REGENT INTERNATIONAL HOTELS LTD.
v.
CYRIL GARDINER AND OTHERS

SUPREME COURT
SAMARAKOON, C.J., ISMAIL, J. AND WANASUNDERA, J.
S.C. APPEAL NO. 4/79
C.A. NO. 1144/78
D.C. COLOMBO CASE NO. 1/81321/M
JANUARY 22, 23, 24, 25, 28, 29 AND 30, 1980 and
FEBRUARY 5, 6, 7 AND 8, 1980.

Contempt — Disobedience — Enjoining Order made by the Court of Appeal — Orders of the Court of Appeal under Article 105(3) of the Constitution — Civil Procedure Code, Chapters XLVIII and LXV.

Enjoining order — Disobedience of an enjoining order — Enjoining order against a juristic person — Parties who must obey.

The appellant Regent International Hotels Ltd., Hong Kong instituted an action against the Galle Face Hotel Company Ltd., and Cyril Gardiner its Chairman and Managing Director and others praying for the specific performance of an agreement marked "A" and filed with the plaint and for a permanent and an interim injunction pending the final determination of the action restraining the defendants from violating any of the righs of the plaintiff under the said agreement. The learned District Judge entered an interlocutory order and an enjoining order restraining the defendants from committing any of the acts violating the plaintiff's rights under the said agreement. The order was served on the defendants but the defendants disobeyed the said order on a number of occasions when the plaintiff attempted to enforce the provisions of the said order.

Thereafter the 'plaintiff' instituted proceedings before the Court of Appeal for contempt of Court under the provisions of Chapter LXV of the Civil Procedure Code. The Court of Appeal dismissed the application but granted leave to appeal.

It was argued before the Supreme Court :—

1. The law does not make the breach of an enjoining order a contempt of court.
2. The Court of Appeal has no power to take cognizance of a disobedience to an enjoining order under Article 105(3) of the Constitution.
3. That the enjoining order is bad in law as it does not direct every person concerned to refrain from doing certain acts.
4. A party cannot be brought before court a second time for the breach of the same enjoining order.
5. That the enjoining order was irregularly or wrongly issued.

Held :

1. That an enjoining order has all the force of an interim injunction and disobedience of an enjoining order constitutes an offence of contempt of court.

2. That the Court of Appeal has all the powers under Article 105(3) of the Constitution of punishing for contempt whether committed in *facie curae* or *ex facie curiae.*

3. That the jurisdiction of an inferior court to punish for contempt is confined to punishments for contempt as are perpetrated *in facie curae* and does not extend to those committed out of court unless express statutory power is given for that purpose.

4. When an injunction is obtained against a juristic person the parties who must obey it are those in control of the affairs of the juristic person. There is no requirement in

law that they must also be direct. If they fail they are guilty of contempt and they are the persons to be charged for contempt.

5. Every act done in contravention of an enjoining order as long as it is operative constitutes a breach of it and therefore a contempt of court.

6. As long as an enjoining order is in operation the party who has obtained it is entitled to make successive attempts to have it obeyed and the obstruction of each of such attempts constitutes a contempt of court.

7. An enjoining order is issued for swift and immediate action and like an injunction must be implicitly obeyed and obeyed to the letter. If two views are possible and the court has taken one view it is not open to a party to say that the other view should have been accepted and therefore refuse to obey the enjoining order.

Cases referred to :—

(1) *In the matter of the application of John Fergusson for a Writ of Prohibition against the District Judge, Colombo* — 1 NLR 181 at 190.

(2) *In Re Cader and another* 68 NLR 293.

(3) *Pounds v. Ganegama* — 40 NLR 73.

(4) *Gnanamuthu v. Chairman U.C. and U.C. Bandarawela* — 43 NLR 366.

(5) *Russel v. East Anglican Railway Co.* 20 L. J. Ch. at 261.

(6) *Eastern Trust Co. v. Mc. Kensie Maan and Company Ltd.* [1915] A.C. 750 P.C. [1952] All 2 ER 567.

(7) *Hadkinson v. Hadkinson* [1952] 2 All ER 567.

(8) *Chuck v. Cromer* (1846) 1 Coop temp. Cott 339 at 342—343. 47 ER 342—343 appeal for order of Court of Appeal.

H. W. Jayewardene, Q.C. with *Eric S. Amerasinghe, H. L. de Silva, K. N. Choksy* and *I. S. de Silva* for Complainant-Appellant.

C. Thiagalingam, Q.C., with *Dr. Colvin R. de Silva, K. Shinya, R. Gooneratne,* and *K. Kanag-Iswaran* for 1st Accused-Respondent.

Dr. Colvin R. de Silva with *K. Shinya, R. Gooneratne* and *K. Kanag-Iswaran* for 2nd to 4th and 6th Accused-Respondents.

K. Shinya for 5th Accused-Respondent.

Dr. Colvin R. de Silva with *K. Shinya, R. Gooneratne* and *K. Kanag-Iswaran* for 9th Accused-Respondent.

Cur.adv.vult

March 12, 1980

SAMARAKOON, C.J.

