

APPEAL FROM ORIGINAL CIVIL.*Before Jenkins C.J., Woodroffe and Mookerjee JJ*

MARSHALL

v.

GRANDHI VENKATA RATNAM.*

1915

April 28.

Contempt of Court—Practice—Appeal—Assisting in contempt—Procedure.

Where the prohibitory injunction on the defendant firm made no mention of M, an assistant, or of servants and agents, but the notice of motion for committal for breach thereof was upon M who did nothing after service on him of the injunction.

Held, that the notice of motion was erroneous, and the procedure which had been adopted was misconceived: the proceedings against M, if any, should have been for *assisting* in a contempt of Court.

Held, also, (on the merits) that there had been no contempt or participation in contempt on M's part, as all that he did had been done prior to the injunction.

APPEAL by John Innes Marshall, an assistant in the firm of J. F. Kendrew & Co., the defendants, from the judgment of Greaves J., dated 31st March 1915.

The facts of the proceedings for injunction and for committal for contempt for breach thereof, out of which this appeal arises, appear fully from the following judgment of Greaves J., dated 31st March 1915:—

“The notice of motion in this case is directed to one J. I. Marshall, who is in the employ of the defendant firm, and it asks that he shall stand committed to the Presidency Jail for having committed a breach of an injunction granted by me on the 20th March instant, *restraining the defendant firm, their servants and agents* (I am here quoting the words of the motion) from disposing of, selling, or dealing in any manner with, the goods referred to in the plaint herein over Tuesday, the 23rd of March 1915

* Appeal from Original Civil No. 30 of 1915.

1915

MARSHALL
v.GRANDHI
VENKATA
RATNAM.

and for an order on J. I. Marshall to pay to the plaintiff his costs of and incidental to this application. The notice of motion is dated 26th March 1915 and was duly served on Mr. Marshall.

This application arises under the following circumstances :—

On the 30th of January 1914, a contract was entered into between the plaintiff (Grandhi Vankata Ratnam) and the defendants (J. F. Kendrew & Co.) for the sale of 500 cases of matches. Certain of the cases were delivered between the months of March and December 1914, but on that day certain cases still remained undelivered. On the 17th of March of this year, the plaintiff received information to the effect that another consignment of matches of 75 cases marked with the plaintiff's name had arrived in Calcutta and that the defendant firm was trying to dispose of them to somebody other than the plaintiff. Thereupon interviews took place between the defendant firm and the plaintiff's son and the defendant firm expressed their willingness to deliver the goods at a certain price which was higher than the price which the plaintiff considered that he was bound to pay. On the 19th of March, the defendants threatened to dispose of the goods, unless the plaintiff purchased them at the price of 1s.-6½d. per gross. They threatened to sell the goods by 11 o'clock on the 20th of March unless the plaintiff was willing to pay this price. On the same day, the 19th March, a letter was written by the plaintiff's solicitor saying that the defendant could not sell the goods to a third person, as they were the property of the plaintiff. On the 20th March 1915 the plaint was filed in this suit at 12 o'clock, and, at 1-30 on that day, an application was made to me for an injunction and I granted an *ad-interim* injunction over the following Tuesday in these terms, *restraining the defendants from selling, disposing of, or otherwise dealing with the goods referred to in paragraph 3 of the plaint, and I gave the plaintiff liberty to serve the defendants with the notice of motion for the following Tuesday, for an injunction restraining the defendants from selling, disposing of, or dealing with, the goods pending the hearing of this action and for a Receiver of the goods. I directed the notice of motion to be served before 4 o'clock at No. 3, Commercial Buildings where the defendant firm carry on business, or if these premises were closed, then on Mr. Cameron who was the manager of the defendant firm, at his private address. It appears, from the evidence of the plaintiff before me, that, after the injunction was granted, the plaintiff's son accompanied by one Askhay Kumar Rudra, an attorney of this Court and assistant of Babu Charu Chandra Bose, Attorney for the plaintiff, went to No. 3, Commercial Buildings and arrived there at about 2-15 P.M. They enquired at the office for Mr. Cameron and were told that Mr. Cameron was not there, and thereupon the plaintiff's son took the attorney to Mr. Marshall,*

