

22/84

IN THE PRIVY COUNCIL

No.2 of 1983

O N A P P E A L

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

RECORD OF PROCEEDINGS

INGLEDEW, BROWN, BENNISON  
& GARRETT,  
International House,  
26, Creechurch Lane,  
London EC3A 5AL.  
Solicitors for the  
Appellant

PHILIP CONWAY THOMAS & CO.,  
61 Catherine Place,  
Westminster,  
London SW1E 6HB.  
Solicitors for the  
Respondent

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O N    A P P E A L

FROM THE COURT OF APPEAL OF SAINT VINCENT AND  
THE GRENADINES

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B E T W E E N :

GRAFTON ISAACS Appellant

- and -

EMERY ROBERTSON Respondent

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O N A P P E A L

FROM THE COURT OF APPEAL OF SAINT VINCENT AND  
AND GRENADINES

B E T W E E N:

GRAFTON ISAACS Appellant

- and -

EMERY ROBERTSON Respondent

RECORD OF PROCEEDINGS

No. 1

In the High Court

10

Writ of Summons 23rd July 1977

IN THE HIGH COURT OF JUSTICE

(SAINT VINCENT)

1977 No. 139

No. 1  
Writ of  
Summons  
23rd July 1977

BETWEEN EMERY W. ROBERTSON  
of Cane Gardens Plaintiff

- AND -

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

20

ELIZABETH THE SECOND, by the Grace of God, of  
the United Kingdom of Great Britain and Northern  
Ireland and of Our other Realms and Territories,  
Queen, Head of the Commonwealth, Defender of the  
Faith:

TO Inez Boatswain of Villa Stephen Bascombe of  
Belair and Grafton Isaacs of Cane Garden in the  
State of St. Vincent.

30

WE COMMAND YOU that within 8 days after the service  
of this writ on you inclusive of the day of such  
service, you do cause an appearance to be entered  
for you in an action at the suit of the Plaintiff  
and take notice that in default of your so doing  
the plaintiff may proceed therein, and judgment

In the High  
Court

No. 1  
Writ of Summons  
23rd July 1977  
(Contd.)

may be given in your absence.

WITNESS The Honourable Sir Maurice Davis Q.C.  
Chief Justice of The West Indies Associated States  
Supreme Court, the 23rd day of July One thousand  
nine hundred and seventy-seven

THE PLAINTIFFS CLAIM IS FOR

1. Specific performance of an oral agreement between the Plaintiff and the first-named defendant Inez Boatswain made in July 1971 for the sale by the said first-named Defendant to the Plaintiff of approximately  $1\frac{1}{4}$  acres of freehold land situate at Villa for the price of \$7,000.00 (hereinafter referred to as the "said property"). 10
2. Damages for wilful refusal to complete the contract.
3. Further or alternatively damages for breach of contract.
4. A declaration that the first and/or third named Defendants is and/or are trustees of the said property for the Plaintiff. 20
5. Cancellation of any deed purporting to convey and/or to vest the said property in the third named defendant.
6. If necessary a vesting order.
7. Damages for trespass.
8. An injunction to restrain the second and third defendants whether by themselves or by their servants or agents or otherwise howsoever from entering or crossing the said property and from interfering and/or molesting the plaintiff whether by himself his servants or agents or otherwise howsoever in the occupation and use of the said property. 30
9. Further or other relief.
10. Costs.

Dated this 25th day of July, 1977

H.E. STEPHENS  
Solicitor for the Plaintiff

This writ was served by me at Kingstown on the Defendant Grafton Isaacs on the 25th day of July 1977 indorsed the 25th day of July 1977 40

(Retired) Bailiff Oscar Moses  
Address New Montrose

This Writ was served by me at Villa on the defendant Inez Boatswain on the 25th day of July 1977 indorsed the 25th day of July 1977

In the High Court

Writ of Summons  
23rd July 1977

(Retired) Bailiff Oscar Moses  
Address New Montrose

10

THIS Writ was issued by H. Eardley Stephens of Chambers, Kingstown, St. Vincent, Solicitor for the said Plaintiff whose address is Cane Garden in the State of Saint Vincent, and whose address for service is Halifax Street, Kingstown, St. Vincent.

THIS WRIT was served by me at Kingstown on the Defendant Stephen Bascombe on the 26th day of July 1977

Indorsed the 26th day of July 1977

Signed Oscar Moses (Retired Bailiff)  
of New Montrose

No. 2

No. 2

Summons 25th July 1977

Summons  
25th July 1977

20

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

No. 139 of 1977

BETWEEN: EMERY W. ROBERTSON  
of Cane Garden Plaintiff

- and -

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

30

LET ALL PARTIES CONCERNED attend before the Judge in Chambers at the High Court at Kingstown on Thursday, the 28th day of July, 1977 at 9 O'clock on the hearing of an application by the Plaintiff for an order that the second and third defendants be restrained whether by themselves, or by their servants or agents or otherwise howsoever from entering or crossing the said property and from interferring and/or molesting the plaintiff whether by his servants agents or otherwise howsoever in the occupation and use of the said property, and that the costs of this application be costs in this action

40

Dated the 25th day of July, 1977

This Summons was taken out by B. Eardley Stephens,

In the High  
Court

Chambers, Halifax Street, Kingstown, Solicitor for  
the Plaintiff.

No. 2  
Summons  
25th July 1977  
(Contd.)

To: The defendants Inez Boatswain, Stephen Bascombe  
and Grafton Isaacs

CERTIFIED A TRUE COPY

Registrar

No. 3  
Affidavit of  
Emery Winston  
Robertson  
25th July 1977

No. 3

Affidavit of Emery Winston Robertson

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

No. 139 of 1977

10

BETWEEN: EMERY W. ROBERTSON  
of Cane Garden

Plaintiff

- and -

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

Defendants

AFFIDAVIT IN SUPPORT OF SUMMONS

I, EMERY WINSTON ROBERTSON of Cane Garden in  
the State of Saint Vincent make oath and say as  
follows:-

20

1. That by virtue of an oral agreement made  
between Stephen Bascombe the second named  
defendant as agent for the first named  
defendant and the plaintiff it was agreed that  
the first named defendant will sell and the  
Plaintiff will buy All that lot piece or  
parcel of land situate at Villa approximately  
1½ acres and butted and bounded on one side  
by lands of Christopher Norris on a second  
side by lands of Johnnie Alves on a third  
side by lands of Ruth Boatswain and on the  
fourth side by remaining lands of the first  
named defendant for the price of \$7,000.00.
2. That on 31st July, 1971 the said oral  
agreement was ratified by the first named  
defendant and in pursuance thereof a payment  
of \$1,000.00 was made to the first named  
defendant as the first instalment on the  
said purchase price of the said property as  
evidenced by a copy of the receipt exhibited  
herewith and marked "E W R1".

30

40



3. The plaintiff thereafter was put in possession of the said property and remained and continued in undisturbed and uninterrupted possession thereof from the 31st July, 1971 until 20th July, 1977 when the second named defendant together with a quantity of policemen came unto the said property and chased the plaintiff's workmen from the said property.

In the High Court

No. 3  
Affidavit of  
Emery Winston  
Robertson 25th  
July 1977  
(Contd.)

10

4. The plaintiff since July, 1971 has made several payments to the first named defendant on the said purchase price of the said property and there is now a balance outstanding on the purchase price of \$3,729.58 a copy of receipt of a further payment is herewith exhibited and marked "E W R2".

20

5. That on the 20th July, 1977 the third named defendant stopped outside of the plaintiff's home at Cane Garden and told the plaintiff that he must make his will if he intends to visit the said property again.

6. On the 21st July, 1977 the plaintiff's workmen returned to the said property and continue to work thereon and the third named defendant pulled a gun and threatened to shoot the plaintiff's workmen and chased them from the said property.

30

7. The third named defendant on the said 21st July, 1977 also threatened the plaintiff with violence on the said property.

8. The second and third defendants have threatened to continue to enter the said property and to interfere and/or chase and/or to committ acts of violence to the plaintiff and/or his workmen.

40

9. Unless restrained by the Court the second and third defendants threatened and intend to continue to enter the said property and/or to interfere with and/or to chase the plaintiff and/or his servants agents and/or workmen from the said property and to trespass on the said property as aforesaid.

SWORN TO AT THE REGISTRY)  
KINGSTOWN this 25th day )  
of July, 1977. )

Before me, ) (Sgd)  
 ) Emery Winston Robertson  
)  
(Sgd) K. Bacchus )  
Dep. Registrar )

THIS AFFIDAVIT IS FILED ON BEHALF OF THE PLAINTIFF.

CERTIFIED A TRUE COPY

Registrar

Affidavit of Grafton C. Isaacs

No. 4  
Affidavit of Grafton C. Isaacs  
26th July 1977

IN THE HIGH COURT OF JUSTICE  
(SAINT VINCENT)

137 of 1977

BETWEEN: EMERY W. ROBERTSON  
of Cane Garden Plaintiff

- and -

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

10

I, GRAFTON C. ISAACS of Cane Garden in the State of Saint Vincent make Oath and say as follows:-

1. On the 25th July, 1977 at about 4.30 p.m. I was served by one Oscar Moses with a Writ of Summons naming me as third defendant, together with a Summons in Chambers returnable on the 28th day of July, 1977, seeking an interlocutory injunction at the instance of Emery W. Robertson against my entering or crossing my lands. 20
2. I have read the Affidavit filed herein by Emery W. Robertson and Paragraphs 1,2,3,4,5, 6,7,8 and 9 are untrue and are specifically denied.
3. On the 18th day of July, 1977 I purchased without notice from the first-named defendant at the price or sum of Ten thousand dollars for Sixty-five thousand three hundred and seventy-seven square feet of land situate at Villa as is more particularly set out and described in the Deed of Conveyance dated the 18th day of July, 1977 the same which is registered as Number 1323 of 1977 free from encumbrances. 30
4. At the time of purchase to the best of my knowledge information and belief the Vendor, the first-named defendant was in actual physical possession of the land. 40
5. The Vendor on the said 18th day of July, 1977, put me in physical possession of the land.
6. Prior to the engrossment of the said Deed of Conveyance dated the 18th day of July, 1977 as aforesaid, I caused a search of the Register of Deed, Agreements, Mortgages, charges and

encumbrances for the State of Saint Vincent and it revealed that the said land was free from encumbrances.

In the High  
Court

No. 4  
Affidavit of  
Grafton C. Isaacs  
26th July 1977  
(Contd.)

7. On Wednesday 20th July, 1977 I was informed that there were persons on my said land cutting trees. I reported the matter to the Police.
- 10 8. On the said Wednesday 20th July, 1977, the Plaintiff, sometime in the afternoon phoned me asking if I purchased lands from one Stephen Bascombe, I told the plaintiff that I purchased lands from one Inez Boatswain. The plaintiff then told me that he bought the same lands from Stephen Bascombe. I thereupon told the plaintiff that I knew nothing of any transaction of his and that I was hearing thus for the first time.
- 20 9. I never at any time threatened the plaintiff or any other person with violence but I did tell the plaintiff in reply to his telling me that he will fight me to the bitter end for the said land that if he wants to fight me to the bitter end I was going to the lands then and he should meet me on my said lands to fight me there but he should first make his will.
10. I am informed and verily believe that the paper-writings exhibited with the said Affidavit are of no legal force and effect.

30 SWORN TO AT THE REGISTRAR'S)  
OFFICE KINGSTOWN, SAINT )  
VINCENT THIS 26th DAY OF )  
JULY 1977 )  
 ) /S/  
BEFORE ME: ) GRAFTON C. ISAACS  
/s/ H. Matadial )  
REGISTRAR )

---

Affidavit of Inez Boatswain

No. 5  
Affidavit of  
Inez Boatswain  
26th July 1977

IN THE HIGH COURT OF JUSTICE

(SAINT VINCENT)

1977 No. 139

BETWEEN: EMERY W. ROBERTSON  
of Cane Garden Plaintiff

- and -

INEZ BOATSWAIN of Villa  
STEPHEN BASCOMBE of Belair and  
GRAFTON ISAACS of Cane Garden Defendants 10

I, INEZ BOATSWAIN of Villa in the State of Saint Vincent make Oath and say as follows:-

1. I am named in a Writ of Summons served on me together with a Summons and an affidavit of Emery Robertson.
2. The whole affidavit is a lie. I do not admit anything Mr. Robertson says in all the paragraphs 1 to 9.
3. Stephen Bascombe is my son but he is not my agent. I have not given him authority to sell lands that I own. Stephen Bascombe is not my only child and all my other children must get a piece of my lands. Stephen cannot sell. 20
4. Sometime ago Stephen keep asking me to sell Mr. Robertson a piece of my lands and I tell Stephen I am not selling any more lands until all my children choose out the piece they want. He brought money and I refused it.
5. On another occasion Stephen bring about \$3,200.00 and again asked me to sell Mr. Robertson a piece of the land. Then he tell me that Mr. Robertson says for me to sign a Deed of Gift for his wife and later he, Mr. Robertson, will pay off the balance if the price is the same as what I sell Sylvester for. I quarrel with Stephen for if I was selling Mr. Robertson any land he had to pay off for the land first before I sign deed. And if he is lawyer and talking about signing before land sell he Mr. Robertson want to thief my land. And I am not selling Mr. Robertson any lands. 30 40
6. I never sell land to Mr. Robertson. I never make no arrangement with Mr. Robertson or with Stephen to sell Mr. Robertson any land. I never sign any paper for Mr. Robertson or for Stephen towards any land. If my name sign to

any paper is a foregery. I never put Mr. Robertson in possession of any land I own.

