

**BACKING OF WARRANTS (REPUBLIC OF IRELAND) ACT 1965
AND THE MAGISTRATES' COURTS (BACKING OF WARRANTS FROM
THE REPUBLIC OF IRELAND) (AMENDMENT) RULES (NORTHERN
IRELAND) 1992**

**IN THE MATTER OF AN APPLICATION FOR AN ORDER
UNDER SECTION 2 OF THE BACKING OF WARRANTS (REPUBLIC
OF IRELAND) ACT 1965 IN RESPECT OF EAMON CONEY
HEARD AT BELFAST MAGISTRATES' COURT
ON THE 7TH DAY OF NOVEMBER 1997**


**CASE STATED FOR THE OPINION OF THE HIGH COURT
BY THE RESIDENT MAGISTRATE
MR CLERY RM**

1. On the 7th day of November 1997 an application was listed before me for an order under section 2 of the Backing of Warrants (Republic of Ireland) Act 1965 (hereinafter "the 1965 Act ") in respect of Eamon Coney (hereinafter referred to as "the Defendant"). The Applicant was the Chief Constable of the Royal Ulster Constabulary (hereinafter referred to as "the Applicant").

2. Two Warrants of arrest purporting to be signed by a Judge of the Dundalk District Court were placed before me. One of those Warrants (Warrant "A") related to a complaint on oath that the Defendant had in his possession on 24 September 1995 at Newry Road, North Marshes, Dundalk, a firearm in such circumstances as to give rise to a reasonable inference that he had not got it in his possession for a lawful purpose. Warrant "A" was accompanied by two Certificates purporting to be signed by the clerk to Dundalk District Court. One of those (Certificate "1") certified that the offence referred to in Warrant "A" is under the laws of Ireland an indictable offence (not being an offence triable on indictment only at the instance or with the consent of the accused) and not also a summary offence. The second Certificate (Certificate "2") certified that Warrant "A" is a Warrant of arrest signed by a Judge of a Court in Ireland in accordance with the laws of Ireland.

The second Warrant (Warrant "B") related to a complaint on oath that the Defendant on the 24 September 1995 at Newry Road, North Marshes, Dundalk, by threat of force pointed a firearm to the head of Kevin Brady and demanded his motor car in an unlawful attempt to seize control of it. As with

Despatched to the Crown Solicitor,
Solicitor for the Appellant, on this date


Clerk of Petty Sessions
13 January 1998

Warrant "A", Warrant "B" was accompanied by two Certificates purporting to be signed by the clerk to Dundalk District Court. These Certificates (Certificates 1 and 2) certified the same matters in respect of Warrant "B" as Certificates 1 and 2 had certified in respect of Warrant "A".

Copies of Warrants "A" and "B" and Certificates "1" and "2" for each Warrant are appended to this Case Stated at Appendix 1.

3. Both Warrants "A" and "B" had been endorsed by a Justice of the Peace for the County Court Division of Belfast under section 1 of the 1965 Act. Members of the Royal Ulster Constabulary were authorised by the terms of the endorsement to execute the Warrants in Northern Ireland by bringing the Defendant before a Magistrates' Court for the County Court Division of Belfast.
4. At the outset of the proceedings before me, the Defendant's Solicitor indicated that he wished to raise a preliminary point in relation to the Warrants and Certificates. I permitted him to do so and he submitted to me that a recent case in the Courts of the Republic of Ireland had resulted in a ruling that clerks of the District Courts in the Republic of Ireland had not been lawfully appointed. Accordingly, he argued that I should treat the Certificates submitted with the Warrants as defective with the consequence that the Warrants themselves could not be relied on to ground the Applicant's application.

