

22/84

ON APPEAL
FROM THE COURT OF APPEAL OF SAINT VINCENT
AND THE GRENADINES

B E T W E E N:

GRAFTON ISAACS

Appellant

- and -

EMERY ROBERTSON

Respondent

CASE FOR THE RESPONDENT

Record

10 1. This is an Appeal against the Judgment and Order of the Court of Appeal of Saint Vincent and the Grenadines (Robotham J.A. (Acting), Berridge, J.A., Peterkin, C.J.) dated 20th July, 1981, whereby an appeal by the Respondent against the Judgment and Order of Glasgow J. dated 22nd November, 1979 was allowed. p. 35-46 p.21-30

2. The principal issues raised by this Appeal are as follows:-

20 (1) whether an injunction granted on 31st May 1979 restraining the Appellant from committing trespass to land was a nullity;

(2) if so, whether on a motion to commit for contempt through breach of the injunction, a finding of contempt can, on that ground, be avoided;

(3) whether the notice of motion to commit the Appellant complied with O.73 r.2(2) of the Rules of the Supreme Court.

30 3. On the hearing of the Notice of Motion the Appellant did not deny that he had disobeyed the injunction. In the Court of Appeal counsel conceded that the Appellant was prima facie in breach. The Court found as a fact that he was in breach. p.41 1.28-38

40 4. In the High Court the learned Judge concluded that the injunction was a nullity because he held that the action in which the interlocutory injunction had been granted was at the date of the grant to be deemed altogether abandoned by virtue of Order 34 Rule 11(1)(a) of the Rules of the Supreme Court. The learned Judge also held that the Notice of Motion was defective for it failed to p.29 1.30

p.30 state, as it was required to do under O.73, r.2(2) of the Rules of the Supreme Court (Revision) Order 1972, the grounds of the application.

p.40 5. The Court of Appeal held that the Notice of
1.1 Motion sufficiently complied with O.73 r.2(2) for
the Appellant could not have been in any doubt of
the contempt for which it was sought to have him
committed. Further the Court concluded, agreeing
with the trial Judge, that on May 31st 1979 the
interlocutory injunction should not have been
granted, the suit being then abandoned under 10
O.34 r.11(1)(a). Nevertheless the Court held that
p.45 it was not open to the Appellant to disobey the
1.40 injunction and that he should have applied for its
discharge. In the circumstances the Court concluded
that the Appellant should pay all the costs although
p.46 it was not appropriate to punish him by way of fine
or imprisonment.

6. Order 34 Rule 11(1)(a) provides (as material):
"A cause or matter shall be deemed altogether 20
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) a 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
....."

Order 73 Rule 2 states (as material):-

- "(1) Where an application for an order of committal 30
may be made to the Court, the application must
be made by motion and be supported by an
affidavit.
- (2)the notice of motion stating the grounds
of the application and accompanied by a copy
of the affidavit in support of the application
must be served personally upon the person
sought to be committed."

7. It is respectfully submitted that the Court of
Appeal were wrong to conclude that by virtue of 40
O.34 r.11(1)(a) the action should have been deemed
altogether abandoned. O.34 is concerned with three
possible steps being taken in an action:

- (1) the filing of a request for hearing;
- (2) the obtaining of a consent judgment;
- (3) the obtaining of a judgment.

Steps (2) and (3) are not relevant to any step taken
in this case, and before a request for hearing can be

made an action must be "ripe for hearing". By O. 34 r. 3(2) ("if there is any interlocutory proceedings pending, a cause or matter shall not become ripe for hearing until the determination of such proceedings")

10 Since the relevant Cause Book entry in this action showed that on the 13th September, 1977 the interlocutory application had been adjourned to a date to be fixed, there was at all material times a pending hearing and no request for hearing could have been filed. Further by reason of the pending hearing sub-paragraph 1(a) of O.34 r.11, which refers to "proceedings had" or "document" filed could have no application.

p.27
1.20

20 8. Further and alternatively, if contrary to the foregoing submission, the action should have been deemed to be abandoned, the Courts' exercise of discretion to grant an interlocutory injunction was not a nullity. In an urgent case an interlocutory injunction can be granted in proposed proceedings. It is respectfully submitted that whatever irregularity may have occurred it did not deprive the Court of jurisdiction to grant an injunction.

9. In the yet further alternative, it is respectfully submitted that the Court of Appeal were right to hold that unless and until an injunction is discharged the party restrained must obey it, and that failure to do so will constitute contempt.

30 10. As to the Notice of Motion it is respectfully submitted the Court of Appeal were right to hold that it complied with the Rules.

11. It is respectfully submitted that this appeal should be dismissed with costs for the following (among other)

REASONS

- 40 1. BECAUSE Suit number 137/1977 did not fall to be treated as abandoned.
2. BECAUSE the injunction granted on 31st May 1979 was not a nullity.
3. BECAUSE the Appellant was bound to obey the injunction until it was discharged.
4. BECAUSE the Notice of Motion was not defective.
5. BECAUSE the Court of Appeal were correct and the learned Judge at first instance was wrong.

GEORGE NEWMAN

O. R. SYLVESTER

No. 2 of 1983

IN THE PRIVY COUNCIL

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