



[2018] IEHC 207

**THE HIGH COURT**

**[2017 No. 1365 SS]**

**IN THE MATTER OF SECTION 51 OF THE COURTS (SUPPLEMENTAL) PROVISIONS ACT, 1961**

**AND**

**IN THE MATTER OF THE LUNACY REGULATION (IRELAND) ACT 1871**

**BETWEEN**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**PROSECUTOR**

**AND**

**JOHN DELANEY**

**(ALSO KNOWN AS JACK DELANEY)**

**ACCUSED**

JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 20th day of April, 2018

**Introduction**

1. On 24th November, 2017 District Judge Anthony J. Halpin, a judge assigned to the Dublin Metropolitan District, of his own motion stated this case for this Court. He posed the following two questions:-

*"1. Is it possible for a judge of the District Court to require the Registrar of Wards of Court to inquire into a matter, and to request the registrar to direct a Medical Visitor to report to the High Court, regarding an individual's capacity to manage himself or his affairs?"*

*"2. Is it possible for a District Judge to bring a request by motion directly to the President of the High Court, requesting that the President use the power conferred upon the President by way of s.11 of the Lunacy Regulation (Ireland) Act 1871, to order a Medical Visitor to visit a proposed ward of court, and present a medical report on the capacity or otherwise of a proposed ward of court, and thereby use the said medical report to stand as a petition for an inquiry into the capacity of an individual to manage himself and his affairs?"*

**Background**

2. These two questions were posed in the context of the accused appearing before the District Judge charged with 60 summary offences which included theft, public order, drug and firearms offences.

3. The accused is legally aided and represented in respect of all of the charges.

4. The accused was remanded from time to time between February 2016 and November 2017.

5. The District Judge was concerned as to the capacity of the accused to understand the charges he was facing. He says in the course of the case stated, that it was clear to him that the accused was not someone who was able to manage his person as on every occasion when he appeared he presented as a thin, pale and anaemic young man who was in an unwashed and dishevelled state with fingernails occluded with dirt and dressed in dirty and torn clothes. The District Judge formed an opinion that the accused might be a person who lacked capacity to make his own decisions and he doubted if the accused was in any position to give clear instructions to his solicitor.

6. The District Judge ordered a psychiatric examination of the accused to take place in order to "*understand more fully the nature of the accused's situation and to assist me in how I might deal in a just way with him*".

7. As a result of that order the District Judge was provided with a psychiatric report from Dr. Paul O'Connell, a consultant forensic psychiatrist at the Central Mental Hospital, Dublin. I have not had sight of that report but the case stated records that it did not reveal anything regarding the capacity of the accused to manage himself or his affairs.

8. The case stated then records that the District Judge:-

*"... considered that the Accused should be medically assessed to ascertain -*

*(a) if the accused were a person of unsound mind and incapable of managing himself or his affairs, or if,*

*(b) the Accused were a person of weak mind suffering from a temporary cause or sickness affecting his mental capacity and incapable of managing himself or his affairs*

*I considered that if (a) or (b) were to be found, the Accused ought to be taken into wardship, under the provisions of the Lunacy Regulation (Ireland) Act 1871."*

9. The District Judge was apparently addressed by counsel on 13th February, 2017 on the law relating to wardship as a result of

which the District Judge ordered the accused's solicitor to seek to have the accused medically assessed with a view to the provision of two medical affidavits required under the Lunacy Regulation (Ireland) Act 1871 (the Act). The case stated records that it was not possible to carry out those assessments.

10. The District Judge was told that Dr. O'Connell, the Consultant Forensic Psychiatrist, had been unable to examine the accused in respect of assessing his capacity and therefore was not in a position to provide one of the two medical affidavits required in order to bring about an inquiry under the Act.

11. As a result of the foregoing the District Judge stated this case to the High Court.

### **The first question**

12. The jurisdiction in wardship as provided for under the Act was at the time of its passing exercised by the Lord Chancellor of Ireland. It, in turn, was exercised by the Lord Chief Justice of Ireland at the time of the passing of the Courts of Justice Act 1924. Under s.19 of that Act of 1924 the jurisdiction was transferred to the Chief Justice. This was subsequently transferred to the President of the High Court by virtue of s.9(1) of the Courts (Supplemental Provisions) Act 1961. Section 9(2) of the 1961 Act provides that:-

*"This jurisdiction vested in the High Court by subsection (1) of this section shall be exercisable by the President of the High Court or, where the President of the High Court so directs, by an ordinary judge of the High Court for the time being assigned in that behalf by the President of the High Court."*

13. This short historical survey of the legislation demonstrates that the jurisdiction has always been conferred not merely on the Superior Courts but on the most or one of the more senior judges in those courts.

14. This fact was recognised by Ashbourne L.C. in *In re Birch* (1892) 29 L.R. Ir. 274 where he said:-

*"The exercise of this great personal duty was not inappropriately entrusted to the Lord Chancellor, who was frequently in former times some great ecclesiastic, and who has always been one with the greatest officials of the Realm .... The single purpose of the Crown is to benefit this afflicted class by confiding them to the care of its highest judge and one of its greatest officials ... that high prerogative duty is delegated to the Lord Chancellor, and there is no statute which in the slightest degree lessens his duty or frees him from the responsibility of exercising that parental care and directing such inquiries and examination as justice to the idiots and lunatics may require."*

15. Section 11 of the Act reads:-

*"The Lord Chancellor intrusted as aforesaid may at any time and from time to time direct one or more of the medical visitors to visit any alleged lunatic, and inquire into the state and condition of his mind, and his capacity or incapacity to manage his person or property, and his residence, mode of treatment, and condition generally, and also to make such other specific inquiries relative to the alleged lunatic as to the Chancellor intrusted as aforesaid may seem fit, and to report thereon ...."*

16. That section as amended and read in light of the provisions of s.9 of the Courts (Supplemental Provisions) Act 1961 makes clear that it is exclusively for the President of the High Court to direct one of the court's medical visitors to visit and report on a person thought to be of unsound mind. The jurisdiction is not conferred upon any other court or judge unless the President of the High Court assigns an ordinary judge of that court to exercise such functions.

17. It is therefore clear that a judge of the District Court may not require the Registrar of Wards of Court to inquire into a matter nor indeed can the Registrar direct that a medical visitor so report.

18. It follows that the first question must be answered in the negative.

### **The second question**

19. There is no procedure available under which a District Judge may bring a request by motion directly to the President of the High Court. It follows that this question must also be answered in the negative.

20. I should, however, point out that it is open to a District Judge if he believes that a person is of unsound mind and unable to manage his affairs to write to the Registrar of Wards of Court to that effect. The letter should not merely state the District Judge's belief in that regard but also the basis upon which it is formed. The Registrar can then place that material before me and, if appropriate, I can exercise the jurisdiction conferred on me by s.11 of the Act.

21. Insofar as the second question posed is concerned the answer to that is in the negative.

### **Invocation of section 11**

22. In the present case, in the light of the contents of the case stated, I exercised my jurisdiction under s.11 of the Act and required one of the court's medical visitors to examine the accused and to report to me concerning him. The medical visitor was unable to assess the accused by reason of his intoxication from narcotics. Furthermore, the medical visitor indicated that no meaningful assessment of the state of mind of the accused could be carried out until such time as he was abstinent from drugs.

### **Disposal**

23. Both questions posed in the consultative case stated are answered in the negative.