

[1988–90 Gib LR 146]**PEREZ v. GOHR**

SUPREME COURT (Kneller, C.J.): March 2nd, 1989

Courts—contempt of court—civil contempt—leave of Supreme Court not generally required for application to commit for civil contempt of its own procedure—leave only required when application made to Supreme Court to commit for contempt of any other court

The plaintiff sought the committal of the respondent for contempt of court.

The plaintiff had brought an action against the respondent for nuisance and negligence. An injunction was granted against the respondent, and undertakings were given to the court by counsel on his behalf. The plaintiff alleged that the respondent had failed to comply with the terms of the injunction and the undertakings, and sought his committal for contempt of court.

The applicant submitted that (a) the leave of the court was not required for an application to commit the defendant; while the Supreme Court was the Gibraltar equivalent of the Divisional Court, it also fulfilled the function of other courts in England and Wales, and therefore (b) although the leave of the court was required to make an application to the Divisional Court for a committal for contempt of court, leave was not required for an application to the Supreme Court in Gibraltar.

The Crown submitted in reply that (a) the Supreme Court in Gibraltar, due to the Supreme Court Ordinance, s.2, and to the Supreme Court Rules, r.8 and Schedule 1, was the equivalent of the Divisional Court in England and Wales, and (b) the leave of the court was therefore required for an application to commit a respondent for contempt of court, as the English Rules of the Supreme Court, O.52, r.2 required the leave of the court to be obtained before the making of an application to the Divisional Court.

Held, making the following order:

The leave of the Supreme Court was not required for an application to commit a respondent for civil contempt in respect of the procedure of that court. The Supreme Court Ordinance was silent on the question of leave and the rules in force in England and Wales therefore applied. While references to the Divisional Court in England and Wales were to be construed as referring to the Supreme Court in Gibraltar, this was the case only when the context required it. The English Rules of the Supreme Court were silent on the question of whether leave was required for

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applications to courts other than the Divisional Court; leave was therefore not required for an application to the Supreme Court to commit a respondent for civil contempt of the procedure of that court (para. 7; paras. 9–10).

Case cited:

(1) *Harmsworth v. Harmsworth*, [1987] 1 W.L.R. 1676; [1987] 3 All E.R. 816; [1988] 1 F.L.R. 349; [1988] Fam. Law 169; (1987), 131 Sol. Jo. 1625, applied.

Legislation construed:

Supreme Court Ordinance (1984 Edition): s.2: The relevant terms of this section are set out at para. 8.

s.11: The relevant terms of this section are set out at para. 4.

s.12: The relevant terms of this section are set out at para. 4.

s.14: The relevant terms of this section are set out at para. 4.

s.15: The relevant terms of this section are set out at para. 4.

Supreme Court Rules, r.8(1): The relevant terms of this sub-rule are set out at para. 5.

English Rules of the Supreme Court, O.52:

“2.(1) No application to a Divisional Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

4.(1) Where an application for an order of committal may be made to a Court other than a Divisional Court, the application must be made by motion and be supported by an affidavit.”

D.J.V. Dumas for the applicant;

The respondent did not appear and was not represented.

J.M.P. Nuñez, *Crown Counsel*, for the Crown.

1 **KNELLER, C.J.:** Is leave required in this jurisdiction to make an application to commit a person for contempt for failure to obey the terms of the court’s orders or injunctions or abide by the undertakings of this court in an original civil proceeding? Mr. Dumas and Mr. Nuñez had this conundrum put to them without warning at the outset of this application by the plaintiff to commit the fourth defendant for contempt for allegedly failing to obey the orders and injunctions of the court and to abide by undertakings given to the court by his counsel on his behalf in this action for negligence and nuisance.

2 Mr. Dumas submitted that it was not required and Mr. Nuñez argued that it was. Each referred to portions of the commentary on O.52 of the Rules of the Supreme Court in *The Supreme Court Practice 1988* in support of their contentions.

3 The answer did not, with respect, emerge quickly and clearly so the court, with an abundance of caution, ordered the plaintiff to apply *ex parte* by summons in chambers, since this power to commit must be exercised justly and fairly: see *e.g. Harmsworth v. Harmsworth* (1).

4 I do not know of any decision of this court or of the Court of Appeal for Gibraltar on this, and in the short time available for such research I can find none. I turn, therefore, to the Supreme Court Ordinance and Rules:

“11. The Supreme Court of Gibraltar established by section 56 of the Constitution shall be a superior court of record and, subject to the provisions of the Constitution, shall be constituted and have the jurisdiction and powers . . . specified [in the Supreme Court Ordinance].

12. The court shall in addition to any other jurisdiction conferred by this or any other Ordinance, within Gibraltar and subject as in this Ordinance mentioned, possess and exercise all the jurisdiction, powers and authorities which are from time [to time] vested in and capable of being exercised by Her Majesty’s High Court of Justice in England.

