R.D., Applicant v. **District Judge McGuinness**, Respondent and **B.D.,** Notice Party [1998 No. 256 J.R.]

High Court 11th February, 1999

Jurisdiction of court - Practice and procedure - Natural justice - In camera proceedings - Litigant in person - Friend present in court to give assistance - "McKenzie friend"- Matter to be heard "otherwise than in public" - District Judge refusing to allow friend to assist - Whether defendant entitled to assistance - Domestic Violence Act, 1996 (No. 1), s. 16(1).

Words and phrases - "Otherwise than in public" - Domestic Violence Act, 1996 (No. 1), s. 16(1).

Section 16(1) of the Domestic Violence Act, 1996 provides that :-

"Civil proceedings under this Act shall be heard otherwise than in public."

The notice party secured an *interim* barring order against her husband, the applicant, which the applicant sought to have discharged. At the commencement of the hearing of that application, which was heard at the same time as the notice party's application for the barring order, the applicant, a lay litigant, sought to have in court with him a "McKenzie friend", that is, a person who is not qualified as a solicitor or a barrister, who attends court for the purpose of assisting a lay litigant during the course of the hearing, but does not act as an advocate. The notice party objected to the presence in court of such a person.

The respondent held that he had a discretion as to who could remain in court during proceedings, and having considered that the applicant was a very articulate person and that the court was experienced in protecting people who had no legal representation, ruled that the applicant was not entitled to have a "McKenzie friend" present in court. The applicant sought a declaration that he was entitled to the assistance of a "McKenzie friend" by way of judicial review in the High Court.

Held by the High Court (Macken J.), in refusing the application for judicial review, that unless there was overwhelming evidence that a fair hearing could only be secured by the attendance in court of a "McKenzie friend", civil proceedings under the Domestic Violence Act, 1996, should be held "otherwise than in public".

Obiter dictum: Except in matters of a matrimonial nature, or where the law prescribes that proceedings should be held "otherwise than in public", a party who prosecuted proceedings in person was entitled to be accompanied in court by a friend who may take notes on their behalf and quietly make suggestions and assist them generally during the course of the hearing, but who may not act as an advocate.

Cases mentioned in this report:-

Collier v. Hicks (1831) 2 B. & Ad. 663.

McKenzie v. McKenzie [1971] P. 33; [1970] 3 W.L.R. 472; [1970] 3 All E.R. 1034.

Reg. v. Leicester JJ., Ex p. Barrow [1991] 2 Q.B. 260; [1991] 2 W.L.R. 974; [1991] 3 W.L.R. 368; [1991] 3 All E.R. 935.

Judicial review.

The facts have been summarised in the headnote and fully set out in the judgment of Macken J., *infra.*

On the 29th June, 1998, the applicant sought leave to apply for judicial review, which application was refused by the High Court (Geoghegan J.). The applicant appealed to the Supreme Court which, by order of the 17th July, 1998, and further order of the 23rd October, 1998, granted leave to the applicant to apply by way of judicial review for:-

"A declaration that the applicant, when acting in person, is entitled to be accompanied in court by a friend who may take notes on his behalf and quietly make suggestions and assist him generally during the hearing."

The application was heard by the High Court (Macken J.) on the 12th January, 1999.

The applicant appeared in person.

Diarmuid P. O'Donovan for the respondent.

Geraldine Fitzpatrick for the notice party.

Cur. adv. vult.

Macken J. 11th February, 1999

This is an application brought by the applicant against a decision of the respondent given on the 29th May, 1998, refusing the applicant liberty to be accompanied in the District Court by a friend, for the purposes of taking notes on his behalf, during the course of a hearing in a family law matter. The applicant's wife, now the notice party, had secured an *interim*

barring order against the applicant, and he had in turn, filed an application to discharge that *interim* order. In relation to that application and the hearing proper of the wife's barring order application, the applicant had sought to have in court with him a friend identified as a Miss P.H.

The *interim* barring order was granted on the 14th May, 1998, by Judge Mary Martin sitting at Portlaoise District Court. This was secured, in the usual way, *ex parte*. It was alleged by the applicant that there were no grounds for applying for such an order, but insofar as the merits of any such application are concerned, these are not really matters with which I have to be concerned at this time.