This is an appeal from an order of the Court of Appeal dismissing the charges of contempt of Court laid against the 1st to 8th respondents. The Court of Appeal has granted the petitioner leave

to appeal to this Court. A brief history of the proceedings is necessary. The petitioner is a corporation doing business as hoteliers under the name Regent International Hotels Ltd. in Hong Kong (hereinafter referred to as the Petitioner). On a plaint dated 10th October, 1978 it instituted action No. 1/81821/M in the District Court of Colombo against the Galle Face Hotel Company Limited (9th Respondent in these proceedings) and Cyril Gardiner, Chairman and Managing Director of the Company (1st Respondent in these proceedings) primarily for a decree for specific performance of an agreement marked "C" and filed with the plaint. (Produced and marked E1A in these proceedings). In paragraph 6 of the plaint the petitioner quoted verbatim several sections of the document "C" and in particular section 3.01 headed : *Use and Operation* which reads as follows :—

> "Section 3.01. Use and Operation. Regent covenants to use the Hotel solely for the operation of a deluxe hotel and for all related activities which are customary and usual to such an operation so far as shall be feasible, shall conduct such operations so as to accord with the character and traditions of the country.
>
> It is understood that Regent shall have within the terms and Provisions of this agreement, for owner's account, absolute control and discretion in the operation of the Hotel".

On the last page of the document appears, written in hand, six clauses, which writing has been referred to in these proceedings as an addendum. Besides the prayer for specific performance the petitioner also prayed for a permanent injunction and also for an interim injunction in these terms :—

> "(c) For an interim injunction restraining the defendants and their servants, agents and subordinates pending the final determination of this action—
>
> (i) From preventing or obstructing the plaintiff through its authorised representative from exercising the rights of absolute management and control of the said Galle Face Hotel in terms of the said agreement marked "A" ;
>
> (ii) from entering into agreements, contracts, and/or arrangements with third parties handing over the management and control of the said Galle Face Hotel either wholly or partly to third parties in violation of the rights of the plaintiff under the agreement marked "A" ;

(iii) from otherwise interfering with and/or otherwise acting in violation of plaintiff's rights under the agreement marked "A" in any manner whatsoever";

The learned Judge "after reading the petition and the affidavit and the annexures" entered an interlocutory order returnable 27th October, 1978. He also enjoined the defendant in these terms :—

"I also order that an enjoining order be issued restraining the defendant in terms of para (c) (i) (ii), and (iii) pending the decision of the application for interim injunction in this Court on the plaintiff depositing a sum of Rs. 100,000/- as security."

The petitioner deposited this security and an enjoining order dated 11th October 1978 was issued. I am setting it out fully as a great deal of argument was based on its terms.

"ENJOINING ORDER"

To: The defendant abovenamed.

WHEREAS the plaintiff has instituted the above styled action praying, inter alia, for an interim injunction in terms of prayer (c) contained in the plaint (copies of the plaint, affidavit and documents filed therewith are annexed hereto).

AND WHEREAS the application for an interim injunction was supported in Court on the 10th day of October, 1978 by Counsel appearing for the plaintiff.

AND WHEREAS the Court after reading the plaint, affidavits and documents annexed thereto and hearing the submissions of Counsel has ordered that notice of the application for an interim injunction returnable on the 27th of October 1978 together with an enjoining order do issue restraining the defendant abovenamed in the manner prayed for in the prayer (c) of the plaint pending the hearing and determination of the application for an interim injunction.

AND WHEREAS the plaintiff has deposited a sum of Rs. 100,000/- ordered as security.

YOU the 1st and 2nd defendants abovenamed and your servants, agents and subordinates are hereby restrained and

enjoined pending the hearing and determination of the application for the interim injunction in this court from :—

(i) preventing or obstructing the plaintiff through his authorised representative from exercising the rights of absolute management and control of the said Galle Face Hotel in terms of the said agreement marked (A).

(ii) entering into agreements, contracts and/or arrangements with third parties handing over the management and control of the said Galle Face Hotel either wholly or partly to third parties in violation of the rights of the plaintiff under the agreement marked "A".

(iii) otherwise interfering with and/or otherwise acting in violation of the plaintiff's rights under the said agreement marked "A" in any manner whatsoever.

THESE ARE THEREFORE to command you to obey in the manner aforesaid.

HEREIN fail not under the penalty of the law otherwise ensuing.

Sgd. K. WIGNARAJAH
Additional District Judge
11th October 1978.

This enjoining order was served on the defendants by the Fiscal on the 11th October. At 1.00 p.m. on the same day Prarob Mokaves, Area Director of the petitioner, wrote to the 1st respondent a letter (E5) which was delivered at the Reception Desk of the Galle Face Hotel at approximately 8.30 p.m. It informed the first respondent that Mokaves would be calling at the Hotel at 9.00 a.m. the next day 12th October — "to resume the management and control of the Hotel by Regent International Hotels Limited which was unlawfully interrupted" by the 1st respondent. It specifically asked for the restoration of the plaque displaying the name "Galle Face Hotel — Regent of Colombo", for the use of the Manager's office, Secretarial Services and other amenities pertaining to the operation of the Hotel, that the employees be made fully aware of the terms of the enjoining order and lastly that a Bank be designated for the opening of "The Operating Account of the Hotel" as required by section 4.04 of the agreement.