. . .

14. In the exercise of the jurisdiction granted by this Ordinance the court shall have power to grant and shall grant either absolutely or on such terms as shall seem just, all such remedies or relief whatsoever interlocutory or final as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly put forward by them respectively or which shall appear in such cause or matter; so that as far as possible all matters in controversy between the parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided.

15. The jurisdiction vested in the court shall be exercised (as far as regards practice and procedure) in the manner provided by this or any other Ordinance or by such rules as may be made pursuant to this Ordinance or any other Ordinance and in default thereof, in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice.”

5 “Where no other provision is made . . . by any Ordinance, rule or regulation in force in Gibraltar . . . the rules of court that apply for the time being in England in the High Court shall apply to all original civil proceedings in the court”: Supreme Court Rules, r.8(1).

6 The Supreme Court’s power summarily to punish for contempt is provided for in s.18, but that is not available in this matter. It also has, in

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common with the High Court of Justice in England, the jurisdiction to commit for contempt on application.

7 There are no rules or regulations in Gibraltar that directly answer the question of whether or not leave is required to make such an application for committal, so O.52, which applies in England, also applies here. That begins with the general provision that “the power of the High Court . . . to punish for contempt of court may be exercised by an order of committal”: O.52, r.1(1). An order of committal may be made only by a Divisional Court of the Queen’s Bench Division where contempt of court is committed in connection with proceedings before that court, in an inferior court and, with exceptions, criminal proceedings (r.1(2)), which is not the case here.

8 “Where contempt of court is committed in connection with any proceedings in the High Court . . . an order of committal may be made by a single judge of the Queen’s Bench Division”: r.1(3). Leave to make an application to the Divisional Court to commit a person must be sought and obtained: O.52, r.2. This is not necessary for an application to any other court. Where the phrase “Divisional Court” is used in the English rules, if the context permits, the word “Court” is to be substituted, which “means the Supreme Court of Gibraltar and includes the Chief Justice, and any additional judge [of the Supreme Court], whether sitting in court or in chambers or elsewhere”: Supreme Court Ordinance, s.2; Supreme Court Rules, r.8 and Schedule 1.

9 Here, we have original civil proceedings and what is alleged to be disobedience to an order of the court and failure to abide by undertakings or, in effect, a “contempt in procedure” which is how the learned editors of 1 *The Supreme Court Practice 1988*, para. 52/1/2, at 775 describe “the chief instance of civil contempt.”

10 Accordingly, it is now clear that the answer to the question set out in the beginning of this ruling is that leave is not required in this jurisdiction to make an application to commit a person for contempt for failing to obey the terms of the court’s orders or injunctions or to abide by his undertakings in an original civil proceeding.

Order accordingly.

[1988–90 Gib LR 150]**MIFSUD v. ATTORNEY-GENERAL**

SUPREME COURT (Kneller, C.J.): March 31st, 1989

Succession—wills—registration in Supreme Court—extension of time to register—application to extend time for registration under Land (Titles) Order, s.3(4) to show “good and sufficient reason or cause” (e.g. malicious concealment of will, infancy of beneficiary entitled to devised land, temporary loss of will or force majeure) for extension—parties’ ignorance or default not sufficient grounds to extend time—prejudice to third party’s rights militates against granting of extension

The applicant sought an extension of the time within which to register the will of her late husband.

The applicant’s husband had died in December 1978, leaving her as the executrix and sole trustee of his will, as well as a beneficiary under it. He had owned a house on Main Street, which he devised to the applicant, and a share in a plot on Devil’s Tower Road, which he left on trust for his children. The applicant’s solicitor did not obtain a grant of probate, despite being asked to do so three times, nor did he register the will, a requirement for wills relating to land in Gibraltar. The caveator, Stud Ltd., was the tenant of business premises forming part of the estate, and had applied for a new tenancy, but the applicant opposed the grant of a new tenancy on the ground that she wanted the premises to carry on her own business. Stud Ltd., in proceedings related to the application, questioned her right to have granted the former lease or to oppose its application, as her late husband’s will had not been registered, and registered a caveat against the title to the premises. The judge adjourned those proceedings to allow the applicant to apply for the time to register the will to be extended.

The applicant submitted that the court should exercise the discretion conferred on it by the Land (Titles) Order, s.3(4) to extend the time for registration of the will, as (a) her lack of awareness of the requirement and her solicitor’s decade-long lack of attention to the matter constituted “good and sufficient reason” for it to do so; and (b) neither the Attorney-General nor the caveator strenuously opposed the application.

The Attorney-General submitted, however, that the court should not exercise its discretion in the applicant’s favour, as (a) the applicant’s solicitor’s failure to attend to the matter and the long delay did not constitute “good and sufficient reason” for the registration period to be extended; and (b) the rights of the caveator could be adversely affected by the registration of the will.