

1977. No. 2534 - DENIERARA.

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE.

CIVIL JURISDICTION.

In the matter of JOHN VICTOR STONE,
an infant,

- and -

In the matter of an application by
GRACE LLOYD STONE by and through her
lawful attorney JEREMY A. SMITH, for
a Writ of Habeas Corpus and sub jurisdiction.

- and -

In the matter of the Civil Law Act,
Chapter 6:01.

*Joyce Touchette of court
will be forwarded later
to her. I do not have
a spare now LHM*

SESSIONS.

LET ALL PARTIES concerned attend the Judge in Chambers at the Law Courts
at Georgetown, on Tuesday the day of September, 1977, at 9 o'clock in the
forenoon on the hearing of an application on the part of JOYCE TOUCHETTE for
the following:-

- (a) An Order that Joyce Touchette of Jonestown, Port Kaituma, North West District, Kaituma, be added and joined as a Respondent/Defendant in this said Cause or Matter as a person directly interested and concerned in the same and as a person who has been affected and will be affected by all Orders made or to be made in this said matter.
- (b) An Order that the Orders of His Honour Mr. Justice Bishop (in chambers) made herein on the 6th day of September, 1977, 8th day of September, 1977, and the 10th day of September, 1977, be declared void and/or a nullity and/or of no effect and be set aside ex debito justitiae.
- (c) A declaration that the procedure adopted in respect of the service of the Writ of Habeas Corpus on Reverend Jim Jones and/or the alleged making of John Stone a Ward of Court and taking him into custody, and/or the grant of leave to commence Contempt proceedings against Reverend Jim Jones, and the Orders in connection therewith are all irregular, contrary to the Rules observed by the Courts of Guyana and contrary to the Laws of Guyana and contrary to the Rules of natural justice, and are an abuse of the process of the Court and are a nullity and should be set aside ex debito justitiae as a nullity, and contrary to Article 5 of the Constitution of Guyana, Chapter 1:01.
- (d) A declaration that the proceedings by way of Writ of Habeas Corpus in which Reverend Jim Jones is not even named as a Respondent/Defendant

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are bad for want or lack of jurisdiction, of the High Court of the
Supreme Court of Guyana.

AND the costs of this application may costs in the action.

DATED this day of September, 1977.

Sps McDom & Co
Solicitors

This summons was taken out by Mr. Mohamed Ayube Ally McDom, Solicitor
of McDom & Company, Legal Practitioners, 2 Creal Street, Georgetown,
Demerara, for the Applicant herein, who resides at Jonestown, Port Kaituma,
North West District.

To:- The Plaintiff

- and -

Mr. H.D. Fraser,
Solicitor,
Hughes, Fields, and Stoby,
Legal Practitioner,
62 Madfield & Cross Streets,
Georgetown, Demerara.

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SUBMISSIONS.

1. On application for joinder English Supreme Court is made under O 14, r 14 equivalent O 15, r 6.

2. In my case Joyce Touchette entitled to come to Court as she was served with copy of writ of Habeas Corpus and Order of Court made on the 8th September, 1977. She wishes to be joined in her individual right (a) As a person served (b) A notarised guardian

3. Cases re Joinder

Authorities :-

Anon v. Tuck & Sons Ltd. (1953) 1 Q.B. 357.

Jacques v. Harrison 12 Q.B. 136.

In Anon's case plaintiff objected to the joinder.

Court-asked In his proceedings before the Court necessary?

Will it cause a multiplicity of actions?

Has the 3rd party an interest in the Order made? *Yes, Tom!*

Joyce Touchette has a Custody Deed, not resolved entitled to be heard

4. The Habeas Corpus Proceedings are a Nullity -- *1. The Haas proceedings taken out for Grace Stoen*
(a) Improperly and/or irregularly commenced Rubric:-

Application by Grace Inoy Stoen by and through her lawful attorney Jeffroy & Haas for a writ of Habeas Corpus and sub judicatur,

- and -

In the matter of the Civil Law Act, Chapter 6:01.

Attorney means an Attorney under a Power of Attorney & not just a Lawyer

Our Supreme Court Rules - O 4, r 4, 5:-

If a plaintiff sues in a representative capacity, the indorsement shall show in what capacity the plaintiff sues ... The indorsement shall describe the document proving such representative capacity and stating its date, if executed in the Books Registry, and the date of the receipt or deposit as of the date it executed elsewhere.

There is no such indorsement. This is a representative action and the right to bring such action for Grace Stoen must be established. This is false

On this entire habeas corpus should be declared

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(b) Haas has established no authorization for the making of the Affidavits.

vide para 2: "I have been specially authorized by Grace Stoen to appear on her behalf etc."

Haas has filed no authority given him by Grace Stoen & consequently cannot act to propound an affidavit

This is his own dicta, no authority filed who is Haas?

Has he proved that he is a lawyer *There is his P.A. U.S.A.*

In February 1977 (7 months ago) I filed a Petition for dissolution of marriage between Grace Stoen and Timothy Stoen and a demand for custody of the minor John Stoen.

Jim Jones was not a party.

Matrimonial Proceedings those & should be struck out

para 5: "Refers to a Court Order Ex. '3'."

This Order is of no effect in Guyana. Jim Jones is ordered to appear in Court on October 6th with the minor child John Stoen (Order No. 7). Any previous authority to Jim Jones to act as guardian is declared null and void (Order No. 46).