Mokaves called at the Hotel as indicated on the 12th but was unable to take control of the Hotel as he was resisted by the 1st

Respondent. He reported this matter to the District Court by affidavit. The 1st Respondent was charged with contempt of Court. After inquiry he was found guilty on the 8th November, 1978, and fined Rs. 2500. The reasons for the conviction were delivered by the learned District Judge on 13th November 1978. The 1st respondent has appealed to the Court of Appeal against this conviction and that appeal is pending in that Court. I do not propose to make any comment on those proceedings as the Court of Appeal has yet to decide it and also because those proceedings are not the subject matter of this appeal now before this Court.

It will be convenient if I set out in chronological order the events leading up to the charges of contempt referred to the Court of Appeal. On the 22nd October, 1978, by letter E7 the Attorneys for the petitioner wrote to the 2nd to 7th respondents and to one W. Tennekoon (also a Director of the 9th respondent Company though not a party to these proceeding pointing out that each of them as directors of the Hotel Company was disobeying the Enjoining Order issued by the District Court and informing them that in the event of continued disobedience each would be reported to Court for contempt of its authority. By letter dated 10th November (E8) the petitioner's lawyers drew the attention of the 2nd to 7th respondents to their letter E7 and informed that Mokaves "will once again call over on Monday 13th November at 8.00 a.m. to resume management of the Galle Face Hotel". By ESA of the same date the 1st respondent was given the same notice. Mokaves called over at the Hotel at 9.00 a.m. on the 13th. He was met by the 8th respondent who handed to him two letters (marked E9 and E10 in these proceedings). Mokaves has stated in his petition that he had to leave the Hotel with his mission un-accomplished. These two letters make interesting reading in the background of the controversy. Letter E9 is dated 13.11.78 and is signed by the 8th respondent. It states that Document "A" was "exploratory in nature" and subsequently altered. It refers to and quotes clause 6 of the addendum. While stating that the Chairman and Directors of the Hotel Company will obey the Enjoining Order it states ultimately as follows :—

> If Mr. Mokaves is the authorised representative of Regent there is no objection to his visiting the Hotel. If however Mr. Mokaves wishes to function as Manager or in any other executive capacity he must first have the approval of the above authorities and of the Development Finance Corporation of Ceylon (DFCC) — leave alone the GFH Board".

Letter E10 is dated 12.11.78 and is signed by the 1st Respondent. It informs Mokaves that Regent, by instituting action No. 1/8182/M of the District Court of Colombo, and by its "subsequent conduct, asserting and seeking to obtain to itself the right to absolute management and control of the Galle Face Hotel *has repudiated the agreement* between Regent International Hotels Limited and the Galle Face Hotel Company Limited as *modified by the minutes of the meeting of the Board of Directors of the Galle Face Hotel Company Limited dated 30th October 1976.*" It adds that the Galle Face Hotel Company Limited *"accepts the repudiation and from date thereof elects to treat the said agreement as cancelled and as having come to an end."* (the underlining is mine). It is a case of the left hand not knowing what the right hand was doing. Two responsible officers of a reputed Company each attempting to justify a different and conflicting stand. One asserting that the Agreement stood repudiated and cancelled on the 12th November and the other, on the very next day, insisting on the strict adherence to a term of the Agreement. The former acknowledges an agreement while the latter refers to it as an exploratory exercise. Counsel for the 1st respondent on the first day of his argument stated that he was unhappy about E10 but as his argument progressed into the third day he stated that he was now happy about E10. He had in the meantime discovered that E10 had no express reference to document E1A. His happiness was short lived because his subsequent reading of the record of his client's evidence (E18) clearly indicated that the Agreement referred to by him was E1A and that there was no other document in writing containing an agreement. E9 and E10 undoubtedly refer to E1A and I so hold. The final result of all this was that Mokaves failed to get management and control of the Hotel on the 13th November.

Mokaves would not give up his attempt to get control of the Hotel. By letter dated the 15th November (E11) the lawyers of the petitioner informed the 8th respondent that another endeavour would be made to have the Enjoining Order obeyed by all who are bound by it and "accordingly Mr. P. Mokaves, accompanied by his nominees will call at the Hotel on Thursday the 16th instant at 8.00 a.m. to resume management and control of the Hotel". A copy of it was forwarded to each of the other Directors of the Hotel Company by express post (E12). Mokaves entered the Galle Face Hotel at about 9.00 a.m. on the 16th November and was met by Victor Rodrigo (referred to in these proceedings as the Manager of the Hotel) who handed to him a copy of a letter dated 16.11.78 (E13) addressed to the petitioner's lawyers and signed by the 8th respondent. Mokaves made a request to speak to the 8th respondent but was told that the 8th respondent did not desire to

speak to him. Having waited in the Hotel till about 10.00 a.m. Mokaves left the premises his mission once again a failure. Thereafter by a petition dated 27th November, 1978, the petitioner invoked the jurisdiction of the Court of Appeal praying that the 1st to the 8th respondents be punished for contempt of the authority of the District Court of Colombo committed on the *13th and 16th November*. The Court of Appeal dismissed the application. These are the salient facts. I shall deal with details in the course of this order.

