

**SAINT VINCENT & THE GRENADINES**

**IN THE COURT OF APPEAL**

CIVIL APPEAL NO.1 OF 1997

BETWEEN:

**ESLEE CARBERRY**

Appellant

and

**GRENADA TELECOMMUNICATIONS LTD**

Respondent

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

Appearances:     Mr. P. R. Campbell for the Appellant  
                      Mr. S. E. Commissiong for the Respondent

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                  1997:     July 23;  
                                  September 15.  
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**JUDGMENT**

**MATTHEW, J.A. [Ag.]**

This appeal arises out of a motion which the respondent brought to commit the appellant to Her Majesty's Prison at Kingstown for his failure to pay a judgment debt and costs which the Court had ordered him to pay within a specified time. At the hearing of the motion learned Counsel for the appellant took a point in limine to the effect that the Court had no jurisdiction in the matter. After hearing arguments and reserving his decision the learned Trial Judge overruled the submissions made on behalf of the appellant but granted the appellant leave to appeal to this Court. I shall now set out the background to this matter.

## **Background**

The respondent obtained judgment against the appellant in Grenada for the sum of \$8,578.01 and costs taxed at \$121.28 on December 15, 1993. The appellant then left Grenada and took up residence in St. Vincent. On December 12, 1995, the respondent filed an originating summons pursuant to section 3 of the Commonwealth Countries Judgment [Enforcement] Act Cap.82 asking that the said judgment be registered in the High Court of St. Vincent and the Grenadines. An order was accordingly made on January 4, 1996 and notice of the same was served on the appellant on January 16, 1996.

On April 15, 1996 the respondent filed an ex parte summons pursuant to Order 69, Rule 1 of the Rules of the Supreme Court 1970 for an order that the appellant attend and be orally examined as to whether any and what debts are owing to him, and whether he has any other property or means of satisfying the judgment dated the 15<sup>th</sup> day of December, 1993 of the High Court of Grenada which was registered in the High Court of St. Vincent. The application was granted on April 19 and an order was made that the appellant attend for examination on May 3, 1996. The appellant failed to appear on that day and an order was made that he pay the amount within six weeks from the date of the order.

The appellant was duly served with a copy of the order which was endorsed with the usual penal sanction, but he refused to obey the order. As a result the motion to commit him to prison was filed on July 11, 1996. The motion came up for hearing on October 10, 1996 and January 15, 1997 and the learned trial Judge gave the ruling referred to above on February 3, 1997.

The appellant was not satisfied with the ruling of the learned trial Judge and has appealed to the Court.

## **The Appeal**

The appellant filed two grounds as follows:

- [1] The learned trial Judge failed to consider and address adequately or at all the detailed submissions made on behalf of the appellant to the effect that the High Court lacked jurisdiction to grant the order sought by the respondent's motion, as set out in Skeleton Argument which was before the Learned trial Judge, and thus deprived the appellant of a fair hearing of his case by ignoring the central issue therein.
  
- [2] The learned trial Judge erred in law in holding that "the [Respondent was] not invoking the summary jurisdiction of the High Court by virtue of the Debtors Act Cap.86 but by Order 73 of the Rules of Supreme Court", in that His Lordship failed to draw the necessary distinction between the procedural nature of the Rules of the Supreme Court and the substantive nature of the Debtors Act Cap.86, and failed to give effect to the supremacy of the Debtors Act Cap.86 over the Rules of the Court thereby erroneously holding in effect that the High Court possessed jurisdiction to punish the appellant for contempt subject to the evidential burden.

Learned Counsel for the appellant submitted that the order of May 3, 1996 was an order to pay a money judgment in the High Court in its plenary jurisdiction as opposed to its summary jurisdiction. Counsel further submitted that the motion sought to seek imprisonment of the Appellant for a debt and that was governed by the Debtors Act, Cap.86 of the Laws of St. Vincent. Counsel referred to sections 4[1][e] and 6 in particular. Counsel submitted that the summary jurisdiction of the High Court was only \$240.00 and the

amount in this claim is therefore in excess of the High Court's summary jurisdiction. Counsel referred to the following authorities:

[1] **Horsnail and Another v Bruce** [1873] L.R. 8 C.P.378

[2] **Fred Toppin and Rudolf's Limited** Civ. App. No.13 of 1991

Learned Counsel for the appellant submitted that the apparent anomaly in the law could only be cured by legislative intervention.

