VIRGIN ISLANDS

IN THE COURT OF APPEAL

Civil Appeals Nos. 10, 11 and 15 of 1997

BETWEEN:

(1) LALIBAI THAKURDAS PAGARANI
(2) HASIBAI known as MORA A LLILARAM KEKWLANI
(3) RIJHA known as KANTA KISHINCHAND JETHWANI
(4) GOPI known as VANTI JAI MOTIANA
(5) KIJMARI DHANWANTI THAKURDAS PAGARANTI
(6) SARASWATI known as KANCHAN SATISH MOTIANI
(7) RUKMANI ASWANI

Plaintiffs/Appellants

And

(1) I. CHOITHRAM INTERNATIONAL S.A.
(2) BYTCO INTERNATIONAL S.A.
(3) BHOLENATH INC
(4) MAHADEV INC
(5) KISHORE THAKURDAS PAGARANI
(6) LEKHRAJ THAKURDAS PAGARANI
(7) RAMESH POHUMAL THANWANI
(8) RAMCHAND DHARMADAS RAJWANI
(9) VASHDEV LALCHAND PAMNANI

Defendants/Respondents

Before: The Hon. Mr. Justice Satrohan Singh Justice of Appeal
The Hon. Mr. Justice Albert Redhead Justice of Appeal
he Hon. Mr. Justice Albert Matthew Justice of Appeal (Ag)

Appearances: Mr. Alan Steinfeld Q.C, Mr. Stephen Moverley Smith with him for the Appellants.

Mr. Stephen Smith, Mr. Paul Webster with him for the Respondents.

[July 2, 3, 27, 1998]

JUDGMENT

SATROHAN SINGH J.A.

This judgment relates to three appeals brought by the appellants against judgments of Ephraim Georges J. They are the offsprings of a multi million dollar suit between the parties. I do not propose to elaborate herein

on the facts of that suit. We have already done so comprehensively very recently in our judgment on the substantive issues of that suit. Also, because of the nature of these proceedings I do not consider it necessary to repeat them here.

The alleged mischief that necessitated the proceedings resultant in these appeals was the filing by the seventh named appellant RUKMANI ASWANI, allegedly aided and abetted by the other appellants, of an application in pending proceedings in a country called Dubai, for the appointment of a guardian of the estate of Thakurdas Pagarani (deceased). That application was granted and a guardian was appointed. The impression of the respondents was that during the hearing of the substantive matter before Georges J, the appellants had undertaken to the Court not to make any such application. They accordingly filed contempt proceedings against the appellants. Appeal No. 15 of 1997 relates to those proceedings.

At the first hearing of the contempt motion on August 15, 1997, Georges J refused an application of the appellants for an adjournment save on terms that they be ordered to apply forthwith to the Court in Dubai to stay the proceedings in which the guardian had been appointed. On August 22, 1997, the appellants applied to said Judge for a variation of that order. That application was dismissed by the Judge. Appeals No. 10 and 11 are from those two orders.

Subsequent to those two orders of Georges J and before these appeals came on for hearing, the guardianship order made in Dubai was rescinded. That rescission order virtually removed the bedrock of Appeals No. 10 and 11 and left them as mere empty shells. As a result we can see no legally

justifiable reason to involve ourselves in their merits or demerits. They are now merely matters of an academic nature. Accordingly, applying the accepted legal principle that a Court ought not to adjudicate on a matter which is purely of an academic iiature, we would order that appeals Nos. 10 and 11 do stand dismissed. Because we have not decided those two appeals on their merits we would make no order as to costs. The remainder of this judgment will therefore only address the appeal in the contempt proceedings No. 15 of 1997.

