22/84

IN THE PRIVY COUNCIL No. 2 of 1983

ON APPEAL

FROM THE COURT OF APPEAL OF ST. VINCENT AND THE GRENADINES

BETWEEN:

GRAFTON ISAACS Appellant

- and -

EMERY ROBERTSON Respondent

CASE FOR THE APPELLANT

RECORD

1. This is an appeal, by leave granted on 9th December 1982 by the Court of Appeal of St. Vincent and the Grenadines, from a judgment dated 20th July 1981 of the said Court of Appeal (Peterkin C.J., Berridge, J.A. and Robotham J.A. (A)) allowing an appeal from a judgment dated 22nd November 1979 of the High Court of Justice of St. Vincent and the Grenadines (Glasgow J.) dismissing a motion on behalf of the Respondent for an order that the Appellant do stand committed for contempt in failing and/or refusing to obey an order (namely, an interlocutory injunction) dated 31st May 1979 of the said High Court. The Court of Appeal imposed no penalty but ordered costs to be paid by the Appellant.

Pages 47-48

Pages 35-46

Pages 21-30

Page 46 Lines 13-23

2. The principal issues to be determined on this appeal are:-

(1) Whether the said order dated 31st May 1979 was a nullity and/or void and if so whether a failure on the part of the Appellant to obey the terms of the same was a contempt.

Pages 14-15

(2) Whether the Notice of Motion dated 31st July 1979 by which the contempt proceedings were initiated was defective with the result that the Motion being one of committal for contempt should have failed.

Page 15

(3) Whether the said Court of Appeal were in any event justified in holding that the

Appellant was guilty of contempt when at the hearing of the Motion for contempt by the High Court, the Learned Judge had dismissed the Motion on a submission on behalf of the Appellant at the end of the Plaintiff's (the present Respondent's) case, the Learned Judge expressly not requiring the Appellant to make an election whether or not to give evidence.

3. The Respondent had commenced proceedings against one Inez Boatswain as first defendant, one Stephen Bascombe as second defendant and the Appellant as third defendant in the said High
Pages 1-3 Court by a Writ of Summons dated 23rd July 1977 (1977 No. 139). In this action the Respondent claimed inter alia specific performance of an oral agreement between the Respondent and the first-named defendant for the sale by the first-named defendant to the Respondent of certain land situated at Villa, St. Vincent and for certain other relief against the Appellant and further claimed against the second defendant and the Appellant inter alia damages for trespass and an injunction to restrain the Appellant and the second defendant by themselves their servants or agents or otherwise from trespassing upon the said property and from certain other acts relating thereto and for other relief as more particularly set out in the said Writ of Summons. No Statement of Claim has been served in the said action. By a Summons in the said action dated
Page 3 25th July 1977 the Respondent sought against the Appellant and the second defendant an injunction in the terms of the injunction claimed in the said Writ of Summons. The return date for the said Summons was 28th July 1977. Affidavits in
Pages 6-12 opposition were filed on behalf of the Appellant and of the first and second defendants. The date of hearing of the said Summons was adjourned to 13th September 1977 and on that date further adjourned to a date to be fixed. On 3rd May
Pages 12-14 1979 an affidavit was filed on behalf of the Respondent and on 31st May 1979 the said Summons was heard and an injunction granted by
Pages 14-15 Glasgow J. (in Chambers) in the terms sought in the said Summons dated 25th July 1977. On 11th July 1979 a copy of the said order was served personally on the Appellant. By a Notice of
Page 15 Motion dated 31st July 1979 the Respondent sought an order for committal against the Appellant for his alleged contempt in failing and/or refusing to obey the said order of the High Court made on 31st May 1979. The said Notice of Motion, Notice of Evidence and affidavits in support (namely those sworn by Calvin Mandeville and Arleigh Douglas on 31st July 1979 which were inadvertently omitted from

the printed Record, copies of which are annexed hereto) and certain other documents were served on the Appellant on 3rd August 1979. On 15th August 1979, the date originally set for the hearing of the said Motion, the hearing was adjourned to 21st August 1979. On that day and the following day the Motion was heard before Glasgow J. — Pages 16-20

