficulty in reconciling those decisions as was noted by Kearns J. in the case of *Superquinn v. Bray U.D.C. (No. 2)* [2001] 1 I.R. 459. In that case at pp. 476 – 7 Kearns J. noted:-

> "In discharging its function the High Court inexorably must, if it can, form a view itself of the particular item of costs or the amount it would have awarded in any given situation. Otherwise, there is no basis upon which any conclusion as to 'injustice' can exist in the absence of some mistake of principle. I would therefore regard the reasoning of Geoghegan J. as more correct."

10. It seems to me having regard to the authorities referred to above that the appropriate test to be followed in a review of taxation is that set out in the judgment of Geoghegan J.

11. It was submitted on behalf of the defendants in this case that although a twofold test has been described namely, firstly establishing whether there is an error on the part of the Taxing Master and then considering whether the taxation was unjust, it has been submitted herein, that if in this case, given that the error is one, if it is an error which arises from the interpretation of a statute as opposed to being an error of degree that the court should in those circumstances alter the Taxing Master's decision. That is so but I am not of the view that the fact that an error arises from the interpretation of a statutory provision can alter the function of the Court as prescribed by s. 27(3).

Relevant Statutory Provisions

12. Section 14 of the Courts Act 1991 amended s. 17 of the Act of 1981 by the substation of a new s. 17 in the following terms:-

> "17(1) Where an order is made by a court in favour of the plaintiff or applicant in proceedings (other than an action specified in subsections (2) and (3) of this section) and the court is not the lowest court having jurisdiction to make an order granting the relief the subject of the order, the plaintiff shall not be entitled to recover more costs than he would have been entitled to recover if the proceedings had been commenced and determined in the said lowest court.
>
> (2) In any action commenced and determined in the High Court, being an action where the amount of damages recovered by the plaintiff exceeds £25,000 but does not exceed £30,000, the plaintiff shall not be entitled to recover more costs than he would have been entitled to recover if the proceedings had been commenced and determined in the Circuit Court, unless the judge hearing the action grants a special certificate, for reasons stated in the order, that, in the opinion of such judge, it was reasonable in the interests of justice generally, owing to the exceptional nature of the proceedings or any question of law contained therein, that the proceedings should have been commenced and determined in the High Court.
>
> (3) In any action commenced and determined in the High Court, being an action where the amount of the damages recovered by the plaintiff exceeds £5,000 but does not exceed £15,000, the plaintiff shall not be entitled to recover more costs than whichever of the following amounts is the lesser, that is to say, the amount of such damages or the amount of costs which he would have been entitled to recover if the action had been commenced and determined in the Circuit Court. …"

13. Section 17(5) provides for a differential cost order to be made and the overall thrust of the section is as its title indicates "Limitation on amount of plaintiff's costs in certain proceedings". I should finally refer briefly to the provisions of s. 17(1) of the 1981 Act, prior to its amendment which was referred to in the course of argument before me and which provided:-

> "In any action of tort or of breach of promise of marriage commenced and heard in the High Court, being an action where the amount of the damages recovered by the plaintiff exceeds £2,500 but does not exceed £7,500, the plaintiff shall not be entitled to recover more costs than whichever of the following amounts is the lesser, that is to say, the amount of such damages or the amount of costs which he would have been entitled to recover if the action had been commenced in the Circuit Court, unless a judge hearing the action grants a special certificate under this section."

14. The contention of the defendant in this case is that the proceedings between the plaintiff and the defendant were commenced and determined in the High Court. The amount for which the proceedings were settled comes within the figure provided in s. 17(3) of the Act of 1981, as amended, and consequently the plaintiff is limited in terms of the costs it can recover to the lesser of the two amounts, namely the amount of the damages recovered or the amount of costs which he would have been entitled to recover if the action had been commenced and determined in the Circuit Court. In this case the costs have taxed at the sum of €11,142. The amount agreed to be paid by the defendant to the plaintiff was €9,500 and therefore if s. 17(3) applies, the amount which can be recovered by way of costs by the plaintiff is the lesser of those two amounts, namely, €9,500. There is no disagreement between the parties as to the legislative intention behind s. 17(1) namely the capping of the level of costs payable to a party by reference to the level of the award, particularly in circumstances where the plaintiff has brought proceedings in a court higher than that which has jurisdiction to deal with the particular case.