In the High Court

- 7. I sold a piece or lands to Mr. Grafton Isaacs and I signed his deed and I put him in possession of a piece that a surveyor marked out.
- 8. From where I live I can see all the lands I own. Mr. Robertson was to the best of my knowledge never on those lands I sold Mr. Isaacs at all. On Wednesday 20th July, 1977 I see people on the lands and I was told Mr. Robertson is claiming that Stephen sell him the lands. This is not true; Stephen cannot sell.

No. 5  
Affidavit of  
Inez Boatswain  
26th July 1977  
(Contd.)

10

SWORN TO AT THE REGISTRY )  
 IN KINGSTOWN, SAINT VINCENT)  
 THIS 26th day of July, 1977)  
 )/S/ Inez Boatswain  
 Before me: )  
 /S/ K. Bacchus )  
 dep. Registrar )

No. 6

No. 6  
Affidavit of  
Stephen Bascombe  
26th July 1977

20

Affidavit of Stephen Badcombe

IN THE HIGH COURT OF JUSTICE

(SAINT VINCENT)

1977 No. 139

BETWEEN: EMERY W. ROBERTSON  
 of Cane Garden Plaintiff

- and -

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

30

I, STEPHEN BASCOMBE of Belair in the State of Saint Vincent Farmer make oath and say as follows:-

- 1. I am the second-named defendant in the Writ of Summons filed herein. Mrs Inez Boatswain the first-named defendant is my mother and she lives at Villa.
- 2. I received a Summons to Chambers together with an Affidavit of the Plaintiff herein and I have read the same.
- 3. Paragraphs 1,2,3,4,5,6,7,8 and 9 of the said Affidavit are untrue and incorrect and I deny each and every one of them.
- 4. Sometime prior to and in 1970 I worked as a

40

In the High  
Court

No. 6  
Affidavit of  
Stephen Bascombe  
26th July 1977  
(Contd.)

Butcher and the plaintiff was my best customer and we developed a very good personal relationship.

5. The plaintiff asked me to talk to my mother, Mrs. Inez Boatswain to sell to him a piece of land at the same price she sold to Othniel Sylvester and Silky Da Silva. I agreed to ask my said mother on the plaintiff's behalf.
6. In July, 1971, I informed the plaintiff that my mother is not selling any more lands until the children are satisfied and perhaps later on. The plaintiff gave me a cheque for \$1,000.00 asking me to give it to my mother until she is ready to sell. 10
7. The plaintiff asked me to sign for the said \$1,000.00 on a blank piece of paper he handed to me I signed in good faith my signature "Stephen Bascombe".
8. The paper-writing exhibited as EWRL to the herein Affidavit of the plaintiff was seen by me for the first time on reading the said affidavit AND I say that what appears on the said paper-writing EWRL as the signature "Inez Boatswain: is not the signature of my mother, Inez Boatswain and the writing in Block Letters "STEPHEN BASCOMBE is not my handwriting and was not done or made by me. 20
9. I took the money \$1,000.00 to my mother and requested her to sell the plaintiff a piece of her remaining lands and she again told me that she is not selling any more until all her children take out what they want. My mother refused to accept the said money. 30
10. I took the money back to the plaintiff and told him what my mother said. Instead of accepting the money the plaintiff give me \$300.00 more and begged me to talk to my mother to sell him, the plaintiff, a piece or the lands.
11. I took the money and signed my signature "Stephen Bascombe" on another blank piece of paper the plaintiff handed to me. 40
12. The paper-writing bearing date "Oct 28th 1971" was first seen by me when the said Affidavit of the plaintiff was read by me. The signature "Stephen Bascombe" appearing thereon is my signature. But, the words "for Inie Boatswain" were not written by me and is not the handwriting of my said mother Inez Boatswain.
13. I took this money, now \$1,300.00 and from time to time offered it to my said mother who refused saying 50

she will sell only after the children are satisfied.

In the High  
Court

No. 6  
Affidavit of  
Stephen Bascombe  
26th July 1977  
(Contd.)

- 10 14. Sometime during the month of December, 1971 I sought and spoke to the plaintiff requesting him to take back and keep the money \$1,300.00 The plaintiff with much arguments convinced me that my mother can do with money for her christmas and if she sees more money it will help to make up her mind. The plaintiff gave me \$2,000.00 with the request that I try to get my mother to receive the money, now \$3,300.00, and that he will make out a Deed of Gift to his wife if I will mark out a piece for him and I should then get my mother to sign.
- 20 15. I went straightaway to my mother and tried to talk her into giving the plaintiff a parcel of the lands and tried to get her to receive the money, my mother refused and stated to me that if a lawyer want to get deed sign before he pay all the money and survey he is a scamp and she will never sell the plaintiff any lands he is dishonest.
- 30 16. I went to the plaintiff's office shortly after and told him my mother now says she will not sell to him any land at all and that he must receive back his money. The plaintiff then told me he must get a piece of the land for he already hold me: I dont know what I sign to and he is a lawyer.
- 40 17. Since then, in December of 1971, I have unsuccessfully tried to hand back the plaintiff's money and upon advice deposited the same at the Canadian Imperial Bank of Commerce to the plaintiff's account.
- 50 18. At no time did I or anyone or the plaintiff demarcate or mark out a portion of my mother's lands. I acted as a friend of and on behalf of the plaintiff only to ask my mother to sell a piece of her lands to the plaintiff. I have no authority to sell my mother's lands as the plaintiff well knew.
19. The plaintiff has never been in possession of any parcel of land owned by my mother nor have I ever seen the plaintiff in occupation of any part or portion of any and lands owned by my mother nor have I ever seen the plaintiff exercising any acts of ownership or dominion in and over any lands owned by my said mother.
20. I have never marked out or pointed out or indicated to the plaintiff any parcel or piece of land as subject of any agreement between the plaintiff and my mother or myself. AND to the

In the High  
Court

No. 6  
Affidavit of  
Stephen Bascombe  
26th July 1977  
(Contd.)

best of my knowledge information and belief  
my mother never put the plaintiff into  
possession of any land whatever. I have  
never put or attempted to put the plaintiff  
into possession of any lands anywhere.

21. On the 20th July, 1977 I saw the plaintiff for  
the first time on a portion of the private road  
owned by my mother at Villa.

SWORN TO AT THE REGISTRY )  
KINGSTOWN, SAINT VINCENT ) 10  
this 26th day of July, 1977)  
BEFORE ME: ) /S/ Stephen Bascombe  
)  
)  
) /S/ K. BACCHUS )  
) Dep. REGISTRAR )

No. 7  
Affidavit of  
H. Eardley  
Stephens  
3rd May 1979

No. 7

Affidavit of H. Eardley Stephens

IN THE HIGH COURT OF JUSTICE  
SAINT VINCENT

1977 No. 139

BETWEEN: EMERY W. ROBERTSON  
of Cane Garden

Plaintiff

20

- and -

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

Defendants

I, H. EARDLEY STEPHENS of Chambers in Kingstown  
of Saint Vincent the Solicitor in this action for  
the above-named plaintiff make oath and say as  
follows:-

1. This action was commenced by Writ dated and  
filed on 25th July, 1977 and the Third named  
Defendant also brought an action by Writ of  
Summons dated 22nd July, 1977 and filed on the  
25th July, 1977 and numbered Suit No. 137 of  
1977 against the Plaintiff and the three (3)  
other persons a copy of this Writ is exhibited  
herewith and marked "H.E.S.1". 30
2. On the said 25th July, 1977 the plaintiff by  
Summons applied for an order that the second  
and third defendants be, inter alia, restrained,  
whether by themselves or by their servants or  
agents or otherwise howsoever from entering or  
crossing the said property and from interfering  
and/or molesting the plaintiff in the use and  
occupation of the said property. A copy of the 40



said Summons is exhibited herewith and marked "H.E.S.2".

In the High Court

No. 7  
Affidavit of  
H. Eardley  
Stephens  
3rd May 1979  
(Contd.)

10 3. The third named defendant by Summons and Notice of Appointment to hear Originating summons dated 24th August, 1977 respectively and filed on the said 24th August, 1977 applied for an order restraining the plaintiff his servants or agents in similar terms as the plaintiff's said Summons. Copies of the said summons and Notice of Appointments are exhibited herewith and marked "H.E.S.3" and "H.E.S.4".

4. The third named defendant who is also the plaintiff in Suit 137 of 1977 by summons dated 28th July, 1977 in Suit 137 of 1977 applied for an order against the fourth named defendant in the said Suit who is also the plaintiff in this Suit. A copy of the said Summons is exhibited herewith and marked "H.E.S.5".

20 5. The plaintiff herein took out a Summons dated and filed on 30th July, 1977 for an order to set aside the Writ of Summons in the said suit No. 137 of 1977. A copy of the said summons is exhibited herewith and marked "H.E.S.6".

30 6. Thereafter there were hearings and adjournments of the several summonses and save for the summons of the plaintiff herein and fourth named defendant in suit No. 137 of 1977 the summonses are still pending. It was however the understanding of all parties concerned that nothing will be done to the said property to change or alter the status quo.

7. Since then the statement of claim in the action has been settled by counsel and ready for service and filing but the defendants through their solicitor have continued to refuse to accept same or to consent to it being filed out of time as is the usual practice.

40 8. A formal request was made to the Defendants' Solicitor. A copy of which is exhibited herewith and marked "H.E.S.7".

50 9. To date the Defendants' Solicitor has not consented to the filing and serving of the Statement of Claim out of time although the Statement of Claim is ready for serving and filing. A copy of the Statement of Claim which is ready to be served on the Defendants in the event of this Honourable Court granting me leave to file this said Statement of Claim out of time as aforesaid is exhibited herewith and marked "H.E.S.8".

In the High  
Court

No. 7  
Affidavit of  
H. Eardley  
Stephens  
3rd May 1979  
(Contd.)

10. It has been brought to my attention by the plaintiff and I verily believe that the third named defendant has recently commenced to build a house on the said land.

SWORN TO AT THE REGISTRY)  
Kingstown, this 3rd day )  
of May, 1979 )  
) (Sgd) H.E. Stephens  
(Sgd) Kathleen I. Mason)  
ag Dep. REGISTRAR )

This Affidavit is filed on behalf of the Plaintiff. 10

CERTIFIED A TRUE COPY

Registrar

No. 8  
Interlocutory  
Injunction  
31st May 1979

No. 8

Interlocutory Injunction

IN THE HIGH COURT OF JUSTICE  
SAINT VINCENT

1977 No. 139

BETWEEN: EMERY W. ROBERTSON  
of Cane Garden Plaintiff

- and -

INEZ BOATSWAIN of Villa 20  
STEPHEN BASCOMBE of Belair  
GRAFTON ISAACS of Cane Garden  
Defendants

Before the Honourable Mr. Justice Glasgow  
(in Chambers)

The 31st day of May, 1979

Entered the 22nd day of June, 1979.

UPON HEARING Counsel for the Plaintiff and counsel  
for Nos. 1 and 2 defendants No. 3 defendant not  
appearing by counsel or in person. 30

AND UPON READING the affidavits filed therein.

IT IS ORDERED THAT Upon the plaintiff undertaking  
to abide by any order as to damages which the  
court may make in case it should afterwards be of  
the opinion that the defendants have by reason of the  
order sustained any which the plaintiff ought to  
pay.

IT IS FURTHER ORDERED that the second and third  
defendants be restrained whether by themselves  
their servants or agents from entering and/or 40

crossing the Plaintiffs 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 being ALL that lot piece or parcel of land situate at Villa in the State of Saint Vincent approximately 1¼ acres of land and butted and bounded on one side by lands of Christopher Norris on a second side by lands of Johnnie Alves on a third side by lands of Ruth Boatswain and on the fourth side by remaining lands of the first named defendant.

In the High Court

No. 8  
Interlocutory  
Injunction  
31st May 1979  
(Contd.)

10

BY THE COURT

(Sgd) K. Bacchus  
ag. REGISTRAR

If you the within-named Stephen Bacombe and Grafton Isaacs neglect to obey this order you will be liable to process of execution for the purpose of compelling you to obey same.