The applicant, prior to the *ex parte* application by the notice party, had already applied for legal aid (in relation to the matrimonial difficulties existing between them), to the law centre in Portlaoise and there was informed that that centre could not assist him as it already had the notice party as a client. The applicant was referred to another law centre at Tullamore in Co. Offaly. He averred in his affidavit in this application to the fact that there was no possibility of securing an appointment with the law centre there for some weeks, and he deposed further to the fact that he sought to secure a solicitor in private practice in Portlaoise but again was unable to secure an appointment until a week later. He averred to having then tried, through his cousin, Miss P.H. (he seeks to have Miss H. in attendance during the course of the hearings), to secure the services of a firm of solicitors in Dublin, but was not successful.

The return date for the hearing of the barring order application proper was the 25th May, 1998, and the applicant, on the 21st May, 1998, issued a plenary summons against Ireland, the Attorney General and District Judge Martin seeking, in particular, to challenge certain provisions of the Domestic Violence Act, 1996, by reference to the Constitution of Ireland. This arose out of the applicant's concerns about the hearing of the case until then. Again, I do not have to be concerned with the merits of such an application, but the applicant says it is all part of the background to his case, and part of the reason why he wishes to have a "McKenzie friend" in court.

The applicant's summons seeking to set aside the *ex parte* barring order, was returnable for the 22nd May. On the 22nd May, District Judge Martin indicated that she would hear that application on the 25th May, 1998, that is to say, on the same day as the hearing day for the barring order application of the notice party.

The applicant was dissatisfied with the manner in which his application was dealt with in the District Court, and considered his right of access

to the court might be denied or unreasonably delayed. Pursuant to an application made to the High Court on the 22nd May, leave was given to the applicant to issue a further plenary summons against District Judge Martin, and leave was given for short service of a notice of motion returnable for the 25th May, which motion was thereafter adjourned till the 28th May. In the course of the progress of that motion, it was agreed or undertaken on behalf of the District Judge, that she would not hear the case, but would arrange for another judge to do so.

On the 29th May, the applicant attended Portarlington District Court in the expectation of dealing both with his application to discharge the *interim* barring order and the notice party's application for a barring order against him.

The foregoing is the background against which the present application is to be viewed. At the commencement of the District Court hearing in Portarlington, the applicant requested liberty to have Miss P.H. attend in court during the hearing and to act for the applicant as a so-called "McKenzie friend", a term used to denote a person who is attending court for the purposes of taking notes or of making quiet suggestions or of assisting a lay litigant during the course of a hearing, but who is not qualified as a solicitor or barrister, and does not act as an advocate at the hearing. Nor is such a person otherwise an officer of the court. The notice party objected to the presence of Miss P.H. in court during the course of the hearing, on the grounds that Miss H. was not a qualified legal practitioner, but was a mere member of the public.

It is agreed between the parties to this application, that after some exchanges and argument, the respondent stated he had a discretion as to who remained in court during the proceedings before him, and in the exercise of that discretion he ruled that Miss P.H. should not be allowed to remain in court. He stated that in his opinion the applicant was a very articulate person and would not be prejudiced by not having legal representation, and said that the court was very experienced in protecting persons in family law matters who appeared before that court without legal representation, even in circumstances where other parties to the proceedings were legally represented.

The applicant indicates that he notified the respondent that he wished to challenge his ruling by way of judicial review and says he drew the respondent's attention to the existence of what the applicant called a "decision" of the Supreme Court in what he said was a 'similar matter'. This in fact is a reference to an order made in a case entitled *Quinn v.*

Governor and Company of the Bank of Ireland on the 13th October, 1995, an order to which I will return in due course.

On the 8th June, 1998, the applicant commenced these judicial review proceedings by applying *ex parte* on the basis of a statement grounding the application for judicial review together with a grounding affidavit, which application was refused by Geoghegan J. by order dated the 20th June, 1998, on grounds which are set forth in a written note of his judgment made in the matter, and which is exhibited in the applicant's affidavit.

From the decision and order of Geoghegan J., the applicant appealed to the Supreme Court. By order dated the 17th July, 1998, as varied by further order of the 23rd October, 1998, the applicant was granted leave to issue these judicial review proceedings. The notice of motion herein was dated the 23rd July, 1998, and seeks the following relief:-

> "A declaration that the applicant when acting in person is entitled to be accompanied in court by a friend who may take notes on his behalf and quietly make suggestions and assist him generally during the hearing"

and is based on the grounds permitted by the Supreme Court as set out in its order of the 23rd October, 1998.

