300

OPINION OF THE COURT

delivered by LORD COULSFIELD

in

RECLAIMING MOTION

in the cause

JUNE KILPATRICK GRAY
Petitioner & Reclaimer;

against

THE CRIMINAL INJURIES
COMPENSATION BOARD
Respondents:

---

28 October 1998

On 21 November 1989, the reclaimer applied to the respondents for payment of an award of compensation. Her application was initially refused by a single member of the respondents and was later referred to a hearing before three members. By a written decision, dated 13 January 1992, the reclaimer's application was refused. She then made an application to the court for judicial review but that was refused by the Lord Ordinary on 13 May 1992. She thereafter enrolled a reclaiming motion, which came before us on 8 and 9 October 1998. Counsel who appeared for the reclaimer had only become involved in the case relatively recently and was unable to provide any explanation for the extraordinary delay which has occurred.

The facts out of which the application to the board arose are narrated in the board's written decision and in the opinion of the Lord Ordinary. In summary, the appellant became friendly with a man named Kenneth Watson in 1987. Watson

attempted to persuade her to have sexual intercourse with him but she initially declined. On a number of occasions during 1988, Watson asked the appellant to marry him but she declined that proposal also. Eventually, however, after the proposal had been renewed, she became engaged to him on 10 December 1988. She understood from what he had told her that he was divorced and had been for a number of years. The appellant and Watson had sexual relations on one occasion before their marriage which took place on 24 March 1989. Thereafter they resided together and had sexual intercourse on about six occasions. On 21 August 1989, Watson disappeared. The appellant reported his disappearance to the police who later found him living in Carlisle under the name of Kenneth Murray Dolman with a woman to whom he was married and with her children. The written decision continues:

> "The applicant stated that the discovery that her marriage was bigamous had caused her great distress. She particularly stressed that following upon Watson's deception of her she had sexual intercourse with him. She confirmed that she had been divorced herself in 1972 because of her former husband's affair with her sister. Her former husband and her sister had two children. The applicant claimed that the realisation that she had married a bigamist had a devastating effect on her. She had required to attend her doctor for stress. She had indicated that if she had known that Watson had been married she would never have gone out with him, far less had a sexual relationship with him. No medical evidence was produced on behalf of the applicant".

As the Lord Ordinary points out, it is not quite clear whether the board accepted the applicant's evidence on all these matters but for the purpose of these

proceedings it can be assumed that these facts were accepted. The ground of the refusal of the application by the board was that the appellant was not a victim of a "crime of violence" and therefore had no claim under the scheme and the Lord Ordinary agreed with that view.

It is convenient to begin by narrating the history of the scheme for compensation for victims of certain crimes. The scheme was first announced in Parliament on 24 June 1964 and came into operation on 1 August 1964. The scheme was headed "Compensation for victims of crimes of violence". Paragraph 5, which was headed "Scope of the scheme" provided *inter alia*:

"5. The board will entertain applications for *ex gratia* payment of compensation in those cases where:-

(a) the applicant, or, in the case of an application by a spouse or dependent (see paragraph 11 below), the deceased, suffered personal injury directly attributable either to a criminal offence or to an arrest or attempted arrest of an offender...".

The board found some difficulty in defining the cases which fell within the scope of the scheme, as it initially stood. These difficulties are explained in the third report of the board for the year ended 31 March 1967. In particular, there was difficulty in deciding what sort of offence was covered by the scheme. In consequence, amendments were made to the scheme. The scheme which was in force at the time relevant to the present claim was the scheme of 1979. Paragraph 4 of that scheme provided *inter alia*:

"4. The board will entertain applications for *ex gratia* payments of compensation in any case where the applicant or, in the case of an application

by a spouse or dependent (see paragraphs 15 and 16 below), the deceased sustained in Great Britain...personal injury directly attributable

(a) to a crime of violence (including arson or poisoning) or

(b) to the apprehension or attempted apprehension of an offender...".

