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ROYAL COURT
(Samedi Division)

19th November, 1993 154

Before: F.C.Hamon, Esq., Commissioner and Jurats Myles and Rumfitt

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Between Mrs C **Plaintiff**

And Mr C **Defendant**

Representation of the Plaintiff re admitted breach of injunctions by the Defendant

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Advocate P.C. Sinel for the Plaintiff.
Advocate M.M.G. Voisin for the Defendant.

JUDGMENT

THE COMMISSIONER: This is a Representation alleging a wilful breach of an Order of this Court dated 14th January, 1992, and the breaching of an Order of this Court dated 12th November, 1993. This is an allegation of a criminal contempt of Court.

The Plaintiff and Defendant were married on 22nd April, 1972. There is one child of the marriage, and they are divorced on the ground of the husband's adultery. The decree, despite what Mr. Sinel told us yesterday, has not yet been made absolute.

On 14th January, 1992, an Order of Justice was served by the Plaintiff on the Defendant. In that Order of Justice was contained an immediate interim injunction which, (*inter alia*), restrained the Defendant *"from entering or attempting to enter the guest bedroom and en suite bathroom as occupied by the Plaintiff, at the matrimonial home"*. The interim injunction was confirmed. It has always been and remains in force.

By way of background, the former matrimonial home, Property 1 was the matrimonial home for some twenty years. The breakdown of the marriage, which we need not detail, was and continues to be so bitter that no settlement has yet been made. There are variations to orders by consent.

On 9th November, 1993, the Defendant was ved with an Order of Justice which is effectively an Order ousting him from Property 1.

Mrs. C told us in evidence that she kept her bedroom locked, but that she had suspicions that her husband entered her bedroom, and so she had a new five lever mortice lock fitted, with one mortice lock key. That was early in the summer of 1993. There is one front door key of a similar type kept in the kitchen. Mr. Sinel told us that the husband had possibly removed the lock and had a key made before having the lock replaced, but there was no evidence to support this; it is pure supposition.

When Mr. C was served with the ouster Order, he had just returned from England. It was 2.30 p.m. He apparently had no change of clothing nor toiletries. There were protracted negotiations between Advocate Voisin and Advocate Sinel. Finally, at 5 p.m. agreement was reached and confirmed by facsimile that Mr. C would have limited access to Property 1 between 6p.m. and 8p.m. to collect his personal belongings. Mrs. Carre was going to a first aid class and she left the property with a friend, having fed her dogs. The lights were on.

Mrs. C suspected that Mr. C would, during the two hours, enter her bedroom which was upstairs and at the end of the house. She had made some tapes with a concealed hand-held tape recorder, of conversations, some of which were between herself and Mr. C but, as she told us, not all. She felt that the information might be of assistance in settling the ancillary matters.

As was said by this Court in M v M (19th November, 1991) Jersey Unreported, tape recordings of telephone conversations have been accepted by the Court in evidence in matrimonial cases; in Weston -v- Boyers and Janes (1969) J.J. 1199 where at p. 1205, the Court said this:

> ***"As the respondent did not admit any association (with the co-respondent), the petitioner decided to secure evidence by tape-recording telephone messages made by the respondent from the matrimonial home. Between 7th and 14th July, 1968, unknown to the respondent, all telephone conversations between her and the co-respondent were recorded, and these established beyond doubt that the respondent and the co-respondent had been committing, and were continuing to commit, adultery".***

She had put the tapes on a bed in an envelope, sealed with sellotape. The envelope had her name on it. Mrs. C told us that Mr. C had been searching her room on a regular basis. We are not certain, from the evidence that we heard, whether this is alleged to be before the new lock was fitted, or after.

When she left the house, her friend, who is also a part-time detective, suggested to Mrs. C that she leave a broken match stick in the crack of the door. It was tightly wedged, she had never done this before. When Mrs. C returned home at 10.30p.m. the bedroom door was locked, the match stick was on the floor and the envelope and tape machine were missing.

An Order of Justice dated 12th November, 1993, was served upon Mr. C and an Officer of the Viscount, Mr. Ian Allen Pattle, attended upon him at his offices on 16th November, 1993. Mr. C admitted removing the possessions - the envelope, we were told by Mrs. C , contained three cassettes and two transcripts, and there was a cassette player containing one cassette. Mr. C asked to consult with his lawyer and in the presence of Mr. Pattle and Mr. Voisin, said that he had disposed of the possessions of Mrs. C by putting them in a waste paper basket in his office. This would have been emptied into a refuse bin, which was cleared by the parish authorities daily. A search of the refuse container was made; it was empty.