It has been urged upon me by the applicant in support of his declaration to be entitled to have a friend in court, that she is no different to any officer of the court or any other person who is entitled to be in attendance, such as the court registrar, counsel and solicitor for other parties, or the garda. He submitted that having such a friend in court does not constitute the hearing one "in public". He accepts that cases of the type circumscribed by the provisions of the Domestic Violence Act, 1996, are ones which must be heard *in camera* for the purposes of maintaining privacy. He argues that the absence of such a friend is prejudicial to him, although the prejudice is alleged to be the fact that he is a lay person not having any legal representation. He points to the fact that there has been no objection to the conduct or likely conduct of the proposed friend. He submits that a judge, during the course of a hearing, would be in a position to control any activities of the friend in attendance, and therefore the presence of such a friend does not in any way deprive the court from exercising its jurisdiction as to the management and supervision of a case before it.

The applicant claimed - and this is not in dispute - that the respondent indicated he had a discretion as to how the case might be dealt with, and in particular as to the persons who would be entitled to be in court, and that in the exercise of this discretion he had ruled against the attendance

by Miss H. in court. The applicant submitted that such a discretion does not vest in the respondent, and that the discretion which does vest in him is limited to one exercisable in respect of witnesses only. He says this follows from the Act of 1996 itself, including s.16(3) which states that the civil procedure should be as informal as possible.

The applicant further submitted that the administration of justice requires that the District Court abide fully by the decision in *Quinn v. Governor and Company of the Bank of Ireland*. He finally submitted that, having regard to the fact that the Supreme Court overturned the decision of Geoghegan J. (to refuse liberty to issue judicial review proceedings), the Supreme Court had thereby intimated or given an indication that it was in sympathy with the applicant's view of the law, and that, in fairness, the position ought to be that the respondent should be compelled to permit the applicant to exercise his claimed right by permitting the proposed "McKenzie friend" to be attendance during the course of the hearing.

Counsel for the respondent argued that the respondent had acted wholly within jurisdiction, and he cited in support of this, the provisions of s.16(1) of the Act of 1996 which provides that the proceedings in question shall be held otherwise than in public. He submitted that this is an express provision and it reads as follows:-

> "Civil proceedings under this Act shall be heard otherwise than in public."

He said that the statutory rule is followed by the District Court Rules, 1997 under O.59, r.3, which states as follows:-

> "3. Proceedings under the Act shall be heard otherwise than in public, and only officers of the Court, the parties and their legal representatives, witnesses … and such other persons as the Judge shall in the exercise of his or her discretion allow, shall be permitted to be present at the hearing."

The words "the Act" refer to the Domestic Violence Act, 1996. Counsel for the respondent submitted that the proposed "McKenzie friend" is not a witness, is not an officer of the court, and has not been permitted by the judge, in the exercise of his discretion, to be allowed attend. In the circumstances, Miss H. is a mere member of the public and could only be in attendance as such.

He submitted that the applicant is trying to establish new law, and suggested that the right which is being contended for is sought to be imposed antecedent to the judge's right to regulate proceedings in court,

regardless of the view of the respondent, and regardless of the objection raised by counsel on behalf of the notice party.

Counsel for the respondent submitted that there is a proper objection to the attendance of such a person based on public policy grounds, in that officers of the court take an oath and are subject to the court and to their own regulatory bodies in relation to the manner in which they discharge their functions in court. A so-called "McKenzie friend" is subject, however, to nothing, and to no control and therefore may behave as they wish. He also argued that in *McKenzie v. McKenzie* [1971] P. 33, which affirmed, *obiter dicta*, the words found in *Collier v. Hicks* (1831) 2 B. & Ad. 663, the key words found in *McKenzie v. McKenzie* were "may attend", but that the case did not, on any interpretation, establish a legal right to such a friend, and that the matter is at all times one for the trial judge.

Counsel for the respondent also submitted that the force which the applicant sought to be placed on the order made in *Quinn v. Governor and Company of the Bank of Ireland* is one which cannot be justified, since there is in existence only an order, and despite diligent searches, it had not been possible to locate a note of the judgment.

