

File



10 DOWNING STREET

Prime Minister ②

You will be interested to read Justice Niddolls Judgment and a note from Attorney General's Chambers which answers the question someone (Gordon Reece?) put to you yesterday about payment of the Scargilli fine.

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01-7641 EXT. 3417

Communications on this subject should
be addressed to
The Legal Secretary
Attorney General's Chambers

File
ATTORNEY GENERAL'S CHAMBERS

LAW OFFICERS' DEPARTMENT

ROYAL COURTS OF JUSTICE

LONDON, W.C.2

15 October 1984

Dear Turnbull,

TAYLOR - V - NUM.

We spoke last week about the enforcement
of the fine imposed on Mr. Scargill. I
enclose a copy of a note setting out
the statutory background.

Yours sincerely,

Stephen Hyett.

I enclose a transcript of ~~a~~^{the} judgment in Taylor & Foulstone v the NUM (Yorkshire Area) and the NUM.

Nicholls J fined the NUM £200,000 and Mr. Scargill the sum of £1,000. So far as Mr. Scargill was concerned he directed that the fine be paid within 28 days from the 10th October and said that he would order that payment of that fine be enforced, if necessary, ^{as} provided in section 16(1)(a) of the Contempt of Court Act 1981. I attach a copy of that section. It provides that the payment of a fine for contempt of court imposed by, inter alia, the High Court may be enforced either -

- (a) in like manner as a judgment of the High Court for the payment of money; or
- (b) in like manner as a fine imposed by the Crown Court

Sub-section (2) provides that where the Court orders that the fine should be enforced as mentioned in para. (a) the Court shall, if the fine is not paid within such time as the Court may allow, certify to Her Majesty's Remembrancer the sum payable. Her Majesty's Remembrancer must thereupon proceed to enforce payment of that sum as if it were due to him as a judgment debt. Her Majesty's Remembrancer is the Senior Master of the Queen's Bench Division. It is clear from the use of the word "shall" in the sub-section that if the Court orders that the fine is to be enforced in this way, the Court must certify the sum payable and Her Majesty's Remembrancer must proceed to enforce payment of the sum.

The sum is enforced as if it were due to Her Majesty's

Remembrancer as a judgment debt. Judgment debts may be enforced by one or more of the means set out in Order 45 Rule 1(1) of the Rules of the Supreme Court, i.e. by:-

- (a) Writ of fieri facias (the goods are ~~seized~~^{seized} by the Sheriff and, if the money is not paid, sold);
- (b) Garnishee proceedings (debts, e.g. money in a bank account, are attached);
- (c) A charging order (property is charged and can be sold);
- (d) An order of committal;
- (e) Writ of sequestration (very rare in the case of an individual).

Once the Court has ordered that this means of enforcement should be used (and it appears that the order to be drawn up after Monday will include an order that the fine should be enforced, if necessary, as provided in section 16(1)(a) of the 1981 Act) the procedure is controlled by Her Majesty's Remembrancer, not by the plaintiffs. Any payment received by Her Majesty's Remembrancer is to be dealt with by him, as the Lord Chancellor directs (section 140(4) of the Supreme Court Act 1981). If Her Majesty's Remembrancer sought to enforce payment of the fine by, for example, a charging order or an order of committal, an application to the Court for such an order would have to be made just as in any other case.

A third party could pay the fine on behalf of Mr. Scargill and, probably, Mr. Scargill cannot say that he objects. In Treasury ^v Harris [1957] 2QB 516 the Court held that a fine was a monetary penalty due to the Crown. At page 525 Lord Goddard CJ said :-

"Where a fine has been imposed by the Court it is not uncommon for some sympathiser or person interested in the particular matter in respect of which the defendant has gone to prison to pay the fine for the defendant. If the Crown gets the money the Crown cannot keep the man in prison, though I doubt very much whether, once the money has been paid, the defendant can say:- 'I am not coming out of prison; I am going to stay in prison...'. If a sympathiser comes forward and pays the fine, he has discharged the Crown's debt; the Crown has received the money, but I do not think that the person fined can say that he objects to it and will remain in prison."

Although that statement is concerned with the enforcement of a fine by committal, the principle would seem to be applicable generally. There are, in my view, a number of conceptual difficulties in the proposition that a person cannot object to a fine being paid by a third party. For example, the payer would seem to make the payment as agent for the person fined; why cannot he disclaim the agency in accordance with the normal rules of agency? *Treasury v. Harris* is the first instance, unreserved judgment and, therefore, not strong authority.

When the fine had been paid, the contempt is purged, but further applications that there has been a contempt can be made if further acts of contempt are committed.

I also enclose a minute summarising the judgment of the Divisional Court in the bail conditions case.

S.H.

A. S. HYETT
12th October 1984

- 5930 Superior Court**—For the meaning of superior court see s.19 below. The County Courts (Penalties for Contempt) Act 1983, which came into force on May 13, 1983, provides for county courts to be treated as superior courts for the purposes of this section (see subs (4A) (sic) inserted by that Act), thus reversing the effect of the House of Lords' decision in *Pearcy v Stewart* [1983] A.C. 109; [1983] 1 All E.R. 859.

Enforcement of fines imposed by certain superior courts

- 5931** 16.—(1) Payment of a fine for contempt of court imposed by a superior court, other than the Crown Court or one of the courts specified in subsection (4) below, may be enforced upon the order of the court—
- (a) in like manner as a judgment of the High Court for the payment of money; or
 - (b) in like manner as a fine imposed by the Crown Court.
- (2) Where payment of a fine imposed by any court falls to be enforced as mentioned in paragraph (a) of subsection (1)—
- (a) the court shall, if the fine is not paid in full forthwith or within such time as the court may allow, certify to Her Majesty's Remembrancer the sum payable;
 - (b) Her Majesty's Remembrancer shall thereupon proceed to enforce payment of that sum as if it were due to him as a judgment debt.
- (3) Where payment of a fine imposed by any court falls to be enforced as mentioned in paragraph (b) of subsection (1), the provisions of sections 31 and 32 of the Powers of Criminal Courts Act 1973 shall apply as they apply to a fine imposed by the Crown Court.
- (4) Subsection (1) of this section does not apply to fines imposed by the criminal division of the Court of Appeal or by the House of Lords on appeal from that division.
- (5) The Fines Act 1833 shall not apply to a fine to which subsection (1) of this section applies.
- (6) Paragraph 23(1) of Schedule 11 to the Employment Protection (Consolidation) Act 1978 and paragraph 30 of Schedule 1 to the Employment Act 1980 (which relate to the enforcement of fines imposed by the Employment Appeal Tribunal) are repealed.

Amended by S.C.A. 1981, s.152(4) and Sched. 7.

- 5932 Superior Court**—See s.19, para.5934.

Disobedience to certain orders of magistrates' courts

- 5933** 17.—(1) The powers of a magistrates' court under subsection (3) of section 63 of the Magistrates' Court Act 1980 (punishment by fine or committal for disobeying an order to do anything other than the payment of money or to abstain from doing anything) may be exercised either of the court's own motion or by order on complaint.
- (2) In relation to the exercise of those powers the provisions of the Magistrates' Court Act 1980 shall apply subject to the modifications set out in Schedule 3 to this Act.

Supplemental

Interpretation

- 5934** 19. In this Act—
- “court” includes any tribunal or body exercising the judicial power of the State, and “legal proceedings” shall be construed accordingly;

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Superior Court—See note

Tribunals of Inquiry

20.—(1) In relation
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