On August 7, 1997, the respondents issued a motion before the High Court to commit the appellants for their alleged breach of an undertaking given by them through their Counsel to the Court on January 22, 1997. This allegation was subsequently amended to allege a breach of the undertaking Arecorded in the Court Order..... entered on 11 July 1997.@ Georges J heard the motion and found the appellants guilty of breaching the undertaking recorded in the order of July 11, 1997. After they were convicted, the appellants through their Counsel by way of mitigation, apologised for their behaviour to the Court. Georges J accepted their apology and imposed no penalty other than an order that they pay the costs of the contempt proceedings to the respondents.

The Appellants have appealed and their main concern was, whether on the facts and circumstances disclosed in the record, there was in fact an undertaking that was breached. The respondents cross appealed against the leniency of the so called penalty that was imposed.

The law applicable to contempt proceedings is not in dispute. The onus of proving the alleged contempt was on the respondents. Such proof was

beyond a reasonable doubt. A Contempt of Court is akin to an offence of a criminal character: Re Bramblevale Limited (1970) Ch:128: Dean -V- Dean (1987) IFLR 517. It is also settled law that before there can be a breach of an undertaking, the terms of such undertaking should be clear, precise and unambiguous and that the persons giving the undertaking should be left in no doubt as to the consequences of a breach. [Hussain - V - Hussain (1986) Fain 134] In Redwing Limited -V - Redwing Forest Products Limited (1947) LT Cha. Div. 387 it was held that the undertaking must be clear and the breach clear beyond all question. Any ambiguity in the meaning of the undertaking must be resolved in favour of the alleged contemnor.

The record of proceedings before us show that during the hearing of the substantive matter, the appellants on January 22, 1997, through their legal advisors proposed an undertaking to the trial Judge. The terms of that undertaking were not fully agreeable to the respondents and therefore the terms were not then settled. At the behest of the Judge, each side was required to submit a draft of the terms of the undertaking. This they did but they were not ad idem. Georges J took the two drafts, chose one and on July 11, 1997 had an order entered in accordance with the one he chose.

Before that order was entered, and more particularly on May 24, 1997, the appellants had already applied in pending proceedings before a Court in Dubai for the appointment of a Guardian to administer the Pagarani estate, the subject of the dispute between the parties. That application had two hearings, one on June 18, 1997 and the other on July 2, 1997. There was therefore on those dates no settled form of the terms of the undertaking. As earlier mentioned the order evidencing the undertaking in issue was not

entered until July 11, 1998. The submission of Queen's Counsel Mr. Steinfeld for the appellants was that given these circumstances, there was no or no settled undertaking at the time of the alleged breach.

Applying the law abovestated to the circumstances disclosed here, we are compelled to agree with the submission of Mr.Steinfeld. We consider that at the time of the alleged contempt, the undertaking the appellants were alleged to be in breach of, did not exist. Before the order of Georges J of July 11, 1997, it was not possible to discern from the transcript the exact terms of any undertaking purportedly given by the appellants. We therefore hold that at the time of the alleged breach there was no effective undertaking in existence.

The transcript of the proceedings before us show confusion as to what the undertaking was before the aforesaid order of Georges J. Indeed, the Judge himself, in his discussions with the lawyers in this matter on the question of penalty and costs expressed reservations as to the clarity of the undertaking, and this despite his very firm observation in his written judgment that there was no ambiguity in the undertaking. These reservations revealed themselves when he observed that he was Ataking a certain approach because it was clear that there was some misunderstanding at some stage.@ He said Aif one reviews all the documents, two versions were put before me for settling and I opted for one having regard to my own notes and my own recollection.@ From another part of the transcript Georges J said A1 accept that they have misunderstood the undertaking. >two versions were put before me which I accepted one.@ In reminding Mr. Webster for the respondents that the argument of the appellants was that there was a

misunderstanding as to the undertaking, Georges J suggested that there was support for the argument. Finally, the fact that the respondents when they brought the motion, founded it on the Aundertaking@ of 22nd January 1997 and then amended same to the date of the order entered on July 1997, demonstrates also some confusion in their minds. It is my considered opinion that when Georges J said in his judgment AI see no room whatsoever for any doubt or ambiguity as to the precise terms of the undertaking@ he was referring to the undertaking evidenced in the July 1997 order which it is agreed was settled and entered after the alleged contemptuous event.

