IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 50/92

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

MOTION

BETWEEN MONCRIS INVESTMENTS LIMITED ..RESPONDENTS
ALLAN DEANS
REYNU DEANS

A N D LANS EFFORD FRANCIS ..APPLICANTS
CAROL MARIE FRANCIS

A N D THE REGISTRAR OF TITLES

Mr. Dennis Goffe, Q.C. for applicants

Mrs. Margaret Forte & Mr. Hector Robinson for the Respondents

22nd & 23rd June, 1992

CAREY, J.A.

We have before us a motion to strike out a notice and grounds of appeal dated June 4, and filed in this matter on the basis that no right of appeal exists. Mr. Goffe, Q.C. in support of his motion, relied on Allen v. Byfield No. 2 (1964) 7 W.I.R. 69 and he made the point that section 10 of the Judicature (Appellate Jurisdiction) Act only enables this Court to hear and determine appeals from any judgment or order of the Supreme Court in all civil proceedings.

The appellants' appeal is against an order of Mr. Justice Pitter, wherein he ruled:

> "That parol evidence was not admissible to show that the memorandum of agreement dated the 10th day of July, 1989 entered into between the 1st Defendant and the Plaintiffs did not contain all the terms agreed between the said parties."

The learned judge below was prevailed upon to give leave to appeal against this ruling. Mr. Goffe points out that that ruling does not come within the term "judgment or order of the Supreme Court in civil proceedings." He said that the ruling was made by the learned judge during the course of upholding an objection taken by counsel for the plaintiff to a question put to the second named defendant. The judge ruled that he would not admit parol evidence tending to vary or contradict that written agreement. Mr. Goffe also relies on a dissenting judgment in the **Gleaner Company & John Hearne v. Michael Manley** (unreported) S.C.C.A. 4/83 delivered 13th May, 1983.

Mrs. Forte has valiantly endeavoured to argue the unarguable. She said that, it was an order within the contemplation of the Act and was therefore an appealable order. She was, however, quite unable to refer the Court to any authority in which the matter has ever been debated, nor was she able to demonstrate that any principle or authority could be prayed in aid to assist her in this insurmountable task.

There is an old case of **Haslam Foundry & Engineering Co. Ltd. v. Hall** (1888) 20 Q.B.D. at p. 491. The question in that case was whether the order made by the learned judge was appealable. The circumstancesin that case were altogether different but the case is helpful, I would suggest. Lord Justice Fry had this to say:

> "... The question arises under the 19th section of the Judicature Act, 1873, which gives appeal in all cases of a judgment or order." [which are the terms used in our Act]. "By s.100 the interpretation put on these terms is that judgment is to include decree, and order to include rule. Matters of appeal are, therefore, judgments, decrees, orders, and rules. At the time the Act passed there was another well-known method of expressing judicial decisions, namely certificates. Of these there are many—"

and the learned Lord Justice gives a great many examples and he went on to say:

> "... I come, therefore, to the conclusion that 'certificates' cannot be included in the words 'judgment or order.'..."

The reason I have adverted to this case is that, it was suggested that what the learned judge did in this case was a rule. Well, the rule he made, is not the same rule that is contemplated by Lord Justice Fry. Those rules to which he refers are what are today regarded as orders. He had in mind, and I illustrate as an example - rule nisi. A ruling on the admissibility of evidence, plainly does not come within that definition. It would make for a great loss of time and money if, on every occasion, a judge made a ruling on the admissibility of evidence, which some party thought was incorrect, that by itself enabled him or her to apply to this Court by way of appeal. One can understand quite easily, the situation where the question of the admissibility of the evidence is made an issue in the case to be determined. As for example, a trial within a trial, in which an order for such a determination is made. Plainly, there would, in those circumstances, be an appealable order.

In the course of the arguments in this case, it emerged that there was actually no formal order filed. One was obtained, we know not how, but the fact that it is got or obtained does not by its creation, confer on this Court any jurisdiction to hear any order from which no appeal lies.

In my view, Mr. Goffe's objection is well founded and I would make an order in terms of the prayer.

DOWNER, J.A.

Mr. Goffe for the applicants moves this Court to strike out the notice and grounds of appeal which was filed by the respondents To determine whether this preliminary objection was valid, it is appropriate to enquire as to what Mr. Justice Pitter did in the Court below. He made a ruling that parol evidence was not admissible to supplement the memorandum of agreement in issue dated 10th July, 1989. It is presumed that the learned judge approved a minute of order pursuant to section 579 of the Civil Procedure Code, so it was appropriate in procedural terms to issue a formal order. But section 579 which deals with judgments or orders expressly mentions final or interlocutory orders only, and a ruling on the admissibility of evidence does not come under any of these two orders. It is clear therefore, that the learned judge had no jurisdiction to make the formal order based on a ruling during the course of a trial on the admissibility of evidence.

It is appropriate to set out section 579 (1) of the Civil Procedure Code to demonstrate that judgments or orders are specifically limited to final or interlocutory judgments. It reads:

> "579.(1) A minute of every judgment or order, whether final or interlocutory, shall be made by the Registrar at the time when the judgment is given or the order is made and shall be approved by the Court or the Judge."

It was urged on us by counsel for the respondents, that this Court is a creature of statute and so had no inherent jurisdiction to strike out the notice and grounds of appeal. It is a fallacy to speak about the Court of Appeal not having any inherent jurisdiction. Section 103 (5) of the Constitution reads:

> "103.—(5) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court."

Moreover, section 10 of the Judicature (Appellate Jurisdiction) Act reinforces the Court's power as a superior court of record. It reads:

> " 10. Subject to the provisions of this Act and to rules of court, the Court shall have jurisdiction to hear and determine appeals from any judgment or order of the Supreme Court in all civil proceedings, and for all purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order made thereon, the Court shall subject as aforesaid have all the power, authority and jurisdiction of the former Supreme Court prior to the commencement of the Federal Supreme Court Regulations, 1958." [emphasis supplied]

The initial feature to be noted is that any judgment or order must be confined to interlocutory or final judgments as specified in section 579 (1) of the Civil Procedure Code. Also to be noted is that section 24 of the Judicature (Supreme Court) Act 1953 Edition Laws of Jamaica made that Court a superior court of record prior to the commencement of the Federal Supreme Court Regulations 1958. The Court of Appeal therefore, is also a superior court of record by virtue of section 10. One of the characteristics of a superior court of record is to rely on its inherent powers to strike out applications which are an abuse of process. Since the learned judge approved a formal order which was neither an interlocutory or final order, he had no jurisdiction to make it. It must therefore be appropriate to strike out a notice and grounds of appeal based on an invalid order: see W.E.A. Records [1983] 2 All E.R. 590.

It is on this ground that I ruled in favour of the preliminary point raised by Mr. Goffe. I agree with the order proposed.

MORGAN, J.A.

I entirely agree with the decision of my learned brothers and I have nothing to add.

CAREY, J.A.

The order of the Court therefore is motion granted as prayed with costs to the applicants to be agreed or taxed.