15. The key issue that arises herein is whether in circumstances where the parties have compromised proceedings, those proceedings can be said to have been "determined" in the High Court. Reference was made in the course of submissions to the decision in the case of *O'Connor v. Bus Atha Cliath* [2003] 4 I.R. 459, which considered the intention of the legislature in relation to s. 17 as a whole and s. 17(5) in particular. There is no dispute between the parties that the general effect of s. 17 is to limit the level of costs that can be recovered by the plaintiff. I accept that in considering the interpretation of the provisions of s. 17 it is important to have regard to the will and intention of the legislature in enacting the relevant provisions.

16. Counsel on behalf of the defendant referred to the canons of construction summarised in Bennion on *Statutory Interpretation* (4th Ed. 2002) p. 740 and which was considered by Hardiman J. in the case of *Maguire v. Director of Public Prosecutions* [2004] 3 I.R. 241, as follows:-

> "*Prima facie*, the meaning of an enactment which was intended by the legislator (in other words its legal meaning) is taken to be that which corresponds to the literal meaning."

17. It is clear that the key word to be interpreted in this case is the word "determined" as used in s. 17. Reference was made to the Oxford Modern English Dictionary definition of determined namely:-

> "1. Find out or establish precisely,
>
> 2. Decide or settle,
>
> 3. Be a decisive factor in regard to,
>
> 4. Make or cause (a person) to make a decision."

18. Murdoch's Dictionary of Irish Law defines the word "determine" as follows:-

> "To come to an end or to bring to an end …"

19. Counsel referred in particular to the second of these decisions namely "decide or settle". It was submitted that in applying a literal interpretation to the words used in s. 17(3) namely, "decide or settle" or "bring to an end" that those meanings did no involve a ruling by the court. It was pointed out that s. 17(3) talks about the *recovery* (my emphasis) of a liquidated sum as opposed to an award of a liquidated sum. Emphasis was also laid on the contrast between the provisions of s. 17 prior to its amendment and s. 17(3) of the 19981 Act as amended by the 1991 Act.

20. Counsel on behalf of the defendant also submitted that one should compare the provisions of s. 17(1) with those of s. 17(3). Section 17(1) provides as follows:-

> "Where an order is made by a court in favour of the plaintiff …"

21. and s. 17(3) states:-

> "In any action commenced and determined in the High Court …"

22. The contention of the defendants therefore is that an action is determined in the High Court in circumstances where it comes to an end in the High Court. It is submitted that the action is determined whether it occurs as a result of a decision following a hearing or as a consequence of a settlement. By contrast the contention of the plaintiff is that proceedings cannot be said to have been "determined in the High Court" in circumstances where the matter has been settled out of court. The defendants emphasises that the proceedings herein were determined in that they were brought to a conclusion by an order of the High Court on the 22nd June, 2005, by which order the proceedings were struck out.

23. In referring to the distinction between the wording used in s. 17(1) and s. 17(3) of the 1981 Act, it was submitted on behalf of the defendants that the fact that the legislature in using different terms in subsections of the same section was doing so not because it is referring to the same event, as contended by the plaintiff, but rather to demonstrate that the legislature is using two different terms to describe two different situations. Again reference was made to Bennion at p. 995 where it is stated under the heading "Different Words to be given Different Meanings":-

> "Similarly it is presumed that the drafter did not indulge in elegant variation, but kept to a particular term when he meant to convey a particular meaning. Accordingly, a variation in the term used is taken to denote a different meaning. Blackburn J. said:-
>
> > 'It has been a general rule for drawing legal documents from the earliest times, one which one is taught when one first becomes a pupil to a conveyance, never to change the form of words unless you are going to change the meaning …'"

24. t is also stated in Bennion as follows:-

> "Where a difference of wording is inexplicable unless different meanings were intended, the court does it best to find those different meanings." (p. 478).

25. Reference was made by the Taxing Master in his ruling in this case to the Supreme Court decision in the case of *Cronin v. Astra Business Systems Limited (No. 2).* In that case it was held by the Supreme Court that where a plaintiff instituted proceedings in the High Court but later accepted a sum lodged that was within the jurisdiction of the Circuit Court, it did not follow that costs must be taxed at a Circuit Court level under s. 17(1) of the 1981 Act, as amended.