as he was the next superior officer in the office of the defendant firm. The plaintiff's son and his attorney stated that they read out a copy of my order to Mr. Marshall in the presence of Mr. Surita, an advocate of this Court; and that, after reading out the same, they handed Mr. Marshall a copy of the order, and they state that he read the same in their presence and in the presence of Mr. Surita, that they asked Mr. Marshall to sign an acknowledgment of the receipt of the copy of the said order, but Mr. Marshall refused to do this and said that his firm had already sold the goods. Akshay Kumar Rudra, the attorney, goes on to say that he attended, immediately after, at the office of the Jetty Superintendent of the Port Commissioners, with the plaintiff's son, and showed a copy of my order to the Deputy Superintendent and read out the same to him and asked him to sign an acknowledgment which he refused to do saying that he could only act on an order signed by an officer of this Court. Both the deponents state that, at the goods shed at the Jetty, they saw several cases of matches marked with the plaintiff's mark, which was pointed out, and the attorney states that he pointed out the goods to the plaintiff's son and also to one Satya Charan Ray who was the Jetty sircar of the plaintiff, asking the plaintiff's son to count the number of packages there, which he and the Jetty sircar accordingly did, telling the attorney that there were 75 cases of matches lying there. The affidavit of the attorney further states that, on the following day, he was informed by the plaintiff's son that 53 cases of matches had been sent to the Howrah station and the same were lying there at No. 13 Goods Shed, Howrah. There is an affidavit also filed on behalf of the plaintiff by Satya Charan Ray, confirming the counting of the cases of matches, and also stating that, after the attorney and the plaintiff's son had left, one Pran Kristo Coondoo, who was a sircar in the employ of the defendant company and whom he knew, came to Jetty No. 2 and gave directions to certain cartmen to take the goods to Murgilhatta Godown-baree. He states that a portion of these goods were, thereafter, removed to Jetty Shed No. 2 by the employee of the defendant company.

On behalf of Mr. Marshall, 3 affidavits are filed, one by himself in which he states at paragraph 4 that, about 2-30, after office hours, and after the business of the defendant firm was closed for the day, and while he was preparing to leave the office being actually in the act of changing his clothes, a person whom he did not know, accompanied by one Grandhi Subramaniam, called, and saw him at No. 3, Commercial Buildings, stating that he was an assistant of Messrs. Bose and Company and wanted to see Mr. Cameron. Mr. Marshall states that he informed him that Mr. Cameron was away from office and he, Mr. Marshall, was the next officer in charge of the office. Mr. Marshall states that the attorney informed him tha

1915
 MARSHALL
 v.
 GRANDHI
 VENKATA
 RATNAM.

1915
 ———
 MARSHALL
v.
 GRANUHI
 VENKATA
 RATNAM.

he had obtained an injunction restraining Mr. Cameron from disposing of the 75 cases of the matches in question, and that he told him, as was the fact, *that they had already been sold and paid for*, and then the attorney asked him to whom they had been sold; he thereupon said that, if they wrote and asked him, he would give them information in writing as he did not want to run the risk of being misrepresented if he gave any information verbally. Mr. Marshall then goes on to state that he left the office shortly after with Mr. Surita and one Mr. Moss, who were both present. Mr. Marshall further states that the attorney produced and handed to him a piece of paper with some typewritten matter on it which bore no signature to shew that it was a copy of an actual order. He states that he glanced at the document, but did not read it through before handing it back to him, and he denies that the document was read out to him, and he is supported in his denial by an affidavit of Mr. Surita. In paragraph 6 of his affidavit, Mr. Marshall states that he had nothing whatever to do with the removal of or the endeavour to remove any of the goods in question, and that he never at any time sold or disposed of or otherwise dealt with the goods or any of them in disobedience or contempt or breach of the alleged injunction or order, and he states, in paragraph 7, that for the first time he came to hear that the Jetty sircar, Pran Kristo Coondoo, had been concerned in the removal of the said goods, when he found the statements to that effect in that affidavit of Sattya Charan Roy. He states that this removal was not done in pursuance of any order or injunction given by him or by any one belonging to the defendant firm, and he states that he has since ascertained that the sircar did, on the 20th of March, remove or cause to be removed some of the goods, but that he did so after office hours in his spare time and at the request of and on behalf of the purchaser Jugal Kissore Pyne, and in nowise on behalf of the defendant firm.

As before stated, Mr. Surita filed an affidavit which corroborates Mr. Marshall's statements with regard to the interview on the afternoon of 20th March. A further affidavit is filed on his behalf by one Jugal Kishore Pyne who states that, on the 3rd of March, he agreed to purchase from the defendant firm 75 cases of matches at Re. 1-7-6 per gross. He states that the purchase was completed by him at the office of the defendants on 20th March and that he paid a sum of Rs. 5,507-13-0 as referred to, as the price of the matches, and that he was thereupon handed the gate-pass, in respect of the goods, to obtain delivery from the Port Commissioners' Jetty. He states that the purchase price was paid and the whole transaction was completed by some time between 12 noon and 12-30 on Saturday, and that he thereupon immediately arranged with one Pran Kristo Coondoo, the defendant firm's Jetty sircar, for an extra charge of Rs. 3 to remove the

goods from the Jetty to his godown at Suka's Lane, and that he gave him the gate pass. He states that some time about 4 or 4-30 in the afternoon, he returned to his godown and there found that in the interval 53 cases out of 75 cases had been brought from the Jetty and stored there, and he never heard about any injunction until 22nd March.