It is relevant to part of the argument in this case to add that an attempt was made by the Criminal Justice Act 1988 to put the scheme on a statutory basis. Section 109 of that Act contained an attempt to define what was meant by "criminal injury". A number of specific offences were listed in subsection (3). Subsection (1)(a) provided that any personal injury caused by conduct constituting one of those offences should be a criminal injury for the purposes of the Act, and also that the term should include

> "an offence which is not so specified but which requires proof of intent to cause death or personal injury or recklessness as to whether death or personal injury is caused".

That definition followed the lines of a suggested definition of a "crime of violence" put forward by Watkins L.J. *R.* v. *C.I.C.B. ex parte Warner* [1985] 2 Q.B. 1069. However, as will be seen later, Watkins L.J.'s suggestion was not followed in later authority. The relevant provisions of the Criminal Justice Act 1988 were never brought into force and when the scheme for compensation for criminal injuries was eventually put on a statutory footing by the Criminal Injuries Compensation Act 1995, no statutory definition was introduced. The result is that compensation continues to be payable for injuries directly caused by crimes of violence, but there is no definition of such crimes, either in legislation or in any scheme.

So far as case law is concerned, the question "What is a crime of violence?" arose in a series of cases concerned with the consequences of suicides. The first was *R.* v. *C.I.C.B. ex parte Clowes* [1977] 1 W.L.R. 1353, a case in which a person committed suicide by knocking the top off a gas pipe and a police sergeant suffered injuries in a subsequent explosion. In that case, a divisional court held by a majority that a crime of violence had been committed. The judges in the majority did not seek to provide an exhaustive definition of the term but Eveleigh J. said, at p.1359, that a personal injury directly attributable to a crime of violence meant, in his opinion, "personal injury directly attributable to that kind of deliberate criminal activity in which anyone would say that the probability of injury was obvious" and Wien J. said:

> "I would rather say that a crime of violence means some crime which by definition as applied to the particular facts of a case involves the possibility of violence to another person".

The next case was *R.* v. *C.I.C.B. ex parte Parsons* 19 May 1981 and 19 November 1982, unreported, in which both Glidewell J. and the members of the Court of Appeal expressed some doubt about the approach which had previously won favour but, because of a concession made before the hearing before the board, did not feel able to take the question further. The issue then arose again in *R.* v. *C.I.C.B. ex parte Warner*. That was one of a group of cases in which engine drivers claimed compensation for the consequences to them of suicides committed by, for example, persons jumping in front of a train. Watkins L.J. questioned the approach taken in *ex parte Clowes* on the ground that it was too wide and would permit compensation to be recovered in cases of breach of regulatory requirements, such as those of the Factories Act. The court held that there had been no crime of violence and that, despite the

previous practice of the board, the plain meaning of the words did not cover the sort of event that had occurred in that case. At the end of his judgment, however, Watkins L.J. observed that it was unsatisfactory to have no definition or reasoned explanation of the term and added:

> "If a definition is called for from us, we would suggest 'any crime in respect of which the prosecution must prove as one of its ingredients that the defendant unlawfully and intentionally, or recklessly, inflicted or threatened to inflict personal injury upon another'. We were told, however, in the course of argument that it is proposed to put the scheme on a statutory basis. We trust that those who are responsible for drafting the legislation will consider the desirability of including, if not some such definition as we have suggested, at least a broad and easily comprehensible statement of the policy which is to be followed in compensating the victims of such a crime".

It was that passage which appears to have influenced the drafting of the Criminal Justice Act 1988, to which we have already referred. The group of cases which had been dealt with in *ex parte Warner*, however, went to the Court of Appeal. The decision of the Court of Appeal is reported as *R.* v. *C.I.C.B. ex parte Webb* [1987] 1 Q.B. 74. The decision of the court was given by Lawton L.J. who examined and criticised the previous decisions and said:

> "In my judgment, Mr. Wright's submission that what matters is the nature of the crime, not its likely consequences, is well-founded. It is for the board to decide whether unlawful conduct, because of its nature, not its consequence, amounts to a crime of violence. As Lord Widgery C.J. pointed out in *Clowes'* case at page 1364, following what Lord Reid had said in *Cozens* v. *Brutus*

[1973] A.C. 854, the meaning of 'crime of violence' is 'very much a jury point'. Most crimes of violence will involve the infliction or threat of force but some may not. I do not think it prudent to attempt a definition of words of ordinary usage in English which the board, as a fact finding body, have to apply to the case before them. They will recognise a crime of violence when they hear about it, even though as a matter of semantics it may be difficult to produce a definition which is not too narrow or so wide as to produce absurd consequences, as in the case of the Road Traffic Act 1972 offence to which I have referred".

The approach recommended by Lawton L.J. was followed by the Lord Ordinary in the present case and by Lord Cameron of Lochbroom in *Craig, Petitioner* 10 December 1992 unreported. That approach does not appear to have been the subject of any adverse criticism in any commentary on the scheme. Counsel for the appellant in the present case made some attempt to pray in aid the definition of a crime of violence suggested by Watkins L.J. in the passage which we have quoted, but, in view of the whole history and the evident difficulty of arriving at any definition which is likely to prove satisfactory, there seems to us to be no realistic alternative to Lawton L.J's approach, which, in any event, seems to us to provide a reasonable and practical approach to the problem in any case.

In the present case, it appears that the submission made on behalf of the appellant to the board was that Watson had committed rape, which was a crime of violence. The board rejected that argument, stating, simply, that they were not persuaded that either rape or any other crime of violence was committed when a woman was persuaded to have sexual intercourse with a man by false pretences of the

nature of those made in the present case. Before the Lord Ordinary, it was not submitted that rape had been committed but it was submitted that the crime of procuring sexual intercourse by false pretences had been committed, and reference was made to section 2(b) of the Sexual Offences (Scotland) Act 1976. It was further submitted that Watson's conduct was analogous to indecent assault, such as occurs when a man has sexual relations with a sleeping woman. It was therefore argued that, viewing the conduct of Watson in the light of its effects on the appellant, a crime of violence had been committed. The Lord Ordinary followed the approach favoured by Lawton L.J. and said that in that approach the answer to the question whether the acts of sexual intercourse were crimes of violence must be in the negative. He said:

> "The root cause of the injury suffered by the petitioner was the commission by Watson of the crime of bigamy and the discovery by the petitioner of that fact. It is to that act that her injury is attributable. Neither that in itself nor the deception involved towards the petitioner contained any element of violence. The ambit of section 2(b) of the Sexual Offences (Scotland) Act 1976 was not explored in argument but assuming that it could apply to the circumstances of this case, while it may be said that an offence had been committed, the offence was not one attended with violence. Moreover, I am not prepared to affirm in the absence of authority that acts of sexual intercourse in the context of a bigamous marriage constitute a crime at common law, let alone a crime of violence".

On behalf of the reclaimer, it was submitted that the Lord Ordinary had erred and that the court should hold that the reclaimer was entitled to compensation as a victim of a crime of violence. As we have mentioned, initially counsel for the

reclaimer drew attention to *ex parte Warner supra* and suggested that the question should be approached along the lines indicated by Watkins L.J. He went on, however, to draw attention to two articles by Dr. Peter Duff, one entitled "Criminal Injuries Compensation and Violent Crime" 1987 C.L.R. 219 and a second entitled "Criminal Injuries Compensation: The Symbolic Dimension" 1995 J.R. 102, and to suggest that in the light of the absence of any fundamental principle to distinguish between what is and what is not a crime of violence the court would be entitled to take the view that, as had been suggested, what mattered was whether the crime would shake the faith of people in society and to hold that in this case that condition was satisfied. The reclaimer had suffered injury as a result of agreeing to sexual intercourse against a background of deception. If consent was obtained by fraud there was no consent at all. The reclaimer could not consent to an unlawful act, and since the man in question was married already, intercourse was, whether regarded as aggravation of bigamy or as a separate crime, unlawful. Counsel referred to *H.M.A.* v. *Fraser* (1847) Ark. 280 and suggested that for this purpose the minority view in that case should be followed, with the consequence that the obtaining of sexual intercourse by fraud was rape. If, however, the majority decision in *Fraser* was not wrong, that was not fatal to the reclaimer's case because there could not be consent to an unlawful act, and therefore intercourse obtained by fraud was criminal. Counsel referred in addition to *H.M.A.* v. *Sweeney* (1858) 3 Irv. 109 and *Hussain* v. *Houston* 1995 S.L.T. 1060, as showing that there could be indecent assault when consent to an act was obtained by fraud. Reference was also made to *H.M.A.* v. *Logan* 1936 J.C. 100 and *Stallard* v. *H.M. Advocate* 1989 S.C.C.R. 248. The possible crimes in this situation were rape, indecent assault, and contravention of section 2 of the Sexual Offences (Scotland) Act

1976, as well as bigamy. Reference was also made to *Young* v. *McGlennan* 1991 S.C.C.R. 738 and *Smart* v. *H.M. Advocate* 1975 J.C. 30. Here there was a deliberate act carried out with the intention of obtaining sexual intercourse, and the perpetrator knew of, or at least was reckless in relation to, the possibility that injury would result. Violence was constituted by intercourse unprotected by consent. The board therefore should not have disabled itself from considering that there might be a crime of violence in this case and the decision should be quashed and the matter remitted to them.

On behalf of the respondents, it was submitted that there were five possible crimes to be considered, of which three could have been committed in the circumstances of this case. The five were bigamy; fraud, including the crime held relevant in *Fraser supra*, namely the obtaining of intercourse by misrepresentation of a material fact; rape; breach of section 2 of the Sexual Offences (Scotland) Act; and indecent assault. However, the authority of *Fraser supra* excluded both rape and indecent assault, and bigamy was plainly not a crime of violence. As regards the remaining two possible crimes, there were two propositions which underlay the reclaimer's position namely (1) that there was a crime of violence in any case in which the perpetrator of an act knew or ought to have known that injury would result from his crime and (2) that sexual intercourse both before and after the marriage amounted to a crime of violence because the reclaimer's consent was vitiated by fraud. The first proposition involved an approach to the definition of a crime of violence which had consistently been rejected as too wide. As regards the second, the critical distinction was between a case in which a person consented to a sexual act in fact and one in which the victim did not so consent in fact. In the latter case there

might be a crime of violence, but where there was consent in fact, even if it was induced by fraud, no crime of violence was committed. The opinions of the majority in *Fraser* were quite clear and there was nothing to assist the reclaimer's argument in *Hussain* v. *Houston supra*, properly understood. The view contended for by the board was consistent with *R.* v. *C.I.C.B. ex parte Piercey,* 14 April 1997 unreported, a decision of McCullough J. in the Queen's Bench Division.

We have set out above the history of attempts to define a crime of violence and we have narrated the arguments for the parties in some detail, but, in our view, this case can be disposed of quite shortly. It seems to us quite clear that the proper approach must be that described by Lawton L.J. in *ex parte Webb supra.* The board have to consider the nature of the crime which has been committed and decide whether it is, in all the circumstances, a crime of violence, treating those words in their ordinary sense in the English language. What this court has to consider is whether the board erred in their approach to the question, and in doing so this court also must treat the words in their ordinary sense. The reclaimer's original contention to the board was that she had suffered from the crime of bigamy, but bigamy is plainly not a crime of violence. It is constituted by going through a marriage ceremony when one of the parties is not free to marry and does not even depend upon the occurrence of sexual intercourse. The decision in *Fraser*, to which we shall turn in more detail in a moment, plainly excludes both rape and indecent assault as possible crimes in a case in which consent to sexual conduct is obtained by fraud. This court would not be entitled to review a decision of the High Court of Justiciary or pronounce upon a matter of criminal law even if it were minded to do so: but in any event the decision in *Fraser* has stood for a very long time unquestioned. The only crimes, therefore,

which may relevantly be considered in the present case are the crime of obtaining sexual intercourse by fraud, a charge which was held relevant in *Fraser*, and the offence under the Sexual Offences (Scotland) Act, which may be regarded as a statutory equivalent of the charge held relevant in *Fraser*.

Fraser, as is well-known, was a case in which a pannel was accused of obtaining sexual intercourse with a woman by pretending to be her husband. The indictment charged, alternatively, rape, indecent assault, and obtaining sexual intercourse by the pretence. The relevancy of the indictment was objected to and the charges of both rape and indecent assault were held irrelevant. The indictment was, however, allowed to proceed on the charge of obtaining sexual intercourse by impersonating the woman's husband. The case was decided by a majority of four judges to three, the minority being prepared to allow the charge of rape to proceed. The essence of the view of the majority can be found in the opinion of Lord Cockburn. Firstly, at p. 309, Lord Cockburn said:

> "And my opinion upon it is that obtaining access to the person of a female by this deception does not amount to the crime of rape. I reach this result solely because the want of the woman's consent is not implied, either legally or practically, in the circumstances of her yielding from misrepresentation.
>
> There is nothing better known to the law, or more familiar to its practice, than the difference between consent *withheld*, and consent given, but given *through fraud*. It would be idle to state examples of a distinction so certain and so common.

> Now the prosecutor's argument proceeds entirely on confounding these two things. Its substance is, that there was no consent, and indeed that the prisoner's fraud reduced his victim to a state of non-free agency, exactly as if he had taken advantage of her having been in childhood, or in lunacy, or as if he had drugged her himself. The plain fallacy of this, however, is that it assumes consent given under misapprehension, not to be given; an assumption not warranted by legal principle, and repugnant to the actual truth".

Later, Lord Cockburn said, at p. 312:

> "Fraud, however, is unquestionably a crime and, therefore, I am of opinion that the third charge, which is that of 'fraudulently and deceitfully obtaining access' to the person of the female in question, is relevant. Any deceit that injures and violates the rights of another is clearly punishable. It is for this reason that it appears to me that the other charges are of very little practical importance. Because this fraud is of so atrocious a nature that, in the exercise of a sound discretion, I think it might be visited by as severe a punishment as can now be applied to the crime of rape itself".

In our view there is nothing in the way in which the court in *Fraser* dealt with the charge which was held to be relevant to suggest that the charge should be considered as amounting to or as similar to the crime of rape. There is no suggestion, even, that the charge should be seen as involving some kind of supposed or deemed use of force or even something amounting to assault, because of absence of consent. The crime committed is simply one of fraud. Since there is nothing in the authorities to require any different view, the board were, in our opinion, quite entitled to consider the particular circumstances of this case and to come to the conclusion that no crime

of violence had been committed. In all the circumstances, therefore, we agree with the decision of the Lord Ordinary and the reclaiming motion must be refused.

OPINION OF LORD WEIR

In Petition of

JANE KILPATRICK GRAY (AP)
Petitioner

for

Judicial Review of a decision by the Criminal Injuries Compensation Board

---

Act: Clancy,
Brodies

Alt: Brailsford
R. Brodie

13 May 1992

NOTE TO AGENTS

CONTENTS NOT TO BE REVEALED TO ANY PARTY IN ADVANCE OF THE DATE GIVEN BELOW - SEE PRACTICE NOTE NO 4 OF 1991

OPINION OF LORD WEIR

In Petition of

JANE KILPATRICK GRAY (AP)
Petitioner

for

Judicial Review of a decision by the Criminal Injuries Compensation Board

---

13 May 1992

Paragraph 4(a) of the Compensation Scheme administered by the Criminal Injuries Compensation Board provides that the Board will entertain applications for *ex gratia* payments of compensation in any case where an applicant sustained in Great Britain personal injury directly attributable to a crime of violence.

The petitioner applied to the Board for an award of compensation. Initially her application was considered by a single member of the Board and on refusal of an award by him the matter was referred to a hearing of three members of the Board in terms of paragraph 22 of the Scheme. The hearing took place in Glasgow on 19 August 1991 when evidence was given by the petitioner. The Board members (Mr T A K Drummond, Q.C., Mr Donald S Mackay, Q.C., and Mr David Barker, Q.C.) disallowed the application and in due course issued a written decision setting out their reasons (No.8/2 of process). The petitioner now seeks reduction of the Board's decision by way of judicial review.

It was accepted by counsel for the Board that the Court has power to review decisions of the Board and it was agreed that if the Court was minded to grant reduction the proper course would be to order the Board to reconsider the petitioner's application.

The facts giving rise to the claim are recorded in the following passages taken from the written decision of the Board.

"The applicant stated that in 1987 she became friendly with a man named Kenneth Watson. She began to see him on a regular basis. No sexual intercourse took place between them, although Watson attempted to persuade her to do so. On a number of occasions during the summer of 1988 Watson asked her to marry him but she declined his invitation to become engaged. During the later months of 1988 he renewed his proposal of marriage. Eventually on 10 December 1988 the applicant became engaged to Watson. At that time the applicant understood from what she had been told by Watson that he was a divorced man, that he had been so for some four to five years, and that his former wife resided in Nottingham. After their engagement and before their marriage the applicant and Watson had sexual relations on one occasion. They married on 24 March 1989 at Dumfries and thereafter resided together at the applicant's house. After the marriage they had sexual intercourse together on approximately six occasions. On 21 August 1989 Watson disappeared. The applicant

reported this to Dumfries Police Station. Investigation disclosed that Watson had given up his job the previous Friday. Later police officers advised the applicant that they had found Watson living in Carlisle. His true name was Kenneth Murray Dolman and he was married to a woman in Carlisle where he was living with her and his children. The applicant stated that the discovery that her marriage was bigamous had caused her great distress. She particularly stressed that following upon Watson's deception of her she had sexual intercourse with him. She confirmed that she had been divorced herself in 1972 because of her former husband's affair with her sister. Her former husband and her sister had two children. The applicant claimed that the realisation that she had married a bigamist had a devastating effect on her. She had required to attend her doctor for stress. She had indicated that if she had known that Watson had been married she would never have gone out with him, far less had a sexual relationship with him. No medical evidence was produced on behalf of the applicant".

It is not clear from the decision whether the Board accepted the petitioner's evidence on these matters particularly as regards the effect of her discovery of Watson's true status on her health, but counsel for the Board indicated that for the purpose of this hearing it could be assumed that these facts were accepted by the Board.

The submission made by the petitioner's solicitor to the Board was to the effect that Watson had committed the crime of rape which was a crime of violence within the meaning of paragraph 4(a) of the Scheme. This argument was advanced upon the basis that on the occasions when Watson had sexual relations with the petitioner he did so either intending that the applicant would suffer mental and physical distress when she found out that he was still married or with reckless indifference as to whether she might suffer such distress on becoming aware that he was still married. Having considered the evidence and the submissions the Board disallowed the application under reference to paragraph 4(a) of the Scheme. The reason given for refusal is contained in a single and concise sentence:

> "We were not persuaded that either the crime of rape or any other crime of violence is committed in circumstances when a female is persuaded to have sexual intercourse with a male by reason of false pretences of the nature made towards the applicant by Watson".

Counsel for the petitioner departed from the argument advanced to the Board. In particular he did not contend that the crime of rape had been committed. He accepted that for the application to succeed the petitioner had to satisfy the Board that injury was directly attributable to "a crime of violence". He submitted that the crime in this case was that of procuring sexual intercourse with the applicant on a

false pretence, namely that he was free to marry, and in circumstances in which had she been aware of the true position, she would not have agreed to sexual intercourse. This crime he said was perpetrated on each occasion when the parties had intercourse after the pretended marriage ceremony. In this connection he referred me to section 2(b) of the Sexual Offences (Scotland) Act 1976 which makes it an offence for any person to procure by false pretence or false representation any woman to have unlawful sexual intercourse in any part of the world. He also submitted that the conduct of Watson was analogous to an indecent assault such as where a man has sexual relations with a sleeping woman. (HMA v Sweenie 1853 3 IRV 109) Although no actual violence was inflicted on the petitioner, indeed she freely consented to the sexual act, it was necessary to consider the effect on her on discovering that Watson was a bigamist. Viewing the conduct of Watson in the light of the consequences to her health when the truth became known, it could be said that the sexual acts in the circumstances were crimes of violence.

The issue in this case is a narrow one. If there was no crime of violence, the petitioner's application is clearly not within the Scheme. On the other hand if it can be said that there was a crime of violence and that the petitioner's personal injury was directly attributable to such a crime, her application is within the Scheme and in such circumstances the Board, in refusing to entertain her application, erred in law.

The expression "crime of violence" is not defined in the Scheme. It is significant, in my view,that paragraph 4(a) of the Scheme does not give rise to a possible claim for compensation where the personal injury sustained was directly attributable to "a crime". The original Scheme introduced in 1964 made provision for compensation in such terms but these were altered at a subsequent stage. The addition of the words "of violence" are words of qualification and limitation. In order to ascertain in a particular case what is meant by a crime of violence, it is necessary to look at the nature of the crime in question. This problem has been the subject of study in certain English cases, notably in Reg v CICB ex parte Clowes 1977 1 WLR 1353 at page 1364; and in a decision of the Court of Appeal in Reg v CICB ex parte Webb 1987 1 Q.B.74. In the latter case Lawton L.J. at page 77 said:

> "The words 'crime of violence' are not a term of art. The Scheme is not a statutory one. The Government has made funds available for the payment of compensation without being under a statutory duty to do so. It follows, in my judgment, that the Court should not construe the Scheme as if it were a statute but as a public announcement of what the Government was willing to do. This entails the Court deciding what would be a reasonable and literate man's understanding of the circumstances in which he could under the Scheme be paid

> compensation for personal injuries caused by a crime of violence".

In a later passage in his judgment at page 79 Lawton L.J. referring to a submission of counsel for the Board said:

> "In my judgment, Mr Wright's submission that what matters is the nature of the crime, not its likely consequences, is well founded. It is for the Board to decide whether unlawful conduct, because of its nature, not its consequences, amounts to a crime of violence. As Lord Widgery C.J. pointed out in Clowes' case at page 1364 following what Lord Reid had said in Cozens v Brutus 1973 A.C.854, the meaning of 'crime of violence' is 'very much a jury point'. Most crimes of violence will involve the infliction or threat of force but some may not. I do not think it prudent to attempt a definition of words of ordinary usage in English which the Board, as a fact finding body, have to apply to the case before them. They will recognise a crime of violence when they hear about it, even though as a matter of semantics it may be difficult to produce a definition which is not too narrow or so wide as to produce absurd consequences .....".

I am content to follow the approach to this question set out in the passages in the judgment of Lawton L.J. which I have quoted. Indeed the Board in their written decision make it clear that they

themselves followed the same approach. The argument of counsel for the petitioner in support of the existence of a crime of violence in this case depended upon looking at the effect of the behaviour of the wrongdoer on the petitioner rather than upon the nature of the crime he committed. But this is directly in conflict with the approach stated in Webb supra. The proper approach is to look at the nature of the crime and ask the question, Were the acts of sexual intercourse crimes of violence? In my opinion, the answer to that question must be in the negative. The root cause of the injury suffered by the petitioner was the commission by Watson of the crime of bigamy and the discovery by the petitioner of that fact. It is to that act that her injury is attributable. Neither that in itself nor the deception involved towards the petitioner contained any element of violence. The ambit of section 2(b) of the Sexual Offences (Scotland) Act 1976 was not explored in argument but assuming that it could apply to the circumstances of this case, while it may be said that an offence had been committed, the offence was not one attended with violence. Moreover I am not prepared to affirm in the absence of authority that acts of sexual intercourse in the context of a bigamous marriage constitute a crime at common law, let alone a crime of violence.

It is difficult to refrain from expressing a feeling of considerable sympathy for the petitioner who was cruelly deceived by the man that she thought she had

married. She may very well have a claim for damages against him under civil law but these proceedings are concerned with the interpretation and application of the Scheme as it stands. I am unable to detect any error in law in the manner in which the Board dealt with the application and therefore the petition must be dismissed.

Ken Baddon

Woman in bigamy case loses cash claim

By John Robertson, Law Correspondent

A WOMAN failed yesterday in her attempt to win compensation for having sex with her husband before discovering that he was a bigamist.

A judge spoke of his "considerable sympathy" for Jane Gray but ruled that being tricked into consenting to intercourse did not qualify her for a payment from the Criminal Injuries Compensation Board because it was not a crime of violence.

He left her with some hope, however, by saying that she might have a claim for damages against the man who had so cruelly deceived her.

> 'It is difficult to refrain from expressing a feeling of considerable sympathy for Miss Gray, who was cruelly deceived . . .'
>
> Lord Weir

Miss Gray, 55, of Rowan Drive, Lincluden, Dumfries, became friendly with Kenneth Watson in 1987. She initially refused his proposals but eventually agreed to marry him, believing that he had been divorced for about five years.

They were married in March 1989 and had sex on about six occasions before Watson disappeared in August that year. The police were alerted and traced Watson, whose real name was Kenneth Dolman, to Carlisle, where he was living with his wife and children. He later admitted bigamy.

Miss Gray lodged a claim with the CICB, which makes payments to those who have suffered personal injury directly attributable to a crime of violence. Her application was rejected because the board took the view that no crime of violence was committed where a woman was persuaded to have intercourse with a man by false pretences such as those Dolman made to Miss Gray.

In an unprecedented action, Miss Gray asked Lord Weir at the Court of Session to order the board to reconsider her application.

Her claim was not in relation to the act of bigamy because that was not a violent crime, but Ronald Clancy, for Miss Gray, argued that the crime involved was procuring sexual intercourse on a false pretence — that Dolman was free to marry her — in circumstances where she would not otherwise have agreed to sex.

Mr Clancy submitted that each time the couple had intercourse, the conduct amounted to an indecent assault.

Lord Weir said that the proper approach was to look at the nature of the crime and ask whether the acts of sexual intercourse were crimes of violence? In his opinion the answer had to be no.

"The root cause of the injury suffered by Miss Gray was the commission by Dolman of the crime of bigamy and the discovery by Miss Gray of that fact. It is to that act that her injury is attributable. Neither that in itself not the deception involved towards Miss Gray contained any element of violence.

"It is difficult to refrain from expressing a feeling of considerable sympathy for Miss Gray, who was cruelly deceived by the man that she thought she had married.

"She may very well have a claim for damages against him under civil law but these proceedings are concerned with the interpretation and application of the [criminal injuries compensation] scheme as it stands.

"I am unable to detect any error in law in the manner in which the board dealt with the application and therefore the petition must be dismissed."