For these reasons, we cannot find precision in the terms of whatever undertaking the appellants were alleged to have breached. Accordingly, we would allow the appeal No. 15 of 1997, and set aside the judgment of Georges J. The Cross Appeal is dismissed. The appellants will have their costs in this Court in the appeal and the cross appeal and in the Court below to be taxed if Riot agreed. As earlier mentioned, appeals Nos. 10 and 11 of 1997, do also stand dismissed with no order as to costs.

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SATROHAN SINGH
Justice of Appeal

I concur

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ALBERT REDHEAD
Justice of Appeal

MATTHEW J.A. [AG.]

The matters before this Court pertain to three appeals and one cross-appeal against several orders made by Georges J between August and October 1997. All the appeals relate to legal proceedings in Dubai to appoint a person as a AGuardian@ of the estate of the late T.C. Pagarani which were initiated by the seventh Appellant on May 24, 1997 and supported by the other Appellants. A AGuardian@ was appointed in the proceedings on July 16, 1997. The Respondents contended, and the learned Judge found, that the proceedings in Dubai were commenced and continued in breach of an undertaking given by the Appellants to the learned Judge himself on January 22, 1997.

The Court of Appeal in Dubai has very recently on May 30, 1998 on application by the Respondents revoked the appointment of the Guardian.

By a notice of motion dated August 7, 1997 which was subsequently amended the Respondents applied to commit the Appellants to prison for contempt of court for allegedly breaching the terms of the undertaking given to the Court on January 22, 1997 by applying to the Court in Dubai for the appointment of a Guardian. The first hearing of the motion was on August 15, 1997. The learned Judge adjourned the motion on terms that the Appellants be ordered to apply forthwith to the Court in Dubai to stay the proceedings in which the Guardian had been appointed. This Interlocutory Order is the subject matter of Civil Appeal 10 of 1997 which was filed later on August 23, 1997.

On August 22, 1997 the Appellants, thinking it was not possible to apply for a stay, sought a variation of the Order of August *15,* 1997 and the learned Judge dismissed the application and refused a stay of execution of the Interlocutory Order. This Variation Order is the subject matter of Civil Appeal 11 of 1997 which was also filed on August 23, 1997.

On October 29, 1997 following the hearing of the motion, the learned Judge found that the Appellants were each in contempt and ordered them to pay the Respondents' costs on an indemnity basis. This was the Contempt Order which is the subject matter of Civil Appeal 15 of 1997 which was filed on November 9, 1997.

The Respondents served a Respondents' notice dated December 1, 1997 in Civil Appeal No. 15 by which, inter alia, they cross appeal against the learned Judge's decision to punish the Appellants simply by an indemnity costs order, seek injunctive relief, the committal of the Appellants to prison and an order for the sequestration of the assets of the Appellants.

BACKGROUND

Something should be said about the background to these proceedings. T.C. Pagarani was born in India and early in his life he left India and set up business, as well as residence in other parts of the world. He died a very wealthy man and if I may be allowed to say so, a very generous man as well.

Before he left India he was married to Lalibai, the first Appellant, and she bore him six daughters, who are the other Appellants in this case. One of the places in which T.C.Pagarani lived was Sierra Leone. He formed a relationship there with Virginia Harding who also bore him children. Unfortunately T.C.P. as he is referred to in these proceedings died without making a Will. One of the main issues arising as a result is whether he was married to Virginia Harding and consequently, whether or not their children are legitimate.