4. On 22nd November 1979 Glasgow J., dismissed the said Motion and ordered that the costs thereof be paid by the Respondent to the Appellant. In his judgment, the Learned Judge set out the relevant history of the matter. — Pages 21-30
After ruling in favour of the Appellant in relation to an objection to an affidavit of one Cummings relied on by the Respondent, the Learned Judge went on to consider the first contention on behalf of the Appellant namely that the order for an injunction made by himself on 31st May 1979 was a nullity. He so held on the grounds that the High Court had purported to make the said order in the action at a time when the action was a cause or matter which was "deemed altogether abandoned and incapable of being revived" under the terms of Order 34 rule 11(1)(a) of the Rules of the Supreme Court 1970. — Page 29 Lines 24-30
The Learned Judge held that the relevant Court file and Cause Book entry showed that on 13th September 1977 the interlocutory motion for an injunction was adjourned to a date to be fixed and that thereafter no proceedings were heard or document filed in the action until 3rd May 1979. — Page 27 Lines 19-28
The Learned Judge further held as a fact that a letter alleged to have been sent to the Appellant's solicitor on 1st June 1978 by the Respondent's solicitor requesting consent to the filing of the Respondent's Statement of Claim out of time was not sent. — Page 27 Lines 29-52/ Page 28 Lines 1-42
If no party to an action had taken any proceeding or filed any document therein for one year from the date of the last proceedings had or the filing of the last document therein the terms of Order 34 rule 11(1)(a) deemed the said action to be altogether abandoned and incapable of being revived. Accordingly the Learned Judge held that Suit 139 of 1977 must be deemed altogether abandoned and incapable of being revived, such abandonment becoming effective on 14th September 1978. — Page 28 Lines 43-45/ Page 29 Line 1
The Learned Judge considered whether the Respondent was bound to obey the terms of an injunction purportedly granted in a cause after the cause had become abandoned and incapable of being revived, and held that any order made in an action on or after the date on which such action became deemed altogether abandoned by

RECORD

Page 29 Lines 24-30 — virtue of the said Order 34 rule 11(1)(a) was a nullity. The Learned Judge went on to find in favour of the Respondent and against a contention

Page 29 Lines 43-49 — on behalf of the Appellant that the injunction was defective in that it was made in the form of a final injunction although interlocutory. The Learned Judge next considered the contention on

Page 29 Line 49/ Page 30 Line 15 — behalf of the Appellant that the Notice of Motion before him was defective in that it failed to state the particular breach of the order of which complaint was made, contrary to the requirements of Order 73 rule 2 of the Rules of the Supreme

Page 30 Lines 16-29 — Court. He held that the Notice of Motion was defective in failing to state even in general terms the grounds of the application when the order of 31st May 1979 restrained the Appellant and the second defendant from doing several acts, any one of which could constitute a breach of the injunction.

Pages 35-46 — 5. In the Court of Appeal Robotham J.A. (Acting) in a judgment with which Berridge J.A. and

Page 46 — Peterkin C.J. agreed, set out the relevant history of the matter and the arguments on behalf of the parties and then dealt first with the question whether or not the motion was defective. He said that it was quite clear that the injunction was designed only to enjoin the Respondent from trespassing on the land.

Page 39 Lines 40-49/ Page 40 Lines 1-13 — He could not readily conceive of a case where an injunction was granted to restrain a person from doing one of several things. In such a case, if there was a breach of any of them, the party in contempt must be made aware of the particular way in which he had breached the order of the Court. The Appellant cold have been in no doubt whatsoever of the particular contempt for which the Respondent was seeking to have him committed, as the order was merely a composite one to restrain him whether by himself his servants or agents from trespassing on the land. The Appellant on the admission of his own Counsel had no intention of obeying the order. There was sufficient compliance

Page 40 Lines 14-33 — with Order 73 rule 2. The Learned Judge then went on to consider two questions which, he said, arose for consideration :-

(1) was the Appellant in breach of the order made on 31st May 1979; and

(2) even assuming that the said order was a nullity, was the Appellant entitled to treat it as such thereby completely ignoring the Court's order?

Page 41 Lines 28-38 — There was an unrelenting rule that anyone who disobeyed an order of the Court was in contempt and might be punished. In the face of this rule

it was not surprising that Counsel for the Appellant when pressed had to concede that prima facie on the affidavits the Appellant was in breach of the order, whilst maintaining his stand that the order for the injunction was a nullity. He had no hesitation in holding that the Respondent was in breach of the order irrespective of whether the order was valid or invalid. He then considered that effect of Order 34 rule 11. He summarised his findings which in short were :- Page 45 Lines 24-48

(1) That the motion was not defective.

(2) That prior to the hearing of the interlocutory motion on 31st May 1979, the last proceeding had in the matter was on 13th September 1977.

(3) That no proceedings having been taken nor any document filed within one year from 13th September 1977, the suit by virtue of Order 34 rule 11(1)(a) became altogether abandoned and incapable of being revived with effect from 14th September 1978.