It is quite clear that the first of the cases in which the question of the entitlement of persons to attend in court is *Collier v. Hicks* (1831) 2 B. & Ad. 663, in which certain comments were made, *obiter*, and which were considered subsequently in *McKenzie v. McKenzie* [1971] P. 33, a decision which gave rise to the nomenclature a "McKenzie friend".

That case involved a defended divorce suit in which there were cross-charges of cruelty and adultery involving difficult and complex questions of fact, necessitating a lengthy trial. The petitioner appeared in person to conduct his case. His former solicitors sent a young Australian barrister to assist the husband gratuitously in the conduct of his case by sitting beside the husband in court and prompting him. The judge, on ascertaining that the Australian barrister represented the petitioner's former solicitors, indicated that he could not take part in the proceedings. This was understood by the barrister as meaning that he must not assist the husband by prompting and he left the court. The case lasted ten days and the husband's petition alleging cruelty was dismissed.

The husband appealed against the dismissal of his petition, and the Court of Appeal, allowing the appeal, found that every party had the right to have a friend present in court beside him, to assist by prompting, taking notes and quietly giving advice. That court also held that by reason of the judge's intervention the husband had been deprived of that right and

therefore there had been an irregularity in the proceedings, and that in those circumstances there was an onus on the opposing party to show that the other party had not been prejudiced. I notice that in that case counsel on behalf of the wife conceded that the judge had erred in the view which he took about Mr. Hanger's presence (Mr. Hanger being the Australian barrister instructed by the former solicitors) next to the husband in court, and conceded that the husband was in law entitled to the assistance and prompting of Mr. Hanger. The case made on behalf of the wife was that the denial of such assistance was no more than an irregularity and did not make the trial a nullity.

In that case all three judges of the Court of Appeal decided that, *inter alia*, by reason of the fact that the judge directed that the Australian assistant not attend in court and not assist the husband, this rendered the trial unsatisfactory. It was unsatisfactory for a number of reasons, and not simply because of the non-attendance of the Australian barrister in question. Each of two judges (and Karminski L.J. agreeing) relied on the words expressed by Tenterden L.J. in the course of the judgment in *Collier v. Hicks* (1831) 2 B. & Ad. 663.

There is however in the course of the judgment no indication as to whether or not these were proceedings which were circumscribed by any provision equivalent to the provisions of s.16 of the Domestic Violence Act, 1996. That provision states that civil proceedings under the Act are to be heard "otherwise than in public", and there appears to have been no debate in *McKenzie v. McKenzie* [1971] P. 33 centred around any equivalent statutory provision.

Another English case in which the matter arose a short time subsequent to *McKenzie v. McKenzie* [1971] P. 33, is *Reg. v. Leicester JJ., Ex p. Barron* [1991] 2 Q.B. 260. The facts in that case did not involve matrimonial matters, but rather concerned liability for orders in respect of alleged non-payment of community charges. In the course of those proceedings, at the outset of the hearing, a solicitor acting on behalf of the applicants asked that a friend be allowed sit with them to give advice and assistance, which request was refused by the justices. The matter proceeded in the absence of solicitor or friend. In subsequent judicial review proceedings, the applicants challenged the decision of the justices on the grounds that the applicants had been entitled to the assistance of their friend in opposing the summonses and that the justices had, by refusing this access, unfairly acted to the prejudice of the applicants in depriving them of that right. A Divisional Court concluded that they had no such

right and had not in any event been prejudiced, and dismissed the application.

On appeal it was held by the Court of Appeal, allowing the appeal, that the administration of justice had to be open and fair, and had to be seen to be fair, that fairness dictated that a party of full capacity conducting proceedings in person, should be afforded all reasonable facilities to enable him to exercise his right of audience, including the assistance of a friend to give advice and take notes unless, in the interests of justice and in the exercise of its powers to maintain order and regulate proceedings before it, the court ordered otherwise: and that, accordingly the justices had erred, and since their error created apparent and potential unfairness, and since it was unclear whether the applicants had thereby suffered prejudice, the decision would be quashed.

The Divisional Court in that case unanimously held that there was no legal right in a litigant to have in attendance a so called "McKenzie friend", but rather an entitlement which might arise at the discretion of the court. On the appeal it was recognised and accepted that the early authorities did not in any way constitute binding authorities on that court. It was said by Donaldson M.R. at p. 284:-

> "Let me say two things at once. First, I am in complete agreement with the Divisional Court that there is an urgent need for guidance as to the extent to which parties to civil proceedings, whether in magistrates' or in other courts, can be assisted when presenting their own cases in person. Second, I do not think that there is any binding authority to assist us and the matter has to be approached on the basis of principle, and such *dicta* as appear in the mercifully few cases to which we have been referred."