So the importance of the status of the Sierra Leone family arises

because T.C. Pagarani died intestate on March 19, 1992. The members of the Sierra Leone family and their interests are the Respondents in this case. The fifth and sixth Respondents in particular are two of the children who feature prominently in these proceedings. There was a suit being heard in the British Virgin Islands which concerned the devolution of the estate of T.C.P. The principal assets in his estate were his shareholdings in four British Virgin Islands companies [the first to fourth Respondents], sums owed by these companies to T.C.P and various interests in Dubai partnerships and companies in Dubai. Following T.C.P.'s death the Respondents asserted that T.C.P. had in fact gifted the entirety of his wealth to a Jersey trust known as the Choithram International Foundation. The validity or otherwise of the alleged gift was the principal issue in the action. This matter has been adjudicated upon by Georges J who was upheld by the Court of Appeal but is now on its way to the Judicial Committee of the Privy Council.

There have been numerous interlocutory applications in the main action and there was some evidence to indicate that the same or similar proceedings were being initiated in courts of several different jurisdictions. Roberts J. must have been satisfied that this was so when he made an order for a limited period in 1992 on the Respondents= ex parte application, restraining the Appellants from bringing any actions upon matters similar to those pending in the British Virgin Islands, with a specific exception for proceedings then being prosecuted in the High Court of Sierra Leone.

The trial of the main action took place in April and May 1995 and judgment was delivered on January 21, 1997. Following the judgment a hearing took place to decide what the terms of Judge's order should be. The Respondents applied for the relief to continue either by undertaking or injunction. It is at this point the Parties differ as to what took place. The Respondents say that it is common ground that at a hearing on January 22, 1997 the Appellants' Counsel offered an undertaking to the Court, but the

Respondents say the hearing was inconclusive, in the sense that at its conclusion no final form of order had been approved by the learned Judge.

CONTEMPT APPEAL

Mr. Steinfeld for the Appellants urged that there were two fundamental issues in this appeal namely:

(a) Whether or not the undertaking in the terms stated were given on January 22, 1997; and

(b) Whether it was breached.

I shall deal with the latter first. It was Mr. Steinfeld's further submission that even if the undertaking is as stated by the learned Judge the Appellants would not have breached the undertaking. He stated that the application for guardianship is not an application on which the matters mentioned in the undertaking can be litigated. It is merely an application that can be made by a person who has been declared an heir of the Deceased. He said the status of the Sierra Leone family could not have been litigated on the application. He made reference to Articles 1222, 1224, 1229, 1242 and 1244 of the Dubai Code.

Mr. Smith for the Respondents demonstrated the breach by reference to certain passages of the judgment of the learned Judge.

The undertaking which the learned Judge accepted is as follows:

A[D] that until further order they will not whether by themselves, their servants, agents or otherwise howsoever bring any action whatsoever in any other court upon or in respect of the issues decided by the High Court of Sierra Leone in the judgment of Ademosu J. delivered on 13th October 1995 I@the Sierra Leone Judgment@j and without prejudice to the generality of the foregoing they will not in any action make any claim that or to the effect that:

[i] the Deceased did not die domiciled in Sierra Leone or [ii] he

Deceased was not married to Virginia Harding; or [iii]the children of the union between the Deceased and

Virginia Harding are not legitimate children for the purpose of sharing in the Deceased's estate on his intestacy; or

[iv] the grant of letters of administration to Lekhraj Pagarani in Sierra Leone should be revoked;

[for the avoidance of doubt such undertaking being given in place of all other undertakings given by the Plaintiffs in these proceedings relating to the bringing of actions in other courts, such other undertakings **[if** any] being hereby released]."

In my judgment the question is whether in the guardianship proceedings the Appellants were making any claim to the effect that the Deceased did not die domiciled in Sierra Leone or that he was not married to Virginia Harding or that their children are not legitimate.

I have had a look at the document whereby the seventh Appellant, named applicant, and the other Appellants, named respondents, went before the Dubai Court asking that a Guardian be appointed.

