

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 1 of 1986

BETWEEN:

OWENS BANK LIMITED  
A company incorporated under  
the Laws of St. Vincent and  
the Grenadines with office at  
Kingstown, Saint Vincent and  
the Grenadines  
- Plaintiffs/Appellants  
and

COGETTRI S.A.  
A company incorporated in France  
with offices at 5 Rue de La Corderie  
Centre 343,94586 Rungis, France  
- First Defendant/  
Respondent

LORENZO BAX  
of 36 Boulevard des Moulins,  
Monte Carlo, France  
- Second Defendant/  
Respondent

GERARD CAUCHE  
of 5 Rue de La Corderie Centre  
94856 Rungis, France  
- Third Defendant/  
Respondent

ETOILE COMMERCIALE S.A.,  
a Society incorporated in  
France with offices at 103  
Boulevard Hausmann, 75008  
Paris, France  
- Fourth Defendant/  
Respondent

YVES GELY  
of 103 Boulevard Hausmann  
75008 Paris, France  
- Fifth Defendant/  
Respondent

Before: The Honourable Mr. Justice Bishop - Chief Justice  
The Honourable Mr. Justice Moe (Acting)  
The Honourable Mr. Justice Mitchell (Acting)

Appearances: R.J.L. Thomas, Q.C., P. Campbell with him for the  
Appellants.  
A.A.R. Thompson, Q.C., B. Commissiong with him  
for the Fourth and Fifth Defendants/Respondents  
O.R. Sylvester, Q.C., M. Williams with him for  
the Third Defendant/Respondent

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1986: July 17, 18,  
Dec. 8.

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RULING

MITCHELL, J.A. (Acting delivered the ruling of the Court

On 18th July, 1986, this Court upheld the submissions

/s/ Mitchell.....

made in limine by Counsel for the fourth and fifth respondents and struck out the appeal indicating that it would put its reasons in writing at a later date. The Court now does so.

This was an appeal by the plaintiffs, Owens Bank Ltd., from a decision by a Judge of the High Court sitting in Chambers on 20th January, 1986. The plaintiffs appealed on several grounds and requested that certain orders be made in their favour.

When the matter came before this Court, Counsel for the fourth and fifth respondents moved the Court in limine for an order that this Appeal be dismissed with costs. Counsel submitted that it was an interlocutory matter and that an appeal therefrom should not reach the Court of Appeal without leave. He said that his application posed two questions; whether or not leave was required and whether or not the matter was an interlocutory matter? In response to the first question he referred to section 28 of the West Indies Associated States Supreme Court (Saint Vincent) Act (No. 8 of 1970).

Section 28 falls under the heading "PART II - COURT OF APPEAL" and the sub-heading "Jurisdiction of Court of Appeal"; it states as follows:

"Notwithstanding the provisions of any law or any rule of court to the contrary, an appeal shall lie as of right to the Court of Appeal or to any Court replacing the same, from judgments or orders originating by summons in Chambers and interlocutory judgments or orders of judges of the High Court, and whether at first instance or on appeal, and the Court of Appeal shall have jurisdiction to hear and determine all such appeals."

Counsel said that at first blush that section seemed to confer an unrestricted right of appeal but that was not really so; it meant that the Court of Appeal had the jurisdiction to hear the appeals referred to it. Counsel for the fourth and fifth respondents further said that section 31 of the West Indies Associated States Supreme Court, (Saint Vincent) Act, 1970 was the relevant section, particularly section 31(2)(g),

Section 31(2)(g) under the sub-heading "Civil Appeals from High Court" states as follows:

"No appeal...."

"No appeal shall lie under this section -

.....  
 .....

(g) without the leave of the Judge making the order or of the Court of Appeal from any interlocutory judgment or any interlocutory order given or made by a Judge except

(i) where the liberty of the subject or the custody of infants is concerned;

(ii) where an injunction or the appointment of a receiver is granted or refused;

(iii) in the case of a decree nisi in a matrimonial cause or a judgment or order in an admiralty action determining liability;

(iv) in such other cases, to be prescribed, as are in the opinion of the authority having power to make rules of court of the nature of final decisions.