In reply, learned Counsel for the respondent submitted that the appellant was ordered to pay money within a specific time and he had two courses of action. He could either have asked for time to pay or ignore the order as he did. Counsel submitted that the appellant wilfully refused to obey the Court's order and he should therefore be committed. This he said was his short reply. Counsel referred to the case of **Roberts v Ball** E.R. Vol.65 page 610.

### **Contempt of Court and the Debtors Act**

Volume 8 of the Third Edition of Halsbury's Laws of England at paragraph states in part - "Contempt of court is either [1] criminal contempt, consisting of words or acts obstructing or tending to obstruct the administration of justice, or [2] contempt in procedure, consisting of disobedience to the judgments, orders or other process of the Court, and involving a private injury". Paragraphs 41 and 46 recognise a further subdivision of the latter category into Disobedience to Orders for the Payment of Money and Disobedience to Orders other than for the Payment of Money and to other process. The same sub-division is contained at paragraphs 66 and 77 of volume 9 of the Fourth Edition of Halsbury's Laws of England. This case of course concerns the disobedience to an order for the payment of money. Paragraph 78 of Volume 9 of the Fourth Edition of Halsbury's Laws of England states the effect of the Debtors Act 1869 as follows:

“The general object of the Debtors Act 1869 was to prevent the imprisonment of persons for the non-payment of ordinary judgment debts. Subject to certain exceptions no person is to be arrested or imprisoned for making default in payment of a sum of money.

The exceptions to this general rule are as follows: [1] default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract; [2] default in payment of any sum recoverable summarily before a justice or justices of the peace; [3] default by a trustee or person acting in a fiduciary capacity and ordered to pay by a Court of equity any sum in his possession or under his control; [4] default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in the payment of a sum of money when ordered to pay the same in his character as an officer of the Court making the order; [5] default in payment for the benefit of creditors of any portion of salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy is authorised to make an order; [6] default in payment of sums in respect of the payment of which orders are in the Debtors Act 1869 authorised to be made; [7] default in payment of any sum payable in respect of death duties or purchase tax.

The maximum period of imprisonment in any of the excepted cases is one year, but in certain cases the Court has a discretion to refuse committal. The order of committal must accurately specify under which exception the default is included. The imprisonment is a punishment for contempt and the suffering of imprisonment in no way discharges the debt.”

C.J. Miller in his book, *Contempt of Court* at page 232 deals with Civil Contempt of Court which is another way of describing what Halsbury calls Contempt in Procedure. But Miller makes the same subdivision and deals firstly with Disobedience of an order other than an order for the payment of a sum of money and later in the 14<sup>th</sup> chapter at page 271 deals with Disobedience of an order for the payment of a sum of money. After referring to sections 4 and 5 of the Debtors Act, he states at page 272:

“Whilst the impecunious debtor was protected, the debtor who had the means to pay remained liable to a maximum term of six weeks’ imprisonment to coerce him into compliance

.....in cases falling outside these limited committal by the High Court or by a county court is no longer possible and the creditor is restricted to enforcement through execution against the debtor's property, or through an attachment of earnings order."

Nigel Lowe and Brenda Sufrin in their book, *The Law of Contempt*, adopt the classification of Miller and deal with Civil Contempt in chapter 14. They also deal separately with the powers of the Courts to enforce the payment of a sum of money and their powers to enforce judgments or orders than for the payment of a sum of money. At pages 582-583 the authors state:

"Disobeying an order for the payment of money into court:  
There are two types of judgments or orders which direct a person to pay money, namely, that directing payment of money to another person and that directing payment of money into Court. Disobedience to either type of order can amount to contempt but the importance of the distinction is that whereas the effect of an order directing a person to pay money to another person is to create a debt, an order to pay money into Court does not necessarily imply the existence of a debt. In the former case the Court's power to imprison persons who have disobeyed the Court order is very limited and can only be exercised in the circumstances provided for by the Debtors Act 1869, sections 4 and 5. In the latter case, however, where the order for payment into Court is not in respect of any debt but merely for the security, for example, of a wife's costs, then the power of the Court is not affected by the Debtors Act 1869, section 4 and the normal remedies of committal or sequestration are available. In *Bates v Bates* [1888] 14 PD 17 the Court of Appeal held that their power to punish a husband who had defaulted in paying a sum of money into Court ordered for the security of his wife's costs in respect of her petition for judicial separation, was unaffected by the Debtors Act 1869. Lindsay L.J. said:

"The question turns upon the words of the 4<sup>th</sup> section of the Debtors Act. It is said that the appellant is within the protection of the Act, because he has made default in payment of a sum of money. But what do the words "payment of money" in this section mean? In my opinion, they do not mean depositing a sum of money in court, to abide an order to be subsequently made."