The application states that T.C.P. who held a Sierra Leone passport died in London on March 19, 1992 and his normal domicile during his life was the city of Dubai. It goes on to say that his heirs are limited in his widow Lalibai Thakurdas Choithram Pagarani and her daughters from him and it names the second to seventh Appellants as the daughters. It goes on further to say he has no other heirs. The relief sought on the summons taken out by the seventh Appellant was to summon the respondents "for the nearest urgent and possible date for hearing and hear the statements of the respondents and appoint a guardian on the estates of the late T.C. Pagarani''. The summons was dated May 24, 1997.

It seems to me that the seventh Appellant in the guardianship proceedings was in fact making a claim to the effect that the Deceased did

not die domiciled in Sierra Leone; that he was not married to Virginia Harding; and that the children of the union between the Deceased and Virginia Harding are not legitimate.

The first hearing of the application was June 18, 1997 and at the hearing one counsel appeared for the applicant and another for the respondents. Both counsel were in agreement in asking the Court to appoint a guardian and they both requested an adjournment to agree on the person to be appointed. The matter was adjourned to July 2,1997 when again both counsel were present and they agreed to nominate chartered accountant Moshin Ali Rafique as the Guardian.

So on the premise that the undertaking is as stated I would have no difficulty in agreeing with the learned Judge that there was a breach of the undertaking and that all the Appellants joined in the proceedings through their respective counsel and were therefore all acting in concert.

But there remains the other issue whether an undertaking in the terms set out above was given to the learned Judge.

Mr. Smith for the Respondents answers this in the affirmative and he points to footnote 5 of a draft undertaking which was submitted by Counsel for the Appellants after January 22, 1997. The note states:

> "The undertaking given was a continuation of that previously given in relation to fresh proceedings, but limited to the estoppel issue-it will be recalled that at the time the undertaking was originally given other proceedings were [and remain] on foot in the U.A.E. - the Plaintiffs neither offered or are prepared to offer any wider undertaking''.

He says what transpired later was to formalize the undertaking. He submits there is no longer any issue as to the form of the order which was finally settled on September 22, 1997 when the Judge dismissed the Appellants' summons to amend the undertaking. Counsel submitted that the undertaking was immutable and Appellants could not be heard to say they

were misled in view of the fact that not one of them was prepared to attend before the learned Judge and say that she was confused or misled or mistaken.

On the issue of mens rea required for contempt Counsel referred to the following cases:

1. RE AGREEMENT OF THE MILEAGE CONFERENCE GROUP

   OF THE TYRE MANUFACTURERS LTD.

   1966 2 AER 849; 850; 861-862

2. HUSSAIN V HUSSAIN 1986 Fain. 134, 140

3. JOHNSON V WALTON C.A. 18 December, 1989

4. M V HOME OFFICE 19924 AER 97, 99; 125.

Learned Counsel for the Appellants agreed with the submissions of Mr. Smith

relative to mens rea in contempt proceedings.

Mr. Steinfeld gave the background to the undertakings. As indicated

above the origin is because there were several suits going on around the same

time in different countries.

On December 11, 1992 Roberts J. made an order -

> ''That the Plaintiffs whether by themselves, their servants or agents or otherwise be restrained from bringing any action whatsoever in any other Court, upon matters which are similar to those pending in the High Court of the British Virgin Islands save that the Plaintiffs may continue to prosecute the proceedings in the High Court of Sierra Leone against the attorney and agent of the 6th Defendant for an order that Letters of Administration granted by the said Court to the 6th Defendant be called in, revoked and declared null and void in Law@.

That injunction was made ex parte and it was to continue until December 21, 1992.

> On December 21, 1992 the said Judge made an order B
> “That the injunctive order made on the 11th December, 1992 be discharged upon undertaking given by the Plaintiffs not to begin any fresh proceedings on similar issues in any jurisdiction outside the

> British Virgin Islands during the adjournment to 15th January, 1993 when this matter would be heard or to a later date to be fixed by both parties with the Registrar".