Mr. C made no bones of the fact that he had entered his wife's bedroom. It appears - and she said as much in her evidence - that Mrs. C had been intercepting his private mail and this had sometimes included his credit card payment demands, which had caused him embarassment. He told us that the tapes were loose on the bed, but later, having denied that there was an envelope, said that one of the tapes was in an envelope. For what it is worth, we believe Mrs. C on this aspect of the evidence.

He told us that he had entered the bedroom by using a spare key that hangs in the laundry room. This had been brought to his notice by the Estate Agent from Broadlands Estates, who had found the key there. Mr. C apologised to the Court, but said that he had been distraught. Mr. C told us that the tapes were labelled with the months to which they referred. This means - and we accept Mrs. C's evidence on this point - that he had broken open the sellotaped envelope. He would not have seen the tapes, other than the one in the tape recorder, otherwise. He did not listen to them and he did not give them to his advocate. He had spent the night of 9th November, 1993, in an hotel.

Both Counsel must be criticised for agreeing to allow Mr. C to enter the house without supervision for two hours. There is, however, much else that disturbs us. Mrs. C obviously anticipated that Mr. C would enter the bedroom; why otherwise, did she put the broken match stick in the door. Was then the leaving of the envelope and cassette-player on the bed an act of deliberate provocation? Mr. C had the tapes and tape recorder with him for an entire evening; he disposed of them at his office the following day, and yet he told us that he did not listen to the tapes. Mr. Sinel criticised Mr. C for not immediately telling Mr. Voisin, so that he could question Mrs. C that he had entered with a key that was hanging behind the laundry door. It seems to us extraordinary, if that were so, that Mrs. C would not have known about it. Mr. C has a

business address and yet, knowing that Mrs. C has opened his credit card and other personal mail, still apparently had them sent to Property 1.

There has been a clear breach of the Order of the Court. Not only did Mr. C gain access into the locked bedroom, when he was specifically forbidden by this Court from doing so, but he took and destroyed items which were not his and which might - however distastful the concept of taping another's conversation might be - be used in evidence against him. If he took exception to the tapes he should have delivered them to Advocate Voisin, who could immediately have sought the assistance of the Court if he was not disposed to hand them back to Advocate Sinel.

In Canadian Metal Company Limited -v- Canadian Broadcasting Corporation (No.2) (1975) 48 DLR 3 Ed'n 641 at 699, a Canadian Judge, Mr. Justice O'Leary said :

> ***"To allow Court orders to be disobeyed would be to tread the road toward anarchy. If orders of the Court can be treated with disrespect, the whole administration of justice is brought into scorn...If the remedies that the Courts grant to correct...wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the Courts will quickly result in the destruction of our society".***

Mr. C told us that he was distraught. Later, in his apology, which was very brief, he told us that he was extremely annoyed. That, in no way, excuses his conduct. The injunction was not fresh; it had been in existence for some time.

An injunction is an absolute prohibition and must be strictly complied with. It was not difficult to obey. It was not a question of crossing some fanciful line of demarcation. Breach of it involved, quite deliberately, unlocking a locked door and entering a domain totally prohibited to him.

We can understand Mr. C's being upset by the ouster Order, for these are orders at the extreme range of the Court's powers which will only be given in cases where the hardship of allowing co-habitation to continue is intolerable to the protesting party.

This Court has every power at its disposal to punish contempt, but we would find it unlikely that we would use commital proceedings in a matrimonial dispute, where uncontrolled passions often break from below the thin fabric of a disintegrating marriage.

We view the breach of this injunction as a serious contempt, and the destruction of the tapes and transcripts - even if they had been loose on the bed and not in an envelope - compounds that contempt. In the circumstances, we are going to fine Mr. C

£ with an alternative of two weeks imprisonment in default of payment.

AUTHORITIES

M -v- M : (19th November, 1991) Jersey Unreported.

Weston -v- Boyers and Janes (1969) J.J. 1199 @ 1205.

Borrie & Lowe's Law of Contempt: Introduction: p.p.1-5.
Canadian Metal Company, Ltd -v- Canadian Broadcasting Corporation (No. 2)
(1975) DLR (3d) 641 at 669 (Ont), quoted in Borrie & Lowe *(supra)* at p.393.