Privy Council Appeal No. 2 of 1983

Grafton Isaacs *Appellant*

v.

Emery Robertson *Respondent*

FROM

THE COURT OF APPEAL OF ST. VINCENT AND THE GRENADINES

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH JUNE 1984

Present at the Hearing:

LORD DIPLOCK
LORD KEITH OF KINKEL
LORD ROSKILL
LORD BRIGHTMAN
LORD TEMPLEMAN

*[Delivered by **Lord Diplock**]*

In an action started by the respondent ("Robertson") against the appellant ("Isaacs") and two other defendants in the High Court of Saint Vincent by writ dated 23rd and served on 25th July 1977, Robertson claimed, among other relief, an injunction to restrain Isaacs from trespassing upon a parcel of land at Villa in Saint Vincent, some $1\frac{3}{4}$ acres in extent ("the disputed land") which had become the subject of a family quarrel with the merits of which the instant appeal is not in any way concerned. Immediately upon the issue of this writ Robertson applied to the Court for an interlocutory injunction restraining Isaacs and the other two defendants:-

> "....by themselves, or by their servants or agents or otherwise howsoever from entering or crossing [the disputed land] and from interfering and/or molesting the plaintiff whether by his servants agents or otherwise howsoever in the occupation and use of [the disputed land]."

This application came before the judge in chambers on 13th September 1977, and was then adjourned to a date to be fixed. Thereafter no further steps were taken in the action until, on 31st May 1979, the application for the interlocutory injunction was

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brought on for hearing in the High Court before Glasgow J. who granted it, subject to the usual undertaking as to damages, which, in their Lordships' opinion, plainly identifies it as intended to be interlocutory not final although it omits to state expressly that it is to remain in force only until judgment or further order.

The other two defendants were represented at the hearing of this application on 31st May 1979. Isaacs, by his own choice, did not appear and was not represented at the hearing although he had notice of it. The terms of the judge's order were communicated to Isaacs' solicitor and a copy of the court's order was served upon Isaacs personally on 11th July 1979.

On 31st July 1979, Robertson issued a notice of motion for the committal of Isaacs for contempt of court in refusing to obey the interlocutory injunction of 31st May 1979. The application was supported by uncontradicted affidavit evidence which disclosed flagrant breaches by Isaacs of the High Court's order, and was heard by Glasgow J. on 21st and 22nd August 1979. He delivered judgment on 22nd November 1979, dismissing Robertson's motion with costs; but their Lordships have not been provided with a copy of his formal order against which Robertson appealed to the Court of Appeal by notice dated 26th November 1979.

The appeal came on for hearing in April 1981. The reasons for judgment of the Court (Peterkin C.J., Berridge J.A. and Robotham J.A.(Acting)) were delivered by Robotham J.A. (Acting) on 20th July 1981. The appeal was allowed; Isaacs was found to be in contempt of court for disobeying the interlocutory injunction of 31st May 1979; no penalty by way of fine or imprisonment was inflicted because the Court of Appeal held that he would have been entitled to succeed in an application to have the injunction set aside if he had made such application; but he was ordered to pay Robertson his costs of the appeal and those incurred by Robertson on the application for the interlocutory injunction and in the committal proceedings in the High Court.

It is symptomatic of the slip-shod way in which this litigation has been conducted since it was started nearly seven years ago that the formal order of the Court of Appeal from which the appeal is now brought to this Board is not included in the Record that is before their Lordships. They have been obliged to infer what are its terms from what was said by Robotham J.A.(Acting) at the close of his reasons for judgment. It is not disputed, however, that the only subject-matter of the present appeal to the Board is an order of the Court of Appeal of Saint Vincent and the Grenadines made upon a motion to the

High Court of Saint Vincent to commit a defendant for contempt of court in disobeying an interlocutory injunction made by that court. No application to set aside the order of the High Court granting the injunction has been made.

The main attack by the appellant on the Court of Appeal's judgment was based on the contention that as a consequence of the operation of Order 34 Rule 11(1)(a) of the Rules of the Supreme Court the order made by the High Court granting the interlocutory injunction on 31st May 1979 was a nullity; so disobedience to it could not constitute a contempt of court. Glasgow J. accepted this contention; the Court of Appeal rejected it, in their Lordships' view correctly, upon the short and well-established ground that an order made by a court of unlimited jurisdiction, such as the High Court of Saint Vincent, must be obeyed unless and until it has been set aside by the court. For this proposition Robotham J.A. (Acting) cited the passage in the judgment of Romer L.J. in *Hadkinson v. Hadkinson* [1952] 2 All E.R. at p. 569:-

> "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 an order believes it to be irregular or even void. Lord Cottenham, L.C., said in *Chuck v. Cremer* (1846) 47 E.R. at p. 841:-
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> > 'A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the court and not take 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 existed it must not be disobeyed.'
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> 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 by committal or attachment or otherwise."

