SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

MISC. SUIT NO.1 OF 1996
IN THE MATTER OF AN APPLICATION ON BEHALF OF COWELBY E.H.R. BLAKE FOR WRIT OF COMMITTAL TO PRISON FOR CONTEMPT OF COURT

BETWEEN:

COWELBY E.H.R. BLAKE

Appellant

and

VICTOR WILLIAMS ET AL

Respondents

Before:
The Hon. Justice C.M. Dennis Byron — Chief Justice [Ag.]
The Hon. Justice Satrohan Singh — Justice of Appeal
The Hon. Justice Albert Redhead — Justice of Appeal [Ag.]

Appearances:
Mr. Cowelby E.H.R. Blake in person
Mr. C. Wilkin and Mr. A. Gonsalves for Respondents No.4 and No.8

1996: October 3; 28.

JUDGMENT

BYRON, C.J. [AG.]

The applicant appeared in person on a motion to invoke the original jurisdiction of the Court of Appeal to commit the respondents to prison for criminal contempt of Court. The proceedings were instituted by a Notice of Motion issued by the applicant on 27th September 1996 and supported by an affidavit sworn by him which alleged that the respondents had published a letter in the Democrat newspaper which misrepresented a judgment of the Court of Appeal and prejudged the applicant's pending appeal to the Privy Council against that judgment. Only two of the nine respondents had been served and the matter proceeded against them.

At the commencement of the hearing Counsel for the respondents submitted in *limine* that the proceedings should be dismissed because they were without jurisdiction, procedurally defective, abusive of the process of the court and entirely without factual merit.

Jurisdiction

The Notice of Motion states that the Court's jurisdiction is based on Order 52 rule 4 of the Order Book 1995, which apparently is a reference to the 1995 edition of the Rules of the Supreme Court of England and on section 4 of the Contempt of Court Act (Cap 15) of the Laws of St.Christopher and Nevis, (revised edition 1962). Order 52 of the Rules of the Supreme Court of England deals with the procedure for dealing with Contempt of Court. However, the English Rules of Court are not applicable in St.Christopher and Nevis where the Supreme Court practice is prescribed by the Eastern Caribbean Supreme Court Rules of the Supreme Court 1970. These rules do not include any provision for contempt procedures. In so far as the applicant was relying on the provisions of the English rules of court there is no comparable rule applicable in St.Christopher and Nevis.

During his address the applicant indicated that he thought that the practice and procedure in England should apply if there was no prescribed local procedure. The adoption of the English rules of court would have required some legislative enactment and in some of the neighbouring Caribbean jurisdictions that is exactly what has occurred. For example in Barbados the case **of Re The Editor of the Barbados Advocate** (1960) 3 W.I.R. 8 refers to section 45 of the Supreme Court of Judicature Act, 1956 which repealed the Contempt of Court Act 1891 and prescribed that:

> "the Supreme Court shall have the same jurisdiction to deal with cases of contempt as may from time to time be exercised at common law by the High Court of Justice in England, and such jurisdiction shall extend to cases involving subordinate Courts"

and in Trinidad and Tobago the case of **Trinidad and Tobago Law Society v Chokolingo and Singh** (1972) 21 W.I.R. 514 where Hasanali J. stated that Order 53 rule 2 of the Trinidad and Tobago Rules of the

Supreme Court was identical in terms with the English Order 52 rule 2. and that:

> "the Jurisdiction of our Courts in contempt proceedings is to be exercised as nearly as possible in accordance with the practice and procedure for the time being in force in the High Court of Justice in England. (See s. 14 of the Supreme Court of Judicature Act, No.12 of 1962)."

In St.Christopher and Nevis the Eastern Caribbean Supreme Court (St.Christopher and Nevis) Act does not incorporate the English law and practice relating to contempt of Court into the local law. The jurisdiction of the Supreme Court in contempt is contained in the Contempt of Court Act (Cap 15) which was enacted in 1898. Civil contempts are dealt with by Section 10 which specifically enacts that the Act shall not be deemed to interfere with or affect the power of the Court to punish disobedience of Court process, orders and directions of the Court and contempts in "the face of the Court" by Section 3 which gives the Court power to punish summarily any person who commits a contempt in the presence or hearing of the court when sitting.