The parties later entered into an agreement in which a similar undertaking is expressed. That seems to have been the position until

January 1997 when the judgment in the main action was delivered. Following judgment a hearing took place to decide what the terms of the Judge's order would be.

The learned Judge in his judgment stated that it is clear from pages 153 and 154 of the transcript of January 22, 1997 what kind of undertaking was proffered by the Appellants. I have read a portion of the transcript which includes pages 153 and 154 and I regret to say that I cannot discern any semblance of an undertaking given by the Appellants. I agree with Mr. Steinfeld that the hearing was inconclusive in the sense that at its conclusion no final form of order had been approved by the Judge.

After the hearing of January 22, 1997 attempts were made by Counsel on both sides to agree to the form of undertaking because no clear undertaking had been given to the Court. The case of HUSSAIN states that an undertaking to the court is as solemn, binding and effective as an order of the Court in the same terms.

Counsel for the Appellants prepared an initial draft in the following form:

> "B That until further order they will not whether by themselves, their servants, agents or otherwise howsoever bring any action whatsoever in any other court upon the issues decided by the High Court in Sierra Leone in the judgment of Ademosu J delivered on 13th October, 1995 ["the Sierra Leone Judgment"] [for the avoidance of doubt such undertaking being given in place of all other undertakings given by the Plaintiffs in these proceedings relating to the bringing of actions in other courts, such other undertakings [if any] being hereby released]."

It appears that the Respondents wanted a more expanded undertaking along the lines of the one eventually adopted by the learned Judge and they sent a formula to the Appellants.

The Appellants seem to have accepted the formula and made some improvements to the text.

However on February 12, 1997 the Appellants sent a fax to Counsel for

the Respondents in which they stated that they have been considering further the undertaking to be given by the Plaintiffs and they tendered another draft.

It can be safely said that the parties at this stage were not ad idem on the form of the undertaking. The Appellants sent a minute to the Judge with a draft as follows:

> "[B] that until further order they will not whether by themselves, their servants, agents or otherwise bring any fresh proceedings whatsoever in any other court upon or in respect of the issues decided by the High Court in Sierra Leone in the judgment of Ademosu J delivered on 13 October 1995 J ["the Sierra Leone Judgment"] I namely whether:
>
> (i) the Deceased died domiciled in Sierra Leone;
>
> (ii) the Deceased married Virginia Harding;
>
> (iii) the children of the union between the Deceased and Virginia Harding are not legitimate children for the purpose of sharing in the Deceased's estate on his intestacy; or
>
> (iv) the grant of letters of administration to Lekhraj Pagarani in Sierra Leone should be revoked;
>
> [for the avoidance of doubt such undertakings being given in place of all other undertakings given by the Plaintiffs in these proceedings relating to the bringing of proceedings in other courts, such other undertakings [if any] being hereby released]'. The Respondents sent a minute to the learned Judge with a draft dated March 11, 1997.

The Appellants' version of the undertaking is quite different to the one eventually settled by the learned Judge. I have already stated my view that the proceedings initiated in Dubai by the Appellants in May 1997 would clearly have breached the latter undertaking. I am not so sure that they would have breached the undertaking in the form proposed by the Appellants.

Mr. Steinfeld submitted that there is a difference between an order of

injunction and an undertaking in that an injunction arises from the order but

the undertaking arises from the person who gives it. This submission is

borne out by the judgment of Sir John Donaldson M.R. in HUSSAIN

At page 140 letter B he saysB

> "Undertakings may be recorded in an order of the Court,.. but it is the undertaking and not the order which requires the giver of the undertaking to act in accordance with its terms."

And later on the same page between letters C-D he says -

> "Subject to such modifications as are necessary or desirable in the light of the fact that an undertaking is volunteered, however unwillingly, by the person concerned, whereas a judgment or order is imposed."

