

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
(SIR MICHAEL OGDEN QC)

Royal Courts of Justice
Strand
London WC2

Thursday, 28th October, 1993

B e f o r e :

THE PRESIDENT

LORD JUSTICE STEYN

and

LORD JUSTICE KENNEDY

- - - - -

TOSELAND BUILDING SUPPLIES LTD

- v -

BISHOP (T/A BISHOP (GROUNDWORKS))

- - - - -

(Computer Aided Transcript of the Stenograph Notes of
John Larking, Chancery House, Chancery Lane, London WC2
Telephone No: 071-404 7464
Official Shorthand Writers to the Court)

- - - - -

MR M.LOWE (instructed by M/S SHARMAN SYKES of Wellingborough)
appeared on behalf of the APPELLANT
MR S.MOVERLEY SMITH (instructed by SMEATH MANN & CO of
Northampton) appeared on behalf of the RESPONDENT

- - - - -

J U D G M E N T
(As approved by the Court)

- - - - -

Thursday, 28th October, 1993
JUDGMENT

THE PRESIDENT: We need not trouble you Mr Smith. Lord Justice Steyn will give the first judgment.

LORD JUSTICE STEYN: The principal question in this case is whether a JCB digger belonging to a judgment debtor was exempt from seizure by the Sheriff under Section 138(a) of the Supreme Court Act 1981.

The facts can be described very briefly indeed. On 4th November 1991 the Respondent obtained judgment in the sum of £4,667.39 and interest against the Appellant. On 22nd February 1992, and pursuant to a writ of Fieri Facias the Sheriff seized the JCB mechanical digger belonging to the Appellant. An objection was raised on behalf of the Appellant against that seizure. The suggestion was that it was exempt from seizure under Section 138(3)(a). The relevant part of that statutory provision reads as follows:
"Every sheriff or officer executing any writ of execution issued from the High Court against the goods of any person may by virtue of it seize:---

(a) any of that person's goods except--
(i) such tools, books, vehicles and other items of equipment as are necessary to that person for use personally by him in his employment, business or vocation...".

The Sheriff issued a summons to seek directions. Directions were given, and in due course the matter came before a District Judge to try the issue as to whether the exemption applies or not. His ruling, given on 20th January 1993, was that the JCB digger was exempt from seizure. The Respondent appealed to a Deputy High Court Judge, and that appeal came before

Sir Michael Ogden, QC, who gave judgment in the matter on 8th February 1993. He came to the conclusion that the JCB digger was liable to seizure. It is against that ruling of the Deputy High Court Judge that we today have an appeal.

It was necessary for the District Judge and for Sir Michael Ogden to resolve the issue in the light of the evidence before them. There were three relevant affidavits before the Court below. The principal affidavit was from the Appellant. In that affidavit he described the nature of his business. It was groundwork. Typically it involved digging trenches for the footings of buildings, or digging out and laying a driveway. The Appellant owned the JCB and used it regularly. He explained that it was essential for him to have the JCB digger because it enabled him to respond very quickly to enquiries for use of such a digger during the course of building work. His business would not, from a practical point of view, have been viable if he had to hire a vehicle. He said it was therefore essential for him to own a JCB digger. He also explained in his affidavit that normally he personally used the digger, but he fairly set out in his affidavit that from time to time he employed other persons to drive the digger, as he put it, "for the day". That was the evidence from the Appellant.

On behalf of the Respondent two affidavits were placed before the Court. David Williams explained that on 18th September 1992 he needed to hire a digger and a driver. He made contact with the Appellant and engaged him. However, he said that the Appellant said that he would not be able to drive the digger himself but could provide an employee. That is what then

happened. The digger was used on two consecutive days and on each occasion for the whole day. There is a supporting affidavit to the same effect, but it is unnecessary to refer to the details of it. What is important from this evidence is that the Appellant accepts that occasionally other drivers use the digger but, as he put it in his affidavit, "only for the day". It may well be that he did in fact allow employees to use it for somewhat more substantial periods, as is illustrated by the incident to which Mr Williams referred. That was the state of the evidence.

Sir Michael Ogden, QC, gave an admirably concise and incisive judgment. He posed the following question: "What I have to do is to say to myself: 'Is this JCB necessary to the defendant for use personally by him in his employment?'"

He then answered that question as follows: "I have come to the conclusion that the JCB was not something 'for use personally by him'. The idea behind the legislation in my view is and always has been to protect the tools of the trade of the individual worker. In this type of case, involving as it does a vehicle, I can well understand that if, for example, a motorcycle courier of the kind that one sees so frequently these days, who owns his own motorcycle and hires himself out to go and deliver documents in various places, then that motorcycle will be protected. So too would a van owned and driven solely by a person in which he drove about making deliveries in the course of his work as a delivery man."

However, the judge found that the present case is a different one and he rested his judgment on the fact that from time to time the Appellant allowed employees to drive the vehicle.

There are before us a number of grounds of appeal. The first two grounds of appeal assert that the Judge erred in law in misconstruing the statutory provision which he had to apply to the facts of the case. These grounds of appeal that has not been pursued before us. The suggestion that the Deputy High

Court judge erred in the interpretation of Section 138 is plainly unsustainable. The relevant words of Section 138(a) are "necessary to that person for use personally by him in his business". The Deputy High Court judge did not attempt to define those words; he was very wise not to do so. In Cozens v. Brutus

[1973] AC 854 Lord Reid explained at 861F:

"When considering the meaning of a word one often goes to a dictionary. There one finds other words set out. And if one wants to pursue the matter and find the meaning of those other words the dictionary will give the meaning of those other words in still further words which often include the word for whose meaning one is searching.

No doubt the Court could act as a dictionary. It could direct the tribunal to take some word or phrase other than the word in the statute and consider whether that word or phrase applied to or covered the facts proved. But we have been warned time and again not to substitute other words for the words of a statute. And there is a very good reason for that. Few words have exact synonyms. The overtones are almost always different."

Likewise, I will not seek to define the operative words of Section 138. The words "necessary" and "personal" are among the commonest words in the English language and do not require definition. The answer to the question before us is simply to be found in the application of those words to the facts of the present case.

That brings me to the submission that was advanced before us this morning, namely that the judge's decision was against the weight of the evidence. Here it is important to bear in mind what the correct approach is in a case like this. The general principle is that prima facie all the judgment debtor's goods are liable to seizure under a writ of Fieri Facias. If a judgment debtor claims the benefit of a statutory exemption, the burden of showing that the exemption applies rests squarely

on him. On the evidence this was not a simple case of tools of the trade used by an individual worker. The Appellant ran a business in which a JCB digger was the most important piece of equipment. Sometimes he drove it, and sometimes his employees did. In these circumstances the judgment debtor has not demonstrated that it is necessary to him "for use personally by him in his business".

In my judgment it has not been demonstrated that the judge erred in his application of the law on the facts. I would dismiss the appeal.

LORD JUSTICE KENNEDY: I agree.

THE PRESIDENT: I also agree.

THE PRESIDENT: You were legally aided, you say?

MR LOWE: I am, yes.

THE PRESIDENT: You are entitled to a legal aid taxation.

MR MOVERLEY SMITH: My Lords, as my learned friend's client is legally aided I would seek an order under Section 18 of the Legal Aid Act.

THE PRESIDENT: Is it 10 weeks or 12 weeks now that they have?

MR MOVERLEY SMITH: My Lord, I think it is 10 weeks.

THE PRESIDENT: The Associate has the well tried formula in mind. It is 10 weeks. Costs against the Legal Aid Fund subject to the normal conditions.

MR LOWE: I am much obliged.