20

No. 9  
Notice of Motion

No. 9  
Notice of  
Motion  
31st July 1979

IN THE HIGH COURT OF JUSTICE  
SAINT VINCENT

1977 No. 139

BETWEEN: EMERY W. ROBERTSON

Plaintiff

- and -

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

30

TAKE NOTICE that the High Court of Justice at Kingstown Saint Vincent will be moved before His Lordship Mr. Justice Eardley Glasgow on the 15th August 1979 at 9 o'clock or so soon thereafter as Counsel can be heard by Mr. Othniel R. Sylvester counsel for the above-named plaintiff for an order that the 3rd named defendant do stand committed to Her Majesty's Prison Kingstown to be there imprisoned until further order for his contempt in failing and/or refusing to obey the order of the Court made the 31st day of May, 1979 the terms whereof were personally communicated to the 3rd named defendant by Andrew Cummings Solicitor in the month of June, and Notice of which order was brought to his attention by Arliegh Douglas on the 22nd day of June 1979 and a copy of the said Order was served personally on the defendant on the 11th day of July, 1979.

40

AND that the costs of and incidental to this application may be paid by the defendant.

50

Dated this 31st day of July, 1979.

.....  
Sgd: Othniel R. Sylvester, Solicitor  
for Emery W. Robertson whose address  
for service is Chambers Whitechapel  
Kingstown.

TO: GRAFTON ISAACS

JUDGE'S NOTES 21st and 22nd August 1979

No.10  
Judge's Notes  
21st and 22nd  
August 1979

139 of 1977

TUESDAY 21st AUGUST, 1979

EMERY W. ROBERTSON

V

INEZ BOATSWAIN  
STEPHEN BASCOMBE  
GRAFTON ISAACS

10

Mr. O.R. Sylvester for Plaintiff

Mr. B. Frederick states that he appears for  
3rd Deft. but that he is watching the interest of  
1st and 2nd Defts.

Mr. Sylvester:

Motion for Contempt as against 3rd Deft.  
Grafton Isaacs. Notice of Motion together with  
Notice of Evidence filed 3/8/79. Affidavit of  
Gaspin McNeil filed 13/8/79. Affidavit of Gaspin  
McNeil filed 20/8/79.

20

Notice made pursuant to 0.73 R.S.C. 1972 0.73  
r.2. It is contended that 3rd Deft. failed to  
obey Court Order made on 31/5/79 which order was  
served on 3rd Deft. personally by Oscar Moses on  
11/7/79. The evidence in contempt proceedings is  
by way of affidavit. There has been no affidavit  
filed by 3rd Deft. in this matter but under 0.73  
r.4(5) it is open to the person sought to be  
committed to give evidence on his own behalf if  
he so wishes. It is also open to the person  
sought to be committed to express a desire to  
cross-examine the persons who made affidavits in  
support.

30

Mr. Sylvester reads affidavit of Calvin  
Mandeville filed 31/7/79.

(Mr. Frederick objects and states that it is  
not open to Plaintiff to introduce photographs as  
evidence except by consent or by leave of the  
Court. Phipson on evidence 9th Edition P.564  
para.8. Noakes on Evidence p.417. Mr. Frederick  
states that such parts of the affidavit of Calvin  
Mandeville as tend to introduce a photograph into  
evidence ought to be expunged 0.38 r.5. Note on)  
0.38 r.5 in Sup. Court Practice 1970.

40

Mr. Sylvester states that this is not the trial of an action 0.38 r.2(3) 0.41 r.5 0.41 r.6 if the photograph is scandalous, irrelevant or otherwise oppressive Court may strike it out 0.41 r.11.

In the High Court

No.10  
Judge's Notes  
21st and 22nd  
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(Contd.)

Mr. Frederick withdraws his objection.

10 Mr. Sylvester continues to read affidavit of Calvin Mandeville.

Mr. Sylvester starts to read the affidavit of Andrew Cummings filed 31/7/79.

Mr. Frederick states that the said affidavit is excluded because it is privileged. Phipson on Evidence 9th Ed. P.203 professional Confidence. Noakes 4th Ed. P.195.

20 Mr. Sylvester refers to Peters v Patterson (1961) 3 W.I.R. 439 at 447 letter E. Nothing in Mr. Cummings affidavit which amounts to a breach of confidence.

Mr. Frederick a solicitor in so far as he has no duty to the Court qua afficer of the Court in which case he is bound by the Rules to the Court but outside of that relationship, communications between himself and a client are privileged. Peters v. Patterson not relevant.

Ruling on admissibility or otherwise of affidavit of Robert Andrew Cummings deferred.

30 Mr. Sylvester reads affidavit of Arleigh Douglas filed 31/7/79, then affidavit of Oscar Moses filed 31/7/79.

#### CLOSE OF EVIDENCE

Mr. Frederick submits that the matter is incapable of being served under 0.34 r.11(1).

Mr. Sylvester states that Mr. Frederick should say whether he stands on his submission or not. 12 Atkins 2nd Ed.p.109 para.10 Knight v Clifton (1971) 2 All E.R.378.

40 Mr. Frederick states that he is not bound to elect.

Court agrees with Mr. Frederick.

Mr. Frederick refers to 0.34 r.11(1)(a) and says that no party has taken any proceeding or filed any document in the cause for one year from

In the High  
Court

No.10  
Judge's Notes  
21st and 22nd  
August 1979  
(Contd.)

the date of the last proceeding. He states that the last proceeding had in Suit 139 of 1977 was on 13/9/77 in which together with Suit 137 of 1977 there was an adjournment for a date to be fixed.

Mr. Sylvester objects to Mr. Frederick making those statements and submits that affidavit evidence should have been given since submissions cannot be made in vacuo. Mr. Sylvester also states that even where there is an irregularity in an order it cannot be treated as a nullity but operates until by a proper application it is discharged. Blake v. Blake 49 E.R.1165 Chuck v. Cremer (1846) 41 E.R. 884. 8 Hals 3rd Ed. P.28 para. 50 Orders improperly obtained. 10

Mr. Frederick states that he is referring to the record in this case Mr. Frederick cites 0.3 r.6.

COURT RISES

COURT RESUMES

20

Adjd. to 22/8/79 at 9.30 a.m.  
Wed. 22nd August, 1979

On Resumption 9.30 a.m.

Mr. Sylvester refers to 0.35 r.6(3) & (4). Phipson on Evidence 9th Ed. P.49. Laurie v. Raglan Bldg. Co. (1941) 3 All E.R. 332 at p.337. Hadkinson v. H. (1952) 2 All E.R. 567 at p.568. 3rd Deft. Cannot be heard to challenge the order of the Court. Spokes v. Banbury Board of Health (1865) 1 L.R. Equity p.42 at p.48. Jennison v. Baker(1972) 1 All E.R.997. Phipson 9th Ed. P.28. Question of abandonment cannot be an issue in this matter. 30

Mr. Frederick states that he wants to argue that the injunction of 31/5/79 is bad. Indorsement on Writ No.139 of 1988, (sic) paras.1,4,5,6 and 8 The order seeks to restrain defendants whether by themselves, their servants or agents from entering or crossing the Plaintiff's property. The format of the injunction and its contents are those of a final injunction. 22 Atkins Court Forms 2nd Ed. P.19. The injunction tends to show that there has been a final finding on the merits that it is the Plaintiff's property. 40

The Motion dated 31/7/79 is bad. 0.73 r.2(2) requires notice of Motion stating the grounds of the application to be served on person sought to be committed, 1970 Annual practice. Where Committal is sought or breach of an injunction it

must be made clear what the defendants is alleged to have done and that it is a breach. The Motion of 31/7/79 fails to comply with the rules if Motion is bad it naturally fails. 0.73 r.4(3) plaintiff cannot therefore attempt to rectify the situation. 0.20 r.8 R.S.C.1970. Mc Illraith v. Grady (1967) 3 All E.R.625, at p.627 letters F. Motion is bad. Gordon v. G. (1946) 1 All E.R. 247, at p.250. No grounds stated in notice of Motion.

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21st and 22nd  
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(Contd.)

10

Plaintiff's affidavit must show that there has been a breach and that 3rd defendant has committed it. Affidavit of R.A. CUMMINGS wholly immaterial. Mandeville's affidavit. Whose land, house or workmen? Court should dismiss the matter and appoint someone to assess damages.

Mr. Sylvester:

20

Insofar as submissions made by counsel with regard to the interlocutory injunction - its validity, form contents etc. - that is not a proper issue to be determined on this contempt motion. It is elementary that the price of an Interlocutory injunction is an undertaking for damages. Tucker v. New Brunswick Trading Co. of London (1890) Ch. D.249 at 253. 22 Atkins 2nd Ed. P.71. Immaterial whether contempt interlocutory or final. 9 Hals 4th Ed. para. 66 p.40.

30

0.73 r.2(2) Rules do not call for specific grounds as opposed to grounds. According to the affidavits, 3rd deft. was on, the land after the date of the injunction. As the uncontroverted affidavits stand, there has been a breach by 3rd deft. of the order.

In re J.A. (An infront) (1965) 2 All E.R.168, at p.170 - 171. Isaac v. Cooley et al (1967) 12 W.I.R. 381, 387, 389, 3rd Deft. cannot complain about not knowing what the contempt alleged is all about. Seaward & ors v. Patterson (1895 - 99) All E.R. Rep.1127.

40

Adjd. to 1.30 p.m.  
on Resumption 1.35 p.m.

Mr. Sylvester continues:

Motion before the court is a proper Motion. No misunderstanding as to what alleged contempt was all about.

0.3 r.6 R.S.C. 1970. Counsel said that an

In the High  
Court

order was made on 13/9/77 adjourning matters for  
a date to be fixed.

No.10  
Judge's Notes  
21st and 22nd  
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(Contd.)

0.34 r.11. Any step taken by a party in  
accordance with any of the Rules of Court with a  
view to the furtherance of the pending matter is  
a proceeding in the matter. It is not correct  
that the last proceeding before May 1979 was on  
13/9/77. The last proceeding in the matter was  
on 1/6/78 pursuant to 0.3 r.5(3) on 1/6/78 a  
letter was sent to Mr. Frederick requesting his  
consent to the filing of the S. of C. out of time.  
Barrow v Caribbean Pub. Co. Ltd. I 1968) 11 W.I.R.  
461, at P.463. Requests were made to counsel.  
No automatic abandonment. One cannot look at the  
record and determine what was the last proceeding  
when a step has been taken in pursuance of a rule  
of Court, then it is a proceeding. In absence of  
counter affidavits the affidavits in support of  
the motion show that there was a total disregard  
of the order of the Court. It is not necessary to  
show that the breach was contumacious. Heaton's  
Transport Ltd. v. T.G.W.U. (1972) 3 All E.R.101,  
at p.103.. Phonographic performance Ltd. v.  
Amusement Caterers (Peckham) Ltd. (1963) 3 All  
ER.493,496. It is in the Public interest that  
orders of the Court should be obeyed. On the  
affidavits before the Court there is evidence of  
contempt. There is no affidavit in answer to  
those. 3rd Defendant is in contempt and ought to  
be punished for his contempt.

10

20

30

Mr. Frederick in reply:

Barrow Case P.462. A letter was directed to  
the Regr. to put a case on the list. It was put  
on the list and that was a step.

There is no inconsistency between 0.3 r.6 and  
0.34 r.11 (1)(a).

Gordon v. G. (Supra) p.252 letter D.

C.A.V.



Judgment 22nd November 1979

SAINT VINCENT & THE GRENADINES

No.11  
Judgement 22nd  
November 1979

IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No.139 of 1977

10 BETWEEN: EMERY W. ROBERTSON of Cane Garden  
Plaintiff

- AND -

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

O.R. Sylvester for Plaintiff  
J.B. Frederick for third defendant

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1979, Aug, 21, 22, Nov. 22

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J U D G M E N T

20 GLASGOW, J.

This motion arises out of an action started by a Writ dated 23rd July, 1977 and issued on 25th July, 1977. The Plaintiff moves for an order that the third-named defendant do stand committed to Her Majesty's Prison, Kingstown, to be there imprisoned until further order for his alleged contempt "in failing and/or refusing to obey the Order of the Court made the 31st day of May, 1979 the terms whereof were personally  
30 communicated to the 3rd named defendant by Andrew Cummings Solicitor in the Month of June and Notice of which Order was brought to his attention by Arleigh Douglas on the 22nd day of June, 1979 and a copy of the said Order was served personally on the defendant on the 11th day of July, 1979."

The Writ in the said action was indorsed with the relief required in the action. This relief included the following:-

40 (a) "Specific Performance of an oral agreement between the Plaintiff and the first named Defendant Inez Boatswain made in July, 1971 for the sale by the said First named Defendant to the Plaintiff of approximately 1½ acres of

In the High  
Court

No. 11  
Judgment 22nd  
November 1979  
(Contd.)

freehold land situate at Villa for the price  
of \$7000.00 (hereinafter referred to as the  
'said Property')

- (b) A Declaration that the first and/or third  
named Defendants is and/or are trustees of  
the said property for the Plaintiff.
- (c) An injunction to restrain the second and third  
Defendants whether by themselves or by their  
servants or agents or otherwise howsoever  
from entering or crossing the said property  
and from interfering and/or molesting the  
Plaintiff whether by himself his servants or  
agents or otherwise howsoever in the  
occupation and use of the said property". 10

By a summons dated and filed on the 25th July,  
1977 the plaintiff required all parties concerned  
to attend before the Judge in Chambers on Thursday  
the 28th July, 1977 at 9 o'clock "on the hearing  
of an application by the Plaintiff for an order  
that the second and third defendants be restrained  
whether by themselves, or by their servants or  
agents or otherwise howsoever from entering or  
crossing the said property and from interfering  
and/or molesting the plaintiff whether by his  
servants agents or otherwise howsoever in the  
occupation and use of the said property." The  
said summons was supported by an affidavit sworn  
by the plaintiff. The second and third defendants  
swore and filed affidavits in opposition. 20 30

Appearances were entered in the action for  
all three defendants on the 26th July, 1977. To  
date, no statement of claim has been served on  
any of the defendants.

