

[2015 Gib LR 49]

**EWING v. TIMES NEWSPAPERS LIMITED (No. 2)**

SUPREME COURT (Jack, J.): November 19th, 2014

*Civil Procedure—vexatious litigation—control by court—serious abuse of process—bringing libel action in Gibraltar when rejected by nine other judges in three jurisdictions so serious as to amount to criminal contempt of court—claimant’s undertaking not to issue proceedings in Gibraltar in future accepted so claimant could leave jurisdiction after 2-night remand in custody to avoid further cost to Gibraltarian taxpayers*

The claimant brought an action against the defendant for libel, breach of confidence and breach of privacy in respect of an article published in the defendant’s newspaper.

The Supreme Court struck out the claim (in proceedings reported at 2015 Gib LR 39) on the basis that the claimant was guilty of a serious abuse of process in bringing his claim in Gibraltar. It ruled that such an abuse could be a criminal contempt of court and that there was a *prima facie* case that the claimant was guilty of it. It adjourned the case so that he could be represented, and he was remanded in custody for two nights.

The claimant offered an undertaking never to issue proceedings within this jurisdiction again.

**Held**, making no order:

(1) The claimant’s behaviour in bringing the claim was so serious as to

amount to a criminal contempt of court. The claim had previously come before nine judges in three jurisdictions, all of whom had held that the claim had no reasonable prospect of success, but the claimant still brought the present claim in Gibraltar using exactly the same arguments, resulting in the defendant incurring £30,000 in unrecoverable costs in Gibraltar alone. The most effective means of protecting the defendant's constitutional right to freedom of speech would be to use the court's power to commit for contempt (paras. 7–8).

(2) Nevertheless, the claimant's undertaking never to issue proceedings within this jurisdiction again would be accepted, no further order would be made and he would be released so that he could leave the jurisdiction. He needed to lodge papers with the Supreme Court of the United Kingdom the following week or his petition for leave to appeal to that court from the Court of Appeal of Northern Ireland would be dismissed, and this court did not wish to interfere with the process of another court. Further, it was highly desirable that he leave Gibraltar without further cost to Gibraltar taxpayers, and, having spent two nights in custody, he had seen what the consequences of vexatious litigation could be (paras. 9–10).

**Cases cited:**

- (1) *Mephistopheles Debt Collection Agency (A Firm) v. Lotay*, [1994] 1 W.L.R. 1064, referred to.
- (2) *R. (POW Trust) v. Chief Executive & Registrar of Companies*, [2003] 2 BCLC 295; [2004] BCC 268; [2002] EWHC 2783 (Admin), referred to.

*R. Vasquez, Q.C.* for the claimant;  
*R. Fischel, Q.C.* as *amicus curiae*.

1 **JACK, J.:** On Monday, November 17th, 2014, I heard the defendant newspaper's application to strike out Mr. Ewing's claim. I decided that Mr. Ewing was guilty of a serious abuse of process in commencing proceedings in this jurisdiction after previously litigating about exactly the same matters in England, Scotland and Northern Ireland. For the reasons which I explained in the judgment I handed down on that date, it seemed to me that serious abuse of process can be a contempt of court and that there was a *prima facie* case that Mr. Ewing was guilty of it.

2 Because Practice Direction 81, especially paras. 4.1 and 4.3 dealing with contempt of court (and indeed natural justice), required me to do so, I adjourned matters until today so that Mr. Ewing could be represented. He appeared today with Robert Vasquez, Q.C.

3 In my judgment on Monday, I said that a litigant pursuing vexatious litigation by bringing vexatious proceedings and then by advocacy in court is committing a form of criminal contempt in the face of the court. That remains my view.

4 It is essential that the court be able to prevent its processes being abused. This is a small jurisdiction. It requires only a few vexatious litigants to cripple the administration of justice in this city. If it became known that men and women who had been declared vexatious litigants in the High Court of England and Wales could come here and issue proceedings (normally with complete remission of fees, because of their impecuniosity or alleged impecuniosity), then I have no doubt many would do so. Airfares to Gibraltar are often cheaper than train travel between major cities in the United Kingdom.

5 I have set out the facts of the current case in my earlier judgment. In my recital of the cases in which Mr. Ewing appeared after he was declared a vexatious litigant, I overlooked his involvement in *Mephistopheles Debt Collection Agency (A Firm) v. Lotay* (1). Mr. Ewing was a partner in the plaintiff firm, whose motto was: “It’s no use dying to avoid us—we pursue debtors to the gates of Hell if necessary in order to recover our clients’ money!” After his status as a vexatious litigant was discovered, he attempted to avoid an automatic stay on the debt collection action against Mrs. Lotay by assigning his share in the partnership to another partner, Mr. Gleaves. Mr. Gleaves had, however, also been declared a vexatious litigant and the Court of Appeal stayed the claim.

6 I also overlooked Mr. Ewing’s appearance on behalf of a charity and its subsidiary. He had made himself a director of both. In *R. (POW Trust) v. Chief Executive & Registrar of Companies* (2), Mr. Ewing presented an unsuccessful claim for judicial review of Companies House’s imposition of £100 fines for failure to file accounts timeously. Lightman, J. criticized the application as “disproportionately expensive and (at best) speculative litigation” ([2003] 2 BCLC 295, at para. 20).

7 I have reconsidered whether Mr. Ewing’s behaviour in the current case is so serious that it amounts to a contempt of court. In my judgment, it is. This is a very bad case indeed. He has been told by no fewer than nine judges before me in three separate jurisdictions that he has no reasonable prospect of success. Instead he brings another set of proceedings before a tenth judge—me—in a fourth jurisdiction—Gibraltar—and makes precisely the same arguments which have been rejected by the previous nine judges.

8 The costs incurred by the defendant in Gibraltar alone are of the order of £30,000. These will, in practice, be wholly irrecoverable. As I pointed out in my earlier judgment, I have to protect the constitutional right of the *Sunday Times* to freedom of speech. The only practical means of protecting the defendant is by the use of the court’s power to commit for contempt.

9 Having found that there was a contempt of court, I now turn to consider penalty. Mr. Ewing indicated that he was willing to offer an

undertaking never to issue proceedings within this jurisdiction ever again. Mr. Ewing also told me on Monday that he had to lodge papers with the Supreme Court of the United Kingdom next week, otherwise his petition for leave to appeal to that court from the Court of Appeal of Northern Ireland might be liable to be dismissed. I would not wish to interfere with the process of another court and, in any event, it is highly desirable that Mr. Ewing leave the city without further cost to the taxpayers of Gibraltar.

10 I have now made it clear what this court's approach will be to any further attempts to abuse its processes. Mr. Ewing has been in custody for two nights and will have seen what the consequences of vexatious litigation can be. In these circumstances, I propose to accept the undertaking offered by Mr. Ewing and make no order. The consequence is that Mr. Ewing will be released.

*Ruling accordingly.*

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