

Owens Bank Limited

Appellant

v.

- (1) Gerard Cauche
- (2) Etoile Commerciale S.A. and
- (3) Yves Gely

Respondents

FROM

THE COURT OF APPEAL OF SAINT
VINCENT AND THE GRENADINES
EASTERN CARIBBEAN SUPREME COURT

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
10TH APRIL 1989

Present at the hearing:-

LORD KEITH OF KINKEL
LORD TEMPLEMAN
LORD GRIFFITHS
LORD ACKNER
LORD GOFF OF CHIEVELEY

[Delivered by Lord Ackner]

This appeal from the judgment of the Court of Appeal of Saint Vincent and the Grenadines (Bishop C.J. (Ag.), Moe and Mitchell JJ.A. (Ag.)) dated 8th December 1986 raises one short question namely, does a party, who wishes to appeal against an interlocutory decision of a puisne judge of the High Court of Saint Vincent and the Grenadines, require leave to appeal against this decision or is there an automatic right of appeal? The answer to this question depends upon the true construction of two sections of the West Indies Associated States Supreme Court (Saint Vincent) Act 1970, referred to hereafter as the 1970 Act.

The procedural history of this appeal. The appellants are an international banking company incorporated in Saint Vincent and the Grenadines and carrying on business in Saint Vincent. In May 1985 the appellants commenced proceedings against, *inter alios*, the three respondents. The central issue in those proceedings concerned the validity of a guarantee which the appellants had given. Prior to these proceedings the appellants had been sued in France

upon this guarantee and their defence that the guarantee had been obtained by fraud had failed, both at first instance and in the Court of Appeal in Paris. It was the appellants' contention in the proceedings in Saint Vincent that the French judgment had been obtained by fraud.

On 20th January 1986 Satrohan Singh J. set aside the ex parte order for service of the writ out of the jurisdiction on the first respondent and struck out the proceedings against the second and third respondents on the grounds that they were an abuse of the process of the court, the issue of fraud having already been adjudicated upon by the courts in France. On 3rd February 1986 the appellants issued their notice of appeal and on 28th February 1986 the second and third respondents issued a notice of motion asking for the appeal to be dismissed because the appellants had not first obtained leave to appeal from Satrohan Singh J. and such leave was required before the appeal could be heard, his decision being an interlocutory one. On 17th July 1986 the Court of Appeal decided that leave to appeal was required and therefore struck out the notice and grounds of appeal, delivering on 8th December 1986 their written reasons for their decision.

Prior to the delivery of the Court of Appeal's written reasons, the appellants applied to Satrohan Singh J. for leave to appeal, and to extend time in order to seek such leave. However Satrohan Singh J. ruled that he had no jurisdiction to extend time and refused leave to appeal against that decision. In a subsequent application the Court of Appeal also refused leave to appeal against the judge's decision.

The decision of the Court of Appeal. The two sections of the Act which concern the rights of appeal from the High Court to the Court of Appeal in civil matters are section 28 and section 31. They are in the following terms:-

" 28. 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, whether adjudicated upon in Chambers or in open Court, and whether at first instance or on appeal, and the Court of Appeal shall have jurisdiction to hear and determine all such appeals.

31.(1) Subject to the provisions of this Act or any other law -

- (a) the Court of Appeal shall have jurisdiction to hear and determine any matter arising in any civil proceeding upon a case stated or upon a question of law reserved by the High

Court or by a Judge thereof pursuant to any power conferred in that behalf by law in operation in Saint Vincent;

- (b) an appeal shall lie to the Court of Appeal, and the Court of Appeal shall have jurisdiction to hear and determine the appeal, from any judgment or order of the High Court and for the purposes of, and incidental to, the hearing and determination of any appeal and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the powers, authority and jurisdiction of the High Court.

(2) No appeal shall lie under this section -

- (a) from any order made in any criminal cause or matter;
- (b) from an order allowing an extension of time for appealing from a judgment or order;
- (c) from an order of a Judge giving unconditional leave to defend an action;
- (d) from a decision of the High Court or of any Judge thereof where it is provided by any law that such decision is to be final;
- (e) from an order absolute for the dissolution or nullity of a marriage in favour of any party who having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree, except upon some point which would not have been available to such party on such appeal;
- (f) without the leave of the Judge making the order or of the Court of Appeal from an order made with the consent of the parties or as to costs where such costs by law are left to the discretion of the court;
- (g) without the leave of the Judge 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 subsection (2) "Judge" means Judge of the High Court."

The Court of Appeal most helpfully set out in some detail the history of the legislation beginning with the Supreme Court Ordinance 1941 (No. 5 of 1941) of Saint Vincent in which there was no specific reference to the Court of Appeal or to any right of appeal. This was followed by the Supreme Court (Amendment) Ordinance 1966 (No. 20 of 1966) which amended the Supreme Court Ordinance 1941. The judgment of the Court of Appeal then traces the position from that date in the following terms:-

"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 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 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.

...

In the Supreme Court Acts of all of those States to which The West Indies Act, 1967 applied and by Virtue to 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."

The Court of Appeal attempted to reconcile section 28 with section 31(2)(g). Their Lordships accept Mr. Christopher Carr Q.C.'s submission that they are irreconcilable. Section 28 provides that an appeal shall lie as of right to the Court of Appeal from interlocutory judgments, whereas section 31(2)(g) provides that no appeal shall lie under the section without the leave of the judge or the Court of Appeal from any interlocutory judgment except in the four classes of cases specified in that sub-section. However, on the basis that they were repugnant the one with the other, the Court of Appeal sought to rely upon a rule said to have been laid down by Keating J. in *Wood v. Riley* [1867] 3 L.R.C.P. 26 at page 27 that where there is an irreconcilable inconsistency between two provisions in the same statute the later prevails. Their Lordships do not accept that there is such a rule. Where such an inconsistency exists, the courts must determine, as a matter of construction, which is the leading provision and which one must give way to the other (see *Institute of Patent Agents v. Lockwood* [1894] A.C. 347 at 360 and Halsbury's Laws of England Fourth Edition Vol. 44 para. 872).

Mr. Christopher Carr, in his able and succinct argument, contended that section 28 was the leading

provision, relying primarily on the opening words of section 28 "Notwithstanding the provisions of any law ... to the contrary." He submitted that the words "any law" were sufficiently wide to include the Act itself. Accordingly, so he argued, the opening words of the section should be construed as meaning "notwithstanding the provisions of this Act to the contrary". Thus section 28 took priority over section 31(2)(g). But that is not what the section says. If the legislature had wished, notwithstanding the provisions of section 31(2)(g), so to provide, then those very words would have been used.

Mr. Carr also relied upon the opening words to section 31(1) - "Subject to the provisions of this Act or any other law" and he accordingly submitted that the provisions of section 31(2)(g) are qualified by those opening words. But it is clear that this qualification is limited to the provisions of section 31(1) and do not qualify the provisions of section 31(2).

Section 31 introduced for the first time a detailed framework for civil appeals from the High Court. It sets out in detail the classes of cases in which leave is required and those in which leave is not required. The phrase in section 28 "an appeal shall lie as of right" seems to their Lordships to have been a voice from the past originally designed to emphasise the existence of a right of appeal at a time when no detailed framework had yet been worked out. Their Lordships are accordingly of the view that section 31(2) is the leading provision and that section 28, in so far as it provides that an appeal shall lie as of right from an interlocutory judgment or order, must give way to it.

Their Lordships will accordingly humbly advise Her Majesty that this appeal should be dismissed. The appellants must pay the respondents' costs.





