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MartIn Vs. Lawrence

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Court : Kolkata

Decided On : Jan-13-1879

Reported in : (1879)ILR4Cal655

Judge : Richard Garth, C.J. and ;White, J.

Appellant : Martin

Respondent : Lawrence

Judgement :

Richard Garth, C.J.

1. This appears to me a very clear case, and Mr. Hill, notwithstanding the short time that he has had to prepare his argument, has said everything that could he said on behalf of his client. (His Lordship then stated the facts of the case, and continued.) The case, as I have already said, is to my mind a very clear one. There is no ground whatever, as far as I can see, for the application; and the mistake of the appellant has arisen from her confounding together two proceedings of the Court, which are entirely diverse in their nature She is attempting to treat her imprisonment, which was a punishment imposed upon her for disobeying an order of the Court, as an ordinary process of execution at the suit of an execution-creditor.

2. Execution at the instance of a creditor against the person of the execution-debtor is a process which the Court is bound to enforce, provided the application

for it is made in the proper way, and in the regular course of law. It is one of the modes by which the execution-creditor obtains satisfaction of his decree. But the proceeding under which Anna Martin has been imprisoned is of a totally different character. It is the means which the Court employs of punishing her for disobedience of its order; and it is not an execution at all in the proper sense of that word. The attorney, to whom the money was to be paid, was not an execution-creditor. The money was not to be paid over to him for his own benefit. He was merely made the recipient of it, in order that it might be disposed of in accordance with the Court's decree.

3. In my opinion the provisions of Sections 341 and 342 of the new Code apply only to these cases where parties have been imprisoned under process of execution in satisfaction of a decree, and do not apply at all to cases of imprisonment for contempt of Court.

4. Section 493 of the Code, to which we have been referred by Mr. Hill, appears to me rather to afford an argument against him. That section says, that in any suit for restraining a defendant from committing a breach of contract or other injury, the Court may by order grant such an injunction as it thinks fit, and, in case of. disobedience, this order may be enforced by the imprisonment of the defendant for a term not exceeding six months.

5. The very fact of the imprisonment in cases of this nature being limited to six months only, seems to show that in other cases there would be no such limit. And again, if Mr. Hill is right in his argument, that imprisonment for contempt of the Court's order is imprisonment under an execution, so that such imprisonment could never be for more than six: months, there would in that case be no necessity for limiting the period of imprisonment under Section 493.

6. I should be sorry to think that there was any doubt at all about the question before us. I will not say that it is unarguable, because it has been very ably argued by Mr. Hill; but now that all has been said which can he said in favour of the appeal, I consider that there is no ground whatever for entertaining it.

White, J.

7. I have little to add to what has fallen from my Lord.

8. The appeal is against an order of Mr Justice Broughton refusing to discharge the appellant from jail. The application was made to him under Section 341 of the new Code. on the ground that the appellant had been imprisoned for a longer period than six months. That section, which incorporates Section 342, directs that; a judgment-debtor, who is imprisoned in execution of a decree, shall be discharged after six months. It appears to me that these sections do not apply in the present instance. The appellant is not a judgment-debtor in the sense in which the words are used in that section; nor is she imprisoned in execution of a decree in the sense in which the words are used in the following section. She is imprisoned under process of contempt, issued for disobedience of an order of the Court, which directed her to pay certain moneys into the hands of her attorney for the use of a minor. It is true that the process issued upon the application of a party to the suit, but in fact it is the peculiar process which the Court employs to vindicate its authority, and ensure that suitors and others, who are amenable to the process, do not by their contumacy make its order nugatory.

9. It is undisputed in this case that the appellant has not paid the money which she was ordered to pay, and has given no explanation why she has not done so. No circumstances have supervened disabling her from obeying the order of the Court and she still detains the minor's money. It would indeed be a grievous failure of justice, if, under these circumstances, she could escape from complying with the order contained in the decree merely by suffering six months' imprisonment. Her contumacy is what it was when the order was made. There has been no submission whatever on her part, and no excuse offered for non-compliance.

10. The jurisdiction of the Court, under which this process issued is a jurisdiction that it has inherited from the old Supreme Court, and was conferred upon that Court by the Charters of the Crown, which invested it with all the process and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain. I am unable to see that this jurisdiction, in the particular instance in which it has been exercised in the case before us, has been removed or affected, or was intended to be removed or affected, by the new Code of Civil Procedure. If

Mr.Hill's contention were right, the High Court would in a measure be disarmed. It would be deprived of the best and most effectual, and in some cases, the only effectual, means of securing obedience to its orders. On the whole, I am of opinion that Mr. Justice Broughton was perfectly right in refusing the appellant's application.

Richard Garth, C.J.

11. The appeal will be dismissed, but without costs, as no one appears for the respondent.

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