

65/78

COURT OF APPEAL (ENGLAND)

R v SCHOFIELD

Lord Widgery CJ, Shaw LJ and Lloyd J

31 January 1978 — (1978) 1 WLR 979; [1978] 2 All ER 705; 67 Cr App R 282

CRIME – COMPENSATION INCLUDING INTEREST – CONSIDERATION AS TO MEANING OF "LOSS".

The defendant having been convicted of obtaining property by deception and theft was ordered to pay compensation in the amounts obtained together with interest. He applied for leave to appeal against sentence.

HELD: Application for leave to appeal dismissed.

1. Having regard to section 35(1) of the Act the important words are 'compensation for any personal injury, loss or damage resulting from that offence.' The word 'loss' should in that sub-section be given its ordinary meaning and should not be limited or restricted to any particular kind of loss. In the case of financial loss, you look to see what the loss is which the victim has in fact suffered at the time the compensation order is made and then, provided the loss results from the offences and is not otherwise too remote in law, the court may, in its discretion, make a compensation order up to that amount. Thus, in a simple case of theft of bank notes, the victim's loss would not necessarily be limited to the loss of money itself but would, or at any rate might, include the loss of the use of the money between the date of the theft and the date when the compensation order was made.

2. Where as in the present case, the amounts were relatively large, where the time was a long one, and where there was no question of any insufficiency in the defendant's means, there was no error in principle in including a sum by way of interest in the award, thereby compensating the victim for the loss of the use of the money as well as for the loss of the money itself. Whilst there may be no evidence of loss of interest in the present case, that is something which the recorder, in a case such as the present, was entitled to infer.

LLOYD J: (delivering the judgment of the Court) As we have indicated, the sole ground of the application is that the sentence was wrong in principle and excessive by reason of the inclusion of interest in the compensation orders. So far as this court is aware, and so far as the researches of counsel have gone, the question is a novel one. It is therefore necessary to start by looking at the language of the Act itself. Section 35(1) provides:

'Subject to the provisions of this Part of this Act, a court by or before which a person is convicted of an offence, in addition to dealing with him in any other way, may, on application or otherwise, make an order (in this Act referred to as a compensation order) requiring him to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence.'

I need not read the remaining subsection of section 35, section 36 or section 37; but it is worth noting that section 38 makes detailed provision for what is to happen in the event of a person who is a beneficiary under a compensation order subsequently recovering damages in a civil court arising out of the same facts.

Turning back to section 35(1) the important words are 'compensation for any personal injury, loss or damage resulting from that offence,' In our judgment, the word 'loss' should in that sub-section be given its ordinary meaning and should not be limited or restricted to any particular kind of loss. In the case of financial loss, you look to see what the loss is which the victim has in fact suffered at the time the compensation order is made and then, provided the loss results from the offences and is not otherwise too remote in law, the court may, in its discretion, make a compensation order up to that amount. Thus, in a simple case of theft of bank notes, the Victim's loss would not necessarily be limited to the loss of money itself but would, or at any rate might, include the loss of the use of the money between the date of the theft and the date when the compensation order was made.

If that is the right construction of section 35, one looks to see whether there is anything in the cases which have been decided since the Act was passed that would lead to a different conclusion. In several recent cases, this court has said that the machinery under section 35 is only intended for simple cases. In the more complicated cases, the victim should be left to his remedy in the civil courts. Mr Selfe has argued that the inclusion of a sum for interest would lead to serious complications in arriving, for instance, at the appropriate rate of interest to be taken. If it did lead to such complications we would agree that it would not be a suitable case for summary disposal by way of a compensation order under section 35. But we can see no such complications or difficulties in the present case.

If one takes simply the first count, by way of example, Mr Renshaw, who was the owner of the portable television set, received a worthless cheque for £62 as long ago as December 22, 1973. If he were to bring a civil action, there would be no doubt that he would recover not only the value of the cheque for £62 but also a sum by way of interest to cover the period between December 22, 1973, and the date of the judgment in the civil proceedings. That being so, we can see no reason why a criminal court should not, in a suitable case, include an equivalent sum when making a compensation order under section 35. The fact that the interest cannot be precisely calculated, and, indeed, should not be precisely calculated, is no bar.

We are not, on this application, laying down the rules for every case. It will still be for the court, in each case, to exercise its discretion as to whether it will include a sum by way of interest or not. When the amounts involved are small, and when the time is short, no doubt the interest will in practice continue to be ignored, as it has been apparently till now. In many cases, as Shaw LJ pointed out in the course of argument, the question of interest would be academic when the means of the defendant are insufficient. But where as in the present case, the amounts are relatively large, where the time is a long one, and where there is no question of any insufficiency in the defendant's means, we can see no error in principle in including a sum by way of interest in the award, thereby compensating the victim for the loss of the use of the money as well as for the loss of the money itself. Mr Selfe says that there is no evidence of loss of interest in the present case. But that is something which, in our judgment, the recorder, in a case such as the present, was entitled to infer. For those grounds, we would dismiss the application.

EDITORIAL COMMENT re: *R v Schofield* (1978) 1 WLR 979

Magistrates should not accept that the decision of the Court of Appeal (England) in the above matter establishes a rule of law that in making an order for compensation under section 546 of the *Crimes Act* 1958, a court has power to include in the sum ordered to be paid, an amount by way of interest.

It should be noted that the section 35(1) referred to in the decision is worded significantly different from the provisions of section 546 of the *Crimes Act* 1958. That section 35(1) empowers the English courts to make an order: "requiring him to pay compensation for any personal injury, loss or damage resulting from that offence ..." Section 546 of the *Crimes Act* 1958 provides that the court may:

"on the application of any person suffering loss (of) or destruction of or damage to his property through or by means of the offence, order the person so convicted ... to pay (as) compensation for any such loss destruction or damage such sum not exceeding the value of the property lost destroyed or damaged as the court or judge thinks fit."

In *Schofield's case*, the C.A. (at p981) states:

"In our judgment, the word 'loss' should in that sub-section be given its ordinary meaning and should not be limited or restricted to any particular kind of loss."

In Section 546 of the *Crimes Act* 1958, the word "loss" is used in a different sense. In the statement above of the abbreviated provisions of s546, the word "(of)" has been added after the word "loss" first used this must be read in because of the wording of the qualification not exceeding the value of the property lost". So that whereas the English legislation refers to general loss, the Victorian legislation refers to loss of property and to the value of that property. In *Schofield's case*, the C.A. accepted that the victim's general loss "would not necessarily be limited to the loss of money itself but would or at any rate might, include the loss of the use of the money between the

date of the theft and the date when the compensation order was made." — a completely different and separate head of claim.

The Victorian legislation is directed to "loss of property", "compensation for any such loss," and the sum ordered to be paid not to exceed "the value of the property lost." See further *R v Kish* [1970] VicRp 60; (1970) VR 459 (Full Court). As to a proper exercise of discretion to refuse to make an order, see *R v Braham* [1977] VicRp 11; (1977) VR 104 at p110 (Full Court) particularly in respect of difficult determinations of value.
