

HILARY PHILLIPS, Appellant, v. FRED V. SMITH, Chairman, JAMES C. WARD, Vice Chairman, JOSEPH LOGAN, Secretary, TOM N. BESTMAN, Chairman, Trustees' Board, and WILMOT R. DIGGS, Vice Chairman, officers of the BASSA BROTHERHOOD B & I SOCIETY, INC., Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued April 20, 1970. Decided June 11, 1970.

1. When a litigant charged with contempt of court for alleged disobedience of a restraining order is arbitrarily denied any consideration by that court of the defenses he has raised to such charges, he has been deprived of his right to a fair hearing, and the court has committed reversible error.

An injunction suit was instituted by appellant, alleging wrongful interference with the enjoyment of his property. A temporary restraining order was issued by the trial court, requiring all parties to leave the property undisturbed pending final determination. The appellant thereafter replaced part of a building the appellees had torn down. A bill of information charging contempt of court was filed by appellees. It appeared that at the hearing thereon the trial judge refused to consider the defenses advanced by the appellant, that the restraining order had not been directed to him, and that he had observed the spirit of the injunction by seeking to preserve and increase the value of the property. He was held in contempt and appealed from the judgment. *Judgment reversed.*

Lawrence A. Morgan for appellant. *Nete-Sie Brownell* for appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

During the June Term, 1968, of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, appellant instituted an action of injunction against the appellees. In his complaint plaintiff alleged that he was possessed of a certain parcel of land and that defendants had trespassed upon and damaged his outbuilding and commenced the construction of a building on his premises. He prayed that the defendants be restrained from further entering upon and interfering with his premises.

The writ of injunction was issued upon the order of Judge Daniel Draper. The pleadings progressed as far as surrejoinder, when defendants filed a document alleging a contempt of court in that plaintiff had violated the terms of the restraining order issued in the injunction action he had brought, which enjoined any further use of the land by any party pending the final outcome of the action, by rebuilding a portion of a structure torn down by defendants. Plaintiff contested the bill, praying dismissal of the information on the grounds that he had disobeyed no order issued against him, and as a matter of fact he had acted in keeping with the spirit and intent of the restraining order by preserving and improving his property in carrying on his construction without the interference of defendants. Notwithstanding the premises, the trial judge, D. W. Morris ruled that he was guilty of violation of the temporary injunction and liable in contempt of court. It was to this ruling that the plaintiff noted exceptions and announced an appeal to this Court.

Appellant's appeal is based on a one count bill of exceptions:

"1. Because the court on the 2nd day of October, 1968, in ruling on informant-appellee's bill of information, ignored counts one and two of respondent's return, and despite the very cogent issues of law raised in count three as well as the issue of fact raised in count four, entered a final decree adjudging respondent guilty of contempt and ordered a writ issued

for his arrest. To which final decree the respondent excepted and announced an appeal to the Supreme Court, in its March Term, 1969.”

The return of the respondent referred to alleged certain formal failures of informant, as well as his principal contentions recited above by this Court.

In argument before this Court, appellant again stressed these points, that the restraining order had not been directed against him and that his actions complained of had in fact observed the spirit of the injunction issued by preserving the property in issue.

When a litigant charged with contempt of court for alleged disobedience of a restraining order is arbitrarily denied any consideration by that court of the defenses he has raised to such charges, he has been deprived of his right to a fair hearing, and the court has committed reversible error.

Therefore, in view of the foregoing, the judgment of the trial judge in these proceedings is hereby reversed and made null and void, with costs against appellees. And it is hereby so ordered.

Reversed.