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Carthy J.  
on J.  
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COURT OF CRIMINAL APPEAL

THE PEOPLE (AT THE SUIT OF THE DIRECTOR  
OF PUBLIC PROSECUTIONS)

v.

GERARD ANTHONY TUIITE

JUDGMENT delivered on the 2nd day of May 1983 by

McCARTHY J.

This is an application for leave to appeal against conviction by the Special Criminal Court of possession of explosive substances with intent, contrary to s. 3 of the Explosive Substances Act, 1883 as inserted by s. 4 of the Criminal Law (Jurisdiction) Act, 1976. The trial before the Special Criminal Court began on the 29th June 1982 and continued until the 13th July 1982, on which date the applicant was found guilty of the charge preferred and was sentenced to ten years imprisonment.

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The Particulars of Offence set out in count No. 2 of the indictment, as textually corrected, were as follows:-

"Gerard Anthony Tuite, being an Irish Citizen, on a date, unknown, between the 1st day of June 1978 and the 1st day of March, 1979, outside the State, namely at 144 Trafalgar Road, Greenwich, London, England, unlawfully and maliciously had in his possession explosive substances to wit, approximately 1540 grammes of gelignite, a box with one Memo-park timer, two H.P. 7 batteries, one torch bulb, one micro-switch and spring, eleven cartridges of "Frangex" explosive, approximately 340 grammes of "Frangex" explosive, two lengths of safety fuse, seventy six assorted detonators, eleven electronic timer power units, four mechanical timer power units and four modified wrist watches, with intent by means thereof, to endanger life, or cause serious injury to property or to enable any other person so to do."

It is beyond question, and in no way challenged, that the explosive substances described were found by London Metropolitan Police in a flat at 144 Trafalgar Road and that elaborate steps had been taken to conceal these substances and a variety of other articles, including fire-arms, in that flat, so much so that, as was conceded by leading Counsel for the defence at the trial in the

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Special Criminal Court, the very nature of the articles and the manner of their concealment established the guilty intent of whoever was responsible for them. It was proved in evidence that the applicant was a resident in the flat at least up to some date about the middle of January 1979, that a search had been carried out by the London Metropolitan Police at the end of February 1979, in which search none of the explosive substances set out in the Particulars of Offence had been discovered, but that, on a more elaborate search carried out in August 1980, the substances had been found in the circumstances described. It is sufficient for the purpose of this judgment to quote but one part of the judgment of the Special Criminal Court, dealing with the facts, in which the Court said:-

"The Court is satisfied beyond all reasonable doubt that on the occasion of this search that the explosive substances the subject of the charge against the accused were present under the floor boards on the occasion of this search and they had been placed there by the accused. It is so satisfied because it is satisfied beyond all reasonable doubt (1) that the accused had access to the flat; (2) traces of nitro glycerine were found on the inside of his brief case which was discovered

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on the occasion of the first search in February 1979;  
(3) his finger prints were found on the items already referred to which were found under the floor boards with the explosive substances (these included a copy of International Who's Who, maps of London and Liverpool copy of the Communist Manifesto, a Babington Junior note book and a brown paper bag, on which the finger prints of the applicant were found); (4) a portion of the butt of the shot-gun found on the premises was found subsequently in a car hired by him (which car was involved in an explosion which occurred on the 18th December 1978 near the junction of Shaftesbury Avenue and Piccadilly Circus, London); (5) the documents related to the Morris Marina purchased by him were found with the explosive substances; and (6) a key which opened a Rover car hired by him was also found under the floor boards. The accumulation of these facts in the opinion of the Court admit of no construction other than that the accused placed these items under the floor boards at some date prior to the 26th day of February 1979 and subsequent to the 1st day of June 1978 and that he had possession thereof with intent to cause serious injury to property and finds him guilty of that charge."