On the 29th May, 1977 a notice was filed in  
the relevant Court file to the effect that Mr.  
E.A.C. Hughes had replaced MR. J.H. Bayliss  
Frederick as Solicitor for the third defendant.  
On the same day a letter addressed to the  
Registrar was received from Mr. R. Andrew  
Cummings, Barrister-at-Law and an associate of  
Mr. Hughes Mr. Cummings stated in the said letter  
that Mr. Hughes was then out of the State and  
was scheduled to return in early July. Mr.  
Cummings requested an adjournment of "a chamber  
hearing scheduled for Wednesday 30th May, 1979  
until the return of the said E.A.C. Hughes" In  
fact the plaintiff's summons of the 25th July, 1977  
had been fixed for hearing on Thursday the 31st  
May, 1979. 40 50

On the hearing of the said summons on Thursday

the 31st May, 1979, the Plaintiff and his counsel In the High  
were present, but neither the third defendant nor Court  
his counsel was present. An interlocutory  
injunction was granted in terms of the plaintiff's No.11  
summons and the plaintiff was required to give Judgment 22nd  
the usual undertaking as to damages. The November 1979  
injunction, as drawn up by the plaintiff's (Contd.)  
Solicitor and settled by the Registrar, is in the  
following terms:-

10 "Before the Honourable Mr. Justice Glasgow  
(in Chambers) The 31st day of May, 1979.

Entered the 22nd day of June, 1979.

UPON HEARING

Counsel for the Plaintiff  
and counsel for Nos 1 and 2  
Defendants  
No. 3 Defendant not  
appearing by Counsel or in  
person.

AND UPON READING

the Affidavit filed therein.

20 IT IS ORDERED THAT

Upon the Plaintiff undertaking  
to abide by any order as to  
damages which the Court may  
make in case it should  
afterwards be of the opinion  
that the defendants have by  
reason of the order sustained  
any which the Plaintiff  
ought to pay.

30 IT IS FURTHER  
ORDERED

that the second and third  
defendants 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  
40 the property being ALL that  
Lot piece or parcel of land  
situate at Villa in the State  
of St.Vincent being  
approximately 1¼ acres of  
land and butted and bounded  
on one side by lands of  
Christopher Norris on a  
second side by lands of  
Johnnie Alves on a third  
50 side by lands of Ruth  
Botswain and on the fourth

No.11  
Judgment 22nd  
November 1979  
(Contd.)

BY THE COURT

/S/ K. Bacchus  
Ag. REGISTRAR  
22/6/79

If you the within-named Stephen Bascombe and Grafton Isaacs neglect to obey this Order you will be liable to process of execution for the purpose of compelling you to obey same. 10

On the 22nd June, 1979, one Arleigh Douglas, a registered private investigator, received from the plaintiff's Chambers a copy of the said injunction and a copy of the plaintiff's Undertaking as to Damages. At about 4.40 p.m. on the same day Mr. Douglas went to Villa where he saw a house being constructed. The third defendant was on the site paying men. Mr Douglas informed the third defendant that he had in his possession an injunction from the Court for the third defendant, and he requested the third defendant to take the Court's Order. The third defendant refused to accept the said Order. He told Mr. Douglas that Mr. Hughes is his Solicitor and that the Order must be served on Mr. Hughes. 20

On the 11th July, 1979, at Kingstown, one Oscar Moses, a retired bailiff of the High Court, served the third defendant personally with a true copy of the said injunction and a copy of the plaintiff's Undertaking as to Damages. 30

On the 26th July, 1979, at about 10 a.m., one Calvin Mandeville, a photographer, saw men working on a building erected on the land described in the said injunction. At about 1 p.m. on the same day, Mr. Mandeville was in Kingstown at one Alphie King's Garage when the third defendant arrived in his car and told him that he heard that he (Mr. Mandeville) had gone to his (third defendant's) premises and taken pictures and that if he had met him there he would shot him. Mr. Mandeville told the third defendant that he is no bird, and that if the third defendant wanted trial by combat he should come out of his car. The third defendant remained in his car brandishing a gun and making noise. 40

On the 31st July, 1979 the plaintiff applied for an order of committal against the third

defendant for his alleged contempt in failing and/or refusing to obey the order of the Court made on the 31st May, 1979. The application was made by motion as required by Order 73 r.2 of the Rules of the Supreme Court (Revision) Order 1972, and was supported by the affidavits of Messrs Andrew Cummings Arleigh Douglas, Oscar Moses and Calvin Mandeville. The plaintiff on the 2nd August, 1979 obtained an order under 0.48 r.6(3) of the Rules of the Supreme Court 1970 and that said motion should be heard on the 15th August, 1979, at 9 a.m.

In the High Court

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Judgment 22nd  
November 1979  
(Contd.)

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On the 3rd August, 1979 at Villa, a bailiff of the High Court served the third defendant with a copy of Notice of the said Motion, Notice of Evidence, and affidavits of Calvin Mandeville, Andrew Cummings, Oscar Moses and Arleigh Douglas, together with a copy of the said injunction and Undertaking as to Damage, and certain exhibits.

On the 15th August, 1979 the date fixed for the hearing of the motion, the plaintiff and his counsel and the third defendant's counsel (Mr. Hughes) were present in Court, but the third defendant was absent. Counsel for the third defendant requested an adjournment. The hearing of the motion was accordingly adjourned to the 21st August, 1979.

30

On Tuesday the 21st August, 1979, when the motion came on for hearing, the Plaintiff and his counsel were present, as were also the third defendant and his counsel Mr. J.H.B. Frederick, Mr. Hughes having earlier notified the Court that he no longer represents the third defendant.

40

Counsel for the plaintiff read the affidavit of Calvin Mandeville which was filed on the 31st July, 1979. Counsel for the plaintiff started to read the affidavit of Robert Andrew Cummings filed on the 31st July, 1979, but counsel for the third defendant objected to this, on the ground that communications between Mr. Cummings, who is a Solicitor, and the third defendant are privileged. Argument was heard on this objection and the Court's ruling thereon deferred. I now rule in favour of the third defendant. Counsel for the plaintiff next read the affidavit of Arleigh Douglas and Oscar Moses, both of which were filed on the 31st July, 1979. The reading of the said affidavits brought to a close the evidence in support of the motion.

50

In the High Court

No. 11  
Judgment 22nd  
November 1979  
(Contd.)

Counsel for the third defendant thereupon referred to Order 34 rule 11 (1)(a) of the Rules of the Supreme Court 1970 which reads as follows:

"11.(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 of consent to judgment--

(a) any party has failed to take any proceedings or file any document therein for one year from the date of the last proceedings had on the filing of the last document therein". 10

Counsel for the third defendant stated that no party has taken any proceedings or filed any document in the cause for one year from the date of the last proceeding. He said that the last proceeding had in the action was "on the 13th September, 1977 in which together with Suit 137 of 1977 there was an adjournment for a date to be fixed." 20

Counsel for the plaintiff objected to counsel for the third defendant making these statements and submitted that affidavit evidence should have been given, since submissions cannot be made in vacuo. Counsel for the plaintiff also stated that even where there is an irregularity in an order, it cannot be treated as a nullity, but operates until by a proper application it is discharged. Counsel for the plaintiff cited Blake v. Blake 49 E.R. 1165, Chuck v. Cremer (1846) 41 E.R. 884 and 8 Halsbury's Laws of England (3rd Edition) p.28. para. 50. 30

I will deal first with the objection made by counsel for the plaintiff of counsel for the third defendant's statement, unsupported by affidavit, that no party has taken any proceeding, or filed any document in the cause for one year from the date of the last proceeding. In Barrow v Caribbean Publishing Co. Ltd. (No.1) - a Barbados High Court case - the defendant company issued a summons to strike out or amend certain portion of the statement of claim and to extend the time for filing the defence. The summons first came on for hearing on the 2nd November, 1965 and at the end of that hearing there was a consent order that the case be taken off the list to be returned to the list by the judge or by either side after tripartite consultation. Notice of hearing was issued by the Registry on the 8th March, 1967, for the 14th March, 1967. On the 14th March, 1967, at the commencement of the resumed hearing of the 50

summons, counsel for the defendant company took points in limine that the cause was deserted by virtue of 0.32 r.8 of the Rules of the Supreme Court (Barbados) and that the cause was abandoned by virtue of 0.32 r.9 of the said Barbados Rules (which is similar to 0.34 r.11 of the Rules of the Supreme Court 1970). It was contended on behalf of the Plaintiff in that case that in order to submit that the cause was deserted or abandoned, the defendant company should have issued a summons for that purpose. The learned judge, Hanshell, J. disagreed and held that there was no irregularity in procedure. The judgment of Hanshell, J. (in which he held that the cause in question is deemed abandoned and incapable of being revived) was reversed by the Barbados Court of Appeal, but not on the ground of any irregularity in procedure.

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Court

No 11  
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November 1979  
(Contd.)

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The relevant Court file and Cause Book entry show that on the 13th September, 1977, an interlocutory matter in this action was adjourned to a date to be fixed, and that thereafter no proceeding was heard or document filed in the action until the 3rd May, 1979 when an affidavit sworn by the plaintiff was filed. The court records also show that no request for hearing or consent to judgment has been filed, nor has judgment been obtained in the action.

30

40

But counsel for the plaintiff stated that it is not correct that the last proceeding in the action prior to May, 1979 was on the 13th September, 1977. He contended that the last proceeding before May, 1979 was on 1st June, 1978 when a letter was sent to Mr. Frederick, the third defendant's solicitor, pursuant to 0.5 r.5(3), requesting his consent to the filing of the statement of claim out of time. In this connection counsel for the Plaintiff stated - and I agree - that any step taken by a party in accordance with any of the Rules of Court with a view to the furtherance of the pending matter is a proceeding in the matter.

50

I am unable for the following reasons to accept as correct the statement of counsel for the plaintiff that a letter as alleged was sent to the third defendant's solicitor on the 1st June, 1978. On the 3rd May, 1979 Mr. H.E. Stephens, the plaintiff's solicitor, swore an affidavit on behalf of the plaintiff. The said affidavit was filed on the 4th May, 1979. Paragraphs 7 and 8 of the said affidavit reads as follows:-

In the High  
Court

No. 11  
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"7. Since then the statement of claim in the action has been settled by counsel and ready for service and filing but the defendants through their Solicitor have continued to refuse to accept same or to consent to it being filed out of time as is the usual practice.

8. A formal request was made to the Defendants' Solicitor. A copy of which is exhibited herewith and marked "H.E.S.,7".

10

A document marked "H.E.S.7" was infact exhibited to the affidavit. The document, a carbon copy, contains after the proper heading, the following:-

"TAKE NOTICE that the plaintiff's Statement of Claim is ready for filing some time now and your consent to its filing is being sought.

Dated the                      day of April, 1979

/s/ H.E. Stephens  
Solicitor for the Plaintiff.

20

To: Mr. J. Bayliss Frederick  
Solicitor for the Defendant

I consent to the Statement of Claim in the above suit being filed out of time

J. Bayliss Frederick for  
the Defendants."

I am of opinion that if a letter had been sent to the third defendant's solicitor in June, 1978 requesting his consent to the filing of the statement of claim out of time, the plaintiff's solicitor would have known of it, and would have referred to it in his affidavit. He made no reference whatever to it. Moreover, it is unlikely that the plaintiff's solicitor, if he had failed in June, 1978 to obtain the consent he sought, would have sent a similar letter to the third defendant's solicitor some ten months later, instead of applying to the Court under 0.3 r.5(1) and (2) for an order granting the required extension. Such an application to the Court was in fact made on the 7th May, 1979.

30

40

In view of the foregoing, I hold that Suit 139 of 1977 must be deemed altogether abandoned and incapable of being revived, such abandonment



becoming effective on the 14th September, 1978.

In the High  
Court

10 The question which now arises is that: Is the third defendant bound to obey the terms of an injunction purportedly granted in a cause after the cause has been abandoned? The obvious answer would seem to be no, but counsel for the plaintiff has cited authorities to which I have already referred, in support of the contrary view, I think a distinction must be drawn between an order of the court made in an existing cause and one made in a cause which no longer exists. In Blake v. Blake (supra) the Master of the Rolls said:

No.11  
Judgment 22nd  
November 1979  
(Contd.)

"The motion to dismiss being intercepted by the order to amend, the order to dismiss cannot be made, but the Plaintiff must pay the costs of the motion.

20 I should feel great difficulty in treating the order to amend as a nullity. It may or may not be regular, but it must remain in operation until, upon a proper application, it is discharged."