Now, it is urged before me on behalf of Mr. Marshall that there has been no breach of the terms of the injunction, inasmuch as he has not sold, disposed of, or otherwise dealt with, the goods, and considerable discussion took place before me with regard to the absence from my order of the words "permitting the disposal of or dealing with the goods"; and that was urged on behalf of Mr. Marshall that, in the absence of these words, he had committed no breach of injunction and that he was not guilty of any contempt of Court. In my opinion the absence of these words makes no difference: see *Hawling v. Tingey* (1).

Now, it seems to me abundantly clear from the facts stated in the affidavits that, if Mr. Marshall had applied his mind to the injunction and communicated with the Jetty Superintendent or with the purchaser of the goods, or in any case, if he had communicated the name of the purchaser to the plaintiff, the removal of the goods in question could not have taken place, and that in that case these proceedings would not have been brought. Of course, when it comes to a matter affecting the liberty of the subject, he is entitled to have the terms of the injunction considered with the greatest strictness and have everything that could possibly be urged or said in his favour considered on his behalf and given effect to, and it would clearly be wrong to send Mr. Marshall to prison having regard to the facts and circumstances of this case, but I cannot think that he performed the duty, which is incumbent on every good citizen to perform, of assisting the process of the Court in whatever form it comes before him. That the goods were dealt with despite the injunction or after it had been granted was due to his action or rather inaction; he has therefore committed contempt of Court and accordingly, although I make no order for committal, I direct Mr. Marshall to pay the costs of this motion."

Mr. Marshall, being dissatisfied with the above order, preferred this appeal.

Mr. M. Zorab (with him *Mr. Hyam*), for the appellant. This is the contempt motion of the 26th March 1915 Mr. Justice Greaves has found me guilty of contempt of Court and has ordered me to pay costs.

(1) (1864) 12 W. R. (Eng.), 684, 685.

1915

MARSHALL
v
GRANDHI
VENKATA
PATNAM.

1915
 MARSHALL
 v.
 GRANDHI
 VENEKATA
 RATNAM.

[JENKINS, C.J. We were told that he was ordered to pay costs without being found guilty of contempt.]

Since getting a copy of the order I find from the judgment that he has been found guilty of contempt.

[JENKINS, C.J. That gets over the difficulty of the appeal lying.]

Yes. The terms of the injunction restrain the defendants only, and nothing is said about their "servants or agents." Notice of the injunction was directed to be served on Mr. Cameron, the Manager of Messrs. Kendrew & Co., whereas Mr. Marshall is an employee under him. It is not a mandatory injunction, but a prohibitory one. The words "servants and agents" have been added in the notice of motion for committal for contempt for breach thereof.

I submit (i) that, the injunction being directed to the defendant firm, Mr. Marshall could not be proceeded against for breach of injunction (might be for contempt): see *Lord Wellesley v. The Earl of Mornington* (1). (ii) If I could not be found guilty of breach of injunction, I could not be shown to be guilty of any other species of contempt of Court, which is the genus, breach of injunction being a species. I must have an opportunity of tendering an apology on general principles and therefore I am entitled to know the particulars of the breach. (iii) Upon the merits—the affidavits in support of this motion do not show breach of injunction, or contempt of any kind. (iv) There are no materials, no discretion, much less jurisdiction of Court, to order me to pay costs, and further the Court proceeded on a misapprehension of facts. The two cases of *Lord Wellesley v. The Earl of Mornington* (1) show that the injunction really did not extend to servants and agents.

(1) (1848) 11 Beav., 180, 181.

I therefore submit that the case for breach of injunction must go, and there is no such finding either.

[JENKINS C. J. You submit that the procedure on injunction must be followed?]

Yes. See Kerr on injunction with regard to the procedure to be followed; also Woodroffe's injunction, 3rd Edition, p. 73. The motion is to be supported by affidavit specifying the particular acts constituting breach.

Passing on to the *merits*: in paragraph 7 of their affidavit they say they gave notice of injunction to me and that Pran Kristo Coondoo was instrumental in removing the goods from the Jetty. It being a Saturday and Mr. Justice Imam being indisposed, the injunction order was got from Mr. Justice Greaves at his house. Mr. Marshall, at 2-30 P.M. the same day, said the goods had been sold (though 53 only out of 75 cases had been removed). We had already sold them to Jugal Kishore Pyne, and the injunction itself had failed.

[JENKINS C.J. It does not appear that Marshall did anything?]

Nothing, except that a letter was written by him before 11 o'clock on the 20th March, the injunction being intimated to Mr. Marshall at 2-30 P.M. that day.

[MOOKERJEE J. Is Mr. Marshall said to have done anything beyond what is stated in paragraph 7?]