Matrimonial Orders are of no effect in Guyana if made elsewhere.

Irrelevant

Note Joyce Touchetto's guardianship has not been revoked.

Very Important

para 9: "Refers to Affidavit sworn to by Grace Stoen on the 18th August, 1977. Ex. '2'"

should be stricken therefrom

Note this Affidavit Ex. '2' is improperly on the file. It is not filed asking the Guyana Court for the child but the U.S. Court. In other words there is no proper accompanying affidavit to the writ of Habeas Corpus removing the whole thing void and a nullity. **Fatal**

para 12: Haas says: "I am entitled to the possession of the said infant by virtue of the express wishes and authority of the Mother Grace Stoen given to me."

Note:- This is merely his statement. The Mother would have to receive the child if there were a proper application which succeeded.

para 13: " I ask the Guyana Court to deliver to me
forthwith the said infant. "

Proposed Affidavit: This not a proper
affidavit to found the issue of the writ.

para 14: " I authorize Messrs and/or Said Official to act
as my Solicitor etc"

He has no locus standi to authorize anyone

Case and Authorities - Annual Practice 1954

Halsbury Vol. 11 p36: " The writ of habeas corpus is grantable only
upon reasonable ground for its issue being
shown. " It is not granted as of right.

p33: " A parent, guardian or other person who is
legally entitled to the custody of a child can
regain that custody when wrongfully deprived
of it by means of Habeas Corpus writ. "

p37: " A stranger or volunteer who has no authority
...will not be allowed to apply for habeas
corpus. " R. v. Gwynn (1750) 3 Burr. 1170.

p39: " The application must be accompanied by an
affidavit. " R. v. Gwynn of Gwynn (1750)
3 Burr. 1170. Halsbury Case (11) 3. 1171.

See R. v. Scherschensky (1972) 8 T.L.R. 571 Court orders of habeas
corpus to father
Wido Adkin's Procedural Tables:- Child:-

- No. 1 " Where application is made by parent or guardian...
- No. 3 Applicant files affidavit.

At p.60 there is a specimen form of Affidavit
supporting application. It is by father or
mother or guardian and the applicant applies
to the Court in question for leave to issue a
writ of Habeas Corpus, directing delivery to
her, the applicant.

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...asking the Guyana

Service of the writ.

The service was ^{affected} not on Jim Jones, yet Court orders:

- (a) Substituted service by affixing to buildings and a copy served on Joyce Touchette;
- (b) Court ordered child to be taken into custody;
- (c) Leave for Applicant to serve contempt proceedings against Jim Jones. (The Applicant is Hans For Grace Steer).

Halsbury Vol. 11 p19: " The writ must be served personally if possible, on the party to whom it is directed.

this has not been alleged much less proved

If it is impossible to effect personal service, service must be effected by leaving it with a servant or agent of the person to whom the writ is directed. "

Atkins p.9: " If personal service is impossible"

p19: Reports the same caveat, only if service impossible.

The necessity for personal service becomes clear when one looks at Atkins Vol. 12 re Contempt p.103. Evidence supporting an application for attachment or Commital is by affidavit served with the motion and must go to prove :

- * 1. Personal service of the Order ...
- * 2. Failure to comply with the Order.

* The Court will only commit or attach if satisfied that the breach of the judgment or order was willful.

O 54, r 6 (Annual Practice) states:

" If it is not possible to serve such writ personally or if it is directed to a Governor of a Prison or other public official it may be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person resides or carrying on his business. "

If John Steer was not at Kautuma then any attempted service fails !!

There is no evidence that at the time of the ...

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service John Steen was at Kaituma.

Two things would have to be shown before such a writ of habeas corpus granted:-

- (a) Impossible to serve on Jim Jones and
- (b) John Steen was at Kaituma.

This negates impossibility

Re (a) His own affidavit shows that Jim Jones was at Kaituma on the 6th September. So impossibility does not arise on his affidavit.

(b) His own affidavit suggests that John Steen was still there at Kaituma.

Therefore all Orders and in particular the Order of September 1978 is clearly a nullity.

In Greig v. Innes (1919) 1 A.S.J.R. 107.

Every aspect of this case is relevant here.

Facts are: Judgment was given in an action in 1937.
 Order giving K (the successful plaintiff) leave to proceed to enforce judgment in 1949.
 A receiving Order is made against K, in 1942.

as in Steen's case →

K contended that the Order improperly made as the summons asking for the Order had not been served on him and he therefore took out a summons asking that the Order giving leave to proceed should be set aside.

Master Morridge ordered that the Order giving leave be set aside. On appeal to Crom-Johnson J. the Master's Order was reversed. He then took matter to Court of Appeal

Was the Order a nullity? ALL the authorities were traversed showing Court or Judge may set aside even its own order, as the Court has inherent jurisdiction to set aside its own Order. The Order was a nullity for the failure to effect proper service and so the Order made had to go.

See also Greig v. Holt & Innes Co. Ltd. (1916) 2 A.S.J.R.

Lord Denning: "An Order which is a nullity is automatically null and void, without more ado, though it is sometimes convenient to have the Court declare it to be so. You cannot put something on nothing and expect it to stay there. It will collapse."

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James Curran