I agree with the statement by the Master of the Rolls that the earlier authorities of *Collier v. Hicks* (1831) 2 B. & Ad. 663 and *McKenzie v. McKenzie* [1971] P. 33, could not constitute binding authorities, and certainly not in this jurisdiction, the first of them being a case concerning a right of audience (immaterial for the present case as was stated by the Master of the Rolls). In the second case it appeared to be a question of unfairness in denying a litigant in person a particular form of assistance. In *Collier v. Hicks* (1831) 2 B. & Ad. 663, Tenterden L.J. stated as follows at p. 668:-

> "The question raised in this case is not whether any person has a right to be present on a trial of an information before a magistrate as long as he conducts himself with decency and propriety, nor whether any one, whether attorney or counsel, or any other description of per-

sons, may or may not be present and take notes, and quietly give advice to either party: but the question is, whether anyone is entitled without permission of the magistrates, and as a matter of right, to attend and take part in the proceedings as an advocate, by expounding the law, and examining the witnesses. This was undoubtedly an open court, and the public had a right to be present, as in other courts; but whether *any* persons *who* shall be allowed to take part in the proceedings, must depend upon the discretion of the magistrates; who, like other judges, must have power to regulate the proceedings of their own courts."

On the other hand in *McKenzie v. McKenzie* [1971] P. 33 this was a divorce case involving cross charges of cruelty and adultery which lasted ten days. There was no evidence from the reported judgment that these proceedings were *in camera* nor that the proceedings were ones to which the public ordinarily had no access.

Finally, so far as the position of such a friend in this jurisdiction is concerned, I have not been furnished with any decided case on the matter. However, I have been referred to the order made by the Supreme Court in *Quinn v. Governor and Company of the Bank of Ireland.* Although no written judgment on the matter appears to be available, nevertheless, I think I am entitled to assume, having regard to the words used in the order made by the Supreme Court that some or other if not all of the authorities in the United Kingdom were fully opened to the Supreme Court and were taken into account by the Supreme Court in coming to its finding and in making the order which it made.

I am entitled to do so having regard to the fact that the order recites the very words which appear in the United Kingdom cases, and I consider it highly unlikely that these words would have been chosen had the Supreme Court not been fully apprised of the cases to which I have referred above. I must therefore find, as a likely fact, that the Supreme Court considered that, absent any other valid reason, in the ordinary course of events, a party who appears in person is entitled to have in Court, a so-called "McKenzie friend."

From the title to the proceedings in *Quinn v. Governor and Company of the Bank of Ireland*, it seems highly unlikely that it was a case in which there were any statutory prohibitions of the type found in the Domestic Violence Act, 1996, and I have to assume that the Supreme Court had not been asked to consider the position which arises when any such statutory prohibition does appear.

I am satisfied that insofar as this jurisdiction is concerned, all other things being equal and in relation to matters other than the matters of a matrimonial nature or of a nature which the law prescribes should be heard *in camera*, the Supreme Court is satisfied and has decreed that a party who prosecutes proceedings in person is entitled to be accompanied in court by a friend who may take notes on his behalf and quietly make suggestions and assist him generally during the hearing, but who may not act as advocate.

Having regard to the foregoing, it seems to me that I have to decide whether, in cases of a matrimonial nature, the guidance to be found in the order of the Supreme Court should automatically apply. I take the view that it should not. In the first place, I think it likely that the Supreme Court was not asked to consider the matter in the context of any specific prohibitory legislation. Secondly, it is the case that in matters of a matrimonial nature, the legislature has decreed that such cases will be dealt with in a particular manner. The provisions of s.16 of the Act of 1996 are deemed to be wholly constitutional, and no suggestion has been made that the section suffers from any frailty, even having regard to the provisions of the Constitution.

The public policy behind particular provisions of legislation which restrict access to courts in matrimonial and guardianship cases is readily understood, and obvious. It does not concern itself only with embarrassment to the parties, but is intended to protect the identity of the parties to the proceedings, their offspring, close family members or others and to avoid insofar as it is possible the publicity which might otherwise attach to the unnecessary disclosure of intimate or personal matters arising between affected parties.