(3) For the purposes of sub-section (2) "Judge" means Judge of the High Court."

He pointed out that none of the exceptions as stated applied and that in the case of an interlocutory order leave was necessary.

He then sought to answer the question as to whether the matter was interlocutory. He referred to the case of Salaman v Warner (1891) 1 Q.B. 734 C.A. which was an appeal from the order of the Divisional Court upon a point of law raised on the pleadings under the then Order XXV, r 2. Counsel referred to the judgment of Esher M.R. at page 735 when he said as follows:

"If their decision whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules, it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter but if given in the other will allow the action to go on, then I think it is not final, but interlocutory."

And Fry L.J., at page 736:

"I conceive that an order is "final" only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is "interlocutory" where it cannot be affirmed that in either event the action will be determined."

(Counsel)

Counsel also referred to In re Page, Hill v Fladgate (1910) 1 Ch. 489, )1909 p. 1113 which was an appeal according to the headnote from an order dismissing an action as frivolous and vexatious. Cozens Hardy M.R. held at page 491 (1 Ch.) that it was an interlocutory order for the purposes of appeal. Fletcher Moulton L.J. at page 493 was of the same opinion.

Counsel also referred to the cases of Hunt v Allied Bakeries (1956) 3 All E.R. 513; Salter Rex & Co. v Ghosh (1971) 2 All E.R. 865 and Moran v Lloyds (1983) 2 All E.R. 200 in support of his contention that the order which was the subject-matter of this appeal was an interlocutory order and therefore fell within the scope of Order 31 rule 2(g) of the Rules of the Supreme Court, 1970.

Counsel for the appellant in reply indicated that as far as the contention of the matter being interlocutory was concerned there were two strands of judicial opinion. He referred to the case of Salter Rex & Co. v Ghosh (Supra) and stated that in England the order under review would be construed as an "interlocutory" order.

He appreciated that the jurisdiction vested in the High Court in civil proceedings must be exercised in accordance with the provisions of the West Indies Associated States Supreme Court (Saint Vincent) Act, 1970, and any other law in operation in Saint Vincent and rules of Court and where no special provision was therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice administered for the time being in the High Court of Justice. He thought, however, that this Court should look at the history of the legislation. He referred to the Supreme Court Ordinance 1941 (No. 5 of 1941) of the St. Vincent.

In that Ordinance there is no specific reference to the Court of Appeal or to any right to appeal. Then there was the Supreme Court (Amendment) Ordinance 1966 (No. 20 of 1966) which amended the Supreme Court Ordinance 1941.

By this 1966 amendment, a new section was inserted conferring for the first time a right of appeal from judgments or orders in Chambers. It stated as follows:

/"6A. Notwithstanding.....

"6A. Notwithstanding the provisions of any law or of any rule of court to the contrary, an appeal shall lie as of right to the British Caribbean Court of Appeal, or to any Court replacing the same, from judgments or orders originating by summons in Chambers and interlocutory judgments or orders of judges of the Supreme Court, whether adjudicated upon in Chambers or in open Court, and whether at first instance or on appeal, and the British Caribbean Court of Appeal shall have jurisdiction to hear and determine all such appeals."

It is to be appreciated that this right of appeal did not apparently exist in the Supreme Court Ordinance, 1941 and it is to be appreciated also, that even though this new right was created by that specific amendment, nevertheless there was no concomitant procedure created by which that newly created right of appeal to the British Caribbean Court of Appeal or any court replacing same should be exercised.

Such then was the state of the law in St. Vincent with regard to appeals when The West Indies Associated States Supreme Court Order 1967, came into operation on 27th February 1967 and when St. Vincent adopted the provisions of the said Supreme Court Order, 1967 as the foundation and origin for establishing its Supreme Court.

By section 6 of the West Indies Act, 1967 Her Majesty was empowered to provide by Order in Council for the establishment of one or more Courts which shall be the courts constituted in common for the territories to which that Act applied, Antigua, Dominica, Grenada, Saint Christopher, Nevis, Anguilla, Saint Lucia, Saint Vincent, and Her Majesty was also empowered to provide by that Order that any such court shall, in relation to any of those territories, have such jurisdiction and powers as may be so specified or determined.

