KATAH *v.* EL HAGE

SUPREME COURT (Boston, Ag.J.): August 29th, 1955
(Civil Case No. 239/55)

[1] **Courts—contempt of court—attachment—application for attachment—application may be made by motion with alternative motion for a committal—notice of motion with supporting affidavits should be served on person affected:** A party seeking an order of committal or attachment may make application to the court by alternative motions, and a notice of motion with the supporting affidavits should then be served on the person sought to be committed or attached (page 427, lines 25–29).

[2] **Courts—contempt of court—committal—application for committal—application may be made by motion with alternative motion for attachment—notice of motion with supporting affidavits should be served on person affected:** See [1] above.

[3] **Courts—contempt of court—committal—matters to be considered in deciding whether to commit:** Once it is established that a person is in contempt of court, the court must decide whether or not to commit that person to prison: it will do so if justice requires that course in order to hold him up as a warning to others, especially if he expresses no genuine regret to propitiate the court; but if, by reason of the contempt, the position of the other party has not been made worse, and regret is expressed openly in court, the court may not commit the contemnor even though it looks with the greatest disfavour on his conduct (page 427, line 36—page 428, line 21).

[4] **Courts—contempt of court—disobedience to court—party may be committed for contempt in not observing injunction regardless of its nature and circumstances:** An injunction ordered by a court must be implicitly and strictly observed, and cannot be disregarded until discharged upon proper application for the purpose; and any person who disregards an injunction against him is liable to be dealt with for contempt whatever the nature of the injunction, whether it is mandatory or restraining in its form, whether it is made *ex parte* or upon hearing both sides, whether it is interim or perpetual, and irrespective of whether it is erroneously or irregularly obtained (page 427, lines 8–18).

[5] **Injunctions—enforcement—committal for contempt—injunction must be implicitly and strictly obeyed regardless of its nature and circumstances:** See [4] above.

The plaintiff applied by notice of motion for a committal or attachment order against the defendant for contempt in disobeying an injunction of the court.

The plaintiff obtained an interim injunction restraining the defendant from doing repairs on certain premises. Notice of the order was duly served on the defendant but the repairs continued nevertheless. The plaintiff instituted the present proceedings for an order of committal or attachment for contempt. At the hearing the defendant denied that any repairs were done after notice of the injunction was served, and contended that the plaintiff's application for committal followed the wrong procedure and should be dismissed. The Supreme Court also considered the circumstances in which a committal order was appropriate.

Cases referred to:

(1) *Felkin* v. *Herbert* (1863), 33 L.J. Ch. 294; 12 W.R. 241, *dicta* of Kindersley, V.C. applied.

(2) *Fennings* v. *Humphery* (1841), 4 Beav. 1; 49 E.R. 237.

(3) *Spokes* v. *Banbury Bd. of Health* (1865), L.R. 1 Eq. 42; 13 L.T. 453.

Zizer for the plaintiff;
R.B. Marke for the defendant.

BOSTON, Ag.J.:

This is an application by motion on the part of the plaintiff for an order to commit the defendant to prison for contempt, or for attachment for disobeying the order of this court made on July 28th, 1955 restraining him by injunction from carrying out any repairs to the building at No. 5 Kissy Road, Freetown, until the action is determined.

The order referred to was made on the morning of July 28th, 1955. Mormo Turay, a witness for the plaintiff, swore in his affidavit that he served a paper on the defendant at 2 p.m. on a Thursday in July. He said it was only one paper he served, and that he took a way-book with him which the defendant signed after receiving the paper. In his oral evidence in court he was shown the way-book and evidently shown the wrong page. He is illiterate. The page shown him contains an entry of one notice and some affidavits under the date August 3rd, 1955. He said it was on that page that the defendant signed; but on the previous page under the date July 28th, 1955 is an entry of "One Certified Order of Court—Interim Injunction" which the defendant also signed for. I accept Mormo Turay's evidence that he served the order on the defendant on July 28th, 1955. Added to that the defendant admitted that he knew

of the order and that he received a copy of it on the afternoon of July 28th, 1955. The entry in the way-book under the date August 3rd, 1955 must have reference to the notice of motion now under disposal with the supporting affidavits. The defendant in his affidavit admitted that he received these documents on that day.

Before the order was made, the plaintiff by affidavit informed the court that the defendant had been given notice to quit the premises, which notice expired on June 30th, 1955. After the expiration of the notice, and even after the writ of summons was issued on July 11th, 1955 and served on the defendant, the defendant was effecting some repairs to the basement-shop of the building in spite of the request of the plaintiff that he should cease from doing any repairs. The plaintiff then applied for an injunction to restrain the defendant from doing further repairs as the defendant told her pointedly that he would continue the repairs. When the application was heard, the order was made on July 28th, 1955 restraining the defendant from doing any repairs to the building including the shop.

As I have stated that order was served on the defendant at about 2 p.m. that day. The plaintiff in her affidavit said the defendant was in the court building when the order was made and knew about it. From the evidence of the plaintiff, when she was coming to court that morning, she saw carpenters working at the shop. There were two leaves of a door leaned against the wall of the basement; they had no hinges on them.