It is beyond dispute that the undertaking was never spelt out in clear and precise terms and accepted by the Judge in Court. On October 27, 1997 when the learned Judge was considering the question of punishment for the contempt which he had already found against the Appellants, as well as mitigation and costs, he made some statements which have caused concern to some of the members of the Court. He said he was arguing from the standpoint of the Appellants whose argument was that in the first place there was a misunderstanding as to the terms of the undertaking given and the learned Judge said one can see there is some support for that, and if one looks through the welter of documents you can see that it is foreshadowed there.

Later in the proceedings the learned Judge said he was taking a particular approach because it is clear that there was some misunderstanding at some stage. He said if one reviews all the documents, two versions were put up before him for settling and he opted for one. True to say he said he opted for the one having regard to his own notes and his own recollection.

This raises the possibility that the Appellants may not have proffered the undertaking for which the learned Judge opted and according to the case of HUSSAIN it is the undertaking which requires the giver of the undertaking to act in accordance with its terms.

In the case of Redwing Ltd v Redwing Forest Products 1947 177 L.T. 387. 388. 390 Jenkins J held that certain undertakings were not clearly drawn and a defendant could not be committed for contempt on the ground that, upon one of two possible constructions of his undertaking, he had broken his undertaking. For the purpose of relief of this character, the learned Judge said at page 390, the undertaking must be clear and the breach must be clear beyond all question.

One important factor in this case is that the matters which are complained of as breaches of the undertaking took place between May 24, 1997 and July 2, 1997 when the learned Judge had not even yet pronounced as to the form of the order.

One might ask the question what was the undertaking given by the Appellants at the time they took proceedings in Dubai. The matter was never settled at the hearing in Court. The lawyers could not agree after the hearing and so they each sent a minute to the Judge with their separate proposals.

Neil L.J. in HUSSAIN stated at page 140B

> "It is equally important for the purpose of any subsequent committal proceedings that the terms of an undertaking should be unambiguous and that the person giving the undertaking should be left in no doubt as to the consequences of a breach".

As I have said above it is not possible to discern from the transcript the exact terms of the undertaking being given by the Appellants. So there was in fact no effective undertaking given at the hearing. Counsel on both sides could not agree on any form of undertaking that could then be put before the learned Judge and there was no subsequent hearing at which an undertaking was proffered by the Appellants. In my judgment there was no undertaking upon which a contempt motion could be based.

INTERLOCUTORY APPEALS

Since the Court of Appeal in Dubai has on May 30, 1998 discharged the "Guardian" the Order of Georges J. made on August 15, 1997 to the effect that the Appellants should apply to stay the proceedings in Dubai for the appointment of a "Guardian" has been rendered ineffective and there is nothing to appeal against.

The same is true of the Order made by the learned Judge on August 22, 1997 by which he refused to rescind his earlier Order made on August 15, 1997. According to the Fourth Edition of Halsbury's Laws of England, Volume 37, paragraph 682 in part -

> "An appeal does not lie where the question or issue raised for the determination of the appellate court ... has ceased to be a live issue."

In any event no arguments were advanced by the parties with respect to Civil Appeal 10 of 1997 and Civil Appeal 11 of 1997.

CROSS APPEAL

There are two aspects to the Respondents' cross-appeal. The first is that the learned Judge ought to have imposed some penalty in respect of the Appellants' contempt. The second aspect concerned the learned Judge's refusal to make any order that the Appellants should withdraw the proceedings begun in Dubai by the seventh Appellant and in which the other Appellants joined. Since this Court is allowing the Appellants' appeal on the

contempt Order the first aspect of the cross-appeal must be dismissed. The second aspect, like the interlocutory appeals, is now rendered otiose.

CONCLUSION

I would therefore allow the Appellants' appeal in Civil Appeal 15 of 1997 and set aside the Order of the learned Judge made on October 28, 1997 with costs to the Appellants here and in the Court below.

The interlocutory appeals and the cross-appeal are dismissed with no orders as to costs.

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A.N.J. MATTHEW
Justice of Appeal [Ag.]