

LENNON & HARVEY LIMITED

-v-

LOUTH COUNTY COUNCIL

Judgment of Mr. Justice McWilliam delivered on the 8th day of May 1984.

This appeal has been brought by Louth County Council against an award of £61,000.40 made by the Circuit Court Judge in respect of the destruction of a cargo of potatoes at The Harbour, Dundalk on 10th May, 1983. In making his award the Circuit Court Judge took into account sums expended on the removal and disposal of the damaged potatoes. These included expenditure on the hire of lorries, the use of the Applicant's own lorries, management charges for the disposal operation, charges for shipping, and stevedoring services and demurrage.

Although the appeal by the County Council was expressed in the notice of appeal to be against the whole of the judgment of the Circuit Court, malice was not contested in either Court. The only submission made on the hearing of the appeal was that sums amounting to £12,000 approximately in respect of the matters mentioned above were items of consequential damage and, therefore, could not be taken into account in making an award of compensation under the provisions of the Malicious Injuries Act, 1981.

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Subsection (1) of section 5 of that Act provides as follows:-

"Where damage, the aggregate amount of which exceeds one hundred pounds, is maliciously caused to property, the person who suffers the damage shall be entitled to obtain compensation from the local authority in accordance with this Act."

Section 2 of the Act provides for the interpretation of the word "damage" as follows:- "'damage', in relation to property, includes the total or partial destruction of the property and any injury thereto;"

Subsection (4) of section 5 of the Act provides as follows:-

"The right to compensation given by this section shall be limited to compensation for the actual damage caused and shall not extend to compensation for any loss consequential on such actual damage and, in particular, shall not extend to compensation for the loss of the use of the property damaged."

I was referred to a number of cases. Although none of the decisions appear to me to be directly relevant to the facts of the present case, some observations made in the course of the judgments do refer to the nature of consequential damage.

In the case of Noblett -v- Leitrim Co. Co. (1920) 2 I.R. 143, in which it was held that consequential damage should be taken into account

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in awarding compensation for malicious injuries, Sir James Campbell, C., said at page 147, "Is the amount to be assessed upon the basis that the county at large is liable only as an insurer or is the injured person to receive such an amount as he would in ordinary circumstances be entitled to receive as damages in a civil action against the actual wrong-doer for the act committed by him? The distinction is vital, inasmuch as in the former case the liability would be confined to the intrinsic value of the property injured, while in the latter it would include such further damages as were the natural and reasonable consequences of the injury itself."

In the case of Worthington -v- Tipperary Co. Co. (1920) 233 the same judge said at page 241 "In the recent case of Noblett -v- Leitrim Co. Co., this Court decided a point which had been for a long time in doubt, that the applicant was entitled to what are called consequential damages in respect of anything which was the natural and direct result of the injury inflicted;"

These observations and the following words of the Act of 1981 "where damage is maliciously done to property", "damage in relation to property includes the total or partial destruction of the property and any injury thereto" and "The right to compensation shall be limited

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to the actual damage caused" appear to make it clear that the distinction between damage to property and consequential damage is that the former relates solely to the value of the actual property injured while the latter relates to any further loss or damage resulting from the damage or injury to the property itself.

The disputed items in the present case were an inevitable result of the damage done to the potatoes but these expenses were incurred as a consequence of the direct damage to the potatoes, making them unusable, and were not any part of the intrinsic value of the potatoes themselves.

I am of opinion that the eight disputed items constituted loss consequential on the actual damage to the potatoes within the meaning of the Act and that compensation for this loss is excluded by the provisions of subsection (4) of section 5 of the Act.

Herbert R. McWilliam
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22/6/84