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SUPREME COURT OF VICTORIA

PATERSON v DIR-GENERAL of COMMUNITY WELFARE SERVICES

Lush J

7 September 1981 — [1982] VicRp 88; [1982] VR 883

PRACTICE AND PROCEDURE – ATTENDANCE CENTRE ORDER – CANCELLATION OF SOUGHT – DIRECTOR-GENERAL MAY APPLY FOR CANCELLATION OF AN ATTENDANCE ORDER – DIRECTOR-GENERAL MAY, IN WRITING, AND WITH APPROVAL OF MINISTER, ASSIGN ANY OF HIS FUNCTIONS AND DUTIES TO AN OFFICER OF THE DEPARTMENT – APPLICATION BY PROGRAMME SUPERVISOR FOR CANCELLATION OF ATTENDANCE ORDER – WHETHER ASSIGNMENT BY DIRECTOR-GENERAL, TO PROGRAMME SUPERVISOR, WAS WITH APPROVAL OF MINISTER – PRESUMPTION OF REGULARITY: COMMUNITY WELFARE SERVICES ACT 1970 (No 8089) SS10(2), 145E(1).

Applicant was sentenced to six months' imprisonment, to be served at an attendance centre. Subsequently, an application by the Programme Supervisor of the attendance centre, based on evidence of unsatisfactory attendance and punctuality, the Court cancelled the attendance order, and ordered the unexpired portion of the sentence, plus an additional sentence of two months, to be served. A document of assignment was tendered to the Court, signed by the Director-General, delegating to the Programme Supervisor, a power to prosecute applications, pursuant to s10(2) of the *Community Welfare Services Act 1970*.

HELD: Since there was no evidence of the Minister's approval, the document of assignment was invalid.

LUSH J: Section 145E(1) begins with the words "An order for attendance at an attendance centre may at any time on the application of the offender or of the Director-General be cancelled or varied by the Court which made the order." Section 10(2) as amended is as follows:-

"(2) With the approval of the Minister the Director-General may assign in writing to any officer of the Department any of the functions and duties of the Director-General either generally or in any particular case and may at any time in writing revoke any such assignment."

On 21 July 1980 Mr Shackson personally appeared to make the application for cancellation. He produced and, in the words of the applicant's affidavit, "tendered to His Worship" a document in the following terms:

"Department of Community Welfare Services, Victoria, Division of Correctional Services, *Community Welfare Services Act 1980* (sic). Pursuant to the provisions of s10(ii) of the *Community Welfare Services Act 1970*, I hereby delegate to Clive Michael Shackson, Programme Supervisor at the Thornbury Attendance Centre, my power and function to prosecute Applications made by me for the cancellation or variation of an Order to Attend at an Attendance Centre under the provisions of s145E of the said Act. Dated this 11th day of July 1980.

(Sgd) BD Bodna,
Director-General Community Welfare Services."

This document was not formally admitted in evidence as an exhibit, but nothing turns on that fact. Counsel then appearing for the applicant submitted that the document did not constitute evidence that the Minister had given his approval to the assignment, and that accordingly the document produced did not authorise Mr Shackson to proceed with the matter. The magistrate rejected this argument upon the basis that the recital in the document that it was made "Pursuant to the provisions of s10(ii) of the Act" imported that all the requirements of that sub-section must have been complied with,

... In any event, the assignment required approval before or after it was executed. If it was approved after execution, nothing would have been simpler than to place on it an endorsement signed by the Minister. Since under s5 of the *Community Welfare Services Act* and s79 of the *Evidence Act 1958*, judicial notice is taken of the signature of the Minister, such an endorsement

would constitute a self-proving document. What the Stipendiary Magistrate derived from the presumption of regularity was, probably, that the Minister had approved the assignment in advance. But there was no need for the Minister to have done so: this document could quite properly have been executed by the Director-General before approval was given, though it may fairly be said that it should not have been issued to Mr Shackson until it had been approved. The fact that the assignment could properly be executed before approval prevents the respondent from deriving any assistance from the presence in the document of the words "pursuant to the provisions of s10(ii)".

In the end, the position is, I think, that the form of the document discourages a belief that it was approved after execution, and the Court was therefore asked to presume that it had been approved beforehand, though this was not essential and perhaps in the case of this particular assignment unlikely. The presumption of regularity arises in circumstances in which a court can feel that the proof of one fact implies the occurrence of other, usually preceding, facts. In the present case I do not feel that the production of the assignment from Mr Shackson's possession implies, in the circumstances, anything at all relevant to the question of approval. I therefore hold that no presumption arose and that there was therefore no evidence to establish the validity of the assignment ... Order nisi made absolute. Decision of Magistrates' Court quashed.

Solicitors for the applicant: Arthur, Phillips and Just.

Solicitor for the respondent: Crown Solicitor.