But the desirability of protecting such matters is also well established at common law. In the United Kingdom, in all of the cases to which reference has been made, and in particular in *Reg. v. Leicester JJ., Ex p. Barrow* [1991] 2 Q.B. 260, there is a solid and continuing recognition of the fact that the entitlement to have a friend in court when the proceedings are ones heard *in camera*, is restricted. In that case Donaldson M.R. stated at p. 288:-

> "Finally we were referred to a very recent decision of this court *In re G. (A Minor)* (unreported), 10th July, 1991; Court of Appeal (Civil Division) Transcript No. 679 of 1991, in which Waite J. sitting in chambers, refused to allow the father to be assisted by a solicitor who was not on record. … Who, other than a party to the proceedings, his solicitor on the record or counsel, shall be permitted to attend pro-

ceedings *in chambers* is always a matter for the discretion of the judge. Waite J. apparently concluded that there were circumstances of unusual confidentiality which rendered the attendance of the solicitor undesirable and this court (Parker, Balcombe and Leggatt L.JJ.) which had the full facts, but naturally did not include them in its judgment, declined to interfere with that discretionary decision. *Being a chambers matter, this decision does not assist*" [emphasis added].

When one comes to the judgment of Staughton L.J. in the same case which supported the findings of the Donaldson M.R. (but on different grounds), he stated at p. 291:-

> "The circumstances are also different when a civil court sits in c*hambers or in camera*, as the public then has no right of access: see *In re G. (A Minor)* (unreported), 10th July, 1991; Court of Appeal (Civil Division) Transcript No. 679 of 1991. But the judge should consider whether this difference is a sufficient reason for excluding a person whom the litigant in person wishes to assist him" [emphasis added].

It is clear therefore that the applicant cannot rely, *simpliciter*, on the decisions in the United Kingdom, because it is clearly recognised that there is not an automatic entitlement to have a so called "McKenzie friend" in circumstances where the hearing is *in camera*. Indeed Donaldson M.R. made it quite clear that in such circumstances there could be no right, whereas in his judgment Staughton L.J., took the view that there was no right, but a discretion in the judge, and the judge ought to exercise his discretion in a particular way.

Having regard to the foregoing, it seems to me that the real issue to be decided is whether or not in the interests of the administration of justice, the prohibition appearing in s.16 of the Domestic Violence Act, 1996, which requires that the hearing be "otherwise than in public" in other words *in camera,* ought to be overridden in circumstances where a party who is appearing in person, seeks to have the benefit of a so called "McKenzie friend".

I would be reluctant to find that the long standing view of the legislature that all matters of a matrimonial nature, including barring orders or any other relief sought under the Domestic Violence Act, 1996, are to be heard otherwise than in public, ought to be set aside or modified in favour of the attendance in court of a member of the public, as a "McKenzie friend", unless there were overwhelming evidence that a fair hearing could not be secured by the applicant, the applicant having a constitutional right to such a hearing.

It seems to me having regard to the view which the respondent took, namely that:-

(a) he had a discretion as to who remained in court during the proceedings before him, and that he was exercising that discretion in ruling that Miss H. should not be allowed to remain in court;
(b) that in his opinion the applicant was a very articulate person, and would not be prejudiced by not having legal representation; and
(c) that the court itself was very experienced in protecting persons who appeared before it in family law matters, without legal representation, even where other parties were legally represented,

no evidence has been presented to me which would suggest that the applicant would be so overwhelmed by appearing in person without a so called "McKenzie friend" or thereby so deprived of a right to a fair hearing, as to justify setting aside or ignoring the clear mandatory words of s.16 of the Act of 1996. Miss H., who does not have any independent rights herself, is however a member of the public, and her attendance at the request of the applicant constitutes the proceedings not proceedings "otherwise than in public", since an applicant who seeks to have a next friend in attendance, is entitled to have that next friend in attendance in that friends capacity as a member of the public and not otherwise.

In the circumstances, I refuse the relief sought by the applicant.

[Editors' note: There is no written or *ex-tempore* note of the judgment in the case of *Quinn v. Governor and Company of Bank of Ireland* (Supreme Court, 13th October, 1995) referred to in the judgment of Macken J.]

Solicitor for the respondent: *The Chief State Solicitor.*

Solicitor for the notice party: *Eugene Kelly.*

Patrick Leonard, Barrister