Before dealing with the grounds of appeal advanced on behalf of the applicant, it is proper to refer to the judgment of the Court of

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Criminal Appeal delivered by O'Higgins C.J. in The People v. Madden (1977 I.R.) 336 and to the observations made under the heading of "Function of the Court of Criminal Appeal" at p. 339/40, in particular where the Chief Justice says:-

"In the appeals now before this Court, we have transcripts of the rulings of the Special Criminal Court made in the course, and at the end, of the trial on questions of law and findings of facts in relation to the admissibility of evidence, the sufficiency or cogency of the evidence, and the reasons for the rulings and verdicts given. Therefore, subject to the grounds of appeal, it would seem to be the function of this Court to consider the conduct of the trial as disclosed in the stenographer's report to determine whether or not the trial was satisfactory in the sense of being conducted in a constitutional manner with fairness, to review so far as may be required any rulings on matters of law, to review so far as may be necessary the application of the rules of evidence as applied in the trial, and to consider whether any inferences of fact drawn by the court of trial can properly be supported by the evidence; but otherwise to adopt all findings of fact, subject to the admonitions in the passages cited above."

This Court would add to these observations the view that, subject

always to the overriding demands of justice, this Court will not entertain submissions, critical of the Special Criminal Court, where such submissions were not made to that Court at the trial. Since the judgment of this Court in Madden's case, in so far as an appeal concerns a review of findings of fact, the citation from the judgment of Holmes L.J. in the Irish Court of Appeal in S.S. Gairloch (1899) 2 I.R. 1 at 18, made by the Chief Justice in Madden's case was renewed by both O'Higgins C.J. and Henchy J. in Northern Bank Finance Corporation Ltd. v. Charlton & Ors. (1979) I.R. 149 at 178 and 189.

The grounds of appeal, generally, fall into two categories -

1. Challenges to the jurisdiction of the Special Criminal Court and,
2. Challenges to the adequacy of the evidence.

There are, however, two other matters, both set out in ground No. 6 of the formal statement of grounds of appeal, under the heading of "trial unsatisfactory", with which it is convenient to deal at this stage. The original book of evidence consisted of the statements of forty three witnesses but, in addition, throughout the trial, thirteen notices of additional evidence were served on the defence involving ninety five additional statements. The applicant complains that this rendered the trial unsatisfactory as did a

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circumstance which may be described as the other side of the coin - the failure of the court of trial to require the prosecution to call and tender the evidence of Miss Patricia Imelda Donovan, "who was one of the witnesses who gave evidence in the proceedings before the Magistrates of England against the appellant, and who was a visitor and occupier of the flat at 144 Trafalgar Road." (quotation from ground No. 6 (d)).

The Criminal Procedure Act, 1967 (an Act to establish a new procedure for the preliminary examination of indictable offences etc.) provided by s. 6:-

- "(1) The prosecutor shall cause the following documents to be served on the accused -
- (a) a statement of the charges against him,
  - (b) a copy of any sworn information in writing upon which the proceedings were initiated,
  - (c) a list of the witnesses whom it is proposed to call at the trial,
  - (d) a statement of the evidence that is to be given by each of them, and
  - (e) a list of exhibits (if any).
- (2) Copies of the documents shall also be furnished to the Court.
- (3) The accused shall have the right to inspect

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(4) The prosecutor may cause to be served on the accused and furnished to the Court a further statement of the evidence to be given by any witness a statement of whose evidence has already been supplied."

Section 11 - "(1) Where the accused has been sent forward for trial the Attorney General shall cause to be served on him a list of any further witnesses whom he proposes to call at the trial, with a statement of the evidence that is to be given by each of them, a list of any further exhibits, a statement of any further evidence that is to be given by any witness whose name appears on the list of witnesses already supplied, and copies of any statement recorded under section 7 and any deposition taken under that section or under section 14.

(2) Copies of the documents shall also be furnished to the trial court."