30 In my opinion, any order made in an action on or after the date on which such action is deemed altogether abandoned by virtue of 0.34 r.11 (a) is a nullity and liable to be treated as such, if such order is made on the basis that the action is still in existence. The injunction of the 31st May, 1979 is such an order.

40 Counsel for the third defendant also argued that the Court order made on the 31st May, 1979 is bad. According to him, the format of the injunction and its contents are those of a final injunction. Indeed, the injunction purports to restrain the second and third defendants from, inter alia, entering and/or crossing the plaintiff's property, and it fails to limit the duration of the restraints imposed in spite of the said defects, I would have held the said injunction valid if it had been granted in an action which was still in existence.

50 Counsel for the third defendant next argued that the motion is defective. He stated that 0.73 r.2(2) of the Rules of the Supreme Court (Revision) Order 1972 requires the notice of motion stating the grounds of the application, to be served personally on the person sought to be committed. Counsel then referred to the Supreme Court Practice 1970 under the heading

In the High  
Court

No. 11  
Judgment 22nd  
November 1979  
(Contd.)

"Committal". Under the Public "Grounds of application", counsel read the following passage:-

"Where committal is sought for breach of an injunction, it must be made clear what the defendant is alleged to have done and that it is a breach ....."

In Hipkiss v. Follows (1909) 101 L.T. 701 C.A. it was held that where a writ of attachment or a writ of sequestration is moved for on the ground of disobedience to an order containing a number of directions, the particular breach thereof complained of sought to be specified in the notice of motion and in the order made thereon. 10

The notice of motion which was served on the third defendant requires an Order that the third defendant do stand committed to prison "for his contempt in failing and/or refusing to obey the Order of the Court made the 31st day of May, 1979". 20  
In my opinion the notice of motion is defective in that it fails to state even in general terms as it is required to do, the grounds of the application, having regard to the fact that the Order of the 31st May, 1979 seeks to restrain the second and third defendants from doing several acts, the doing of any one of which could constitute a breach of the injunction. This defect, in my judgment, is fatal.

For the foregoing reasons, the motion is dismissed with costs to be taxed. 30

agd: E.F. Glasgow

E.F. GLASGOW  
Puisne Judge.

Notice of Appeal  
26th November 1979

No. 12  
Notice of  
Appeal 26th  
November 1979

IN THE COURT OF APPEAL

NOTICE OF APPEAL

SAINT VINCENT

CIVIL APPEAL No. 9 of 1979

BETWEEN: EMERY W. ROBERTSON PLAINTIFF/  
APPELLANT

10

AND

GRAFTON ISAACS DEFENDANT/  
RESPONDENT

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TAKE NOTICE that the PLAINTIFF/  
APPELLANT being dissatisfied with that  
part of the decision more particularly  
stated in paragraph 2 hereof of the High  
Court of Justice (Civil Jurisdiction  
Suit No. 139 of 1977) contained in the  
Judgment of Mr. Justice Glasgow delivered  
on the 22nd day of November, 1979 DOTH  
hereby appeal to the Court of Appeal upon  
the grounds set out in paragraph 3 and  
will at the hearing of the Appeal seek  
the reliefs set out in paragraph 4.

AND the PLAINTIFF/APPELLANT further  
states that the names and addresses  
including his own of the persons directly  
affected by the Appeal are those set out  
in paragraph 5.

30

2. (a) That Suit No. 139 of 1977 must  
be deemed altogether abandoned and  
incapable of being revived such  
abandonment becoming effective on  
the 14th September, 1978.

(b) The Injunction of the 31st May,  
1979 is a nullity.

(c) The notice of Motion is defective in that it fails to state even in general terms as it is required to do the grounds of the application

(d) The defect in the Notice of Motion is fatal.

(e) The Motion is dismissed with costs to be taxed.

3. GROUNDS OF APPEAL

(1) The learned Judge was wrong in law in allowing and/or permitting the DEFENDANT/RESPONDENT to utilise the PLAINTIFF/APPELLANT'S application for contempt for the purpose of discharging the interlocutory injunction. 10

(2) The Learned Judge was wrong in law in allowing and/or permitting the Defendant/Respondent in contempt proceedings to raise and argue the issue of abandonment of Suit No. 139 of 1977 which was not and ought not to have been an issue in the contempt proceedings. 20

(3) The Learned Judge misconstrued order 34 of the Rules of the Supreme Court 1970, and came to a wrong conclusion in law in holding that Suit No. 139 of 1977 must be deemed to be altogether abandoned and incapable of being revived as from 14th September, 1978 pursuant to O.34 r.11 in that he failed to determine the preliminary questions; 30

(a) Did Suit No. 139 of 1977 ever become ripe for hearing and if so;

(b) when did it become ripe for hearing.

(4) Further and in the alternative Suit No. 139 of 1977 never became ripe 40

for hearing since by 0.34 r.3 a cause or matter shall not become ripe for hearing if there are any interlocutory proceedings pending; and the Summons upon which the interlocutory injunction was made on 31st May, 1979 was pending proceedings in Suit No. 139 of 1977.

In the Court  
of Appeal

No. 12  
Notice of  
Appeal 26th  
November 1979  
(Contd.)

10

(5) The Learned Judge erred in law in holding that where an order of the Court is a nullity that it is open to a person to treat that order as such and to disregard the order without going to the court for relief.

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(6) Further or alternatively the learned Judge erred in Law in disregarding the fundamental principle of law that is, it is the unqualified obligation of every person against who, an order is made by a Court of competent jurisdiction to obey it unless and until that Order is discharged.

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(7) The Learned Judge was wrong in law in deciding the issue of abandonment of the cause or matter out of which the contempt proceedings arose without evidence and which was not an issue in the proceedings with which he was seised.

(8) The Learned trial judge was wrong in law in holding that the notification by a Solicitor to the client of his associate of the terms of an injunction made by a Court of competent jurisdiction against him is privileged.

(9) The Learned Judge was wrong in law in holding;

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(a) That the Notice of Motion is defective and

(b) That that defect is fatal.

4. THE RELIEFS sought are:

(1) That the decision of the Learned Judge be set aside and that Suit No. 139 of 1977 be restored with directions that the contempt proceedings be decided on its merits.

(2) The order for costs be set aside and an order for costs be made in favour of the Plaintiff/Appellant.

5. Persons directly affected by the Appeal: 10

Names	Addresses
EMERY W. ROBERTSON	CANE GARDEN
GRAFTON ISAACS	CANE GARDEN
INEZ BOATSWAIN	VILLA
STEPHEN BASCOMBE	BELAIR

Dated the 26th day of November, 1979.

Othniel R. Sylvester

Solicitor for the  
Plaintiff/Appellant

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Judgment of Court of Appeal 20th July 1981

SAINT VINCENT

No.13  
Judgment  
20th July 1981

IN THE COURT OF APPEAL

CIVIL APPEAL NO.9 of 1979

10 BETWEEN: EMERY ROBERTSON - PLAINTIFF/  
APPELLANT  
AND  
GRAFTON ISAACS - DEFENDANT/  
RESPONDENT

Before: The Hon. Mr. Justice Peterkin - Chief  
Justice  
The Honourable Mr. Justice Berridge  
The Honourable Mr. Justice Robotham  
(Acting)

20 Appearances: O.R. Sylvester for the Appellant  
J.H. Bayliss Frederick for the  
Respondent

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1981; April 7, 8,  
July 20.

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JUDGMENT

ROBOTHAM, J.A. (ACTING)

30 This is an appeal from the judgment of  
Glasgow J dismissing a motion for contempt of  
Court brought by the Plaintiff/Appellant against  
the Defendant/Respondent, for failure to comply  
with the terms of an injunction made by the same  
judge on May 31, 1979.

The action was commenced on July 23, 1977 by  
a Writ (139/1977) naming Inez Boatswain, Stephen  
Bascombe, and the Respondent Grafton Isaacs as  
defendants and the relief sought was:-

40 (1) Specific performance of an oral agreement  
between the appellant and the first defendant  
Inez Boatswain made in July 1971 for the sale  
by her to the appellant of approximately 1½  
acres of land situate at Villa for the price  
of \$7,000.00.

In the Court  
of Appeal

No.13  
Judgment  
20th July 1981  
(Contd.)

- (2) A declaration that the said Inez Boatswain and the respondent are trustees of the property for the plaintiff.
- (3) An injunction to restrain the second defendant Stephen Bascombe and the respondent whether by themselves or their servants or agents or otherwise howsoever from entering or crossing the said property and from interfering and/or molesting the plaintiff/ appellant whether by himself his servants or agents or otherwise howsoever in the occupation and use of the said property.

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Appearances were entered by all three defendants on July 26, 1977, but no statement of claim was ever filed.

On July 25, 1977, a summons was issued to all parties to attend before a Judge in Chambers on July 28, 1977, for the hearing of the application for an interlocutory injunction. Affidavits in opposition were filed on behalf of the defendant Bascombe, and the respondent. The matter was not heard on July 28, but was adjourned to September 13, 1977. On that date it was adjourned to a date to be fixed.

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Nothing further was done in the matter until May 3, 1979 when an affidavit was filed by the appellant. Thereafter on May 31, 1979 the summons filed on July 25, 1977, for the hearing of the application for the interlocutory injunction was heard. At that hearing the appellant and his counsel were present, but the respondent did not appear, and was not represented by Counsel. Upon the appellant giving the usual undertaking as to damages, the interlocutory injunction in the terms sought was granted. The terms of the order were personally and quite properly communicated to the respondent in June 1979 by Andrew Cummings, a Solicitor, who had earlier as an associate of Mr. E.A.C. Hughes represented the respondent; notice of the order was also communicated to the respondent by Arleigh Douglas, when he tried unsuccessfully to serve the Court's Order on him on June 22, 1979; on July 11, 1979 Oscar Moses a Bailiff of the High Court personally served the respondent with a copy of the Court's Order, along with the undertaking as to damages. There can be no doubt therefore that the terms of the order were regularly communicated to the respondent. Despite this, he completely ignored the Order of the Court, and continued by himself, his servants and/or agents to carry out construction work on the land. Particulars need not be given because

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there is no dispute that this is precisely what the respondent intentionally did for reasons which will appear later.

In the Court  
of Appeal

On July 31, 1979, the plaintiff/appellant brought the motion seeking to have the respondent committed:-

No. 13  
Judgment  
20th July 1981  
(Contd.)

10 "...for his contempt in failing and/or refusing to obey the Order of the Court made the 31st day of May, 1979, the terms of which were personally communicated to him by Andrew Cummings Solicitor in the month of June and notice of which Order was brought to his attention by Arleigh Douglas on the 22nd day of June 1979, and a copy of the said Order was served personally on him on the 11th day of July 1979".

20 The motion was heard by the same judge on August 21/22, 1979. It was resisted on two grounds namely:-

- (1) The motion was defective in that it did not state the grounds of the application as required by Order 73 Rule 2(2) of the Rules of the Supreme Court (Revision) Order 1972.
- (2) The granting of the interlocutory injunction on May 31, 1979 was a nullity because no document had been filed for one year from the date of the last proceeding had on September 13, 1977 when the application for the interlocutory injunction was adjourned for a date to be fixed. The suit 137/1977 was therefore deemed altogether abandoned and incapable of being revived by virtue of Order 34 Rule 11(1)(a) of the Rules of the Supreme Court 1970, with effect from September 14th, 1978. In the given circumstances the order itself being invalid, there was no obligation to obey it. In a written judgment delivered on November 22, 1979, the learned trial judge upheld both submissions and dismissed the motion.

At the hearing of this appeal, Mr. Frederick for the respondent raised the preliminary objection that the appellant had no right of appeal and referred the Court to section 60 of the West Indies Associated States Supreme Court Act 1970. I can summarily dispose of this objection by stating my view that section 60 deals only with criminal contempt, and has no application to civil matters. The grounds of appeal are set out hereunder:-

In the Court  
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No.13  
Judgment  
20th July 1981  
(Contd.)

- (1) The Learned Judge was wrong in law in allowing and/or permitting the Defendant/Respondent to utilise the Plaintiff/Appellants application for contempt for the purpose of discharging the interlocutory injunction.
- (2) The Learned Judge was wrong in law in allowing and/or permitting the Defendant/Respondent in contempt proceedings to raise and argue the issue of abandonment of Suit No.139 of 1977 which was not and ought not to have been an issue in the contempt proceedings. 10
- (3) The Learned Judge misconstrued Order 34 of the Rules of the Supreme Court 1970, and came to a wrong conclusion in law in holding that Suit No.139 of 1977 must be deemed to be altogether abandoned and incapable of being revived as from 14th September, 1978 pursuant to Order 34 Rule 11 in that he failed to determine the preliminary question: 20
  - (a) Did Suit No.139 of 1977 ever become ripe for hearing and if so.
  - (b) when did it become ripe for hearing?
- (4) Further and in the alternative Suit No.139 of 1977 never became ripe for hearing since by Order 34 Rule 3 a cause or matter shall not become ripe for hearing if there are any interlocutory proceedings pending; and the Summons upon which the interlocutory injunction was made on 31st May 1979 was pending proceeding in Suit No.139 of 1977. 30
- (5) The Learned Judge erred in law in holding that where an Order of the Court is a nullity that it is open to a person to treat that order as such and to disregard the order without going to the Court for relief.
- (6) Further or alternatively the Learned Judge erred in law in disregarding the fundamental principal of law that is, it is the unqualified obligation of every person against whom, an Order is made by a Court of competent jurisdiction to obey it unless and until the order is discharged. 40
- (7) The Learned Judge was wrong in law in deciding the issue of abandonment of the cause or matter out of which the contempt proceedings arose without evidence and which was not an issue in the proceedings with which he was seized.

