

THE HIGH COURT

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS

Complainant/Appellant

and

KEVIN O'ROURKE

Defendant/Respondent

Judgment delivered on the 25th day of July 1983 by

Finlay P.

... This is a case stated by District Justice Francis Johnston, the District Justice assigned to the District Court area of Naas on the application in writing of the Director of Public Prosecutions who was dissatisfied with his determination as being erroneous in point of law.

The Respondent came before the District Court in Naas on the 13th January 1982 pursuant to a complaint made by the Appellant against him that on the 20th May 1981, he drove a mechanically propelled vehicle in a public place while there was present in his body a quantity of alcohol such that within three hours of so driving, the alcohol in his urine exceeded a concentration of 135 milligrams of



alcohol per 100 millilitres of urine contrary to Section 49 (3) and (4) of the Road Traffic Act, 1961 as inserted by Section 10 of the Road Traffic (Amendment) Act, 1978 and also in respect of a further complaint that at the time he drove the vehicle contrary to Section 53 (1) and (2)(b) of the Road Traffic Act, 1961.

At the conclusion of the evidence for the prosecution it was contended on behalf of the Respondent in the District Court that the complaints should be dismissed on the grounds that Mr. John A. Healy who issued the summonses in respect of the complaints on the 5th August 1981 had no authority to do so on that date.

Having regard to that contention, the learned District Justice adjourned the matter and gave liberty to the defence to call evidence on this issue. At the adjourned hearing Mr. Padraig Ó Murchú who holds the position of Chief Examiner of the District Court Section of the Department of Justice gave evidence called by the Respondent and his evidence as stated in the original case stated and in a supplemental case stated by the learned District Justice

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may thus be summarised. Only one person, he stated, was assigned as a District Court Clerk to the Naas District and that was Mr. Delahunty. Mr. Healy amongst other officers was a person who had been appointed by the Minister as a District Court Clerk and who was attached with the others to assist Mr. Delahunty. On the date on which the summons was issued, the 5th August 1981, Mr. Delahunty was on holidays and no formal assignment of Mr. Healy or as I understand the evidence anyone else as a District Court Clerk to the Naas area had been made by or on behalf of the Minister for Justice. It was stated by Mr. Ó Murchú that District Court Clerks attached to an office by the Department other than one District Court Clerk who is in charge of it and who is assigned to it are not regarded by the Department as "assigned" under Section 48(1) of the Courts Officers Act of 1926 and that it is the departmental practise where the one "assigned clerk" is absent on holidays to have the most senior of the other clerks "assigned" formally by an officer on behalf of the Minister. On the strength of that evidence, the learned District Justice accepted the submission of the Defendant

on behalf of the Respondent and struck out the summons for want of jurisdiction.

By Section 46(1) of the Courts Officers Act, 1926 it is provided that there shall be attached to the District Court such and so many District Court Clerks as the Minister shall with the sanction of the Minister for Finance from time to time direct.

By sub-paragraph 2 it is provided "subject to the provisions of this Section, every District Court Clerk shall be appointed by the Minister and shall (unless he is a pensionable officer) hold office at the will of and maybe removed by the Minister."

The Minister referred to in these sub-Sections is of course the Minister for Justice.

By Section 48(1) of the same Act, it is provided as follows:

"Every District Court Clerk shall be assigned to such one or more District Court areas as the Minister shall from time to time direct and shall have and

exercise all such powers and authorities and perform and fulfil all such duties and functions in relation to the District Court in such District Court area or areas as shall from time to time be conferred or imposed on him by statute or rule of court

By virtue of Rule 91 (2) of the District Court Rules 1948 it is provided

"where more than one Clerk is assigned to a Court area then the Principal Clerk in such court area or in the Metropolitan District, the Chief Clerk may make such division of duties among the Clerks assigned to such court area or to the said district respectively as he thinks proper."

In regard to the evidence as stated in the case before me and to the statutory provisions the contention on behalf of the Appellant is that firstly, it is a matter for the District Justice to have reached a conclusion which was a mixed question of fact and law as to whether on the evidence

of Mr. Ó Murchú, Mr. Healy was a District Court Clerk assigned to the District area of Naas and that it could not be a matter determined by the expressed opinion of Mr. Ó Murchú even though that purported to be an opinion expressed on behalf of the Department of Justice. Secondly, that by virtue of the provisions of Section 48(1) of the Act of 1926 that there was a mandatory obligation on the Minister for Justice to assign each person who was appointed by him as a District Court Clerk to at least one district court area; that there was no provision in the Act of 1926 or in any other statutory provision for the "attachment" of a District Court Clerk to a particular area nor was the concept of attachment known to the law.

Upon the evidence of Mr. Ó Murchú therefore it was contended that the only legal interpretation of the position of Mr. Healy who was "attached" and actually working in the District Court area of Naas though not the most senior District Court Clerk there was that he being admittedly a duly appointed District Court Clerk under Section 46 of the Act of 1926 he had been assigned by the Minister to that area.

On behalf of the Respondent it was contended that the provisions of Section 48(1) of the Act of 1926 were not mandatory and that there was no obligation on the Minister for Justice to assign each District Court Clerk appointed by him under Section 46 to any area at all. That a person could be appointed as a District Court Clerk and receive no assignment but be used to assist in the workforce under an assigned District Court Clerk. Furthermore it was contended that once the Chief Examiner of the Department of Justice stated on evidence his opinion that Mr. Healy was not assigned to the District Court area of Naas, that the learned District Justice had no option but to find that as a fact established as a matter of law and facts.

I accept the contention made on behalf of the Appellant on this issue. It seems to me clear that the scheme of the Act of 1926 which to some extent is reflected in the provisions of Rule 91(2) of the District Court Rules of 1948 clearly is that each and every person who was appointed by the Minister for Justice under the Act of 1926 as a District Court Clerk must be assigned to at least one district

and that there is no room for a situation in which a person is a duly appointed District Court Clerk and is actually directed by the Minister or his officers to work in a particular District Court area but is merely attached to that area. The practical consequences of such a concept would in my view create absurd anomalies. All the powers and duties and functions of a District Court Clerk are by virtue of the provisions of sub-Section 1 and sub-Section 2 of Section 48 of the Act of 1926 expressly vested in a District Court Clerk assigned to a district. If as seems to be the thinking of the Department of Justice as reflected in the evidence of Mr. Ó Murchú there was only one District Court Clerk assigned to each district at any given time and the other persons holding the rank and office of District Court Clerk and working in the same area were merely attached then it would seem to me that such persons who must inevitably as a practical matter become involved in many of the duties, functions and powers and responsibilities imposed on District Court Clerks by statute would be acting

without authority. I am therefore satisfied that once the uncontradicted evidence before the learned District Justice was that Mr. Healy was attached to and working in the District Court area of Naas at the time he issued the summons that the proper legal interpretation of that evidence was irrespective of the view of Mr. Ó Murchú that he was an assigned District Court Clerk. I am therefore satisfied that there was no invalidity in the summons by reason of its having been signed by Mr. Healy and I am therefore satisfied that the learned District Justice erred in law in striking out the summons on the basis that he had no jurisdiction to hear it. The proceedings should be re-entered before the learned District Justice for continuances.

approved
J. A. Furl 3.10.1985

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