26. Particular emphasis was placed by the Taxing Master on that decision and I think it would be helpful to refer briefly to a passage from the ruling of the Taxing Master made herein on the 14th July, 2006. He stated:-

> "It is clear that as of 10th February, 2004, the law was as Master Moran stated in the taxation of Margaret Grogan v. Alison Hearne. However, the Supreme Court some months later changed the law as is their rightful and constitutional duty to so do. The law upon this area was changed on the 14th May, 2004, in *Cronin v. Astra Business Systems Limited*, since reported in the Irish Reports. McGuinnes J. at p. 9 of her written judgment makes no distinction between the commencement of proceedings and the acceptance of a lodgement.
>
> The order for costs as dated the 22nd June, 2005, simply refers to 'costs on the Circuit Court scale' and it is not limited by any other qualification and the parties are bound by the order for costs as awarded and same must be taxed in the appropriate fashion as dictated by the acceptable principles of taxation."

27. I want to refer briefly to the Supreme Court decision in the case of *Cronin v. Astra Business Systems Limited,* (Unreported, McGuinness J. Supreme Court, 14th May, 2004.). As indicated, that case concerned proceedings in the High Court commenced by plenary summons seeking damages for personal injuries. The defendant lodged a sum of £21,010 with its defence. Subsequently, the lodgement was accepted by the plaintiff. The amount of the lodgement fell within the jurisdiction of the Circuit Court. An issue arose as to the taxation of the plaintiff's costs. The matter was heard before Butler J. in the High Court, who laid stress on the fact that s. 17(1) dealt solely with the situation where an order was made by court in favour of a plaintiff. He noted that there was no statutory provision dealing with the situation where the plaintiff accepted a sum lodged in court. In the course of her judgment, McGuinness J.

stated at p. 7 of her judgment as follows:-

> "As in the *Hopkins* case, this court cannot know what particular considerations induced the plaintiff to accept the lodgement in the present case. It seems likely that in this, and in most cases, both subjective and objective considerations would have come into play. The situation where, after due consideration, a plaintiff decides to accept a lodgement is crucially different from the situation where, after hearing all the evidence on both sides, a court decides the level of damages to be awarded. Section 17(1), as has been accepted, specifically governs only the situation where the amount of damages is ordered by the court. Its terms should not, in my view, be extended to cover the acceptance by the plaintiff of a lodgement. I am unable to accept that in all circumstances and in every case the value of a case can be measured by the amount of an accepted lodgement. I consider that the learned trial judge was correct in his conclusion that he could see no basis for determining that it was the intention of the Oireachtas that a plaintiff who institutes proceedings in the High Court and accepts a sum lodged that is within the jurisdiction of the Circuit Court should not be entitled to have her costs taxed on a High Court basis."

28. Reference has been made already to the distinction between s. 17(1) and s. 17(3). So far as the provisions of s. 17(1) are concerned, I am clearly bound by the interpretation of s. 17(1) as enunciated by the Supreme Court. It is worth bearing in mind that the provisions of s. 17(3) would not have had a bearing on the costs in the *Cronin* case as the taxed costs in that case in any event were less than the amount of the lodgement.

29. Reference was made in the course of submissions by counsel on behalf of the defendant to the provisions of s. 5 of the Interpretation Act 2005, it provides:-

> "In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction) –
>
> (a) that is obscure or ambiguous…
>
> the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole."

30. Relying on that provision it was submitted that the meaning of the term "determined" in s. 17(3) should be considered in view of the intention of the Oireachtas as identified by Hardiman J. in the case of O'Connor referred to above, that is the legislative purpose of providing a strong incentive to institute proceedings generally in the lowest court having jurisdiction to make the award appropriate to them. Bearing in mind the provisions of s. 5 of the Interpretation Act, 2005, it does seem to me that it is appropriate to consider the provisions of s. 17 as a whole. Section 17 is a self-contained code in respect of costs within the Courts Act 1981, as amended. In that context it is important to look again at the provisions of s. 17(2) which provides:-

> "In any action commenced and determined in the High Court, being an action where the amount of damages recovered by the plaintiff exceeds £25,000 but does not exceed £30,000, the plaintiff shall not be entitled to recover more costs than he would have been entitled to recover if the proceedings had been commenced and determined in the Circuit Court, unless the judge hearing the action grants a special certificate, for reasons stated in the order, that, in the opinion of such judge, it was reasonable in the interests of justice generally, owing to the exceptional nature of the proceedings or any question of law contained therein, that the proceedings should have been commenced and determined in the High Court."

31. It is to be noted that in s. 17(2) the precise term at issue in s. 17(3) is used, namely, "in any action commenced and determined in the High Court". Does this phrase used in the context of s. 17(2) give any force to the argument made herein on behalf of the plaintiff that what is contemplated by s. 17(3) in the use of the phrase "commenced and determined in the High Court" is a decision made by a judge of the High Court?

