

THE HIGH COURT

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1984 No. 20 SS

IN THE MATTER OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT, 1961

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

Complainant

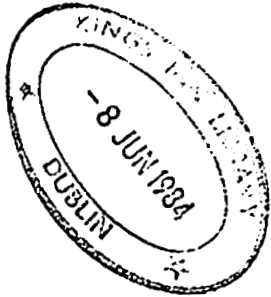
AND

MARTIN CLOSKEY

Defendant

Judgment of O'Hanlon J., delivered the 6th day of February, 1984

The Defendant, Martin Closkey, came before District Justice Thomas P. O'Reilly in Drogheda District Court on the 7th January, 1983, and 18th March, 1983, charged with the offence of driving a mechanically propelled vehicle while there was present in his body a quantity of alcohol in excess of the permitted limit, contrary to Section 49 (3) and (4) (a) of the Road Traffic Act, 1961, as inserted by Section 10 of the Road Traffic (Amendment) Act, 1978. The said charge was dismissed by the learned District Justice after legal argument, and from that decision the Director of Public Prosecutions has appealed by way of Case Stated.



It appears from the facts as found by the District Justice that the evidence was sufficient in every way to support a conviction of the Defendant on the said charge, but objection was taken to the manner in which vital parts of the said evidence had been obtained.

The Defendant was not interviewed by the Gardai at the scene of an accident in which he had been involved on the date of commission of the alleged offence, but a short time later members of the Gardai called to his home, and after a certain amount of delay they were admitted to his house by his sister, who was also living there. She further acceded to the request by the Gardai to see his bedroom and admitted them to the interior of the room, where the Defendant was at that time in bed, and, to all appearances, asleep.

He was roused by one of the Gardai, who informed him that he was arresting him under Section 49 (6) of the Road Traffic Act, 1961-78. The Case Stated then continues: "when the Defendant was arrested his sister resisted and obstructed him."
("Him I take as referring to the member of the Gardai who

effected the arrest). "The Defendant was placed in the patrol car and taken to Drogheda Garda Station."

From that time forward it appears that the Defendant co-operated with the Gardai in their inquiries.

The point of law which was raised successfully on his behalf before the District Justice was, that the Gardai were not entitled to enter the Defendant's dwelling-house without permission, and even if admitted by the Defendant or by some other person with authority to do so, they were bound to leave immediately on being requested to do so, otherwise they would become trespassers on the property. It was not contended that their original entry was unlawful, but it was submitted on behalf of the Defendant that once his sister opposed and resisted the arrest, this was tantamount to a revocation of the permission previously given to the Gardai to enter the premises, and that they were then bound to leave the house without effecting the arrest.

The Defendant's Counsel relied on the decision of the House of Lords in Morris -v- Beardmore, (1980) 2 AER 753, where the



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facts (including the offence charged) were similar to those found by the District Justice in the present case, save that the police officers in that case, having been admitted by the Defendant's son, were informed by the Defendant that they were trespassers and were required to leave the house before they had proceeded upstairs to the bedroom to seek a breath test from the Defendant.

It appears to me that that factor represents a crucial difference as between that case and the present one. The Gardai in the present case entered the Defendant's home lawfully, having been admitted by his sister. They proceeded upstairs and into his bedroom with her knowledge and consent. When they arrested the Defendant it is not suggested that he, himself, resisted arrest, or required them to leave his house, but it is stated that his sister at that stage resisted and obstructed the Gardai.

The Case Stated does not suggest that the house was the property of the Defendant's sister, or that she was entitled

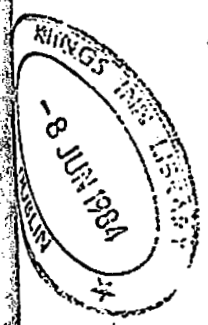
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to exercise any greater degree of control over it than was her brother. I am of opinion that, having been lawfully admitted to the house and to the bedroom, the Gardai were at that stage entitled to exercise such powers of arrest as were vested in them by law, and were not trespassers when they proceeded to do so.

In these circumstances, I am of opinion that the arrest and everything which followed upon it, was lawful, and that the learned District Justice erred in law in acceding to the application by the Solicitor for the Defendant to dismiss the charge on the grounds referred to in the Case Stated.

The matter will, accordingly, be referred back to the District Justice to resume the hearing.

R. J. O'Hanlon
 R.J. O'Hanlon
 6th February, 1984.



Note:

Counsel for the Complainant:- Denis Mitchell, BL (instructed by The Chief State Solicitor)

Counsel for the Defendant:- BL (instructed by B.V. Hoey & Co., Solicitors).

Cases and Materials Cited:-

Morris -v- Beardmore, (1980) 2 AER 753.