That is all.

That is just the reason why Mr. Justice Greaves set it aside. Further, the goods are alleged to have been removed by the sircar of Messrs. Kendrew & Co., on behalf of and under payment from the purchaser Jugal Kishore Pyne. The learned Judge refers to the case of *Harding v. Tingey* (1), cited in Kerr on

1915

MARSHALL
v.
GRANDHI
VENKATA
RATNAM.

(1) (1864) 12 W. R. (Eng.) 684, 685.

1915
 MARSHALL
 v.
 GRANDHI
 VENKATA
 RATNAM.

Injunctions for quite a different purpose. I submit that this order cannot stand.

[JENKINS C.J. We will hear the respondent now.]

Mr. N. N. Sircar (with him *Mr. C. C. Ghose*), for the respondent. I wish to support the order. Assuming Mr. Marshall knew nothing at all about the order of injunction, though the selling had been completed, he knew at 2-30 P.M. on Saturday that the order of the court prevented the defendant *dealing with* or *disposing of* the goods at the Jetty. Marshall was the next man in the office after Cameron, and their firm's sircar removes the goods. The papers show that Marshall's statement on the 26th that he knew nothing is absolutely false. He admits he glanced through it. Yet he would not give the name of the purchaser.

[JENKINS C.J. What has that got to do with the question before us—whether he did anything towards selling or disposing?]

That is one of the facts that will go to show that Marshall was determined not to carry out or give effect to the Court's order. If his story is accepted, there can be no breach of injunction or contempt. And must we serve every darwan or servant of the firm?

[JENKINS C.J. You have your remedy against the firm.]

The partners are not here. But Marshall, who was in charge of these goods with our mark on them, dealt with them and sold them *before*, and again dealt with them *after*, the injunction.

[JENKINS C.J. How do you show he assisted in the breach?]

In this way: the sircar does not make any affidavit and Marshall says he knew nothing about the removal till the 26th. The whole intention of that injunction was to keep the goods where they were. On their

own showing the goods were not removed till 4-30 P.M. He came to Court with two absolutely lying cases: Marshall's attorney says that the goods were sold and removed in the morning, while Marshall in paragraph 7 of his affidavit denies removal under his orders. Marshall has got to change his case because he found from the plaintiff's affidavit that they had found all the goods at the Jetty where they had proceeded direct from Marshall's office on Saturday.

[MOOKERJEE J. If the purchaser had got the gate-pass, then there was a delivery to him?]

That is what the purchaser, Jugal Kishore Pyne, says in his affidavit.

[JENKINS C.J. There is no suggestion that that is false. As to Marshall lying, there is nothing to show it. It seems to us you misapprehend the position.]

I cannot carry the case further.

JENKINS C.J. This is an appeal from an order of Mr. Justice Greaves which has been treated before us as an order finding that there had been a contempt by the appellant Marshall which merited, if not imprisonment, at any rate, the payment of the costs of the motion. The notice of motion called upon J. I. Marshall, an assistant of the defendant firm, to take notice that, on Monday the 29th March 1915, an application would be made on behalf of the plaintiff for an order that he, J. I. Marshall, do stand committed to the custody of the Superintendent of the Presidency Jail for having committed a breach of the injunction granted by Mr. Justice Greaves on the 20th March 1915, restraining the defendant firm, *their servants and agents* from disposing of, selling or dealing in any manner with, the goods referred to in the plaint. That notice of motion is erroneous, for, the injunction

1915

MARSHALL
v.
GRANDHI
VENKATA
RAYNAM.

1915
 MARSHALL
 v.
 GRANDHI
 VENKATA
 RATNAM.
 JENKINS C.J.

makes no mention of Mr. Marshall or of servants and agents. It necessarily follows from this that the procedure which had been adopted was misconceived. The proceedings against Mr. Marshall, if any, should have been for *assisting* in a contempt of Court. But the case need not be disposed of on that ground, because, on the merits, it has not been made out that Mr. Marshall in any way assisted in a contempt of Court. He did nothing. He did not dispose of, sell, or deal with, the goods. Nor did he in any way *assist* in disposing, selling of, or dealing with, them *after* service on him of the injunction. All that he did was done prior to the injunction. It has been suggested before us that he is in some way responsible for the delivery which is said to have taken place after the injunction. But on the facts it appears that the delivery was prior to the injunction. There was no contempt or participation in contempt on Mr. Marshall's part. In my opinion, the order of the learned Judge is erroneous and must be set aside and the motion dismissed with costs of the hearing before Mr. Justice Greaves and before us.

WOODROFFE J. I agree.

MOOKERJEE J. I agree.

G. S.

Appeal allowed.

Attorneys for the appellant: *Orr, Dignam & Co.*

Attorney for the respondent: *Charu Chandra Bose.*