On the other hand, where the order for the payment of money into Court is in the nature of a debt, then the Debtors Act 1869 does apply. In **De Lossy v De Lossy** [1890] 15 PD 115 it was held that an order directing a husband to pay permanent maintenance to his wife did amount to a debt. In **Farrant v Farrant** [1957] P 188, a husband had been ordered to pay school fees for three children, and it was held by Sachs J. that:

“in substance the husband’s obligation was to pay a sum certain when it had been ascertained. The moment that sum had been ascertained his obligation was clearly to pay money, and any default on his part was in truth a ‘default in payment of a sum of money’ within the meaning of section 4 of the Debtors Act 1869. This the court has in the present case no power to order a writ of attachment to issue.”

The essence of the distinction seems to be that the payment of money as security is not a debt within the meaning of the Debtors Act, because no definite and fixed obligation to pay a sum of money has thereby been created.

On the other hand, once the sum has become fixed, a definite obligation to pay a sum of money is created and it is in essence therefore a debt.

The case of **Horsnail v Bruce** referred to above dealt with the simple proposition that a second order of commitment could not be made in respect of the same debt on which an earlier order of commitment had been made. The learned Chief Justice Bovill clarifies the judgment when he says at pages 385-386:

“The conclusion I have arrived at is that section 5 authorises one commitment for a period not exceeding six weeks for one default; and that, where the order is for payment of the debt by instalments the party may in like manner be committed for each default. Here, the judge having made an order for the commitment of the defendant for default in payment of the whole debt, I am of the opinion that he had no jurisdiction to issue a second for the same default, and therefore that the prohibition should go.”

However, the case has significance in showing the relationship between sections 4 and 5 of the Debtors Act 1869 which correspond to sections 4 and 6 of the Debtors Act, Cap.86 of the Laws of St. Vincent and the Grenadines. At page 383, Chief Justice Bovill states:

“The main object of the Debtors Act, 1869 was the abolishment of imprisonment for debt. Its title is “An Act for the abolition of imprisonment for debt, for the punishment of fraudulent debtors, and for other purposes”. Part 1 has reference solely to ‘abolition of imprisonment for debt’. Section 4 enacts, that, with the exceptions hereinafter mentioned, no person shall after the commencement of this Act be arrested or imprisoned for making default in payment of a sum of money. Then follow six exceptions, the last of which is ‘default in payment of sums in respect of the payment of which orders are by this Act authorised to be made’, which may possibly refer to the orders for payment by instalments referred to in section 5.”

Honyman J. is not in any doubt. At pages 389-390 he states:

“I agree that the 6<sup>th</sup> sub-section 4 of the Debtors Act, 1869 is applicable to all the cases provided for by section 5.”

See further the views of Bret J. on sections 4 and 5 of the Debtors Act at page 387. I conclude therefore that the order made by the learned trial Judge on May 3, 1996 being an order for the payment of money into Court in the nature of a debt is subject to the provisions of the Debtors Act, Cap.86.

### **Applications concerning the Liberty of the Subject**

As stated above, this appeal arises because the respondent sought to commit the appellant to Her Majesty's Prison for his contempt in disobeying an order of the High Court. In the case of **Fred Toppin Jonas Browne & Hubbard [Grenada] Limited and Rudolf's Limited** this Court was divided on the actual decision, the majority being in favour of allowing the appeal. But the Court was unanimous that where the liberty of the subject is involved, procedural rules must be strictly complied with. Singh J.A. in his judgment



attributed some wise words uttered by the learned Chief Justice Justice during the hearing of the matter thus:

“The Constitution of Grenada, the Rules of the Supreme Court and judicial principles have all shown great sensitivity where the liberty of the subject is concerned and the Court must be ever so vigilant in matters of this kind.”