(4) That in the circumstances the said interlocutory injunction of 31st May 1979 ought not to have been made, the suit being then abandoned.

(5) That despite this it was not open to the Appellant to disregard and disobey the terms of the injunction without taking steps to have it discharged by a Court of competent jurisdiction.

(6) That the Appellant's disregard of the order amounted to a breach of the terms of the injunction.

Accordingly he would allow the appeal, grant the motion and record a finding thereon that the Appellant was in contempt of Court. On the basis of the authorities and in the peculiar circumstances of the case, he would refrain from imposing imprisonment or a fine. The Appellant would be ordered to pay the costs of the appeal and also the costs arising from the breach and of the application for the committal together with the costs on the application for the interlocutory injunction on 31st May 1979. Page 46 Lines 10-23

6. It is first submitted on behalf of the Appellant that the order for an interlocutory injunction made on 13th May 1979 was a nullity and without effect.

RECORD
Page 42
Lines 20-37

7. Order 34 rule 11 of the Rules of the Supreme Court 1970 provides:-

> "(1) A cause or matter shall be deemed altogether abandoned and incapable of being revived if prior to the filing of a request for hearing or consent to judgment or the obtaining of judgment -
>
> (a) any party has failed to take any proceedings or file any document therein for one year from the date of the last proceeding had or the filing of the last document therein; or
>
> (b) no application for or consent to reviver has been filed within six months after the cause or matter has been deemed deserted; or
>
> (c) if the cause or matter has not, on the request of any party been entered on the Hearing List within six months from the date of any order of revival.
>
> (2) The instituting of a cause or matter which has been deemed altogether abandoned shall be of no effect in interrupting any period of limitation".

8. It is submitted that when (as held both by the Court of Appeal and by the Court below) the suit became altogether abandoned and incapable of being revived with effect from 14th September 1978 there was thereafter no suit in being and the Respondent was no longer a party to a cause or matter to be tried.

9. Order 29 rule 1 of the 1970 Rules of the Supreme Court of the West Indies Associated States provides:-

> "(1) An application for the grant of an injunction may be made by a party to a cause or matter before or after the trial of the cause or matter ...
>
> (2) ...
>
> (3) The plaintiff may not make such an application before the issue of the Writ or Originating Summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit".

RECORD

10. In the present case, when the Court purported to make an order for an interlocutory injunction on 31st May 1979 there was no suit in being; the Applicant was not a party to a cause or matter; there was not to be nor had there been a trial and it is submitted there was no jurisdiction in the Court to make the "order". In these circumstances the said order was not a mere irregularity but was a nullity. It is conceded that if the order of 13th May 1979 was merely irregular, a breach by the Appellant of the said order would have been a contempt. However the Appellant submits that there is a clear distinction to be drawn between that which is a mere irregularity and that which is a nullity: see MacFoy v. United Africa Co. Ltd., /1962/ AC152 (PC); Marsh v. Marsh /1945/ AC 271 (P.C.). Insofar as natural justice is an element to be taken into consideration in determining whether in the circumstances of the present case the order of the Court was a nullity (see Austin v. Hart /1983/ 2 WLR 66 (P.C.)) it is respectfully submitted that natural justice does not require that an "order" obtained in a suit after the suit has been abandoned and has become incapable of revival shall carry penal consequences if not obeyed. It is submitted that neither principle nor public policy requires that disregard of an "order" made without jurisdiction and/or which is a nullity and void should be a contempt or be enforceable and enforced by committal or otherwise. Neither the dignity of the law nor the respect in which the due authority and administration of the law are regarded are likely to be enhanced by a doctrine that orders made by a Court without jurisdiction and/or which are a nullity and void are to be obeyed until declared null and void and/or ordered to be set aside by the Court.

11. Secondly, it is submitted that the Notice of Motion dated 31st July 1979 in the contempt proceedings was a nullity for the same reasons as hereinbefore set out but if not a nullity was defective in that it did not particularise the breach of order relied on. The relevant terms of the injunction in the order of 31st May 1979 were :- Page 3 Page 14 Line 38/ Page 15 Line 4

> "...be restrained whether by themselves their servants or agents from entering and/or crossing the Plaintiff's property and from interfering and/or molesting the Plaintiff whether by his servants or agents or otherwise howsoever in the occupation and use of the property..."