(8) The Learned Trial Judge was wrong in law in holding that the notification by a Solicitor to the client of his Associate of the terms of an injunction made by a Court of competent jurisdiction against him is privileged.

In the Court  
of Appeal

No.13

Judgment  
20th July 1981  
(Contd.)

(9) The Learned Judge was wrong in law in holding:

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(a) that the Notice of Motion is defective and

(b) that that defect is fatal.

I will deal first of all with the question whether or not the motion is defective. (See ground 9)

Order 73 Rule 2 states:-

(1) Where an application for an order of committal may be made to the Court, the application must be made by motion and be supported by an affidavit.

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(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 on the person sought to be committed.

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It is quite clear that the injunction in this case was designed only to enjoin the respondent from trespassing on the land. Not only were the terms of the injunction made on May 31, 1979 regularly communicated to and served personally upon the respondent, but on August 3, 1979 the Bailiff of the High Court for St. Vincent served the motion for committal on the respondent, along with the affidavits of Calvin Mandeville, Oscar Moses, Andrew Cummings and Arleigh Douglas which were being relied on in support of the motion. The notice of motion clearly stated that his imprisonment was being sought "for his contempt in failing and/or refusing to obey the order of the Court made on May 31, 1979".

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I cannot readily conceive of a case where an injunction is granted to restrain a person from doing one of several things. In such a case, if there is a breach of any of them, the party in contempt must be made aware of the particular way in which he has breached the order of the Court. Not only must he know but the Court also must know what the particular matter of contempt is. (Mc Ilworth v Grady 1967 - 3 All E.R.P.625)  
The respondent here could have been in no doubt

In the Court  
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No. 13  
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(Contd.)

whatsoever of the particular contempt for which the appellant 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. It seems almost farcical for time to have been spent arguing this point, when it is clear from the conduct of the respondent and on the admission of his own counsel that he had no intention of obeying the order. Be that as it may I am unable to support the finding of the learned trial judge that the motion is defective. I am of the view that the notice showed sufficient compliance with Order 73 Rule 2.

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Having come to the conclusion that the motion was properly before the Court, before considering the implication of Order 34, two questions arise for consideration

(1) was the respondent in breach of the order made on May 31, 1979?

(2) furthermore even assuming that the order was a nullity, was the respondent entitled to treat it as such thereby completely ignoring the Court's order? The learned trial Judge came to the conclusion that he could, and this is the subject of the appellant's complaint in grounds 5 and 6. The eight of authorities support a contrary view, and counsel for the respondent could refer this Court to no case in point which tended to show that an order such as this one in question could be ignored, a proper application to have it discharged for whatever cause, not having previously been made.

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In an early edition of Oswald on Contempt (3rd edition) 1910 - Page 107, it is stated:-

"An order irregularly made cannot be treated as a nullity but must be implicitly obeyed until by a proper application it is discharged and the same applies to where the order is alleged to have been improvidently made.

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But in such cases, the Court may merely order the offender to pay the costs of the breach and of the application to commit".

In Hadkinson v Hadkinson 1952, 2 All E.R.567 Romer L.J. had this to say on the question at page 569 letter C:-

"It is the plain and unqualified obligation of every person against or in respect of whom

an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or even void. Lord Cottenham L.C. said in *Chuck v Creamer* 47 E.R.841, "A party who knows of an order whether null or void, regular or irregular cannot be permitted to disobey it .... it would be most dangerous to hold that suitors or their Solicitors could themselves judge whether an order was null or void - whether it was regular or irregular. That they should come to the Court and not take it upon themselves to determine such a question. That the course of a party knowing of an order which was null or irregular and who might be affected by it was plain. He should apply to the Court that it might be discharged. As long as it exists it must be obeyed. Such being the nature of this obligation two consequences will in general follow from its breach. The first is that anyone who disobeys an order of the Court .....is in contempt and may be punished committal or attachment or otherwise".

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of Appeal

No.13  
Judgment  
20th July 1981  
(Contd.)

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In the face of this unrelenting rule, it is not surprising that Counsel for the respondent in this Court when pressed had to concede that prima facie on the affidavits the respondent was in breach, whilst maintaining his stand that the order for the injunction being a nullity, no obligations could flow therefrom. I have no hesitation in holding that the respondent was in breach of the order of Glasgow J made on May 31, 1979, irrespective of whether the order was valid or invalid.

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The matter however does not end there. The finding of the learned trial Judge that the suit 137/1977 was abandoned and incapable of being revived with effect from September 14, 1978 has got to be examined. Further if in fact it was abandoned, how if at all does it affect the finding that the respondent is in breach. Counsel for the respondent as shown in 1, 2 and 7 of his grounds contended that the learned trial Judge was wrong in allowing the issue of abandonment to be raised at all in proceedings for contempt of Court before him when:-

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- (1) it was being improperly used by the respondent as a means of discharging the injunction, and

In the Court  
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No. 13

Judgment

20th July 1981  
(Contd.)

(2) it was not an issue in the contempt proceeding and had not been raised by way of affidavits.

I am fully in agreement that it was not permissible for the respondent to rely on the provisions of order 34 as a means of discharging the injunction at that stage. The proper course should have been by way of a separate application made for that purpose. As the matter stands however. I cannot say that an interpretation of Order 34 if indeed it turns out that the action had been abandoned, is irrelevant to the proceedings. As will be shown at a later stage it is very relevant on the question of what sanction is to be applied for a breach in those circumstances.

10

The grounds of appeal which deal with this issue are 3 and 4. order 34 Rule 11 reads:-

(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 -

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(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

(b) no application for or consent to revivor has been filed within 6 months after the cause or matter has been deemed to be deserted;

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(c) if the cause or matter has not on the request of any party been entered in the hearing list within 6 months from the date of any order of revivor.

At the outset, as shown by the manner in which grounds 3 and 4 are drafted, it was being contended by Counsel for the respondent that the learned trial Judge was wrong in having failed to determine as a preliminary question whether or not the suit had become ripe for hearing. It was pointed out to him however that the matter could not have become ripe for hearing because under Order 34 Rule 2(2) the presence of the application for the interlocutory injunction on the file would have precluded this. When the decision of Barrow v Carribbean Publishing Company Limited - (No.1) - (1968) 11 W.I.R. P.176 a first instance decision

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in the Supreme Court of Barbados, and the decision of the Court of Appeal in the same case to be found at (1968) 11 W.I.R. P461 were brought to his attention, he readily conceded that they were against him, on the question of the suit being ripe for hearing, and agreed that the relevant portion of Order 34 as it affected this case was Rule 11 (1)(a) as quoted above. In Barbados, this rule appears in identical terms in their rules of the Supreme Court 1958 as Order 32, 9(1) (a) and the order is in other respects in pari materia with Order 34. The facts of that case are that Barrow commenced an action in the Supreme Court of Barbados by a writ on August 23, 1965, Appearance was entered on September 1, 1965 and a statement of Claim delivered on September 15, 1965.

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of Appeal  
No. 13  
Judgment  
20th July 1981  
(Contd.)

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No defence was filed and on October 27, 1965 a summons was filed on behalf of the defendant to strike out or amend the statement of claim, and to extend the time for filing the defence. The matter came on for hearing on November 2, 1965 when by consent it was taken off the list to be returned by the Judge or by either side after tripartite consultation. On April 5, 1966 unilateral application was made by the plaintiff in a formal letter to the Registrar to return the case to the list and set it down for hearing. A notice of hearing was issued for April 26, 1966, but there was no record of such a hearing taking place. Another notice of hearing was issued on March 8, 1967, for March 14, 1967. At this resumed hearing, counsel for the defendant took the point in limine that the cause or matter was abandoned by virtue of the Rules of the Supreme Court (Barbados) 1958, Order 32 Rule 9. On behalf of the plaintiff it was submitted that in order to make these submissions the defendant should have taken out a summons for that specific purpose. This was rejected. After hearing arguments Hanshell J. held that the unilateral application by the plaintiff's solicitor in his letter of April 5, 1966 to return the matter to the list was not a "proceeding taken" for the purpose of the rule; that the last proceeding had been the hearing of the interlocutory injunction on November 3, 1965 and at the end of that period, the cause had become altogether abandoned and incapable of being revived; that the resumption of the hearing on March 14, 1967 was not authorised by any rule and was therefore a nullity. At the hearing of the appeal the decision of the learned trial Judge that the letter of April 5, 1966 to the Registrar seeking to have the matter returned to the list was not a proceeding

In the Court  
of Appeal

No. 13  
Judgment  
20th July 1981  
(Contd.)

which would take the matter out of the application of Rule 9(1) was reversed. The suit therefore could not be deemed abandoned, before April 6, 1967. His decision however on the interpretation to be placed on Rule 9(1) was upheld.

Counsel for the respondent sought to distinguish this case from the Barrow case by submitting that there the last proceeding was on November 2, 1965 when the consent order was made charting the future course of the motion. In the instant case, the matter having been adjourned on September 13, 1977 "for a date to be fixed" it was still before the Court and could not therefore be abandoned as no decision was made on the summons. With this submission I cannot agree. As Hanshell J pointed out in the Barrow case (No.1) the intent and purpose of the rule is to provide that if any case or matter is left unattended for a period of one year whether it becomes ripe for hearing or not, it is deemed altogether abandoned and cannot be revived. Such I am afraid is the situation which prevails here. The last proceeding had in this matter was on September 13, 1977 when it was adjourned for a date to be fixed. The year commenced to run from September 14, 1977 and on May 31, 1979 when the injunction was granted, the matter had been abandoned and incapable of being revived from as far back as September 14, 1978, as found by the learned trial Judge. It follows therefore that the order for the injunction ought not to have been made.

It is indeed unfortunate that neither the respondent nor his counsel took the time or made the effort to attend before Glasgow J on May 31, 1979 at the hearing of the application for the interlocutory injunction. Had the issue of abandonment been argued then, much time and expense to either or both parties may have been saved. The conduct of the respondent and his Counsel was compounded by the fact that the respondent well knowing of the existence of the injunction remained in flagrant breach thereof, without any effort whatsoever being made to have it discharged. This Court would be remiss if it did not place on record its condemnation of such conduct albeit that it may have been due to a misconception of the law. It does not absolve the Court however of the responsibility of deciding if it so chooses what sanction if any, should be imposed for the admitted breach in the light of the finding that the order ought not to have been made, the cause having been abandoned.



In Russel v East Anglia Railway 20 L.J.Ch.257, In the Court 1850. 42 E.R.201 the Court there whilst affirming of Appeal the rule that it is not open to a party to question an order of the Court by disobedience, also held that it was not inconsistent with the general rule that the Court in administering punishment for disobedience to an order will attend to all the facts of the case and amongst others to the circumstances under which it was made - (see also Halsbury 3rd edition vol.21 para.916, page 343). Halsbury 3rd edition vol.8 para.50, page 28 states:-

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(Contd.)

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"The opinion has been expressed that the fact that an order ought not to have been made is not a sufficient cause for disobeying it, that disobedience to it contributes a contempt, and that the party aggrieved should apply to the Court for relief. It is submitted that this is still good law. Upon an application to enforce an order irregularly made the Court will give the respondent the benefit of the fact that the order is irregular".

Before stating my final conclusions, I would summarise my findings as follows:-

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- (1) That the motion was not defective and was therefore properly before the Court.
- (2) That prior to the hearing of the interlocutory injunction on May 31, 1979, the last proceeding had in the matter was on September 13 1977, when the application was adjourned for a date to be fixed.
- (3) That no proceedings having been taken or any document filed within one year from the latter date, the suit by virtue of Order 34 Rule 11(1)(a) became altogether abandoned and incapable of being revived with effect from September 14, 1978.
- (4) That in the circumstances the interlocutory injunction on May 31, 1979 ought not to have been made, the suit being then abandoned.
- (5) That despite this it was not open to the respondent to disregard and disobey the terms of the injunction, without taking steps to have it discharged by a Court of competent jurisdiction.
- (6) That his wilful disregard of the order amounted to a breach of the terms of the injunction.

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No. 13  
Judgment  
20th July 1981  
(Contd.)