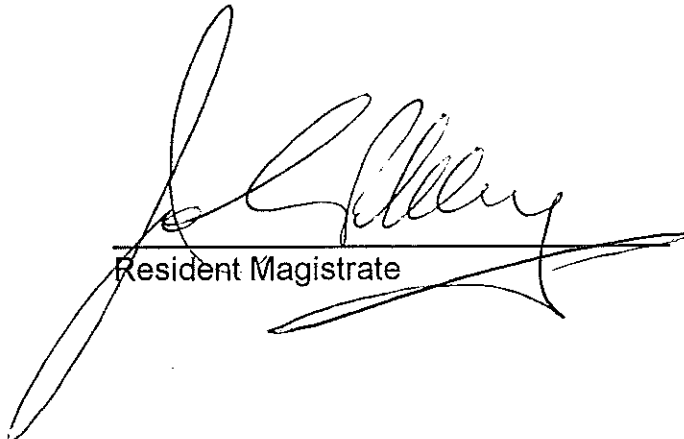
The Defendant's Solicitor did not call any evidence but he put before me two press cuttings relating to the case in the Republic of Ireland to which he had referred. I append the press cuttings to this Case Stated at Appendix 2.

The said press cuttings reported a decision of McCracken J in the High Court of the Republic of Ireland that the appointment of a District Court Clerk had been invalid by reason of her not having been appointed by the Minister for Justice personally. This decision was reported to be under appeal to the Supreme Court of the Republic of Ireland.

5. Counsel for the Applicant referred me to sections 1, 2, 7 and 10 of the 1965 Act and to rule 6 of the Magistrates' Courts (Backing of Warrants from the Republic of Ireland) Rules (Northern Ireland) 1965 (hereinafter "the 1965 Rules"). He argued that under section 1 of the 1965 Act the Warrants had been duly endorsed and the Certificates were a convenient means provided by the statute to deal with evidence of matters originating in the Republic of Ireland. In respect of Certificate 1 for each Warrant he referred me to section 7(b) and the definition of "judicial authority" in section 10. In respect of Certificate 2 for each Warrant he referred me to section 7(a) and rule 6 of the 1965 Rules. He argued that the Court should not seek to go behind the apparent validity of the Certificates or the Warrants.
6. I ruled that the Certificates for each Warrant were defective in that the person who had signed them had not been lawfully appointed to the office of clerk of the Dundalk District Court. Accordingly the Warrants could not be relied on as the foundation of the Applicant's application.
7. In view of the above ruling, Counsel for the Applicant stated that he would wish to call other evidence of the matters contained in the Certificates and told me that he had an officer of the Garda Siochana in Court who was present when the Judge of the Dundalk District Court had signed the Warrants. I ruled that he could not call any evidence to seek to prove the matters contained in the Certificates as these matters could only be adduced through the medium of Certificates such as those which the Applicant proposed to have admitted by the Court.
8. In view of my rulings referred to at paragraphs 6 and 7 above, Counsel for the Applicant informed the Court that it was the Applicant's intention to question the proceedings on the ground that the Court's rulings were wrong in law and he stated that he would be applying to the Court to State a Case for the opinion of the High Court on the questions of law involved. He drew my attention to section 2A(1) and (2) of the 1965 Act and applied for an order providing for the release of the Defendant on bail until such date as the Case Stated could be heard. I acceded to this application.

9. In view of the foregoing I now respectfully seek the opinion of the High Court on the following questions of law:

- (i) Whether it was correct in law to reject the validity of the Warrants and accompanying Certificates placed before the Court, notwithstanding the fact that the Warrants had been duly backed for execution in Northern Ireland by a Justice of the Peace pursuant to section 1 of the Backing of Warrants (Republic of Ireland) Act 1965 (hereinafter referred to as "the 1965 Act")?
- (ii) Whether it was correct in law to hold that the Certificates which accompanied the Warrants were defective by reason of the Clerk to Dundalk District Court not having been lawfully appointed, in the absence of any evidence, other than the press cuttings, on which to base this finding?
- (iii) Whether it was correct in law to hold that the matters contained in the Certificates which accompanied the Warrants could only be adduced in evidence through the medium of Certificates admitted under the provisions of section 7 of the 1965 Act?
- (iv) Whether it was correct in law not to make the order sought by the Applicant under section 2(1) of the 1965 Act?


Resident Magistrate

Dated this 12th day of January 1998.