32. Counsel on behalf of the plaintiff laid particular emphasis on the importance of compromise in relation to proceedings. Reference was made to the savings in respect of costs and court time by the compromise of actions. It was submitted that in this case there was an express intention on the part of the parties herein to provide their own arrangement in respect of the issue of costs. This was done by an agreement which was reflected in the order of the 22nd June, 2005.

33. It was further emphasised by counsel on behalf of the plaintiff that if proceedings are compromised by an agreement between the parties then the action is not determined in the High Court. Rather it is determined by the agreement of the parties.

Conclusions

34. Section 17 of the Courts Act 1981 is a self-contained statutory scheme designed by the legislature to impose a cap on costs that may be recovered by a successful plaintiff or applicant where the order made in his favour is made by a court which is not the lowest having jurisdiction to make the order granting the relief the subject of the order. I have already referred to a passage from the judgment of Hardiman J. in the case of *O'Connor v. Bus Atha Cliath*, in which he described the purpose of the statutory scheme contained in s. 17. Murray J. (as he then was) in the same case stated the following at pp. 493 – 494:-

> "The relevant provisions are part of a statutory scheme whereby claims may be brought in different courts according to the level of their jurisdiction to give the relief sought by a plaintiff. It is clear that among the policy reasons for such provisions is that they facilitate the efficient administration of justice, and are of convenience to all the parties in bringing their cases, where appropriate, before courts of local and limited jurisdiction. In particular, in the present context, it will usually mean that lower costs are incurred by both the plaintiff and the defendant than if the proceedings had been brought to the higher court.

35. It is clearly in the public interest that claims are in principle brought before the lowest court having jurisdiction to hear and determine the claim with a view to the proper and efficient administration of justice and for the purpose of minimising the cost of litigation generally and in particular for the parties. There is therefore an onus on a Plaintiff to bring the proceedings before the court having the appropriate jurisdiction."

36. Bearing in mind the judgments of Murray J. and Hardiman J. in that case, there can be not doubt that the policy behind s. 17 is to compel plaintiffs to bring their proceedings in the appropriate jurisdiction in respect of the relief being sought and to encourage this by ensuring that the costs recoverable by a successful plaintiff in circumstances where the claim has been brought in a higher jurisdiction than that which is necessary, shall not exceed the costs that would be recoverable had the case been brought in the appropriate jurisdiction.

37. As pointed out earlier, there was no dispute between the parties as to the principles applicable to the construction of the section. Reference was made to Bennion on *Statutory Interpretation* and I think that the submissions in this regard can be helpfully summarised by a passage contained in a judgment of the Supreme Court in the case of *E.M.S. v. Minister for Justice* [2004] 1 I.R. 536, which concerned the meaning of a provision of the Illegal Immigrants (Trafficking) Act 2000. At p. 540 of the judgment in that case, Hardiman J. who gave the judgment of the court stated as follows:-

> "Is what the statement of grounds describes as the respondent's 'refusal [to] give consent to the applicant herein to make a further application for a declaration of refugee status pursuant to s. 17(7) of the Refugee Act 1996'a 'refusal' within the meaning of s. 5(1)(k) of the Act of 2000? In approaching this question one must first have regard to the very basic canon of construction summarised in Bennion, *Statutory Interpretation* (3rd Ed. 1997) at s. 285 as follows:-
>
> > '*Prima facie*, the meaning of an enactment which was intended by the legislator (in other words its legal meaning) is taken to be that which corresponds to the literal meaning.'
>
> The author notes that the literal meaning corresponds to the grammatical meaning unless that meaning, deduced in the relevant context, is ambiguous. In that event then any of the possible grammatical meanings may be described as the literal meaning. Authorities from several different centuries are cited for those basic propositions."