Under the Special Criminal Court Rules, 1975 (S.I. No. 234 of 1975) Rule 15, which refers to cases under s. 47 of the Offences Against the State Act, 1939, the instant case being such, the provisions of s. 5 and s. 11 of the Criminal Procedure Act, 1967, with necessary changes, are applied, there being, of course, no preliminary examination. This Court does not have the original book of evidence nor the 13 notices of additional evidence nor the 95 additional statements, nor any part of them, and, in order to



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deal with this ground of appeal must glean what it can from the transcript and seek to assess the weight to be attached to the particular ground of appeal in the course of argument before this Court. During the argument on this application Counsel for the defence, even with the advantage of hindsight were unable to indicate to this Court any matter of which earlier disclosure would have been to the advantage of the defence, or point to any aspect or prejudice to the conduct of the defence by reason of the trial. The great bulk of the additional evidence appears to be concerned with tracing the provenance of exhibits through the hands of various members of the London Metropolitan Police and the experts retained by them, and also, where necessary, with filling gaps in the evidence, of a largely formal kind, where such gaps were revealed on cross-examination. The other major feature of the additional evidence was that of Mr. Sutling, a member of the Bar of England and Wales, who gave expert evidence as to the law of England and Wales. The intention to call Mr. Sutling was revealed at an early stage in the trial, whilst his evidence was adduced much later; no possible prejudice could have been caused. As the daily delivery

of notices of additional evidence accompanied by additional statements continued through the trial, Counsel for the accused, with justifiable indignation, protested against this manner of conducting a prosecution; in the opinion of this Court, his protests were most properly made and, also, most properly dealt with by the Presiding Judge, who offered every facility to Mr. MacBride in order to meet what was, certainly, a most unsatisfactory situation. It may well be that many of these difficulties arose from the fact that this was a case in which virtually all of the exhibits came from London and much of the evidence concerning the custody and control of these exhibits may not have been available to the Director of Public Prosecutions and his Counsel before the commencement of the trial. This may explain but it certainly does not excuse the situation. It is fair to comment that the course of procedure at the trial was, in this regard, unusual, troublesome for the Court and Counsel and distracting, as Counsel for the defence allege. Whatever difficulties were, however, presented, they were overcome by the patience and competence of solicitors and Counsel to whom every opportunity by delay or otherwise was afforded by the court of trial. This Court is satisfied that the course of procedure did not, in any fashion, act to the

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prejudice of the conduct of the defence. No authority was cited in support of a general proposition that the circumstances justified setting aside the verdict. Both principle and precedent would appear to suggest the contrary.

The other side of the coin is an alleged failure by the prosecution to fulfil one of its functions. The constitutional right to fair procedures demands that the prosecution be conducted fairly; it is the duty of the prosecution, whether adducing such evidence or not, where possible, to make available all relevant evidence, parole or otherwise, in its possession, so that if the prosecution does not adduce such evidence, the defence may, if it wishes, do so.

There is, however, a limit on the duty of the prosecution - apart from the testimony being irrelevant, in a given case the prosecution may answer such a request by saying that such evidence cannot add anything to the evidence already given by another witness or witnesses; further, the request must be made with reasonable notice. In the instant case, on the morning of the tenth day of the trial, the prosecution was served with a notice

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in the following terms:-

"Following consultation, and in view of the evidence so far tendered by the prosecution, I have been requested by Counsel to notify you that the following evidence additional to the evidence set forth, so far furnished, and available to the prosecution should be made available in the Special Criminal Court before the conclusion of the case for the prosecution: the evidence of Miss Patricia Imelda Donovan who resides in London, England, who was a witness in the committal proceedings which took place in London and who lived at 144 Trafalgar Road."

In the course of the discussion between Mr. MacBride and the Presiding Judge, in which the Presiding Judge, particularly, asked Mr. MacBride to state the nature of the relevant evidence that

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Miss Donovan could give, the record shows the following

(p. 20):-

Judge ..... Does Miss Donovan put the case further than that?

Mr. MacBride: Well, she is a relevant witness, My Lord. She is certainly as relevant as any of the other witnesses and it is very hard to understand why this witness has not been called.

Judge: Is there any evidence that Miss Rowland (solicitor for the accused) didn't ask Miss Donovan to come to give evidence on behalf of the accused?

Mr. MacBride: No. The onus is on the prosecution to do so.