RECORD

The order accordingly enjoined the Appellant whether by himself his servants or agents from acting in two distinct and separate types of act: first, from entering and/or crossing the property and, secondly, from interfering and/or molesting the Plaintiff whether by his servants or agents or otherwise in the occupation and use of the property. The first limb related to trespass on the property. The second limb related to interference with and/or molestation of the Plaintiff his servants or agents whether or not on the property in relation to the occupation and use of the property. Nothing in the Notice of Motion put the Appellant or the Court on notice as to whether the breach complained of related to the first or second limb or both limbs of the order or as to whether the acts complained of were alleged to be vicarious or personal. It is submitted that in contempt proceedings it is essential to state with particularity the act or default relied on as constituting the contempt: see In Re Pollard (1868) 2 L.R.P.C. 106. It is respectfully submitted that the Court of Appeal was wrong in construing the order for an injunction as "merely a composite one to restrain /the Appellant/ whether by himself his servants or agents from trespassing on the land". Even if, as the Court of Appeal held, the Appellant had had no intention of obeying any part of the order that would not deprive him of the right to be informed in the Notice of Motion of the particular requirement of the order which it was alleged that he had breached.

Page 3

Page 40 Lines 3-5

Page 40 Lines 5-9

12. Thirdly, it is submitted that, if (contrary to the submission of the Appellant) the Learned Trial Judge was wrong in holding that the order for an injunction was a nullity and could not successfully be the foundation for a motion for contempt, and was further in error in holding that the Notice of Motion was irregular, the Appellant was entitled to give evidence on the Motion as to the facts and to be heard on the merits. When Counsel for the Appellant at the end of the Respondent's case submitted that the Motion was bad in law, Counsel for the Respondent asked that the Appellant be required to elect whether to rely solely on such submissions or otherwise first to give evidence, the Learned held that the Appellant was not required so to elect.

Page 17 Lines 33-41

13. Order 73 rule 4 (4) of the aforesaid Rules of the Supreme Court, provides:-

> "If on the hearing of the application the person sought to be committed expresses a

wish to give oral evidence on his own behalf, he shall be entitled to do so".

When the Learned Judge found in favour of the Appellant on the legal argument, the hearing had not reached the stage at which the Appellant was required to express a wish to give oral evidence. The Court of Appeal in holding that the Appellant was guilty of a contempt deprived the Appellant of the opportunity to which he was entitled under Order 73 rule 4(4) of giving oral evidence on his own behalf. In so doing the Court of Appeal deprived the Appellant of a proper opportunity of answering the charge of the alleged contempt contrary to long established principles and in breach of the protection of the law afforded by the fundamental right and freedom enacted by Section 1 of the Constitution of St. Vincent and the Grenadines which provides so far as is relevant as follows:-

> "(1) Whereas every person in St. Vincent is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following namely -
>
> (a) ... the protection of the law;".

14. The Appellant accordingly submits that the judgment of the Court of Appeal of St. Vincent and the Grenadines is wrong in law and should be set aside and that this appeal should be allowed and that the judgment of Glasgow J., be restored and that the Appellant be awarded the costs of this appeal and his costs in the courts below for the following among other

R E A S O N S

1. BECAUSE the order of 31st May 1979 was a nullity and/or void.

2. BECAUSE a failure by the Appellant to comply with the terms of the said order were not a contempt of court.

3. BECAUSE the Notice of Motion dated 31st July 1979 to commit the Appellant was defective in that it did not sufficiently or at all state and particularise the contempt alleged against the Appellant.

4. BECAUSE the Appellant was not afforded an opportunity of giving oral evidence on his own behalf.

5. BECAUSE in all the circumstances hereinbefore set out the Appellant was not afforded the protection of the law to which he was entitled by Section 1 of the Constitution of St. Vincent and the Grenadines.

6. BECAUSE the judgment of Glasgow J., was correct and that of the Court of Appeal was wrong. 10

D.J. TURNER-SAMUELS

WILLIAM BIRTLES

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

1977 No. 139

B E T W E E N : EMERY W. ROBERTSON of Cane Garden Plaintiff

- and -

INEZ BOATSWAIN of Villa
STEPHEN BASCOMBE of Belair
GRAFTON ISAACS of Cane Garden Defendants

I CALVIN MANDEVILLE of Kingstown in the State of Saint Vincent photographer make Oath and say as follows:-

I am a photographer by profession and was employed by Mr. Emery W. Robertson the plaintiff in this Suit to visit certain lands at Villa which is the subject matter of this said suit.

I duly hired Mr. Chemmie Alexander's Taxi on the 12th day of June, 1979 and together we proceeded to Villa to take photographic exposures of the land as described to me by Mr. Robertson.

On my arrival at the said site I noticed that a small wooden house was erected on the said land and a concrete and stone wall building was being erected on the said land.