Counsel appearing for the respondents have taken several objections to the legal validity of the Enjoining Order and to the legal validity of these proceedings. Dr. de Silva contended that the law does not make a breach of an Enjoining Order a contempt of Court and in any event it is not one that the Court of Appeal can take cognizance of under the provisions of Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka 1978 (hereinafter referred to as the Constitution). Section 664 of the Civil Procedure Code prevents a District Court from issuing an injunction, commonly called an interim injunction, without prior notice to the opposite party "except when it appears that the object of granting the injunction would be defeated by the delay". However, it is given a discretion to enjoin the defendant until the hearing of the application for an interim injunction. Such an order is commonly referred to as an "Enjoining Order". It is not a legal term used in the Civil Procedure. It is merely a judicial order prohibiting the doing of an act or restraining the defendant from doing an act until the Court has had the opportunity of hearing and disposing of the application for an interim injunction. Such an order must also conform to the law. Section 662 of the Civil Procedure Code (which was deemed never to have been repealed—vide section 4 of the Law No. 19 of 1977) refers to sections of the Courts Ordinance (Cap. 6). This corresponds to section 43 of the Administration of Justice Law No. 44 of 1973 which was operative at the relevant time. The law prevailing at the time empowered a District Court to issue an interim injunction pending the final determination of the case. When a defendant is enjoined in terms of the law it is an order which must necessarily be of the nature of and in the form of the interim injunction. Such an enjoining order therefore has all the force of an interim injunction and must be obeyed as such. The Enjoining Order (E3) issued in this case which has been issued in terms of paragraph C(i), (ii) and (iii) of the prayer to the plaint (E1) has such force and effect in law.

The petitioner has invoked the jurisdiction of the Court of Appeal conferred on it by Article 105(3) of the 1978 Constitution which

article reads as follows —

> "(3) The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph 1 (a) of this Article whether committed in the presence of such court or elsewhere."

The Supreme Court "being the highest and final Superior Court of Record in the Republic" and the Court of Appeal being a Superior Court of Record with appellate jurisdiction have all the powers of punishing for contempt, wherever committed in the Island in *facie curiae or ex facie curiae.* (I N.L.R. 181 at 190). (1) Counsel however argues that there is a vital difference between the power to "punish for contempt" and the power to "punish as for a contempt". Whereas Article 105 (3) confers the power to punish for contempt section 663 of the Civil Procedure Code states that where an injunction has issued, disobedience to it may "be enforced as for a contempt of Court". In the case of the former, so the argument goes, it is punishment for the offence of contempt whereas in the latter case it is mere disobedience that attracts the punishment that is ordinarily meted out for the offence of contempt—there being no contempt in fact or in law. Counsel cited the provisions of section 792 Civil Procedure Code which refers to *"offences of contempt of Court"* and *offences* declared by this Ordinance to be punishable as contempts of Court ? An examination of the provisions of the Civil Procedure Code discloses the following sections which declare certain acts as offences of contempt.

Section 109 — Any person failing to comply with an order to answer interrogatories, or for discovery, production or inspection is "deemed guilty of the offence of contempt"

Section 137 — Non-compliance with summons without lawful excuse "shall be deemed to be guilty of the offence of contempt of Court and punishable therefor."

These sections create offences of contempt of Court by means of legal fiction. There is also an omnibus category variously expressed in the following sections :—

Section 140 — Where a party to an action refuses to give evidence or to produce a document the Court may punish him *"as for a contempt"*.

Section 294 — Section 295 — Person violating an order not to commit what may be punished *"in manner provided by law for punishment of contempt of court"*.

Section 372 — An officer making a false statement in any affidavit "commits an offence which is *punishable as contempt of court"*.

Section 650 — A plaintiff failing to disclose security in his possession may be punished *"as for a contempt of court"*.

Section 656 — Any person making a wilfully false statement by affidavit or otherwise may be punished *"as for a contempt of court"*.

Section 663 — Disobedience of an injunction may be enforced by punishment of the offender *"as for a contempt of court"*.

Section 713 — Failure to attend upon citation may be punished *"as for a contempt of court"*.

Section 717 — Disobedience to a decree "may be punished *"as for a contempt of court"*.

Section 718 — A delinquent in filing inventory or valuation and accounts may be dealt with *"as for a contempt of court"*.

The terms used vary. They are *"as for a contempt", as for contempt "punishable as contempt", "as a contempt" "for a contempt"* and in one instance *"in manner provided for punishment of contempt of court"*. Counsel contended that the second category of sections do not empower the Court to punish for contempt. He cited the case of *In re Cader* (2). Basnayake C.J. in the course of his judgment in that case (vide page 299) observed as follows :—

> "They do not empower the Court to punish for contempt but they vest in the court the power to enforce its order by punishing as for contempt of court the offences briefly described above".

He was considering the wording of the identical sections. This statement is not strictly correct because section 137 (which

Basnayake C.J. was considering) and section 109 each creates an offence of contempt of court, and the court can punish the offender for contempt of court. While section 372 refers to an "offence" the other sections I have cited do not refer to the particular act or acts set out in the section as an "offence" or "offences". However section 792 refers to this category as "offences declared by this Ordinance to be punishable as *contempts of Court*". (Vide also Section 799) Section 793 states that the Court shall issue a summons to the accused in form No. 132 in the first schedule. The heading of the Form is —

"FORM OF SUMMONS TO PERSONS ACCUSED OF CONTEMPT OF COURT".