The section dealing with criminal contempt such as alleged in these proceedings is Section 4 which provides:

> "(1) All contempts of Court other than those committed in the presence and hearing of the Court when sitting shall be dealt with and determined only by means of a rule of the Court which may be applied for by any person whomsoever calling upon the defendant to show cause why he should not be attached for contempt of Court."

There are ten subsections which set out in some detail the procedure to be followed.

The Original Jurisdiction of the Court of Appeal

In the definition section the Court is described as the Supreme Court, which includes both the trial and the appellate divisions. This seems to be in keeping with the inherent power which Superior courts have exercised from the earliest times to coerce those who obstruct the administration of justice. It is obvious that this power is needed by the Court of Appeal in the case of contempts in "the face of the Court" which are regulated by section 3 of the Act. Without going into any detail, I have formed the opinion that in the case of those criminal contempts which are regulated by section 4 of the Act, the special procedures prescribed are more conveniently and

appropriately administered by the High Court. I venture the conclusion that these proceedings should not have been instituted in the Court of Appeal.

Procedural Defects

In section 4(1) of the Act, the term "rule of the court" signifies an order or direction made by a court of justice in an action or proceeding. The particular rule prescribed is a rule to show cause, or a rule nisi. This means that if no sufficient cause is shown, the rule is made absolute: otherwise it is discharged. More importantly it means that the respondents would be summoned to show cause by an order of the Court.

In this case the applicant did not obtain a rule of Court. He served the respondents with Notice of his motion for their committal to prison, and with a subpoena commanding their attendance at Court. The legal result is that the applicant failed to comply with section 4(1) of the Act.

This procedural defect must result in striking out the Notice of Motion. The requirement that an applicant obtains a rule of Court provides a mechanism for judicial supervision over the issue of these grave criminal proceedings which could lead to summary imprisonment. Additionally, the form of these proceedings invites the Court to infringe the respondents' rights against the deprivation of their personal liberty, except by due process of law, as guaranteed by the Constitution.

Had the applicant applied to the court for an application to obtain a rule of court, his contention would have been examined to determine whether there was any basis for instituting the proceedings. I propose to go through this process without expressing my adjudication on the other procedural defects identified by counsel for the respondents.

What is Contempt of Court

From the earliest legal history the courts have assumed the power to coerce those who obstruct the administration of justice. In more modern times the Phillimore Committee, which reported in 1974 on the law of contempt, expressed the opinion that the Law of contempt is required as a means of maintaining the rights of the citizen

to a fair and unimpeded system of justice and protecting the orderly administration of justice; and that it should allow as much freedom of speech as is consistent with the achievement of those objectives.

In the text book the Law of Contempt by Anthony Arlidge and David Eady published in 1982 it is stated at page 30:

> "The common law definition of contempt of court is an act or omission calculated to interfere with the due administration of justice. This covers criminal contempts (that is acts which so threaten the administrating of justice that they require punishment) and civil contempts (disobedience to an order made in a civil cause)."

There are various types of conduct which could constitute contempt of court. The principle of law which is relevant to these proceedings can be briefly stated to be that the publication of matter calculated to interfere with the fair trial of a pending cause is a criminal contempt. The case of **Vine Products v Green** (1965) 3 W.L.R.791. is authority for the proposition that the publication of an article which prejudged an issue in the case (as to what wine could properly be called sherry) was no contempt unless there was a grave and real risk of the proper administration of justice being interfered with. However, the proposition that any prejudgment of a pending cause is a contempt even if the risk of interference with that cause is small received support in the House of Lords decision in **Attorney-General v Times Newspaper** (1974) A.C.273. The case arose out of a campaign directed by a national newspaper against the manufacturer of a drug which had produced serious deformities in foetuses and hence in the resulting children. The campaign was designed to pressurise the manufacturers into giving the children more generous compensation than they were intending. It occurred while litigation was in progress. The manufacturers sought to prevent the campaign continuing on the ground that it was calculated to interfere with the fair trial of the pending cause. The House of Lords upheld an injunction restraining publication of a newspaper article which in part prejudged the issue of the pending litigation. But the matter did not end there because the United Kingdom is a signatory to the European Convention on Human Rights, and the matter was referred to the European Court of Human Rights which overturned the ruling of the House of Lords on the ground that it was an unwarranted restraint of free speech.