This, in their Lordships' view, says all that needs to be said upon this topic. It is in itself sufficient reason for dismissing this appeal.

Their Lordships can accordingly deal very briefly with the application to the instant case of Order 34 Rule 11(1)(a) which says:-

> "(1) A cause or matter shall be deemed altogether abandoned and incapable of being revived if prior to the filing of a request for hearing or consent to judgment or the obtaining of judgment -
>
> (a) any party has failed to take any proceeding or file any document therein for one year from the date of the last proceeding had or the filing of the last document therein; ....."

Both Glasgow J. and the Court of Appeal were of opinion that, upon the facts as to the course of the proceedings in the instant case, the rule had become applicable before 31st May 1979 when the interlocutory injunction was granted; the only, but crucial, difference between the learned judge and the Court of Appeal being that the former held (erroneously) that the rule operated ipso jure to render the interlocutory injunction an order which the court was obliged upon its own initiative to treat as having never been made; whereas the Court of Appeal held (rightly) that the rule entitled Isaacs as defendant in the action to apply for an order setting aside the interlocutory injunction if he elected to make such application. The rule, which is for the benefit of defendants, is not one upon which a defendant is under any compulsion to rely. It may be to his interest that the action should proceed, particularly if the limitation period for the cause of action has not expired. But these are matters of practice and procedure under a rule of the Supreme Court of Saint Vincent which has no counterpart in the rules of the Supreme Court of England. They are best left to be developed by the courts of the country concerned, with whose decisions as to the operation of the rule this Board would be reluctant to interfere.

Their Lordships would, however, take this opportunity to point out that in relation to orders of a court of unlimited jurisdiction it is misleading to seek to draw distinctions between orders that are "void" in the sense that they can be ignored with impunity by those persons to whom they are addressed, and orders that are "voidable" and may be enforced unless and until they are set aside. Dicta that refer to the possibility of there being such a distinction between orders to which the descriptions "void" and "voidable" respectively have been applied can be found in the opinions given by the Judicial Committee of the Privy Council in the appeals *Marsh v. Marsh* [1945] A.C. 271, 284 and *MacFoy v. United Africa Co. Ltd.* [1962] A.C. 152; but in neither of those appeals nor in any other case to which counsel

has been able to refer their Lordships has any order of a court of unlimited jurisdiction been held to fall into a category of court orders that can simply be ignored because they are void ipso facto without there being any need for proceedings to have them set aside. The cases that are referred to in these dicta do not support the proposition that there is any category of orders of a court of unlimited jurisdiction of this kind; what they do support is the quite different proposition that there is a category of orders of such a court which a person affected by the order is entitled to apply to have set aside *ex debito justitiae* in the exercise of the inherent jurisdiction of the court without his needing to have recourse to the Rules that deal expressly with proceedings to set aside orders for irregularity and give to the judge a discretion as to the order he will make. The judges in the cases that have drawn the distinction between the two types of orders have cautiously refrained from seeking to lay down a comprehensive definition of defects that bring an order into the category that attracts *ex debito justitiae* the right to have it set aside, save that specifically it includes orders that have been obtained in breach of rules of natural justice.

The contrasting legal concepts of voidness and voidability form part of the English law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentious litigation. Such an order is either irregular or regular. If it is irregular it can be set aside by the court that made it upon application to that court; if it is regular it can only be set aside by an appellate court upon appeal if there is one to which an appeal lies.

A further point that the motion for the injunction was defective was taken on behalf of Isaacs before this Board. It was dealt with and rejected by the Court of Appeal and their Lordships have nothing to add to what Robotham J.A. (Acting) said about it. In their view the point is unarguable. A third point sought to be raised on behalf of Isaacs before the Board but not, it would appear, before the Court of Appeal is in their Lordships' view shown to be misconceived by the judge's notes of the proceedings before him. There is no need to say anything more about it.

Their Lordships will accordingly humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the respondent's costs.