And it requires him to answer a "charge of contempt committed against the authority" of the court. Similar words appear in the Form of Warrant No. 133. The charge itself refers to "a contempt of Court". The Court must record a conviction in Form 134 which is also for "having committed contempt of the authority of (this) Court". (Vide Section 797 of the Civil Procedure Code). The sentence of fine or imprisonment are "for contempt" under Chapter LXV. It is therefore clear that when the offender comes to be dealt with under Chapter LXV of the Civil Procedure Code he is charged with the offence of contempt of court and punished for contempt. The act or acts referred to in the section then "constitute the offence of contempt of court". (Vide Section 797). Disobedience of an injunction (Section 663) therefore, constitutes an offence of contempt of court. I have analysed these provisions to show that in any event the distinction sought to be drawn by Counsel is not a valid one. It arises from a misapprehension of the real meaning of these provisions. These provisions are undoubtedly modelled on the U.K. Law and English Law shown in so far as an inferior court is concerned, contempt of court can arise from two different situations. The jurisdiction of an inferior Court to punish for contempt is confined to such contempts as are prepetrated *in facie curiae* and does not extend to such as those committed out of Court unless express statutory power is given for that purpose. When such power is given, the offence would be assimilated to contempt proceedings and regarded as a contempt. But generally speaking the power to punish for contempt for acts committed not *in facie curiae* of an inferior tribunal, is given to a superior court. In the U.K., the Queen's Bench Division watches over the proceedings of inferior courts and is vested with power to prevent persons interfering with the course of justice in such inferior Courts (Halsbury's Law of England, 3rd Edn. Vol. VII p. 19. Oswald contempt, 3rd Edn. p. 11).

A careful examination of Basnayake, C.J.'s judgment does not appear to be at variance with the above position. He rightly draws attention to the distinction between contempts *ex facie curiae* and offences punishable as for contempt in the case of inferior tribunals. He recognises the right of the Supreme Court as a superior court of record to punish for contempt where the order of an inferior court has been defied. This would be the case of contempt taking place not *ex facie curiae*. After referring to the powers of an inferior court to punish in case of offences declared as contempts, he says :—

> "The powers are given to the Court for enforcing its orders and not to affect the power of the Supreme Court to punish for contempt under Section 47 of the Courts Ordinance".

The power given to the Supreme Court under Section 47 was the power to punish for the offence of contempt and not in respect of an offence punishable as a contempt. The material part of Section 47 reads —

> "The Supreme Court ..... shall have full power ..... to try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself or any offence of contempt committed against or in disrespect of the authority of any other court and which such court has no jurisdiction under Section 37 to ..... punish".

Although this section contemplates only the offence of contempt Basnayake, C.J., held that the disobedience to an injunction granted by a District Court (which was punishable as a contempt) and falling within Section 663 of the Civil Procedure Code, was nevertheless a contempt punishable by the Supreme Court. Superior Courts therefore have jurisdiction in terms of Article 105(3) of the Constitution to deal with this case.

The next contention is that the charges are meaningless and are therefore bad in law. Each charge recited in paragraph 3 is that despite the directions given in the Enjoining Order the 1st defendant Company, that is, the Galle Face Hotel Company Limited, has failed, refused and neglected to obey and comply with the Enjoining Order. The acts of failure, neglect and refusal are thereafter set out in detail. The charge of contempt is against each individual Director named in each charge. Section 665 of the Civil Procedure Code provides that an injunction directed against a Company is binding on all its members and officers whose personal action it seeks to restrain. Counsel argued that as no injunction

had been served on the respondents to restrain their personal actions they could not be bound by the injunction. I do not think this is in any way necessary. When an injunction is obtained against a juristic person the parties who must obey it are those in control of the affairs of the juristic person. In this case the injunction must necessarily be honoured primarily by the Directors of the Company. They are the persons whom the plaintiff sought to bind. There was no requirement in law that they must also be directed. The section requires only a direction on the Corporation and then the officers of the Corporation whose duty it is to do or refrain from doing the acts set out in the order are the persons who are automatically bound by the Enjoining Order. If they fail they are guilty of contempt and they are the persons to be charged. The charges have been inelegantly drafted in that the word "you" has been omitted in the first line of the penultimate paragraph on the charge. The respondents could not have been misled by this omission and no prejudice has been caused to them. All particulars that they needed to know were to be found in Document E1 to E15 copies of which were served with the summons. I therefore reject the contention that the charges are bad in law.

Counsel next contended that the charges could not be maintained as the Enjoining Order had already been disobeyed on the 12th October and therefore there could not be disobedience to it on the 13th and 16th November generating two new offences. It was, Counsel argued, a continuing offence and not a repetition of an offence. Therefore, he states, the 1st respondent is doubly vexed and the 2nd to 8th respondents cannot in any event be charged for disobedience on the 13th and 16th November because the Enjoining Order had been disobeyed on the 12th October by the Company and the 1st respondent. The Enjoining Order had not been dissolved and was operative, because the interim injunction issued is, I understand, subject to appeal to the Court of Appeal and therefore not final. The fundamental rule is that an injunction remains operative until dissolved by the Court and the duty of obedience to it continues till it is dissolved. Until the Enjoining Order is dissolved on a proper application to Court the duty of obedience exists. Any party who disregards it does so at his peril. Every act done in contravention of the Enjoining Order as long as it is operative constitutes a breach of it and therefore a contempt of Court. No doubt there may be a series of such acts after the initial disobedience but this is a matter that may be taken into account in mitigation of sentence. As long as the Enjoining Order

exists the party who has obtained it is entitled to make successive attempts to have it obeyed and obstructions of each of such attempts constitutes an offence. To hold otherwise would in effect be, to hold that the enjoining order ceases to have any force after the initial disobedience and thereby the law and the Court that issue it will be brought to naught. If the *contemnor* is doubly vested he has only himself to blame.

Counsel for the 1st respondent, in dealing with the Enjoining Order, stated it was "not in order", it was "impossible of obedience", that "two views are possible" and that it was "bad on account of duplicity". He also stated that the Agreement was not capable of specific performance. This last argument is not a matter for decision by this Court and I do not propose to go into the matters which are not relevant to the main case only. These proceedings are only concerned with whether or not the Enjoining Order should have been obeyed. At this stage I desire to refer to the plaint filed in the District Court upon which the Enjoining Order was obtained. It had annexed to it the Agreement (E1A), a copy of the oppointment in writing of Allan Wade, and copies of certain correspondence between parties. It reproduced verbatim eight clauses of the agreement. It referred to the "purported termination" of the services of the said Allan Wade which it states was illegal and also the fact that he had to temporarily vacate the hotel as he apprehended risk to personal health and safety in view of the hostile attitude of the 1st respondent. It specifically states that the "purported termination is illegal, unlawful and a gross violation of the terms of the Agreement. The document produced as the Agreement contained the addendum. It is therefore futile to state that the Court was not aware of the addendum. Clause 6 of the addendum reads as follows :—

> GFH veto employees. Senior employees approved by DFCC & GFH"

Counsel argued—

1. That when the Enjoining Order directed the defendants to give "absolute management and control in terms of the agreement" it must be read with clause 6.

2. That when Mokaves sought to resume management of the Hotel he could not do so because he lacked the permission of the DFCC and the GFH which was a condition precedent to taking control.

3. That Mokaves could not in any event resume management because he, being a non-national was forbidden by the Law of Sri Lanka to engage in any work or employment in Sri Lanka without a permit from the proper Governmental authority.

4. That the provisions of section 1.04 and section 4.04 of the agreement had vital blanks and therefore was impossible of implementation.

5. That the Bank account stipulated in section 4.04 had never been opened and therefore funds of the hotel could not be deposited in a designated bank.

6. The Enjoining Order is not definite in terms. It calls for interpretation.

At the outset it is necessary to note that reasons 4, 5 and 6 were not reasons given by the 1st to 8th respondents in the month of November 1978, in letters E9, E10. They seem to be an afterthought. Whatever infirmities the Agreement had, including blank and lack of a designated Bank, the Agreement was honoured for two and a half years and the petitioner ran the Hotel during that period. In evidence the 1st respondent conceded that it was only after 1st October, 1978, that is, after Wade ceased to work in the Hotel, that the Galle Face Hotel Company took control through the Chairman and the Directors.

Much use has been sought to be made of the words "absolute management and control in terms of the agreement" in defence of the respondents. Dr. Silva quite rightly pointed out that the agreement now here refers to "absolute management". But "management is referred to expressly in some of the sections of the agreement and it is necessary to examine it in detail to find out what is meant by the term "management" in the context of the agreement. Under the heading "Recitals of Fact" it is stated that Regent is willing to render assistance to the owner "in the management, operation and marketing of the Hotel". Section 3.01 provides that Regent shall have absolute control and discretion in the operation of the Hotel and shall retain control and management of all properties and funds relating to the hotel. Upon taking over the Hotel Regent covenanted to use the hotel solely for the operation of a de luxe hotel for the purpose of performing "all the general management service of the Hotel". Regent was empowered, *inter alia* to enter into service contracts "including employment of all personnel on the pay-roll of the Hotel". The

owner also authorised Regent, "as part of the general management of the Hotel to settle on terms and conditions a Regent shall deem in the best interest of the Hotel, any and all claims or demands arising out of the operation of the Hotel irrespective of whether or not legal action has been instituted". (Section 3.03). Regent was given wide powers in matters of repairs and maintenance, alterations, structural repairs and changes which powers a hotelier should necessarily have for the purpose of providing that high standard of service that goes with a de luxe hotel (Vide Article VI). For the purpose of providing these management services Regent is given "absolute control and discretion" which includes and extends to among others, "the use of the Hotel for all customary purposes, the charges to be made for and the terms of admittance to the Hotel for rooms, for commercial space, for privileges for entertainment and amusement, for food and beverages, the right to employ, train, discipline, transfer and select the employees of the Hotel and the advertising and promotion of the Hotel. (Section 3.01). Regent undertook to operate and provide in the Hotel "all facilities and services normally operated or provided directly by operators of hotels of comparable class and standing" (Section 3.03) and the owner covenanted that "Regent shall and may peaceably and quietly manage and operate the Hotel in accordance with the terms of (this) Agreement for the entire period stipulated (therein)" (Section 1.03). For good measure a Restrictive Clause stipulated that the owner's right of entry upon any part of the Hotel for the purpose of examining Books and Accounts "or for any other necessary or desirable purpose" shall be done "upon notice" and "with as little disturbance to the business of the Hotel" (Section 7.02) and Galle Face Hotel took on the Trade name of Regent "Galle Face" — Regent of Colombo" (Section 11.01).

The above analysis indicates that "management" in the Agreement and in the Enjoining Order is not the work of a Manager who controls and conducts the day to day affairs of the Hotel. Management here means the provision of expertise in directing and controlling the running of the business of the Hotel, including policy matters which Hoteliers such as Regent provide. The Agreement refers to the aggregate of them as management services. These are services that could be rendered by a juristic person. Such a person will find it impossible to do the day to day work of a Manager. The use of the words "absolute management" has little practical consequence. When "absolute control" is given, then management follows and the use of the word "absolute"

cannot justify disobedience to the Enjoining Order. The evidence of Mokaves was that management and control was in his employer and as area Director and authorised representative of Regent he was entitled to the management and control of the Hotel in terms of the Enjoining Order. The evidence of the 1st respondent given in cross-examination in the District Court on 3rd November, 1978 indicates that he understood it as such. His statement with regard to the management of the Hotel after the 1st October, 1978, reveals this. His evidence is as follows :—

Q. You were Managing Director of the G.F.H.?

A. Yes. I am.

Q. How often did your Board of Directors meet in an year ?

A. About once in 6 weeks, it all depends, in this year we have met often, about 10 or 12 times in the year.

Q. How often did you have a meeting round about this period ? Did you meet twice or thrice a month ?

A. May be three times during the last month.

Q. After Wade left, who was in sole management and control of the Hotel ?

A. Wade was not in sole control.

Q. My question is, after Wade left who was in sole management and control of the Hotel ?

A. Through its Chairman and Directors, through me.

Q. So would it be correct to say that you were actually in control ?

A. In the operation of the hotel I was in sole control but there were many things in which I had to consult the Directors.

Q. You were actually the instrument of the Board of Directors in the management and control of the hotel ?

A. Yes

Q. But you were subject to the directions of the Board of Directors, and you were yourself a member of the Management too ?

A. Yes.

Q. So that anything that happened at the G.F. from and after the 1st October 1978 regarding management and control was your responsibility?

A. Yes.

It is clear that he was merely directing operations on behalf of the Board. He was not working as Manager of the Hotel.

How then did the controversy with regard to Mokaves as Manager arise? By E5 of 11.10.1978 Mokaves informed the 1st respondent and 9th respondent that he would be coming on the 12th October to "resume management and control of the Hotel by Regent International Hotels Limited which was unlawfully interrupted." Allan Wade went with him. He had a right to enter the Hotel because he was on contract with the Hotel till December that year. The 1st respondent says he asked for time and did not hand over the Hotel on that occasion. Mokaves says the 1st respondent flatly refused to hand over. By E8 and E8A the lawyers for the petitioner informed the respondents that Mokaves would come on the 13th November to resume management of the Hotel. Letters E9 and E10 were delivered to him when he arrived at the Hotel on the 13th. By E9 the 8th respondent states — "If Mr. Mokaves wishes to function as Manager or in any other executive capacity he must have the above authorities and of the Development Finance Corporation of Ceylon (DFCC) — leave alone with G.F.H. Board". He repeats this stand in his letter E13 of 16.11.78. He seems to have assumed that all the rights claimed by Mokaves on behalf of Regents fell within the ambit of the Addendum and he was therefore entitled to take the stand he took. But it appears to me that this assumption cannot be justified in law, whether or not the Addendum — on the validity or application of which, I make no pronouncement — is brought into the picture.

The matter referred to by the respondents appears to us to be subsidiary or collateral to the actual issue before us. The matter before us is the limited issue as to whether or not the specific directive of the Enjoining Order could be complied with and not a question as to the feasibility of running the hotel in its total operations and services. It will be noted that the appointment of staff whether national or non-national, and the necessity to obtain approval for their employment are matters that would arise subsequently after the delivery of control. They arise in the course of management and even in this regard the agreement states that the Galle Face Hotel Company Limited is expected to give its co-operation and assistance (Section 20.02(1) and (2). Similarly the

absence of a designated Bank may not by itself stand in the way of the functioning of the Hotel, as the petitioner is empowered to use income for operating the hotel (Section 5.02). If the terms relating to such subsidiary matters are unworkable or imprecise, this is attributable to imperfections of the Agreement and it should not be a matter for surprise if the cracks are now beginning to show under pressure. But the agreement has been operated for well nigh two and a half years and this was possible because there had been goodwill and co operation on both sides. During this period, each party had been content with the situation, and has assigned to each other their respective share of the rights and obligations. The material before us shows that the petitioner has been in general management and control of the hotel during such period.

The next submission of Counsel was based on the decision in the case of *Pounds vs. Ganegama* (3) in which the Supreme Court held that a person in possession of a business upon a claim of right and of the premises in which it was run could not be deprived of such possession by means of an interim injunction. That was an appeal from an order in proceedings initiated to dissolve the injunction, in which application, the applicant succeeded. Any application to dissolve an Enjoining Order which has been issued by a Court must first be made to the Court that issued it. This Court is only concerned with the allegations of disobedience to an Enjoining Order that still exists and I cannot accede to the request to declare the Enjoining Order invalid in law.

One last contention of Dr. de Silva needs consideration. He stated that there is no evidence that there was any disobedience to the Enjoining Order on the 13th and 16th November. I do not agree. Apart from the evidence of Mokaves, which has not been contradicted by the evidence of any of the respondents, there is the evidence disclosed by E9, E10 and E13. In E9 while stating that he will obey the Enjoining Order he also states, "there is no objection to his (Mokaves) visiting the Hotel." In E13 too he states "I will obey", but postpone obedience "a day or two" as he wishes to consult lawyers. He protests too much. If it was his genuine desire to obey the Enjoining Order the simplest thing for him to do was to give charge of the hotel. This he did not do. The conduct of the 1st respondent appears to have been one of reckless indifference. He decided that he required legal advice. This he has not received up to the time he gave evidence in the District Court on the 3rd November, 1978. He did nothing in the meantime in regard to the Enjoining Order. There was no response from 2nd to 7th respondents to the letters E7 and E8. They seem to have ignored their contents. Being the majority in the Board of Directors they had the power to have the Enjoining Order obeyed but they

seem to have taken no steps at all towards that end. It seems clear to me that the 1st to 8th respondents had no intention whatsoever of obeying the Enjoining Order.

An Enjoining Order is issued for swift and immediate action and like an injunction must be implicitly obeyed and obeyed to the letter. *Gnanamuthu v. Chairman U.C. and U.C. Bandarawala* (4). If two views are possible and the Court has taken one of them it is not open to a party to say that the other view should have been accepted and therefore refuse to obey the Enjoining Order. He cannot set himself up as a Judge over the orders of Court. In the case of *Russel v. East Anglican Railway Co.* (5), the Lord Chancellor stated as follows :—

> "My opinion of the result is that it is an established rule of this Court, that it is not open to any party to question the orders of this Court, or any process issued under the authority of the Court, by disobedience. I know of no act which this court will do which may not be questioned in a proper form and on a proper application; but I think it is not competent for any one to interfere with the possession of a receiver, to disobey an injunction, or to disobey any other order of the Court, on the ground that such orders were improvidently made. They must take a proper course to question them; but while they exist, they must obey them. I consider the rule to be of such importance to the interests and to the peace and safety of the public and to the due administration of the justice of this Court, that is a rule I hold inflexible on all occasions."

If any party is of the opinion that the Enjoining Order was irregularly or wrongly issued it is open to him to move the Court that issued it to dissolve or vary the Enjoining Order. Till such time, the Enjoining Order exists, and exists to be obeyed. *Eastern Trust Company v. Mc Kensie Maan & Company Ltd.* (6) A.C. 750 P.C.). This is a principle strictly followed as contemnors in the past have found to their cost. In *Hadkinson v. Hadkinson* (7) the petitioner who had removed a child of the marriage in defiance of the Court's Order was not heard in appeal because the Court of Appeal declined to entertain the appeal. Homer L. J. stated the principle thus :—

> "It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the

person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C., said in *Chuck v. Cromer* (8). "A party, who knows of an order, whether null or void, regular or irregular, cannot be permitted to disobey it..... It would be most dangerous to hold that the suitors or their solicitors, could themselves judge whether an order was null or void-whether it was regular or irregular. For that they should come to the Court and not take upon themselves to determine such question. The course of a party knowing of an order which was null or irregular, and who might be effected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed." Such being the nature of this obligation, the consequences will, in general, follow from its breach. The first is that anyone who disobeys an order of the court (and I am not now considering disobedience of orders relating merely to matters of procedure) is in contempt and may be punished by committal or attachment or otherwise. The second is that no application to the court by such a person will be entertained until he is has purged himself of his contempt."

I find myself unable to agree with the order of the Court of Appeal. I therefore set aside the order of acquittal and convict the 1st to 8th respondents on the charges laid against each of them. The mode of enforcing an Enjoining Order is by committal, I therefore order that the 1st to 8th respondents be committed to jail and be incarcerated there until their contempt has been purged. In addition I sentence the 1st respondent to pay a fine of Rs. 25,000/- and in default 12 months rigorous imprisonment. I impose a fine of Rs. 2,500/- on each of the 2nd to 7th Respondents and in default one month's rigorous imprisonment and fine of Rs. 12,500/- on the 8th respondent and in default 6 months' rigorous imprisonment. The default sentence shall commence to run after the contempt has been purged.

ISMAIL, J. — I agree

WANASUNDERA, J. — I agree

Order of acquittal set aside;
Conviction for contempt entered.