This decision of the European Court of Human Rights applying International standards of Human Rights to the domestic law in England (and consequently to our jurisdiction) has affected the common law definition of this head of contempt, to the extent that proof is likely to be required that the publication complained of creates a risk that the course of justice will be seriously impeded or prejudiced. This risk will have to be balanced against the court's duty, created by the fundamental rights provisions of the constitution, to protect the citizen's rights of free speech, particularly in the area of public discussion of the judicial process.

In my judgment therefore, the essential elements of the criminal charge which the applicant has purported to prosecute against the respondents, includes proof that there was a risk that the course of justice would be seriously impeded or prejudiced by the statement published in the Democrat Newspaper.

Abuse of the Court's Process

Counsel for the respondents submitted that these proceedings abuse the court's process because the High Court has already adjudicated in similar proceedings. He alleged that the applicant employed the device of bringing these proceedings to evade the payment of the legal costs already ordered against him which he may have had to pay as a condition of appealing.

It is well established that the Court has an inherent jurisdiction to stay or dismiss before hearing all proceedings before it which are obviously frivolous, vexatious or an abuse of its process. Proceedings which relitigate matters are abusive of the process of the court.

The relevant background facts are that the applicant brought two sets of proceedings against the respondents. The first were instituted in the High Court. That action was heard by Smith J. and was dismissed with costs. Apparently that action is not completely ended as the applicant had only served some of the respondents and the case is still pending against those he had not served. The applicant did not appeal. Instead he brought these proceedings invoking the original jurisdiction of the Court of Appeal.

The applicant advanced the rather presumptuous rebuttal that his conduct was justified because the publication was in contempt of both the High Court and the Court of Appeal, and whereas the High Court could pronounce on a contempt against itself, it would be in fra dig for it to pronounce on a matter of the contempt of the Court of Appeal. I was not impressed. The High Court is competent to determine an issue of contempt against the Court of Appeal. The two sets of proceedings involve the same parties, they relate to the same publication and involve the same legal principles. The only difference by which they could be distinguished is that they alleged contempts against the judgments of the two courts, albeit in the same case and reaching the same conclusion. In my view this is a trivial and immaterial distinction which does not alter the simple fact that the proceedings in the Court of Appeal were to determine substantially the same point that was raised in the High Court proceedings. I would rule that this application is an abuse of the process of the Court.

The Merits

The applicant's affidavit in support alleged that on Saturday 24th August 1996 the Democrat newspaper published "an official letter of the Directorate of the St.Kitts -Nevis Chamber of Industry and Commerce" which contained the following statement:

> "The High Court and the Court of Appeal have both declared that the Government which existed between the 1993 and the 1995 general elections was a lawful Government. The Chamber publicly expressed a similar view even prior to these judicial decisions."

The affidavit alleged that this statement was a contempt of court because:

(1) it was a misrepresentation of the judgments handed down by the High Court on 2nd February 1994 and the Court of Appeal on 3rd October 1994;

(2) his appeal to the Privy Council had the effect of staying the judgment against which he had appealed;

(3) it usurped the authority of Her Majesty's Judicial Committee of the Privy Council as it amounted to a prejudgment of the appeal.

The applicant did not allege, nor adduce any evidence directed to or capable of establishing that there was any risk that the course of justice would be impeded or prejudiced by the publication. In my view therefore, even if he was able to establish all the allegations he has made as a matter of law no conviction could result from the evidence he has adduced. However, I will now examine his allegations.

The Misrepresentation

The judgments to which the application referred were in litigation initiated by the applicant on 21st January 1994 for a declaratory judgment impugning the decision of the Governor-General to appoint the Prime Minister, and for other relief including the removal of the Prime Minister, the dissolution of Parliament and the issue of new writs for General Elections by the Governor General.

