IN THE COURT

IN THE COURT OF APPEAL

SAINT VINCENT:

CIVIL APPEAL NO. 14 of 1976

BETWEEN: ROSALIE BRISBANE Appellants
ROBERT BRISBANE

Vs.

GIOVANNI FERRARI Respondent

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: E. Robertson for appellants
Bayliss Frederick for respondent

1977 January 13, 14
1977 April 19

# JUDGMENT

DAVIS, C.J.:

At the conclusion of the hearing of this appeal on the 14th January, 1977, the court allowed the appeal and stated that its reasons for so doing would be put into writing. The reasons are as stated hereunder.

On the 21st May, 1976, the appellants were restrained by interim injunction from causing or permitting between the hours of 11 p.m. and 4 a.m. excessive noise to come from the Crows Nest, a club, situate on their premises. On the 16th of September, 1976, the respondent in whose favour the injunction was granted moved the court for committal and the trial judge made the following order:

/"IT........

> "IT IS ORDERED that the defendants do pay a fine of $1,200.00 in two weeks and in default 4 weeks imprisonment. The defendants to pay the costs of this application to be taxed".

No appeal was lodged against this order. On the 27th September, 1976, the respondent made application by summons under Order 20 rule 11 of the Supreme Court Rules, 1970, that the order of the 16th September be corrected. This application was heard on the 29th September, 1976, and the trial judge substituted the following order for the order of 16th September -

> "Pursuant to order 20 rule 11 of the Rules of the Supreme Court and in substitution of the order of the 16th September, 1976, it is ordered that the defendants do pay a fine of $1,200.00 in two weeks of the date of this order, in default of payment a writ of sequestration issue and in default of the terms of the writ, the defendants be imprisoned for a period of four weeks."

The appellants appealed from this order within the time prescribed by section 60 of the West Indies Associated States Supreme Court (St. Vincent) Act, 1970, and complied with the conditions set out therein for lodging appeals in contempt proceedings. They contend that the court had no power under Order 20 rule 11 to substitute one order for another and that the whole order was bad in law. They also contend that the Order was against the weight of evidence and as the proceedings were in their nature criminal the standard of proof was the same as on a criminal charge.

Order 20 rule 11 reads:

> "Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal."

The order in substitution mentioned above has given the remedy of sequestration which is an alternative remedy in

/contempt............

contempt proceedings and, in my view, cannot be classed as a clerical mistake, or an accidental slip or omission in the order of 16th September, 1976. Under rule 5 (1) (2) and (3) of Order 67 of the Rules of the Supreme Court 1970 application for leave to issue a writ of sequestration must be made to a judge by motion and the notice of motion stating the grounds of the application and a copy of the affidavit in support must be served personally on the person against whose property it is sought to issue the writ, provided that the Court may dispense with the service of the notice of motion if it thinks it just to do so. This rule indicates that sequestration is a special remedy and is used only in exceptional circumstances hence the reason for obtaining leave of the judge. Although the writ may issue against the property of an individual party it is mainly used where the party committing a breach of an injunction is a limited company or other corporation or is out of the jurisdiction. In the present case the application before the court was by summons in chambers that some error in the Order of 16th September be corrected. In my opinion the granting of an order for the issue of a writ of sequestration was not an error as contemplated by order 20 rule 11 and the procedure followed was in breach of the rules of court. It was not an error corrected in order to express the manifest intention of the Court. It was an error of law and the court had no power to correct such an error.

The order of 16th September, 1976, appears to offend in more ways than one. On the face of it a fine was imposed for contempt and a period of imprisonment given in default of payment. There were two persons in contempt but the fine did not stipulate whether or not each must pay the sum of $1,200 or whether each person must pay $600. In my view the proper

/procedure..........

procedure when the court has arrived at the conclusion that there was a contempt committed is to decide whether or not a period of imprisonment or a fine should be imposed in accordance with section 60 of the West Indies Associated States (St. Vincent) Act, 1970. If the court comes to the conclusion that the contempt is not serious enough to impose a period of imprisonment then a fine is imposed in lieu of committal and the order states to whom the fine should be paid and the time within which it must be paid. Costs may be given if necessary. If the order of the court is not obeyed then the disobedient party is brought before the court and a period of imprisonment may be imposed if necessary.

The above reasons are sufficient to dispose of this appeal but in view of certain statements made by the trial judge in his judgment and the submission of counsel for the appellants in regard to the standard of proof in contempt proceedings it seems necessary to say a few words in this respect. The trial judge in finding the appellants guilty of contempt stated -

> "In balance I find that the affidavit evidence of Howard and Cropper ring true and substantiate what the Plaintiff and his wife have said, the former by affidavit the latter by oral evidence.
>
> I am satisfied that the Court Order has been breached possibly I repeat possibly through sheer indifference and I am prepared to give the defendants the benefit of the doubt in this respect
>
> But
>
> A Court order when made must be carried out at all costs."

The contention of counsel was that contempt proceedings were in their nature criminal and the standard of proof required should be same as that on a criminal charge. He argued that the judge did not apply this standard and cited the case of Re Bramblevale Ltd. (1969) 3 A.E.R. 1062. In

/this.........

this case it was held that contempt of court was an offence of a criminal character and must be proved with such strictness as was consistent with the gravity of the offence charged. At page 1063 Lord Denning, M.R. stated:

> "A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt."

In the passage cited from the judgment of the trial judge he stated that the court order was breached possibly through sheer indifference and he was prepared to give the appellants the benefit of the doubt in that respect. This assertion by the judge clearly shows that he was not satisfied beyond reasonable doubt. Having reached that conclusion he should have dismissed the motion and if he considered it necessary order the appellants to pay the costs of the application.

For these reasons the appeal is allowed with costs to be taxed.

(Sir Maurice Davis)
CHIEF JUSTICE

I agree.

(E.L. St. Bernard)
JUSTICE OF APPEAL

I also agree.

(N.A. Peterkin)
JUSTICE OF APPEAL