Judge: The onus is on the prosecution to produce the witnesses that are in the book of evidence. They are obliged to produce all relevant evidence but that doesn't mean that they have to produce about ten or twenty people to prove the same things. This is a thing we try to discourage them from doing. You are making this application because you are aware of the fact that Miss Donovan made a deposition in the committal proceedings in England. So far as it is of relevance to the case, her evidence

would be, if she were called, that Mr. Tuite was not a regular, a continuous occupant of this flat. We have evidence from Miss Griffith to the effect that he stayed there intermittently but regularly, not all the time. People other than the accused either stayed in or visited this flat, that it was unoccupied for a period of at least three months and half of London could have gone to the flat. We have to deal with the case in that basis. We have got to deal with the case on the basis that when it was taken possession of - the flat - by the Thompsons I am sure they had visitors regularly and that they weren't there all the time to see what they were doing. We have to approach this case on that basis with regard to the charge against the accused. Now, can Miss Donovan put it any further, Mr. MacBride?

Mr. MacBride: Perhaps not, perhaps yes; I don't know. We may be able to obtain evidence in cross-examination that is not available otherwise. I must point out that Your Lordship used the word "regularly".

Judge: I said "intermittently but regularly".

Mr. MacBride: Well, that, I think, Miss Donovan would disprove, at least from my interpretation

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of the statement she made in the committal proceedings. It seems to me that she is a relevant witness. My Lord, and should have been called by the prosecution...

Judge: The Court considers that it is a matter for the prosecution as to what witnesses they call in any particular case. There is, of course, an obligation on them to produce any relevant evidence, but the Court itself has no jurisdiction to compel them to produce any witness that is not on the book of evidence. At this stage it appears to the Court that a request made on the 12th July 1982 is unreasonable having regard to the circumstances: that the witness concerned is referred to in the book of evidence in the statement of Miss Griffith and was referred to in her evidence; that the defence were aware of the contents of the evidence <sup>she</sup> gave on deposition and would appear to have been aware of that for some time prior to the 12th July. A request could have been made earlier, should have been made earlier, and then it would be a question for the prosecution as to whether they would facilitate the defence by making arrangements, having regard to the particular difficulties inherent in this case. Consequently, we will make no order at this

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stage of the case directing that Miss Donovan be produced."

At this stage the evidence for the prosecution had concluded. It is clear from the passage I have quoted that there was no basis upon which it could reasonably be held that Miss Donovan's evidence would have put the case, for the defence, any further; the application was made on the last day of evidence being given - the tenth day of the trial; the criticism made of the prosecution in respect of the service of notices of further evidence may legitimately, if lacking the same force, be made in respect of the delay by the defence in making the request for the procurement of this witness. This ground of appeal is rejected.

The challenge to the jurisdiction

Grounds 1, 2 and 7 of the written grounds of appeal appear, in essence, to make the following contentions:-

1. The Special Criminal Court has no extra territorial jurisdiction nor jurisdiction to try any person in respect of an offence alleged to have been committed outside the territory of Ireland.
2. The prosecution of the applicant before the Special Criminal Court deprives him of his right to trial by jury as guaranteed by the



Constitution.

3. Since the accused is liable to be prosecuted for the same offence in a court of the United Kingdom, a fact which can only be derived from the evidence of Mr. Sutling, the competence and admissibility of whose evidence the defence challenged, ground No. 5 of the written grounds being that there was no or no sufficient evidence to establish that the acts alleged against the appellant were illegal in England on the date of their alleged commission, <sup>this assumption</sup> it is said, ~~placed~~ the accused <sup>in</sup> double jeopardy.

4. The Special Criminal Court has not been conferred with jurisdiction to try alleged offences under s. 4 of the Criminal Law (Jurisdiction) Act, 1976.

Before dealing with these grounds in detail, it seems to this Court that certain fundamentals should be stated.

The Special Criminal Court derives its jurisdiction from Art. 38, s. 3 of the Constitution -

"1 Special courts may be established by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the

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effective administration of justice, and the preservation of public peace and order.