As events have turned out, and on the basis of these findings, I do not consider that any useful purpose is to be served by remitting the matter to the Court below for a re-hearing. It is always desirable that proceedings should be brought to a finality and this Court can, without doing injustice to either party exercise all the powers of the Court below, where the facts and the circumstances warrant such a course of action. I would therefore allow the appeal, grant the motion and record a finding thereon that the respondent is in contempt of Court, and as such liable to be punished. On the basis of the authorities however, and in the peculiar circumstances of this case, I would refrain from imposing imprisonment or a fine. The respondent however will have to pay costs. I would therefore order that the respondent do pay to the appellant not only the cost of this appeal, but also his costs arising from the breach and the application for the committal, together with his taxed costs on the application for the interlocutory injunction on May 31, 1979.

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.....  
L.L. ROBOTHAM,  
Justice of Appeal  
(Acting)

I agree.

.....  
N.A. BERRIDGE,  
Justice of Appeal

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I also agree.

.....  
N.A. PETERKIN,  
Chief Justice.

Order Granting Final Leave to Appeal

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MOTION NO. 9 OF 1981

No. 14  
Order granting  
Final Leave to  
Appeal 9th  
December 1982

BETWEEN: EMERY ROBERTSON PLAINTIFF/  
APPELLANT

AND

GRAFTON ISAACS DEFENDANT/  
RESPONDENT

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Made the 8th day of December, 1982.

Entered the 9th day of December, 1982.

Before The Honourable Sir Neville Peterkin,  
C.J.  
Neville Berridge, J.A.  
Lascelles Robotham, J.A.

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UPON READING THE NOTICE OF MOTION of the  
above named Defendant (hereinafter called  
"the Respondent") dated the 15th day of  
October, 1982, preferred unto this Court for  
final leave to appeal to the Judicial  
Committee of the Privy Council against the  
Judgment of this Court delivered herein on  
the 20th day of July, 1981.

AND UPON READING THE SAID MOTION and the  
affidavit of Grafton C. Isaacs the Respondent  
in support thereof sworn on October 15, 1982,  
and filed herein.

30

AND UPON HEARING COUNSEL for the  
Respondent and COUNSEL for the Appellant.

40

AND UPON BEING SATISFIED that the  
Respondent has deposited the required security  
of £500 sterling (EC. \$2287.45 equivalent) and  
that the Registrar has certified that the  
transcript record has been settled and that  
the Respondent has otherwise complied with the  
Order of this Court made on the 19th day of  
July, 1982, and entered on the 21st day of  
July, 1982, and with the West Indies Associated  
States (Appeals to Privy Council) Order 1967.

THIS COURT DOTH ORDER that the Respondent  
be granted final leave to appeal to Her Majesty  
in Council.

In the Court  
of Appeal

No. 14  
Order granting  
Final Leave to  
Appeal 9th  
December 1982  
(Contd.)

AND THIS COURT DOTH FURTHER ORDER:

1. That there be a stay of execution of the said judgment for the costs until the hearing and determination of the appeal by Her Majesty in Council.
2. That the costs of and occasioned by this application and the said appeal be costs in the cause to abide the result of the appeal.
3. That the Respondent do have and is hereby granted leave to write up this order. 10

By the Court

(Sgd) R. THEODORE L.V. BROWNE  
REGISTRAR

---

EXHIBIT E.W.R.1

Exhibits

Receipt

EWRL  
Receipt  
31st July 1971

(Sgd) K. Bacchus

25/7/77

31st July 1971

Received from Emery W. Robertson the sum of  
\$1000.00 One Thousand Dollars being part  
payment on land at Villa.

(Sgd) Inie Boatswain

10

Signed: Stephen Bascombe

INIE BOATSWAIN

Stephen Bascombe

Witnessed: E.W. ROBERTSON

Exhibits

Exhibit E.W.R.2

EWR2  
Receipt  
28th October  
1981

Receipt

(Sgd) K. Bacchus

25/7/77

Oct. 28th 1971

Received from Emery W. Robertson the  
sum of Three Hundred Dollars being  
second instalment on land at Villa.

Signed: Stephen Bascombe for  
Inie Boatswain

10

CERTIFIED A TRUE COPY

Registrar.

Exhibit  
Deed of Conveyance

Exhibits

SAINT VINCENT

NUMBER 1323/1977

Deed of  
Conveyance  
18th July 1977

10 THIS INDENTURE is made the 18th day of July  
in the year of Our Lord One thousand nine hundred  
and seventy seven BETWEEN INEZ BOATSWAIN of Villa  
in the Parish of St. George in the State of Saint  
Vincent (hereinafter referred to as "the VENDOR"  
which expression shall where the context so admits  
include her heirs executors administrators and  
assigns) of the ONE PART and GRAFTON CEPHAS ISAACS  
Barrister-at-law of Cane Garden in the Parish  
of St. George in the State of Saint Vincent  
(hereinafter referred to as "the PURCHASER" which  
expression shall where the context so admits  
include his heirs executors administrators and  
assigns) of the OTHER PART

20 WHEREAS under and by virtue of the Indenture  
dated 20th day of January 1959 made BETWEEN ARTHUR  
WILLIAMS Executor of the Will of Frank Boatswain  
deceased of the One Part and the VENDOR of the  
Other Part and recorded in the Registry of Saint  
Vincent as Deed Number 251 of 1959 the hereditaments  
and premises as are more particularly set out and  
described in the Schedule to these presents and  
intended hereby to be Granted and Conveyed  
(hereinafter referred to as "the said  
hereditaments") were conveyed to the VENDOR

30 AND WHEREAS the VENDOR agreed with the  
PURCHASER for the absolute sale to him of the said  
hereditaments at a price of TEN THOUSAND DOLLARS  
(\$10,000.00)

40 NOW THIS INDENTURE WITNESSETH that in  
pursuance of the premises and in consideration of  
the sum of TEN THOUSAND DOLLARS (\$10,000.00) paid  
to the VENDOR by the PURCHASER (the receipt whereof  
the VENDOR doth hereby acknowledge) She the  
VENDOR doth hereby GRANT AND CONVEY UNTO the  
PURCHASER ALL AND SINGULAR the said hereditaments  
and premises set out and described in the  
Schedule hereto AND ALL the Estate Right Title  
Interest Claim and Demand of the VENDOR in to and  
upon the said hereditaments and every part  
thereof TO HAVE and TO HOLD the same UNTO and TO  
the USE of the PURCHASER his heirs successors  
and assigns FOREVER and the VENDOR doth hereby  
covenant with the PURCHASER that notwithstanding  
anything by her the VENDOR done or executed or  
knowingly suffered to the Contrary She the VENDOR  
now hath good right to grant the said hereditaments  
UNTO and TO THE USE of the PURCHASER his heirs  
50 successors and assigns in manner aforesaid AND  
THAT the PURCHASER shall and may from time to time  
and at all times hereafter peaceably and quietly

EXHIBITS

Deed of  
Conveyance  
18th July 1977  
(Contd.)

possess and enjoy the same and receive the rents and profits thereof without any lawful eviction interruption claim and demand whatsoever from or by the VENDOR or her heirs or any person or persons lawfully or equitably claiming under or in trust for her or them or any of them AND THAT free from encumbrances AND FURTHER that She the VENDOR her heirs and successors and all persons having or lawfully or equitably claiming any estate or interest in the said hereditaments and premises or any part thereof from under or in trust for her the VENDOR shall and will from time to time and at all times hereafter at the request and cost of the PURCHASER do and execute or cause to be done and executed all such acts deeds assurances and things for further or more perfectly assuring the said hereditaments and premises and every part thereof UNTO and TO THE USE of the PURCHASER his heirs and assigns in manner aforesaid as shall or may be reasonably required

10

20

THIS IS THE SCHEDULE HEREINBEFORE REFERRED TO

ALL THAT LOT PIECE OR PARCEL OF LAND situate at Villa in the Parish of St. George in the State of Saint Vincent being Lot Number 9 and admeasuring SIXTY FIVE THOUSAND THREE HUNDRED AND SEVENTY SEVEN (65,377) SQUARE FEET and abutted and bounded on or towards the NORTH-EAST by lands in the possession of RUTH BOATSWAIN on or towards the NORTH-WEST by Lot Number 8 in the possession of ARCHIE DUNCAN and partly by a TWENTY (20) FOOT ROAD on or towards the SOUTH-WEST by lands in the possession of CHRISTOPHER M. NORRIS and on or towards the SOUTH-EAST by lands in the possession of J. ALVES and partly by lands in the possession of R. JACK or as the same is delineated and shown on a Plan or Diagram drawn by STEINSON CAMPBELL Licensed Land Surveyor dated the 21st day of May 1975 and recorded in the Surveys Office of the State of Saint Vincent as Number G/840 TOGETHER with all ways waters watercourses rights lights liberties privileges easements and appurtenances thereto belonging or in anywise appurtenant or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto

30

40

COVENANTS BY THE VENDOR

1. The VENDOR or her successors in title shall provide adequate drinking water and electric lights for the use of the PURCHASER and his successors in title to the lands of the PURCHASER as stipulated in the Schedule

50

2. The VENDOR shall provide suitable concrete



EXHIBITS

drains and properly surfaced bitumen road not less than TWENTY (20) FEET wide of road heading and abutting the lands of the PURCHASER

Deed of  
Conveyance  
18th July 1977  
(Contd.)

- 3. The VENDOR shall provide the roads, drains, lights, and water for the use of the said lands within a period of three (3) months from the date of purchase
- 10 4. The VENDOR agrees to prevent the adjoining tenants from erecting any building or construction work on the other adjoining plots of land of the said VENDOR sold to other PURCHASERS in such a manner as to prevent the clear view of the PURCHASER or his successors in title
- 20 5. The PURCHASER his successors in title and licenses shall at all times hereafter have a free right of way for all purposes over and along such proposed new roads as shown on the said Plan hereinbefore mentioned

IN WITNESS WHEREOF the VENDOR has hereunto set her hand and affixed her seal the day and year hereinbefore first written

SIGNED SEALED AND DELIVERED)  
BY THE WITHIN-NAMED VENDOR )  
INEZ BOATSWAIN IN THE ) (Sgd) INEZ BOATSWAIN  
PRESENCE OF: )

(Sgd) ANITA ABBOTT

30 Acknowledge by the  
within-named INEZ  
BOATSWAIN as for her  
acts and deeds this  
18th day of July, 1977

Before me:

(Sgd) K. BACCHUS  
DEPUTY REGISTRAR

Stamps \$625.75

CERTIFIED A TRUE COPY

40 K.J. MASON  
for Registrar

HES1  
Writ of Summons  
22nd July 1977

Writ of Summons

IN THE HIGH COURT OF JUSTICE

(SAINT VINCENT)

1977 No. 137

BETWEEN: GRAFTON C. ISAACS  
of Cane Garden Plaintiff

- and -

MOSES FOSTER )  
WINSTON WYNNE) of Redemption 10  
EDGAR CRAIGG ) Sharpes  
and  
EMERY WINSTON ROBERTSON  
of Cane Garden Defendants

ELIZABETH THE SECOND, by the Grace of  
God, of the United Kingdom of Great Britain  
and Northern Ireland and of Our other Realms  
and Territories, Queen, Head of the  
Commonwealth, Defender of the Faith:

TO MOSES FOSTER 20  
WINSTON WYNNE of Redemption Sharpes  
EDGAR CRAIGG and  
EMERY WINSTON ROBERTSON of Cane Garden

in the State of Saint Vincent

WE COMMAND YOU that within 8 days after the  
service of this Writ on you inclusive of the  
day of service, you do cause an appearance to  
be entered for you in an action at the suit of  
the Plaintiff and take notice that in default  
of your so doing the plaintiff may proceed 30  
therein, and judgment may be given in your  
absence.

WITNESS The Honourable Sir Maurice Herbert  
Davis Q.C. Chief Justice of The West Indies  
Associated States Supreme Court, the 22nd day  
of July One thousand nine hundred and seventy-  
seven.

Note:- This writ may not be served more than  
12 calendar months after the above date unless  
renewed by order of the Court. 40

L.S. DIRECTIONS FOR ENTERING APPEARANCE

The defendant may enter an appearance in  
person or by a solicitor either (1) by handing  
in the appropriate forms, duly completed, at the  
Registry of the High Court in Kingstown, St.  
Vincent, or (2) by sending them to that office  
by post.

THE PLAINTIFF'S CLAIM IS FOR

Exhibits

(a) damages for trespass and damage to the Plaintiff's land and plants thereon which said land is situate at Villa in the State of Saint Vincent AND an injunction to restrain the Defendants whether by themselves or by their servants or agents or otherwise howsoever from entering or crossing the Plaintiff's said land.

HES1  
Writ of Summons  
22nd July 1977  
(Contd.)

10

(b) Costs.

Dated the 22nd day of July, 1977

(Sgd) J.H. Bayliss Frederick  
Solicitor for the Plaintiff

THIS WRIT was issued by J.H. BAYLISS FREDERICK of Chambers, Kingstown, St. Vincent, Solicitor for the said Plaintiff whose address is Cane Garden in the State of Saint Vincent, and whose address for service is Long Lane Lower, Kingstown, St. Vincent.