The principles stated above are very relevant in this matter.

I notice from the Record of Appeal that the Motion for order of committal was made pursuant to Order 73 Rules 1 and 2 of the Eastern Caribbean Supreme Court Rules 1970.

In **Toppin’s** case the respondent had obtained on an ex parte application certain mandatory injunctive relief and because the appellants had not complied he was seeking to commit the appellants to prison. From the judgment it is said that the application was made pursuant to Order 66 Rule 5[1][iii] of the Rules of the Supreme Court. The provision reads:

“5[1] Where:

- [a] a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, Rule 5 or;
- [b] a person disobeys a judgment or order requiring him to abstain from doing an act,
- [c] then subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say:-
  - [iii] subject to the provisions of the Debtors Act, an order of committal against that person or, where that person is a body corporate, against any such officer.”

The Rule is subject to the provisions of the Debtors Act. Order 66, Rule 1 is clearly relevant, being a rule for the enforcement for the

payment of money and as regards committal this is governed by Rule 5. Order 73, Rule 1 merely states that where the High Court and the Court of Appeal have power to punish for contempt they may do so by order of committal. Rule 2 states how the application is to be made. It seems to me that the provisions of Order 66 have to be satisfied before one can proceed to committal under Order 73.

### **The Debtor's Act**

Section 6[1] of the Debtors Act, Cap.86 states:

"Subject to the provisions herein mentioned and to the rules, the Court, acting under the rules of its practice and procedure for the trial of small causes, or any magistrate, in any case within his jurisdiction under the law for the time being regulating the recovery of small debts before magistrates, may commit to prison for a term not exceeding six weeks or until payment of the sum ordered to be paid [if paid before such six weeks], any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order of the Court, or judgment of the magistrate, as the case may be."

Learned Counsel for the appellant has demonstrated with adequate legislative authorities that the summary jurisdiction of the High Court of St. Vincent and the Grenadines is limited to \$240.00, a jurisdiction which was known in other Eastern Caribbean Countries but which some of them have abolished. See the Civil Procedure Code Chapter 81 of the Laws of St. Vincent and the Grenadines. It seems clear to me that the jurisdiction of the High Court of St. Vincent and the Grenadines as contained in the Debtors Act, Cap.86 is quite limited and I do not entertain any doubt that the Court is lacking in jurisdiction in the instant matter. Learned Counsel for the respondent in his skeleton arguments concedes that the jurisdiction of the High Court under section 6 of the Debtors Act is a summary jurisdiction where the debt does not exceed \$240.00 but he says this would create a situation that the legislature could not have intended and so he seeks reliance on the inherent jurisdiction of the Court where the

debt, as in this case, is in excess of \$240.00. I agree with learned Counsel for the appellant that this is a matter that can only be solved by legislative intervention.

As I was preparing this judgment the only other legislation on the subject which was available to me was the Dominica Debtors Act found at Chapter 7:01. The corresponding section is section 6 of the St. Vincent and the Grenadines legislation is section 4 and the text is closer in wording to section 5 of the Debtors Act, 1869. The material portion of section 4[1] of the Dominica legislation is as follows:

“Subject to the provisions hereinafter mentioned and the prescribed rules, the Court may commit to prison for a term of six weeks or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent Court.”

Section 2, like the legislation of Saint Vincent and the Grenadines defines “Court” to mean the High Court. So in my view the appellant would not be as fortunate in Dominica.

I am of the opinion that in the present state of the legislation the appeal must be allowed. As the authorities indicate that does not mean that the appellant is not still contempt of Court. Indeed, learned Counsel for the appellant conceded that in his skeleton arguments before the learned trial Judge which he made part of the record of appeal. What it means is that he cannot be arrested or imprisoned for making default for that is not a default excepted from the operation of subsection [1] of section 4 of the Debtors Act, Cap.86.

I feel obliged not to award costs to a person who is in contempt of Court but I should like to take the opportunity to commend Mr. Campbell for his industry and research in the prosecution of the appeal.

The appeal is allowed. There will be no order as to costs.

ALBERT MATTHEW  
Justice of Appeal [Ag.]

I Concur.

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

I Concur.

SATROHAN SINGH  
Justice of Appeal