The West Indies Associated States Supreme Court was established by section 4 of The West Indies Associated States Supreme Court Order 1967 (S.I. 1967 No. 223) made pursuant to that said section 6 of The West Indies Act, 1967 and now exercises jurisdiction in relation to the States referred to in section 1(2) of The West Indies Act 1967 including St. Vincent.

Each of the States to which the West Indies Associated  
/States.....

States Supreme Court Order 1967 applied then passed legislation establishing a Supreme Court for each of the States, which was styled The West Indies Associated States Supreme Court and consisting of a Court of Appeal and a High Court of Justice. It also conferred jurisdiction on that Supreme Court. Certain provisions of the said West Indies Associated States Supreme Court Order 1967 became entrenched in the Constitution (which is the supreme law in each State of each of the "States" to which that Order applied.

At section 9 of the said West Indies Associated States Supreme Court Order 1967, which gave birth to the Supreme Court, the jurisdiction of the Supreme Court in the respective States was set out as follows:

"9 - (1) The High Court shall have, in relation to a State such jurisdiction and powers as may be conferred on it by the Constitution or by other law of the State.

(2) The Court of Appeal shall have, in relation to a State, such jurisdiction to hear and determine appeals and to exercise such powers as may be conferred upon it by the Constitution or any other law of the State.

(3) The process of the Supreme Court shall run throughout the States and any judgment of the Court shall have full force and effect and may be executed and enforced in any of the States."

Pursuant to section 9 sub-sections (1) and (2) above-stated in so far as the Constitution of the respective States did not confer the appropriate jurisdiction on the High Court and the Court of Appeal, the respective States each in turn conferred on the High Court and Court of Appeal by legislation such jurisdiction as was then considered appropriate in terms of the Supreme Court Order, 1967.

It was thus in accordance with the provisions of section 6(1) and (2) of The West Indies Act, 1967 and The West Indies Associated States Supreme Court Order 1967 that The West Indies Associated States Supreme Court Act was passed in Dominica in 1969, in St. Lucia in 1969, Antigua in 1969, St. Vincent in 1970, Grenada in 1971 and St. Christopher, Nevis and Anguilla in 1975.

/It can.....

It can thus be gleaned from the passage of such legislation that the spirit of all of those Acts from those States for which there was this common Supreme Court, was that there should be a common jurisdiction of that Supreme Court throughout those States and that the procedure in the exercise of that jurisdiction should also be common throughout those States, and that the jurisdiction and procedure of that Supreme Court common throughout those States should be adhered to in common throughout those States.

In the Supreme Court Acts of all of those States to which The West Indies Act, 1967 applied and by virtue of which The West Indies Associated States Supreme Court Order 1967 (S.I. No. 223) established the present Supreme Court constituted in common for all those States of Antigua, Dominica, Grenada, Saint Christopher, Nevis, Anguilla, Saint Lucia and Saint Vincent, there is no similar or comparable provision as the section 28 of the Saint Vincent Act. Such a provision must be construed as being specifically excluded by all the other States except St. Vincent and for good reason, either because it was unnecessary or superfluous.

The comity of those States in judicial matters of the one Supreme Court would certainly have prompted the inclusion of a provision similar to section 28 of the St. Vincent Act in their respective legislation if such a provision were considered appropriate or necessary to the requirement of the one Supreme Court of all the States in conferring a right to appeal.

Moreover at sections 13 and 14(1) in the Court of Appeal Rules, 1968, made pursuant to section 17 of the Supreme Court Order 1967, there is recognition of the right to appeal "by leave only" and the procedures for appealing by leave are set forth.

These provisions of the Court of Appeal Rules 1968 are restated at Order 64 of the Rules of the Supreme Court, 1970, which concerns "appeals to the Court of Appeal at rule 4.

In the light of all the foregoing in so far as section 28 is included in the St. Vincent Supreme Court Act, the question arises as to whether it can be construed that it was included either deliberately as making it peculiar to the law

/of the...

of the Supreme Court as exercised in St. Vincent alone and apart from the law of the Supreme Court as exercised in the other States or that there was a lack of tidiness on the part of the draughtsman when drafting that particular section of the Act.

