

1) Injunction Petition
2) Injunction Petition



SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1994

Suit No. 878 of 1994

BETWEEN:

ANNA KAY EDWARD

Petitioner

and

RANDOLPH EDWARD

Respondent

APPEARANCES:

Miss C. Mendes for the Petitioner
Mr. M. Gordon for the Respondent

1994: December 7 and 14.

JUDGMENT

MATTHEW J.

On November 14, 1994 the Petitioner filed a petition under Articles 841 and 850 of the Code of Civil Procedure praying for an order that the Respondent be restrained from assaulting, molesting, threatening or otherwise interfering with the Petitioner; that the Respondent be restrained from going to and entering the Petitioner's work place or her home; and that he be ordered to pay the costs of the application.

EDWARD
AND
KAY
EDWARD
AND
EDWARD

In support of the application was an affidavit of the Petitioner in which she stated that she got married to the Respondent on September 7, 1991 and that he has constantly assaulted, beaten, threatened and used abusive language to her from the commencement of the marriage.

She alleged that after 1 1/2 years marriage he tried to strangle her with an electric wire and a report was made to the police.

The picture created was a very nasty one and I have read paragraphs 3, 4, 5, 6, 7; and also **paragraph 8** which stated that he entered her work place and started choking her and threatening to kill her.

I read also paragraphs 9 - 12 where she alleged among other things that she is in constant fear of her life.

I do not know when the Respondent was served with the petition and affidavit but he came before me last Wednesday represented by Counsel who did not intimate that service was late or that he wanted any opportunity to put in an affidavit in reply.

In fact learned Counsel took a position that this Court had no jurisdiction to grant this injunction in such a matrimonial proceeding under Article 850 paragraph (17) of the Code of Civil Procedure this not being ejusdem generis to the previous 16 paragraphs. Counsel submitted in that context that Article 850

came under Chapter Tenth of the Code of Civil Procedure which related to proceedings affecting corporations or public offices.

Learned Counsel left with the Court the following documents:-

- (1) Section 16 of the West Indies Associated States Supreme Court (St. Lucia) Act No. 17 of 1969.
- (2) A passage allegedly from the 37th chapter of the newest edition of Rayden on Divorce dealing with injunctions. The passage deals with the Domestic Violence and Matrimonial Proceedings Act 1976, presumably of the United Kingdom.
- (3) Halsbury's Laws of England, Fourth Edition Volume 24 paragraphs 910 et seq. It deals with the Jurisdiction of the Courts in matters of granting injunctions.

Despite his submissions learned Counsel gave an undertaking on behalf of his client that the Respondent will not assault, molest or threaten the Petitioner, nor go to her work place or her home.

In her reply Miss Mendes concentrated on section V of chapter 10th dealing with injunctions. She referred to paragraph (1) which pertained to "any person" and compared it with paragraph (2) which pertained to corporations.

She also referred to a number of the other paragraphs which did not pertain to corporations or public offices, for example paragraphs (3), (4), (5), (6), and (7), and further submitted that paragraph (17) deals with other cases.

In my view the short answer to Mr Gordon's submission is that there is no common genus that can be established from paragraphs (1) - (16) of Article 850, so that paragraph 17 can be restricted to it. The paragraphs are varied and different in the kind of protection they give and they apply to corporations, partners and private persons.

The next point is that one does not look to chapter headings and side notes to interpret the provisions of a section when there is no ambiguity. As aids to construction their usefulness are not without doubt. See Thornton on Legislative Drafting, Second Edition, Pages 133 and 136.

In my view this jurisdiction of the Court to grant an injunction by petition under the Code of Civil Procedure as a substantive remedy is a very useful one which is unknown to the English practice where an injunction is known only as an interim measure.

I would not like to see its usefulness curtailed except by clear authority.

Mr. Gordon in conclusion stated that if the Court were minded to grant the injunction there should be an undertaking that the Petitioner will commence matrimonial proceedings because unless this is done the Court will be in effect legislating their separateness.

I am not going to ask the Petitioner to give any undertaking that she will take matrimonial proceedings and I cannot see by that refusal I am legislating their separation. I am not responsible for the conduct of one or both parties so that they cannot live peacefully together like other married couples. And nothing prevents the Respondent from initiating proceedings if he so desires.

The documents filed reveal a very serious state of affairs and I grant the injunction requested with costs to the Petitioner to be agreed or taxed.

My order then is as follows:-

1. Upon the Petitioner by her Counsel undertaking to pay the damages in case the Court shall here after be of the opinion that the Respondent should have sustained any by reason of this order which the Petitioner ought to pay:

IT IS HEREBY ORDERED that the Respondent be restrained and an

injunction is hereby granted restraining the Respondent:-

(a) from assaulting, beating, molesting, threatening or otherwise interfering with the Petitioner; and

(b) from going to and entering the Petitioner's home or workplace.

2. The Respondent is ordered to pay the Petitioner's costs of these proceedings to be agreed or otherwise taxed.

A.N.J. MATTHEW
Puisne Judge