38. It is the contention on behalf of the defendant herein that the word "determined" as used in s. 17(3) encompasses matters which have been concluded in the High Court but not necessarily concluded as a result of a hearing before the High Court. The plaintiff's contention in this regard is that the word "determined" should be understood only in the context of a determination by the High Court of the matters in dispute between the parties. I referred earlier to the dictionary definitions of the word "determined" with which I had been supplied. Mr. Barniville SC on behalf of the defendants placed particular emphasis on the second definition given in the Oxford Modern English Dictionary i.e. "decide or settle". It is interesting to note that in the dictionary definition relied on by the defendants, an explanation as to the usage of the word in that context is given as follows: "Decide or settle (determined who should go)". Relying on that definition of determine, it would appear that the meaning of "determined" in the context is somewhat ambiguous. A case decided in the High Court could only be decided in the context of a hearing but of course a settlement can occur before, during or indeed after a hearing. Again the fourth definition given, "make or cause a person to make a decision" seems to me be supportive of the contention made by the plaintiff as to the meaning of the word "determined" as used in s. 17(3). In that context it seems to me that there is certainly some ambiguity in the meaning of the word determined as used in s. 17(3). Murdoch's Dictionary of Irish Law uses the definition of the word "determine" as follows: "to come to an end or bring to an end". In that sense it is clear that proceedings commenced in the High Court may be brought to an end by a variety of means e.g. they may be discontinued, they may be struck out, they may result in a decree for the plaintiff or the defendant or they may be settled. In other words a variety of interpretations for the word "determined" can arise.

39. Given that the word "determined" as used in s. 17(3) is capable of a number of different meanings, it seems to me that it is important to look at the precise wording of s. 17 as a whole, in order to see if some further guidance can be obtained from the section as to the meaning of the word "determined". In that regard I think it is necessary to go back to s. 17(1) which provides:-

> "Where an order is made by a court in favour of the plaintiff or applicant in any proceedings (*other than an action specified in subsections (2) and (3) of this section*) (my emphasis) and the court is not the lowest court having jurisdiction to make an order granting the relief the subject of the order, the plaintiff should not be entitled to recover more costs than he would have been entitled to recover if the proceedings had been commenced and determined in the said lowest court."

40. The objective and intention of s. 17 has been clearly set out in the judgments of Murray J. and Hardiman J. to which reference has already been made. It is also clear from the judgment of McGuinness J. in the case of *Cronin* referred to above that s. 17(1) refers to an order made by the court following a hearing. That being so, I have come to the conclusion that when s. 17 (1) refers to the actions specified in subss. (2) and (3) of the section it is referring to actions where the proceedings have resulted in an order made by a court following a hearing. I am fortified in this view by the specific provisions of subss. (2) and (3). The general rule as set out in s. 17(1) and (3) is that a plaintiff cannot recover more costs than he would have been entitled to recover if the proceedings had been commenced and determined in the lowest court. Section 17(2) provides a limited exception to that rule in cases where the amount of damages recovered by the plaintiff exceeds £25,000 but does not exceed £30,000. In those circumstances, the judge hearing the action can grant a special certificate for reasons stated in the order that in the opinion of the judge it was reasonable that the proceedings should have been commenced and determined in the High Court. It goes without saying that such a decision cannot be made without a hearing of the matter. Section 17(3) amounts to the imposition of a sanction on plaintiffs whose damages fall within the range of £5,000 but do not exceed £15,000. I am inexorably driven to the conclusion that in s. 17(3) the use of the phrase "in any action commenced and determined in the High Court" as used in that section, bearing in mind the provisions of s. 17(1) and s. 17(2), can only mean determined following a hearing in court. That seems to me to be the logical conclusion to draw from the scheme of the section as a whole.

41. In the *Cronin* case reference was made in the course of her judgment by McGuinness J. to the various considerations that may induce a plaintiff to accept a lodgement. She concluded that in most cases subjective and objective considerations would have come into play. She went on to comment:-

> "I am unable to accept that, in all circumstances and in every case, the value of a case can be measured by the amount of an accepted lodgment."

42. It is also the case that most personal injury actions are compromised without the parties proceeding to a full hearing. It is important that parties should, where possible, compromise proceedings. The compromise of an action saves time in terms of court hearings and as a consequence, saves costs. The observations of McGuiness J. in respect of lodgements are just as relevant to the compromise of proceedings.

43. I am of the view that in enacting the provisions of s. 17 of the 1981 Act, the intention of the legislature was to deal with those cases where the order of the court was made following a hearing as opposed to circumstances where the parties themselves reached a compromise. The overall thrust of s. 17 appears to me to have been intended to apply to those circumstances where a plaintiff has persisted in pursing a case through to a hearing resulting in a decree for damages which comes within specified limits and thus falls to be determined in accordance with the provisions of s. 17 of the 1981 Act.

44. In the circumstances, it seems to me that I should not allow the appeal of the defendants herein and should affirm the ruling of the Taxing Master herein.