2 The constitution, powers, jurisdiction and procedure of such special courts shall be prescribed by law."

Pursuant to this provision, Part V of the Offences Against the State Act, 1939 was enacted and the Court by which the applicant was tried is a Special Criminal Court established under s. 38 of that Act. The Criminal Law (Jurisdiction) Act, 1976, so far as is relevant to the instant case, provided by s. 4 as follows:-

"The Explosive Substances Act, 1883, is hereby amended by the substitution for sections 2 and 3 of the following sections:- .....

3 - A person who in the State or (being an Irish citizen) outside the State unlawfully and maliciously -

.....(b) makes or has in his possession or under his control an explosive substance with intent by means thereof to endanger life, or cause serious injury to property, whether in the State or elsewhere, or to enable any other person so to do,

shall, whether any explosion does or does not take place, and whether any injury to person or property is actually caused or not, be guilty of an offence and, on conviction on indictment, shall be liable

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to imprisonment for a term not exceeding twenty years,  
and the explosive substance shall be forfeited".

The relevant subsection is inserted in the Explosive Substances Act, 1883 in place of an existing provision, with all necessary changes, with the significant added change to the effect, so far as here relevant that the injury to property may take place in the State or elsewhere, whereas the 1883 Statute confined the application to instances where the injury to property took place in the State. Pursuant to Article 26 of the Constitution, this Act was referred by the President to the Supreme Court for an opinion as to its constitutionality, and that Court duly advised the President that no part of the Bill, as it then was, was repugnant to the Constitution. (1977 I.R. 129). Accordingly, this Court is precluded from any consideration as to whether or not the Act or any section of it is so repugnant; Article 34.3.3; it would appear that this Court is not a court in which the question of constitutional validity may be raised - Article 34.3.2.

1. The offences created by s. 4 of the 1976 Act, by way of insertion into sections 2 and 3 of the Explosive Substances Act, 1883, are offences according to Irish law, irrespective of where they are committed, when the person charged is an Irish citizen. Sections 2 and 3, as substituted, are enactments of the Oireachtas and for the purposes of construction by the courts must be treated as being enacted within the competence of the Oireachtas.

and, therefore, construed in accordance with the law of this State, wherein the courts exercise their jurisdiction. The nature of the offences created and the requirements of proof of the acts and intent to ~~commit~~ <sup>allow conviction for</sup> of the offences must be determined in accordance with Irish law, wheresoever the acts may have been committed. The Oireachtas cannot impose on an Irish citizen an obligation to observe the laws of another State nor can the courts enforce performance of the laws of another State. One need merely point to the possibility of the laws of another State being changed overnight to demonstrate this truism. In exercising jurisdiction to try an Irish citizen for a crime committed against Irish law, the Special Criminal Court was doing no more than implementing legislation which had an extra territorial effect. The validity of such legislation is beyond question - see, in particular, the observations of O'Higgins C.J., delivering the opinion of the Supreme Court, in the Criminal Law (Jurisdiction) Bill 1975 (1977 I.R.) 129 at 148 and, later, at 151 where he says:-

"Therefore, the Court must reject the contention that an offence against the criminal law of the State which consists of acts committed outside the State could not - by reason of that fact alone - be properly and constitutionally committed for trial by a special court."

The fact that the acts constituting the offence were committed outside the territory of the State is irrelevant. Accordingly, this ground fails.

2. The applicant was deprived of trial by jury within the State by the exercise of powers conferred by the Constitution and the Offences Against the State Act, 1939. It is to be noted that the Special Criminal Court invited the applicant to seek trial by jury within the jurisdiction of the United Kingdom and that he declined such offer. He cannot be heard to complain that, in the circumstances, he was tried by the Special Criminal Court. This ground of appeal fails.
3. The applicant has not been tried, much less convicted, of the offence charged before any court other than the Special Criminal Court. It may be that the offence of which he has been convicted, or a like offence, is one for which at some time he may be brought to trial elsewhere, in which case the plea of double jeopardy may or may not be available to him. It is sufficient to dispose of this ground of appeal to say that, as of the time of trial in the Special Criminal Court, there was no such double jeopardy. This ground of appeal fails.

