AS TO THE ADMISSIBILITY OF

Application No. 25899/94
by Raymond NUNNS
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 16 October 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 18 August 1994 by Raymond NUNNS against the United Kingdom and registered on 9 December 1994 under file No. 25899/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1935. He lives in Whitstable, Kent. The facts of the application, as submitted by the applicant, may be summarised as follows.

The applicant was the successful party to a dispute with a firm of builders. He had been negotiating with one of the members of the partnership, a Mr. W. The applicant was awarded £9,450.56 plus his costs in the Canterbury County Court on 20 October 1991.

On 12 November 1991 the case was transferred, on the applicant's request, to the High Court for enforcement, pursuant to Order 25 Rule 13 of the County Court Rules. The case was then before the High Court.

Attempts to enforce the judgment by writ of execution were unsuccessful.

In the County Court, the County Court Rules apply. Order 25 Rule 9 subrule 1 of the County Court Rules provides, so far as relevant:

"a judgment or order against a firm may be enforced against -

(a) any property of the firm,

(b) any person who admitted in the action or matter that he was a partner or was adjudged to be a partner,

(c) any person who was served as a partner with the originating process if -

(i) the proceedings is a default action and judgment was entered under Order 9 Rule 6 in default of defence or on admission, or

(ii) the person so served did not appear on a pre-trial review and judgment was entered and given under Order 17 Rule 7 or 8, or

(iii) the person so served did not appear at the trial or hearing of the action or matter."

Subrule 5 provides:

"The foregoing provisions of this rule shall not apply where it is desired to enforce ... a judgment ... of the High Court, and in any such case, the provisions of the [Rules of the Supreme Court] relating to the enforcement of a judgment or order against a firm shall apply".

In the High Court, the Rules of the Supreme Court govern procedural matters. Order 81 Rule 5 subrule 2 provides that execution can be levied against partners where the partner in question acknowledged service of the writ in the action as a partner, was served as a partner but failed to acknowledge service, admitted in his pleading that he was a partner, or was adjudged to be a partner. In other cases, the leave of the court is required by virtue of subrules 4 and 5.

The applicant applied to the Canterbury County Court for a charging order against Mr. W's house. A charging order nisi was granted on 29 July 1993. It became absolute on 21 March 1994, and war challenged by Mr. W, who claimed that it was not valid because the leave of the court had not been obtained, pursuant to Order 81 Rule 5 subrules 4 and 5 of the Rules of the Supreme Court, and that none of the provisions of Order 81 Rule 5 subrule 2 applied.

On 24 February 1994, the District Judge declined to set the charging order nisi aside. He considered that the requirement of leave was to protect a person who had an involvement in the firm but knew nothing of the proceedings. That was plainly not Mr. W's case. If leave had been applied for, the District Judge would have granted it.

Mr. W appealed to the District Registrar. The District Registrar allowed the appeal on 26 May 1994. He recalled the differences between enforcement in the County Court and in the High Court, and continued that:

" ... in my opinion the effect of Order 81 Rule 5 subrules 4 and 5 is clear. If a judgment holder [in the High Court] seeks to enforce his judgment against a partner not falling within one of the four categories set out in subrule 2, it is a necessary precondition to his seeking to enforce that judgment that he obtains the leave of the court under Rule 5 subrules 4 and 5.
...

The fact that Mr. W. would have had no answer to any such application does not seem to me to entitle a judgment holder to ignore the effect of subrules 4 and 5 of Rule 5. That subrule

applies to a judgment holder whether he be plaintiff or defendant. Ordinarily, its relevance will be in the context of persons who are partners and who might have little knowledge of what the action is about. But the fact that in this case Mr. W knew exactly what the matter was about may have a profound effect upon the merits, but does not seem to me to have any effect upon the clear purport of the rules which Parliament has decreed must be complied with in circumstances such as this.

Accordingly, with very considerable regret, because I have no doubt myself where the merits lie, I must allow this appeal and set aside the charging order."

By the time the charging order had been set aside, it was too late for a new charging order to be made against the property because ownership of it had changed and it had subsequently been sold.

COMPLAINTS

The applicant alleges violation of Article 6 of the Convention and of Article 1 of Protocol No. 1. He sees a violation of Article 6 in the unreasoned consistencies the rules of procedure of the High Court and the County Court, and a violation of Article 1 of Protocol No. 1 because the charging order, a valuable possession, was taken from him by a procedural unfairness which was not part of the laws of England.

THE LAW

The applicant alleges violation of Article 6 (Art. 6) of the Convention and Article 1 of Protocol No. 1 (P1-1) in that the difference between the procedural rules in the High Court and the County Court resulted in him losing the charging order he had on Mr. W's house. The relevant parts of these provisions provide as follows.

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law ..."

The Commission first notes that there may be doubt as to whether the enforcement proceedings pursued by the applicant attract the guarantees of Article 6 para. 1 (Art. 6-1) of the Convention, as decisions taken by a court enforcing adjudicated claims do not necessarily entail a new, separate determination of civil rights (No. 13800/88, Dec. 1.7.91, D.R. 71 p. 94 with further references). The Commission is not required to determine this question, however, as the application is in any event inadmissible for the following reasons.

The present case was transferred to the High Court on 12 November 1991, pursuant to a certificate which the applicant had applied for. The applicant has not given details of why he applied for that certificate, but the Commission is aware that enforcement measures in the High Court are frequently preferred by judgment creditors to the measures available in the County Court. Indeed, the applicant made several unsuccessful attempts to execute his judgment debt by (High Court) writ of execution. He was therefore aware that the case was pending in the High Court.

When the applicant applied to the County Court for a charging order, there was no reason for the judge who granted the order nisi to be on notice of the transfer of the case to the High Court: the

applicant appeared before the judge with a County Court judgment and requested a charging order.

In the event, therefore, the judgment of 26 May 1994 setting aside the charging order was the inevitable result of the applicant's first having applied for transfer of the case to the High Court, and then not having complied with the High Court rules as to notice to a partner in the judgment debtor firm.

The applicant's complaints cannot therefore be classified as complaints about unfairness of proceedings or of deprivation of possessions, but rather complaints about the consequences of his own error. Such complaints are not, however, capable of forming the basis of an application to the Convention organs.

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber