

SAINT LUCIA



IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No. 613/1993

LEO HENRY

- PLAINTIFF

AND

(1) THE STAR (1987) PUBLISHING COMPANY LIMITED

(2) LEARIE CARASCO ALSO KNOWN AS RICKWAYNE

- DEFENDANTS

Mr. V A. Cooper QC for Plaintiff
Mrs. C. Malaykhan for Defendants

1996: April 26th
May 10th

JUDGMENT

D'Auvergne J. (In Chambers)

By a Summons supported by an Affidavit filed on the 13th day of June 1995, the Defendants sought an order that the matter be deemed abandoned and incapable of being revived. There was no Affidavit in reply on file and the matter was heard in Chambers on the 26th day of April, 1996.

The facts of the case are as follows:

On the 8th day of October, 1993 the Plaintiff filed a writ against the Defendants in which he claimed damages for Defamation and Costs. On the 15th day of October, 1993 an appearance was entered on behalf of the defendants who, on the 1st of November, 1993 sought an order of the Court that the Plaintiff's Statement of Claim be struck out under Order 18 Rule 19 and under the inherent jurisdiction of the Court on the ground that it discloses no

reasonable cause of action and on November 18th filed a Supplementary Affidavit in support of the application.

On the 1st December, 1993 **Matthew J.** ordered that the Statement of Claim be amended "to state the exact words of the article relied upon as libellous, within 28th days, failing which the writ will be struck out.

Costs of this application to the Defendants to be taxed, if not agreed.

On the 22nd December, 1993 the Plaintiff filed an amended Statement of Claim and on 29th of December, 1993 the order of 1st December, 1993 was entered. That same order was entered again on the 5th of January, 1994.

On 4th March, 1994 the Plaintiff filed a document, **Demand for Pleas** and on the 31st day of March, 1994 the Defendants filed their defence.

On the 11th day of April 1995 the Plaintiff filed two documents **"Notice of Charge by New Solicitor in place of former Solicitor"** and **Request for Hearing.**

At the hearing Learned Counsel for the Defendants claimed that under the provisions of Order 34 Rule 11(1)(a) of the Rules of the Supreme Court, the matter had been deemed altogether abandoned and incapable of being revived on the ground that the Plaintiff had failed to take any proceedings or to file any document for one year from the Defendants' defence filed 31st March, 1994 to 11th April, 1995 and quoted the case of **St. Hilaire and Baptiste v ENA Lewis Civil Appeal No. 21 of 1993 St. Vincent and the Grenadines.**

Learned Counsel for the Plaintiff replied by informing the Court that Order 34 of the Rules of the Supreme Court 1970 which has no counterpart with the rules of the Supreme Court of England has given much trouble to all Courts including Her Majesty's Privy

Council and therefore he was leaving it up to the Court to decide.

As I have said before in Suit No. 224 of 1994 **Joseph Florenville vs Damaze Sylvain and Clara St. Marthe**. I am bound by the decisions of the Court of Appeal of the Eastern Caribbean States in particular the above mentioned case of **St. Hilaire v Lewis** in which Sir Vincent Floissac, Chief Justice notes that once the default in the cause was caught under Order 34 Rule 11 (1) (a) then the cause or matter has to be deemed abandoned under that rule.

My Order is as follows

That the cause or matter in issue be deemed altogether abandoned under Order 34 Rule 11 (1) (a) and incapable of being revived.

Costs of this application to the Defendants, to be agreed or otherwise taxed.

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SUZIE d'Auvergne
Puisne Judge