In passing, it is right to comment that, having regard to the observations of O Dalaigh C.J. in Bourke v. Attorney General (1972 I.R.36 at p.64/66) this Court would decline to entertain undertakings by the Attorney General, the Director of Public Prosecutions, or like officer of any State not to prosecute for a like offence.

4. The Statutory Instrument of 1972 included amongst the scheduled offences the relevant offences under sections 2 and 3 of the Explosive Substances Act, 1883. The exact nature of these offences was altered by the inserted sections set out in s. 4 of the Criminal Law (Jurisdiction) Act, 1976.

It is argued on behalf of the applicant that the amendment effected by s. 4 of the 1976 Act, subsequent in time to the Statutory Instrument of 1972, has not the effect of including the new subsections in the scheduled offences as set out in the Statutory Instrument. The identical point, dealing with a similar amendment of the Firearms Act, 1964, effected by s. 8 of the 1976 Act, was raised before Finlay P. in The State (Daly) v. District Justice Delap (judgment delivered the 30th June 1980) the learned President, in his judgment said (p.5):-

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"On behalf of the Respondent it was urged that the effect of making an offence a Scheduled Offence under the Act of 1939 is to deprive a person charged with such offence of what would otherwise be a constitutional right to trial by jury and that therefore if the Legislature is to be taken to have so scheduled an offence the language or instruments by which it does so must be unequivocal and beyond any doubt. I would accept the general propositions submitted to me on behalf of the Respondent but bearing in mind the precise terms of section 8 of the Act of 1976 I think it is the inescapable conclusion that it was the intention of the Legislature by that section to insert into the Firearms Act of 1964 a new offence which would attract all the features and characters of an offence under the Firearms Act, 1964 and which would therefore be by virtue of the Instrument of 1972 a Scheduled Offence. One must, in my view, assume that the Legislature in passing the Act of 1976 in the particular form in which it was passed and not in what had previously been the more usual form of merely amending a prior Act by the addition of a subsection or section as distinct from amending by the insertion of a subsection or section was aware that it was thereby increasing in effect the offences captured by the provisions of the Statutory Instrument of 1972 as Scheduled Offences under the Offences Against the State Act, 1939. A consideration

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furthermore of the newly inserted subsection and sections already existing in the Firearms Act, 1964 would indicate no conceivable reason why it could be the intention of the Legislature that those previously existing in the Act of 1964 should be Scheduled Offences but those newly created by the Act of 1976 and inserted in the Act of 1964 should be ordinary offences. I am therefore driven to the conclusion that the effect of s. 8 of the Act of 1976 was to make this offence with which the Prosecutor was charged an offence under the Firearms Act, 1964 within the meaning of the Statutory Instrument No. 142 of 1972 and that accordingly it was a Scheduled Offence and that the learned District Justice had not got jurisdiction to return the Prosecutor for trial upon it to the Dublin Circuit Court otherwise than at the specific request of the Director of Public Prosecutions."

Apart from the weight of the authority of the learned President's decision, this Court is satisfied that the reasoning by which he reached such decision is entirely correct, and respectfully adopts that reasoning as applicable to this part of the applicant's case.

There is no identifiable distinction to be drawn between the result effected by s. 4 of the Act of 1976 on the offences scheduled as arising from the 1883 Act and the effect of s. 8 of the Act of 1976



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on the offences scheduled as arising under the 1964 Act. The submission by Counsel for the applicant here depended upon the chronology between the 1972 Order and the 1976 Act. In the course of argument, the Court drew attention to s. 20, subs. 1 of the Interpretation Act, 1937 which provides:-

"Whenever any statute or portion of a statute is repealed and re-enacted, with or without modification, by an Act of the Oireachtas, references in any other statute or in any statutory instrument to the statute or portion of a statute so repealed and re-enacted shall, unless the contrary intention appears, be construed as references to the portion of such Act of the Oireachtas containing such re-enactment."

Whilst sections 2 and 3 of the Explosive Substances Act 1883 were not expressly repealed and re-enacted by s. 4 of the 1976 Act the effect of s. 4 seems, essentially, to be the same; if so, s. 20, subs. 1 of the Interpretation Act would appear to be a complete answer to this ground. In any event, the ground fails.