20

This Writ was served by me at \_\_\_\_\_  
on the Defendant \_\_\_\_\_ on the \_\_\_\_\_ day of  
197

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 197

Signed .....

of

CERTIFIED A TRUE COPY

REGISTRAR

HES2  
Summons  
25th July 1977

Summons

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

No. 139 of 1977

BETWEEN: EMERY W. ROBERTSON  
of Cane Garden Plaintiff

- and -

INEZ BOATSWAIN of Villa  
STEPHEN BASCOMBE of Belair and  
GRAFTON ISAACS of Cane Garden  
Defendants 10

LET ALL PARTIES CONCERNED attend before the Judge in Chambers at the High Court at Kingstown on Thursday, the 28th day of July, 1977 at 9 o'clock on the hearing of an application by the plaintiff for an order that the second and third defendants be restrained whether by themselves, or by their servants or agents or otherwise howsoever from entering or crossing the said property and from interfering and/or molesting the plaintiff whether by his servants agents or otherwise howsoever in the occupation and use of the said property, and that the costs of this application be costs in this action. 20

Dated the 25th day of July, 1977.

This Summons was taken out by H. Eardley Stephens, Chambers, Halifax Street, Kingstown, Solicitor for the Plaintiff. 30

To: The defendants Inez Boatswain,  
Stephen Bascombe and Grafton Isaacs.

certified a true copy

registrar

Summons

HES3  
Summons  
24th August  
1977

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

No. 139 of 1977

BETWEEN: EMERY W. ROBERTSON  
of Cane Garden Plaintiff

- and -

10

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

20

LET ALL PARTIES CONCERNED ATTEND before the Judge in Chambers at the High Court at Kingstown on Monday, the 29th day of August, 1977 at 9.00 o'clock on the hearing of an application by the third-named Defendant for an Order that the Plaintiff be restrained whether by himself or by his servants or agents or otherwise howsoever from entering or crossing the Third-named defendants' land (the said property) and from interfering and/or molesting the Third-named Defendant whether by his servants agents or otherwise howsoever in the occupation and use of the said property, and that the costs of this application be costs to the defendants.

Dated the 24th day of August, 1977.

30

This Summons was taken out by J.H. Bayliss Frederick of Chambers, White Chapel, Kingstown, Solicitor for the third-named Defendant.

To: Emery W. Robertson,  
and to his Solicitor E. EARDLEY STEPHENS.

CERTIFIED A TRUE COPY

REGISTRAR

HES4  
Notice  
24th August 1977

Notice

IN THE HIGH COURT OF JUSTICE  
SAINT VINCENT

No. 139 of 1977

BETWEEN: EMERY W. ROBERTSON  
of Cane Garden Plaintiff

- and -

INEZ BOATSWAIN of Villa  
STEPHEN BASCOMBE of Belair and 10  
GRAFTON ISAACS of Cane Garden  
Defendants

TAKE NOTICE that the originating Summons issued herein on the 24th day of August, 1977, will be heard by the Judge at his Chambers at the High Court, Kingstown, on Monday the 29th day of August, 1977 at 9.00 o'clock.

You may attend in person or by your Solicitor or Counsel. If you fail to attend, such order will be made as the Court may think just and expedient. 20

Dated the 24th day of August, 1977

(Sgd) J.H. Bayliss Frederick

Solicitor for Dfs.

CERTIFIED A TRUE COPY

REGISTRAR

Summons

HES5  
Summons  
28th July 1977

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

No. 137 of 1977

BETWEEN: GRAFTON C. ISAACS  
of Cane Garden Plaintiff

- and -

10 MOSES FOSTER )  
WINSTON WYNNE) of Redemption Sharpes  
EDGAR CRAIGG )  
and  
EMERY W. ROBERTSON of  
Cane Garden Defendants

20 LET ALL PARTIES CONCERNED attend before  
the Judge in Chambers at the High Court at  
Kingstown on day, the day of July,  
1977 at o'clock on the hearing of an  
application by the Plaintiff for an Order that  
the fourth-named defendant be restrained whether  
by himself or by his servants or agents or  
otherwise howsoever from entering or crossing  
the plaintiff's land situate at Villa (the same  
which is more particularly described in the  
Deed of Conveyance herewith exhibited) and  
that the costs of this application be paid by the  
fourth-named defendant in any event.

Dated the 28th day of July, 1977

30 This Summons was taken out by J.H. BAYLISS  
FREDERICK, Chambers, Kingstown, Solicitor for the  
Plaintiff.

CERTIFIED A TRUE COPY

REGISTRAR

HES6  
Summons  
30th July 1977

Summons

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

1977 No. 137

BETWEEN: GRAFTON C. ISAACS  
of Cane Garden Plaintiff

- and -

MOSES FOSTER  
WINSTON WYNNE of Redemption Sharpes 10  
EDGAR CRAIGG  
and  
EMERY WINSTON ROBERTSON  
of Cane Garden Defendants

LET ALL PARTIES CONCERNED attend His Lordship Mr. Justice Berridge in Chambers at the Court House in Kingstown on Friday the 5th day of August 1977 at 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel on the hearing of an application by the defendants for an Order that pursuant to Order 12 Rule 7 of the Rules of the Supreme Court Revision 1970 the Writ of Summons beginning this action and all subsequent proceedings herein be set aside as against the defendants on the ground that the Writ of Summons is defective and/or void in that: 20

1. It makes no provision or no proper provision for the indorsement of service of the said Writ on the respective defendants and 30
2. The directions for entering appearance stated therein are incorrect bad in law and require the defendants to enter a defence before a Statement of Claim is served in the action,

and the plaintiff do pay to the defendants their costs of this action and of and occasioned by this application to be taxed.

Dated the 30th day of July, 1977 40

This summons was taken out by Othniel R. Sylvester, Solicitor for the Defendants, whose address for service is Chambers, White Chapel, Kingstown.

CERTIFIED A TRUE COPY

REGISTRAR



Exhibit HES7

Exhibits

Notice

HES7  
Notice  
April 1979

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

1977 No. 139

BETWEEN: EMERY W. ROBERTSON  
of Cane Garden Plaintiff

- and -

10

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

TAKE NOTICE that the Plaintiff's  
Statement of Claim is ready for filing some  
time now and your consent to its filing is  
being sought.

Dated the            day of April, 1979

(Sgd) H.E. Stephens  
Solicitor for the Plaintiff

20

TO: Mr. J. Bayliss Frederick  
Solicitor for the Defendants

I consent to the Statement of Claim in  
the above suit being filed out of time.

---

J. Bayliss Frederick  
for the Defendants.

CERTIFIED A TRUE COPY

REGISTRAR

HES8  
Statement  
of Claim  
(Undated)

Statement of Claim

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

1977 No. 139

BETWEEN: EMERY W. ROBERTSON  
of Cane Garden Plaintiff

- and -

INEZ BOATSWAIN of Villa  
STEPHEN BASCOMBE of Belair 10  
GRAFTON ISAACS of Cane Garden  
Defendants

STATEMENT OF CLAIM of the above-named  
Plaintiff delivered this day of  
1979 by H. Eardley Stephens of Chambers,  
Kingstown, Saint Vincent, Solicitor for the  
Plaintiff.

(Sgd) H.E. Stephens  
Solicitor for the Plaintiff

STATEMENT OF CLAIM 20

1. By an agreement made between Stephen  
Bascombe the second Defendant as agent  
for the First Defendant and the Plaintiff  
on or about 24th July, 1971 it was agreed  
that the First Defendant will sell and the  
Plaintiff will buy all that lot piece or  
parcel of land situate at Villa in the  
Parish of St. George and butted and bounded  
on one side by lands of Christopher Norris 30  
on the second side by lands of Jonathan  
Alves on a third side by lands of Ruth  
Boatswain and on a fourth side by a line  
running from a mango tree through a patch  
of guava trees and unto a sour-sap tree  
and separating the said parcel of land  
from remaining lands of the first defendant.  
The said parcel of land was estimated at 1- $\frac{3}{4}$   
acres and the selling price was agreed at 40  
\$7,000.00.

2. It was further provided by the said agreement  
that the plaintiff will pay a down payment of  
\$1,000.00 in respect of the said purchase  
price and that the First Defendant will  
survey the land in Order.

- Exhibits  
Statement  
of Claim  
(Undated)  
(Contd.)
- 10 (i) to put down proper boundary marks at the boundary line which separated the said parcel of land from the remaining lands of the First Defendant and to determine the proper position of a road which would lead from the public road to the said parcel of land and running over the said remaining lands of the First Defendant.
- (ii) to provide a plan of the said parcel of land and
- (iii) to cut up the remaining lands into building lots.
- 20 3. As the First and Second Defendants will know the said parcel of land was purchased by the Plaintiff for the purpose of building a Dwellinghouse thereon and the proposed site of the building was pointed out.
4. In furtherance of the aforesaid purpose the Plaintiff engaged the services of a Civil Engineer as well as a Builder/Draftsman to advise in construction work as well as to prepare and design a building to be constructed thereon.
- 30 5. On the 31st July, 1971 the said oral agreement was ratified by the first named Defendant at Villa on the said parcel of lands and the Plaintiff duly paid the down payment of \$1,000.00 and the Plaintiff went into immediate possession of the said parcel of land and continued thereafter in possession thereof without any interruption or disturbance from anyone until the 20th July, 1977.
- 40 6. No time for the completion of the contract was agreed but the Plaintiff continued to make payments on the purchase price to the Second Defendant on behalf of the First Defendant as and when requested by him and the Plaintiff continued to request the First and Second Defendants to procure the services of a qualified surveyor that the sale may be completed.
7. On or about January, 1973 the First and Second Defendants purported to survey the said parcel of land cutting off a portion thereof.
- 50 8. The First and Second Defendants although frequently requested by the Plaintiff to complete the sale, wrongfully neglected and refused so to do, and on or about 18th day of July, 1977 purportedly sold and conveyed to the Third Defendant the said parcel of land.

Exhibits

HES8  
Statement  
of Claim  
(Undated)  
(Contd.)

9. On the 20th July, 1977 the second Defendant together with a quantity of policemen came unto the said parcel of land and chased the Plaintiff's workmen from the said parcel of land.
10. On the said 20th July, 1977 the Second Defendant stopped outside of the Plaintiff's home at Cane Garden and threatened the Plaintiff with violence if he or his workmen should go upon the said parcel of land. 10
11. On the 21st July, 1977 the Plaintiff's workmen returned to the said parcel of land and resumed working thereon and the Third defendant came unto the lands with a gun and threatened to shoot the plaintiff's workmen and chased them from the said parcel of land.
12. The Third Defendant having forcibly entered the said parcel of land on 21st July, 1977 continued to use force and threats and the Third Defendants his servants and agents have since on divers days wrongfully entered and occupied the said parcel of land. 20
13. Recently the Third Defendant has begun to excavate portions of the said parcel of land and to dig foundation thereon and continues to defy the Plaintiff his servants or agents from coming unto the said land.
14. The Defendants and in particular the third defendant threatened and unless restrained by this Honourable Court intend to repeat the acts complained of. 30
15. The Plaintiff is and has throughout been, ready and willing to complete the said purchase in accordance with the terms of the said agreement and has paid to date the total sum of \$3,271.42.

AND THE PLAINTIFF CLAIMS:

- (1) Specific performance of the oral agreement between the Plaintiff and the first defendant Inez Boatswain also known as Inie Boatswain made in July 1971 for the sale by the said first defendant to the Plaintiff of approximately 1- $\frac{3}{4}$  acres of freehold land situate at Villa for the price of \$7000.00 (hereinafter referred to as "the said parcel of land"). 40
- (2) As against the first Defendant damages for breach of contract.

(3) As against the second Defendant damages for procuring a breach of contract.

Exhibits

(4) Damages for trespass.

HES8  
Statement  
of Claim  
(Undated)  
(Contd.)

(5) A declaration that the First and Third Defendant is/and/or trustees and/or trustees of the said parcel of land for the Plaintiff.

10

(6) Cancellation of any Deed purporting to convey and/or to vest the said parcel of land in the Third Defendant.

(7) If necessary a vesting order.

(8) A declaration that the Defendants are not entitled to enter or cross or occupy the said parcel of land.

20

(9) An injunction to restrain the Defendants whether by themselves or by their servants or agents or otherwise from entering or crossing the said parcel of land and from interfering and/or molesting the plaintiff whether by himself his servants or agents or otherwise howsoever in the occupation and use of the said parcel of land.

(10) Further or other relief.

(11) Costs.

Dated this        day of                    1979

(Sgd) Othniel R. Sylvester  
OF COUNSEL

CERTIFIED A TRUE COPY

30

REGISTRAR

O N        A P P E A L

FROM THE COURT OF APPEAL OF SAINT VINCENT  
AND THE GRENADINES

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B E T W E E N :

GRAFTON ISAACS

APPELLANT

- AND -

EMERY ROBERTSON

RESPONDENT

---

---

RECORD OF PROCEEDINGS

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---

INGLEDEW, BROWN, BENNISON  
& GARRETT,  
International House,  
26, Creechurch Lane,  
London EC3A 5AL.  
Solicitors for the  
Appellant

PHILIP CONWAY THOMAS & CO.,  
61 Catherine Place,  
Westminster,  
London SW1E 6HB.  
Solicitors for the  
Respondent