When Mormo Turay went to see the defendant at about 2 p.m. that day to serve him the order, he met the carpenter at the shop working. He saw the two leaves of the door lying on the ground outside; the carpenter was measuring the space in the wall to fix the door. A Mr. S.R. Johnson, a building contractor, passed there at about 4 p.m.; he saw the two leaves of the door on the ground, and the carpenter was fixing hinges on one leaf. When he returned to the shop about an hour later, the door had been completely hung. The plaintiff also went to the shop at about 6 p.m.; she found the hinges had been fixed on the door.

The defendant in his affidavit and in his oral evidence stated that all repairs had been done before July 28th, 1955, and on that day no carpenter or other workmen did any work on the building. Three witnesses gave evidence for the defendant by affidavit and orally in court to the effect that no repairs were done to the building on July 28th, 1955. I was not impressed with the evidence of these witnesses nor with that of the defendant. They contradicted them-

selves in important particulars and some contradicted themselves in their affidavits and oral evidence. Having considered the evidence carefully, I accept the evidence of the plaintiff and her witnesses, that after the defendant had known of the order, and even after he had been served with a copy of it, he continued the repairs.

I hold that the defendant, having known of the order, and having been served with a copy of it, wilfully disobeyed it; he is therefore liable to be dealt with for contempt. A person against whom an injunction has been awarded and who disregards it is liable to be dealt with for contempt, whatever the nature of the injunction may be, or whether it be mandatory or restraining in its form. And whether it is made *ex parte*, or upon hearing both sides, or is interim or perpetual, an injunction must be implicitly observed. Every diligence must be exercised to obey it to the letter and any proceedings resulting in a breach are tantamount to an actual breach. And the order, although it may have been erroneously or irregularly obtained, so long as it exists must be implicitly obeyed and cannot be disregarded until discharge on a proper application for the purpose: see *Spokes* v. *Banbury Bd. of Health* (3) and *Fennings* v. *Humphery* (2).

Counsel for the defendant in his address stated that the wrong procedure has been adopted as regards the application for committal and that that portion of the application should be dismissed. He however declines to say in what way it is wrong. I do not regard him seriously. I may say however that applications both for attachment and for committal may be made by motion, and they could be asked for in the alternative, and the notice of motion with the supporting affidavits should be served on the person sought to be committed or attached. The plaintiff complied with all these.

As I have stated, the defendant wilfully disobeyed the order of the court, and instead of expressing regret he seems to be aggravating the offence by unduly resisting the application and bringing in irrelevant matters in his affidavit: see paras. 20–24 of his affidavit.

In the case of *Felkin* v. *Herbert* (1) Kindersley, V.C. had this to say of such a contemnor (33 L.J. Ch. at 298; 12 W.R. at 243):

> "There being no doubt about the contempt, the question is, how is it to be visited? It is always a disagreeable office to have to commit a party to prison; but the Court must not therefore shrink from it, if justice requires that course, in order to hold him up as a warning to others, and I have no alternative but to commit him. I have the less hesitation in doing so from the

course he has pursued; he has either been unfortunately advised, or, having received good advice, has not thought fit to follow it. Instead of doing what any reasonable man would have done, and any legal adviser would have counselled, and by an affidavit expressing regret and propitiating the justice of the Court, he has vindicated the truth of part of the statements, and instructed counsel to argue that there was no contempt, and that he had the right to publish the article, but if the Court thought there was a contempt, then he would express his regret which was, of course no expression of regret at all."

In this case the defendant got three men to swear to affidavits and give oral evidence perjuring themselves in an endeavour to get the defendant out of the difficulty in which he found himself. He himself did the same thing and introduced irrelevant and prejudicial matter in his affidavit. In this case, although the defendant has been found guilty of contempt and the court has looked with the greatest disfavour on his conduct, yet by reason of the contempt the position of the plaintiff has not been made worse. That being the case, I will not commit the defendant to prison as he has expressed his regret openly in court. I think the case will be met if he is made to pay the costs of these proceedings. It is therefore ordered that the defendant pay to the plaintiff the taxed costs of and incidental to this application as between solicitor and client.

Order accordingly.

CONTEH and FIVE OTHERS *v.* REGINAM

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL (Lord Oaksey, Lord Tucker and Lord Somervell of Harrow): January 11th, 1956
(P.C. App. No. 32 of 1955)

[1] **Criminal Law—degrees of complicity—conspiracy—conspiracy to accuse of crime—accusation must be false to knowledge of conspirators:** The gist of the offence of conspiracy to accuse another of a crime is that the accusation should be false to the knowledge of those conspiring, and it is therefore no offence for people who believe that a crime has been committed to agree to take steps with a view to a prosecution (page 430, lines 16–19).

[2] **Criminal Procedure—assessors—objection to assessor—either party may object on ground of partiality—partiality includes interest in or connection with subject-matter of proceedings or parties—ruling on objection in discretion of court:** Either party to criminal proceedings