In the result, the Court rejects the several grounds of challenge to the jurisdiction of the Special Criminal Court.

The adequacy of the evidence

The challenge to the verdict of the Special Criminal Court under this heading was made on the following grounds:-

1. That the evidence for the prosecution established that there were no explosives in 144 Trafalgar Road on or before 1st March 1979, and that, accordingly, the explosive substances found in 144 Trafalgar Road in August 1980 must have been placed there after 1st March 1979. There was no, or no sufficient evidence that the accused was at 144 Trafalgar Road after 15th or 16th January 1979 (ground 3(a) of the written grounds of appeal).
2. There was no, or no sufficient evidence to establish that the appellant was born in Ireland (ground No. 4).
3. There was no, or no sufficient evidence to establish that the acts alleged against the appellant were illegal in England on

the date of their alleged commission (ground No. 5).

4. There was no, or no sufficient evidence or admissible evidence that the brief-case and carrier bag found at 144 Trafalgar Road (exhibits HDG 4 and RE 60 respectively) were contaminated with explosive substances.
  
1. In answer to this ground of appeal, Counsel for the Director of Public Prosecutions contended that the dates set out in the count on the indictment were irrelevant and cited in favour of this proposition R. v. Dossi 13 CAR 158. It may be that there are cases in which such a contention may be upheld but it is clear from an examination of the transcript in the instant case that the defence was conducted, in part at least, on a contest as to the dates within which the explosive substances were in the possession of the applicant at 144 Trafalgar Road. Having regard to the proven periods of occupation by the applicant of the flat at 144 Trafalgar Road, the dates alleged in the count on the indictment were of vital importance. The Court, accordingly, rejects the submission of Counsel for the

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Director of Public Prosecutions. But, however, does not avail the applicant. The judgment of the Special Criminal Court dealt with this issue, as already quoted at p. 3 of this judgment.

In the opinion of this Court the Special Criminal Court was clearly entitled to come to these conclusions ~~which the~~  
~~inevitable consequence.~~

2. Citizenship. By virtue of s. 5 of the Registration of Births and Deaths (Ireland) Act, 1863, the production of the register or a certified copy thereof proved the birth of the accused and the effect of s. 6 subs. 1 of the Irish Nationality and Citizenship Act, 1956 established him as an Irish citizen. Having regard to the evidence of the declaration made by him and contained in his application for a passport and the identification provided by the Gardai, there was ample evidence upon which the Special Criminal Court could, as it did, find that it was proved beyond all reasonable doubt that the applicant is and was at all relevant times an Irish citizen. This ground of appeal fails.

3. For the purpose of the charge against the applicant, as an

Irish citizen, the offence is, as already stated, an offence against Irish law. The Court accepts the submission of Counsel for the Director of Public Prosecutions that it is irrelevant as to whether or not similar acts would constitute an offence against the law of England in particular or the United Kingdom or of any other State; it is quite possible that an act or acts alleged to constitute the whole or part of the offence charged might not be illegal in the country in which it or they were committed, but the possession of the explosive substances with the intent set out in the section would itself establish the unlawful and malicious content of the charge according to Irish law and, consequently, establish the offence charged in the case of an Irish citizen. The Court can readily understand why public policy, in the opinion of the Legislature, would require that such be the case. In these circumstances, the evidence of Mr. Sutling was unnecessary. This ground of appeal fails.

4. The Court does not accept that there was an absence of sufficient or admissible evidence in respect of the contamination of the brief-case and carrier bag with

explosive substances. Criticism was levelled at the evidence of Mr. Elliott to the effect that he did not adequately illustrate the reasons for his conclusion, reliance being placed upon observations of the Lord President Cooper in Davie v. Edinburgh Corporation (1953 SC 34 at 40).

Davie's case was concerned with the submission that in the particular case the evidence of an expert cannot be rejected - this is not such a case. This case is concerned with the propriety of the acceptance of the evidence of an established expert. The Court finds no ground for holding that the evidence on this heading fell short of the necessary proof. This ground of appeal fails.

In the result the Court refuses the application for leave to appeal.