I also noticed that workmen were at that time working on the said building.

I took photographs of the said land together with the buildings and workmen as shown by the photograph exhibited herewith and marked C.M.1.

Since my going to take the picture for Mr. Robertson I have received threats from Mr. Grafton Isaacs the third named defendant that he will shoot me for going on his said lands.

I never went onto the said lands but took my photographs by standing in the road near the said building.

On the 26th day of July, 1979 I was again requested by Mr. Emery W. Robertson to visit the said land at Villa and to take more photographs.

I again hired Mr. Chemmie Alexander's Taxi and together we travelled to Villa at the said site and arrived there approximately 10 a.m.

On my arrival there I noticed that there were men working on the said building at Villa and that there was substantial work done to the said building since my first visit and taking of photographs.

I duly took more photographs which are exhibited herewith and marked C.M.2.

I was told by some hostile workmen I saw on the said building site and verily believe the same to be true that Mr. Isaacs told them to forbid anyone from trespassing. The said workmen had armed themselves with stones.

I replied to them by telling them that I am clear of Mr. Isaacs premises and I came only to do some photographs.

At about 1 p.m. the said day while I was in Kingstown at one Alphie King's garage I saw the 3rd named defendant Grafton Isaacs who came to me and told me he heard that I went up to his premises and took pictures and if he had met me there he would have shot me.

I replied to him and told him I am no bird and if he wanted trial by combat come out of the car but he remained in his car brandishing his gun and making noise.

That the facts deposed to herein are true.

SWORN TO AT THE REGISTRY KINGSTOWN)
this 31st day of July, 1979) sgd. Calvin Mandeville

Before me:

sgd. Kathleen I Mason

ag. Dep Registrar
REGISTRAR

1977 No. 139

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

ROBERTSON

- v -

BOATSWAIN and OTHERS

A F F I D A V I T

- of -

CALVIN MANDEVILLE

INGLEDEW, BROWN, BENNISON & GARRETT
International House
26 Creechurch Lane
London EC3A 5AL

Plaintiff's Solicitors

IN THE HIGH COURT OF JUSTICE 1977 No. 139

SAINT VINCENT

B E T W E E N : EMERY W. ROBERTSON of Cane Garden Plaintiff

- and -

INEZ BOATSWAIN of Villa
STEPHEN BASCOMBE of Belair
GRAFTON ISAACS of Cane Garden Defendants

I ARLEIGH DOUGLAS of Kingstown Park in the State of Saint Vincent a Registered private Investigator make oath and say as follows:-

That on the 22nd day of June, 1979 I received from the Chambers of Mr. Emery W. Robertson a copy of a court's Order and undertakings as to Damages now produced to me and marked "A.D.1" for service upon the 2nd and 3rd defendants.

That later that said day at approximately 4.40 p.m. I went to Villa where I saw a house being constructed and I saw the 3rd defendant Grafton Isaacs there along with other men. The said Grafton Isaacs was at that time paying men.

I informed the said Grafton Isaacs that I had in my possession an injunction for him from the Court and requested him to take the Court's Order.

The said Grafton Isaacs refused to accept the Court's Order.

The said Grafton Isaacs further remarked that his Solicitor is Mr. Hughes and I must serve same upon Mr. Hughes and refused to accept same.

That because of the demeanour of the 3rd defendant I was afraid of leaving the copy of the Court's Order with him.

That I later that said evening served the 2nd named

defendant with a copy of the Court's Order already referred to and marked "A.D.1". The defendant accepted the said Court's Order.

That the facts deposed herein are true.

SWORN TO AT THE REGISTRY KINGSTOWN)
this 31st day of July, 1979) Sgd. Arleigh Douglas

BEFORE ME:

Sgd: Kathleen I Mason

ag. Dep. REGISTRAR

This Affidavit is filed on behalf of the plaintiff.

1977 No. 139

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

ROBERTSON

- v -

BOATSWAIN and OTHERS

A F F I D A V I T

- of -

ARLEIGH DOUGLAS

INGLEDEW, BROWN, BENNISON & GARRETT
International House
26 Creechurch Lane
London EC3A 5AL

Plaintiff's Solicitors

No. 2 of 1983

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF
ST. VINCENT AND THE GRENADINES

B E T W E E N :

GRAFTON ISAACS — Appellant

- and -

EMERY ROBERTSON — Respondent

CASE FOR THE APPELLANT

INGLEDEW, BROWN, BENNISON & GARRETT
International House
26 Creechurch Lane
London EC3A 5AL

Appellant's Solicitors