On 22nd February 1994 Hylton J. refused the application in a written judgment. The applicant appealed and on the 3rd of October 1994 the judgment of the Court of Appeal in **Re Blake** [1994] 47 W.I.R. 174 was delivered by Sir Vincent Floissac C.J. dismissing his appeal. In his judgment Sir Vincent explained that the applicant had confused the procedural requirements for judicial redress for violation of public rights with the procedural requirements for judicial redress at private law for the violation of private rights. Consequently he had not applied for leave for an order for mandamus as required by the Rules of the Supreme Court nor had he joined the Attorney-General (representing the Governor General) contrary to the rules of natural justice. He explained that section 116(2) of the constitution exempts from judicial review any decision made by the Governor-General under section 52 of the Constitution, and concluded that:

> "The answer to the question who is "likely to command the support of the majority of the Representatives" is subjective and the Constitution makes it subjective to the Governor-General's personal judgment. The answer is an elusive issue which is not justiciable."

Nonetheless, he then considered the merits on the premise that the decision was justiciable and concluded:

> "There is no evidence or justification for the conclusion that the Governor-General's decision was "so outrageous in its defiance

> of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." There is therefore no valid ground for impugning the Governor- General's decision at a judicial review."

The effect of the judgment was to confirm the legality of the Governor-General's decision to appoint the Prime Minister. The applicant's affidavit alleged that the judgment of the court was not couched in language which included a specific declaration that the Government was lawful. However, it is an elementary principle of interpretation that one extracts the meaning of the judgment by reading it as a whole. The judgment examined the relevant issues. Its effect and meaning was clearly conveyed. The statement in the letter which the applicant has criticised did not give a false or erroneous impression of the ruling of the Court. In my view there was no basis for the allegation that the publication misrepresented the judgments handed down by the High Court and the Court of Appeal.

Further the statement was no more than a report of the decision of the Court, and a statement indicating that the Chamber of Commerce had expressed a similar view prior to the delivery of the Court's judgment. It has been well established that an accurate report of judicial proceedings cannot give rise to punishment for contempt of Court. See for example the old case of **Buenos Aires Gas Company Ltd. v Wilde** (1880) 29 W.R. 43 where Malins V.-C. refusing to commit a man who had published an accurate report of Court proceedings which was alleged to constitute a contempt said:

> "As I understand the law it is this, that a fair representation of what takes place in a court of Justice is justifiable, provided it is accurate".

The Stay of Execution

The applicant appealed to the Privy Council and his affidavit contended that the judgment was stayed by his appeal. However, it is trite law that the judgment of a court is not stayed by an appeal. The enforcement or execution of a judgment can be stayed but only by an order of the court. In this case no order has been made to stay the judgment referred to in this application so it remains in force unless set aside on

appeal or otherwise. There was every right to publish the judgment notwithstanding the fact that it was on appeal.

The prejudgment of his appeal

In this case there was no allegation from which it could be concluded that there was anything which could tend to prejudice the fair trial of the applicant's appeal to the Privy Council. The suggestion that reporting the effect of a decision which has gone on appeal is a prejudgment of, or could interfere with, impede or prejudice the fair hearing of the appeal is irrational, illogical and simply ludicrous.

In the law of contempt it has long been established that professional judges are unlikely to be affected by prejudicial matter printed in the press. In **Attorney-General v Times Newspapers (1974)** A.C.273 (supra) Lord Reid in delivering his judgment in the House of Lords said:

> "It is scarcely possible to imagine a case when comment could influence judges in the Court of Appeal or noble and learned judges in this House. And it would be wrong and contrary to existing practice to limit proper criticism of judgments already given but under appeal."

The words complained of in this case merely reported the judgments with approbation. The idea that the noble and learned Judges in the Judicial Committee of the Privy Council could be affected by such a publication is ridiculous.

The result is that there is no merit in the allegation that the criticised publication could form the basis of a charge for contempt of Court.

Order

I would therefore uphold the preliminary objections of the respondents and rule:

(1) that the application ought not to have been instituted in the Court of Appeal;

(2) that the failure to obtain a rule of Court calling upon the respondents to show cause contravened section 4(1) of the Act;

(3) that this motion is an abuse of the process of the Court and;

(4) that the charge is entirely without merit, as it disclosed no basis for the complaint that the respondents had committed a contempt of court.

I would dismiss this motion and order that the applicant do pay the costs of the respondents to be taxed, certified fit for two counsel.

C.M. DENNIS BYRON
Chief Justice [Ag.]

I Concur.

SATROHAN SINGH
Justice of Appeal

I Concur.

ALBERT REDHEAD
Justice of Appeal [Ag.]