Dir P.P - O'Connor

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THE HIGH COURT

IN THE MATTER OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT, 1961

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

and

PATRICK O'CONNOR

Respondent

AND

BETWEEN:

1983 18 SS

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

and

NIAMH O'CONNOR

Respondent

Judgment delivered on the 9th day of May 1983 by Finlay P.

These are two cases stated arising out of similar prosecutions transmitted by the Complainant Appellant to the High Court pursuant to the provisions of the Summary Jurisdiction Act, 1857 as extended by the Courts

(Supplemental Provisions) Act, 1961.

In each case a preliminary objection was made by the Respondents that the court had not got jurisdiction to entertain the appeal by way of case stated. It was agreed by Counsel that this preliminary objection in each of the two cases should be heard at the same time and that since issues of both fact and law arose on it that I should hear oral evidence.

The matter came before me on Monday, the 25th day of April, and I heard evidence on oath as to the documents which were transmitted on behalf of the Appellant to the Solicitor on record for the Respondents. It was alleged on behalf of the Appellant that upon receipt of the case stated by the learned District Justice and within three days he transmitted to the Solicitor for the Respondents in each case a copy of the case stated a copy of the notice originally served by the Appellant upon the District Justice seeking the stating of a case by way of appeal and a letter enclosing the documents which was joint to both cases. I found as a fact on the evidence I heard that the Appellant had not discharged

the onus of proving that he had served on the Solicitor for the Respondents in each of the cases a copy of the original notice seeking a case stated which had been served by him, but I was satisfied, as was conceded, that he did serve in each case a copy of the case stated within the time prescribed and prior to the transmission of the case to the High Court and that he also enclosed with the two cases stated a letter.

The material provision of Section 2 of the Summary Jurisdiction Act, 1857 is as follows -

> "and such party hereinafter called the Appellant shall within three days after receiving such case, transmit the same to the Court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party of the proceeding in which the determination was given hereinafter called the Respondent".

It was decided by the Supreme Court in the case

of Thompson .v. Curry 1970 I.R. Page 61 that the observance of the sequence of events required by Section 2 of the Act of 1857 was a condition precedent to the exercise by the High Court of its jurisdiction to hear a case stated pursuant to that Section. It follows in my view from this decision that the High Court has not got power to dispense an Appellant from compliance with the sequence of events provided by the Section, no such statutory power being contained in the Act of 1857 nor in any amending Act, and there being no such general inherent power in the Court.

In the course of the submissions made by Counsel to me on this preliminary issue, I was in addition referred to the following decisions -

Morgan .v. Edwards

Hurlstone and Normans Reports, Volume 5

Woodhouse .v. Woods and Others

Law Journal Reports New Series, Volume 29, 1860

Little .v. Donnelly I.R. Common Law, Volume 5, 1870

Dickeson .v. Mayes 1910 First K.B.

I was also referred to a decision which is unreported and which was made by me in a Ruling on a similar preliminary issue recently in the Director of Public Prosecutions .v. Nangle.

In Morgan .v. Edwards the case stated had been handed to the Appellant's attorney on the 23rd June and it was not transmitted to the High Court until the 5th November. No notice in writing of the appeal was served on the Respondent before the 9th of November and no copy of the case stated was apparently ever served on the Respondent. The case, in my view, largely deals with a suggestion of waiver and lays down the undesirability of enquiring into waiver rather than strictly applying the statutory condition precedent.

Woodhouse .v. Woods and Others was a case in which no service of either a notice of appeal or a case stated was carried out prior to the transmission of the case stated to the High Court.

Little .v. Donnelly was a case in which a copy of

the case stated was served but no other accompanying document and it was there held that the statutory preconditions contained in the 1857 Act had not been complied with.

Dickeson .v. Mayes was a case in which within the appropriate time a copy of the case stated was served on the Respondent together with a copy of the Appellant's notice of application to the Justices to state a case in which they stated that they were dissatisfied and aggrieved with the determination and conviction of the Justices and desired to question the same as being erroneous in point of law.

In that case it was held that the copy of that notice constituted a sufficient notice of their intention to appeal to comply with the statutory precondition.

In the D.P.P. .v. Nangle which I recently decided a copy of the case stated was accompanied by a letter informing the Respondents that it was the intention of the Solicitor for the Appellant to transmit the case

stated to the High Court. I there held that this was a sufficient notice of the intention of the Appellant to proceed with the appeal to comply with the statutory precondition.

In this case, the letter which accompanied the copies of the two cases stated was in the following terms:-

> "Re Patrick O'Connor and Niamh O'Connor - charge personation - case stated.
>
> Dear Sirs,
>
> I refer to previous correspondence herein and now enclose compared copy of the original case stated signed by District Justice Kearney on the 11th January 1983. I would be obliged if you would endorse acceptance of service on same on behalf of your clients Patrick and Niamh O'Connor and return one copy of each case stated to me duly endorsed immediately."

It was contended on behalf of the Appellant that this letter constituted a sufficient notice of the

intention of the Appellant to appeal by reason of the fact that not only did it enclose a copy of the case stated but made the request for an endorsement of acceptance of service and the return of an endorsed copy which was inconsistent with any intention on the part of the Appellant other than to proceed with the appeal. It was therefore submitted that this letter fell into the same category as the letter which had been dealt with by me in the case of the D.P.P. .v. Nangle and that I should apply the same principle to it.

As I indicated in my decision in Nangle's case, I am satisfied that the terms of procedural provisions in a statute such as this must be construed with reference to the intention of the statute, and with particular reference to the objective which the procedural provisions of the statute clearly seek to achieve. It is clear in this case that the Solicitor for the Respondents can have been under no real misapprehension as to the purpose of the service of

documents upon him on the 11th January of 1983. In a sense, therefore, the preliminary objection taken on behalf of the Respondents does not go to the merits of the case but that does not mean that it is without merit in law. If I were satisfied that the statute conferred on me any discretion with regard to the compliance by the Appellant with the terms of the section, I would unhesitatingly exercise that discretion in favour of the Appellant and against the Respondents. Being a statutory condition and provision, however, I am satisfied that I have not got any such general discretion. It seems to me to do violence to the meaning of the phrase "notice in writing of such appeal" to interpret a letter merely enclosing a copy of the case stated and seeking an endorsement of acceptance of service on it as such notice. The request and information contained in the letter as distinct from the position that arose in Nangle's case conveys no further or other information to the Respondents than does the transmission to them of a copy of the case stated. It is true as was contended

on behalf of the Appellant that a Solicitor receiving such documents could easily infer that it was the intention of the Appellant to proceed with the appeal. It is equally true, however, that a Solicitor receiving a copy of the case stated without any other document would reach the same conclusion.

I have therefore decided that I am forced to hold that the Appellant has not complied with the provisions of Section 2 of the Act of 1857 and that this court has accordingly got no jurisdiction to entertain the appeal by way of case stated.

approved
J. A. Finlay 10:5:1982