It is appropriate to consider that a certain judicial comity among the various States (including St. Vincent) was contemplated by operation of law and indeed became necessary if the said Supreme Court embracing the High Court and the Court of Appeal of all the States was to function effectively as one common Court for all the States concerned and have the desired efficacy and that there would be consistency and unanimity in the approach to judicial problems, the procedures adopted in the approach to those problems and the decisions of the Supreme Court. In that sense, also, it might not have been contemplated that there would be diversity and difference in the jurisdiction and procedures adopted by one State as against those adopted by the others.

It is in that historical setting of the law and legislation that one must needs look at sections 28 and 31 of The West Indies Associated States Supreme Court (Saint Vincent) Act, 1970, to see whether the terms of those sections are such as fairly to carry out the object of that Act and no other, and to read those sections with a view to finding out what they mean and not with a view to extending them to something that was not intended.

The West Indies Associated States Supreme Court (Saint Vincent) Act 1970 has several Sections, Parts, Headings, Sub-headings and marginal notes.

At Part II under the heading "The Court of Appeal there is the sub-heading "Jurisdiction of Court of Appeal". This sub-heading could be construed as being concerned with the general jurisdiction of the Court of Appeal. This heading must needs be construed in relation to any special jurisdiction which may be conferred or defined or any limitation which may be imposed on the jurisdiction.

It is under this sub-heading of "Jurisdiction of Court of Appeal" that section 28 concerning the "right of appeal

/from.....

from judgments or orders in Chambers" falls

That section 28 of the 1970 Act is identically worded as section 6A of the 1966 Ordinance amending that of 1941, except that in the 1970 Act the words "Court of Appeal" are substituted for the words "the British Caribbean Court of Appeal" in the 1966 Ordinance, and reiterates that:

"Notwithstanding the provisions of any law or any rule of Court an appeal shall lie as of right to the Court of Appeal or to any Court replacing same, from judgments or orders originating by summons in Chambers and interlocutory judgments or orders of the High Court etc....."

The section 28 of the 1970 Act confers a right of appeal generally in the matter stated but does not provide the procedure as to how that right should be generally exercised. That is stated at section 31.

As a matter of construction if two sections of the same statute are considered repugnant, the known rule is that the last must prevail. Wood v Riley (1867) L.R.C.P. 26 per Keating J. at p. 27. Then section 31(2)(g) which is later in time will prevail.

Alternatively, on the general principle that the "draughtsman" must be supposed not to have intended to contradict himself, the Court will endeavour to construe the language of the legislature in such a way as to avoid having to apply the rule, *leges posteriores priores contrarias abrogant*.

One way in which repugnancy can be avoided is by regarding two apparently conflicting provisions as dealing with distinct matters or situations.

Applying that principle section 28 may thus be construed as dealing with the "right" to appeal which is one distinct matter and section 31(2)(g) as dealing with the jurisdiction of the Court of Appeal to hear Civil Appeals from the High Court as the sub-head indicates and with leave.

Having regard to all that has been previously stated this Court was of the opinion that the order made by the Judge  
/of the High Court.....

of the High Court in this matter was an interlocutory order.

The Court was also of the opinion that having regard to the provisions of section 31(2)(g) of the West Indies Associated States Supreme Court (Saint Vincent) Act 1970, in conjunction with the provisions of section 13(1) of the Court of Appeal Rules, 1968, and Order 64 rule 4 of the Rules of the Supreme Court 1970 leave to appeal in this matter should have been granted by the Judge of the High Court who made the order, or by the Court of Appeal.

No leave was sought of the Judge of the High Court who made the order or of the Court of Appeal prior to the filing of the Notice and Grounds of Appeal.

Accordingly, the Court ordered that the purported notice and grounds of appeal lodged on 3rd February, 1986, be struck out, with taxed costs to the fourth and fifth respondents, certified fit for two Counsel.

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H.L. MITCHELL,  
Justice of Appeal  
(Acting)

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E.H.A. BISHOP,  
Chief Justice  
(Acting)

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G.C.R. MOE,  
Justice of Appeal.