[2014] JMCA Civ 1

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 33/2011

BEFORE: THE HON MRS JUSTICE HARRIS JA
THE HON MR JUSTICE DUKHARAN JA
THE HON MRS JUSTICE MCINTOSH JA

BETWEEN	**PAUL HOO**	**APPELLANT**
AND	**EPSILON EQUITIES LIMITED**	**RESPONDENT**

Miss Annaliesa Lindsay and Miss Peta-Gaye Manderson instructed by John G Graham and Co for the appellant

John Vassell QC and Miss Hyacinth Lightbourne instructed by DunnCox for the respondent

29 November 2012 and 27 January 2014

HARRIS JA

[1] In this appeal, the appellant challenges an order of Campbell J dismissing an application to discharge a stop notice.

[2] The appellant, the founding shareholder of a company called Supreme Ventures Limited, on 28 August 2002 and 27 February 2004, entered into two agreements with the respondent or its nominees for the forward sales of shares in the company. Under

the agreement of August 2002, the appellant agreed to sell the respondent 84,350 ordinary stock units of the company. Under the agreement of February 2004, it was agreed that the appellant would sell the respondent 15,510 ordinary stock units of the company. In May 2005, the stock units were subdivided and accrued to 175,313,560. On 15 December 2008, the respondent brought a claim against the appellant claiming a beneficial interest in 175,313,560 shares in the company.

[3] On 21 April 2009, the respondent obtained a stop notice, under the hand of the registrar of the Supreme Court, restricting the appellant from registering any transfer of the shares or paying any dividend on those shares without giving 14 days written notice to the respondent.

[4] On 10 December 2009, the appellant brought the application to discharge the stop notice which was heard by Campbell J. The learned judge found that a stop notice originated in the old writ of distringas and that the registrar is seized of the jurisdiction to issue it. He said at paragraph 10 of his judgment:

> "The Stop Notice, provisions of Rule 49(1) [sic] to (6) of the Civil Procedure Rule[s] are similar to O.50 r.11-14, and would have been applicable to Jamaica pursuant to s.686 of the Civil Procedure Code. See **Minister of Foreign Affairs, Trade & Industry v. Vehicle & Supplies Ltd.**, (1989) 39 W.I.R. 270 pp. 281-2, it was held that, in the absence of express provisions in the Civil Procedure Code and in Rules of Court the practice and procedure of the English court must be followed. I agree, that the Stop Notice had its origin, in the old writ of distringas, which was provided for in R.S.C., 0.46, and later in 0.50. As the learned authors of Palmer, Company Law, Twentieth Edition states [sic] at page 358, footnote 2.
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> **'The notice takes the place of the now obsolete writ of distringas. The law relating to this notice is mainly**

contained in R.S.C., Ord. 46, r 3-11. Under the Court of Chancery Act, 1841, s.5, the writ of distringas applied in terms to the Bank of England only but the practice admitted it likewise to companies'.

This practice to my mind would have been followed in the Jamaican Courts pursuant to [sic] 686 of the Civil Procedure Code or expressly transferred to the **Supreme Court by the Judicature (Supreme Court) Act.** The reception of the authority of the Court of Chancery in the local judisdiction was noted in **William Clarke v. Bank of Nova Scotia & Pavement and Structures Ltd**, Claim No. HCV 05137, Mr. Justice Patrick Brooks, said;

> 'It is important to note that certain provisions of the **Judicature (Supreme Court) Act** grant to this court the power to exercise the authority once belonging to the Court of Chancery. Section 48 (a) of that Act requires this court to give to an applicant, who claims equitable relief founded upon a legal right, 'such and the same relief as ought to have been given by the Court of Chancery before the passing of (the) Act.' I find that the Registrar had the requisite jurisdiction to issue a Stop Notice; the application to discharge the notice is refused."

[5] The following ground of appeal was filed:

"(i) The judge erred in that even if the Stop Notice is the successor to the old writ of distringas and notice in lieu of distringas and even if the Supreme Court has the power to sign such a Notice, the Registrar of the Supreme Court has no such power for the following reasons:-

(a) Although the writ of distringas and notice in lieu of distringas have certain similarities to the stop notice, the stop notice is a new legal creation which has characteristics as to form and substance which are totally different from the writ of distringas and notice in lieu of distringas.

(b) The stop notice was introduced into the law of the United Kingdom by section 5 of the Charging Order [sic] Act, 1979.

(c) The stop notice is a statutory caveat interferes [sic] with the property rights of a citizen and ought not to be

permitted to stand without a clear and proper basis in law.

(d) That Court as defined by the Judicature (Supreme Court) Act means the act of a judge of the Supreme Court acting as such and does not contemplate acts by the Registrar of the Supreme Court.

(e) Neither the Judicature (Supreme Court) Act nor the Judicature (Supreme Court) Additional Powers of Registrar Act gives the power to the Registrar of the Supreme Court to issue a Stop Notice.

(f) The Judicature (Civil Procedure Code) Law has been repealed and no longer has any relevance to Jamaica and hence section 686 of the Judicature (Civil Procedure Code) Law is no longer a basis on which the practice and procedure provides [sic] the basis for the issue of a stop notice.

(g) Section 686 of the Judicature (Civil Procedure Code) Law related to the applicability of 'practice and procedure' in the United Kingdom in the event that there is no provisions [sic] in Jamaica.

(h) The issue raised by the appellant in this appeal is whether there is any provision in the statute or common law which provides the basis for the issue of a stop notice."

[6] Miss Lindsay, for the appellant, submitted that the registrar of the Supreme Court, being a creature of statute, is not permitted to exercise any power beyond that which is conferred by statute and therefore is not empowered to issue the stop notice and the learned judge erred in finding that she had jurisdiction to do so. The Civil Procedure Rules (CPR), she submitted, being subsidiary legislation, are incapable of formulating rules importing the "practice and procedure" in the United Kingdom rules, unless there is legislation permitting this to be done. Nor can the CPR confer power on

the registrar which has not been provided for by the Judicature (Supreme Court) Act or the Judicature (Supreme Court) Additional Powers of Registrar Act, she argued.

[7] The learned judge, she contended, erroneously found that the stop notice was the successor to the writ of distringas which provided an available remedy to the respondent but although reference is frequently made to the writ of distringas and the notice in lieu of distringas as precursors to a stop notice, they are different.

[8] Counsel further contended that a historical examination of the writ of distringas, shows that the Court of Chancery was empowered to issue it prior to 1880 and this statutory function formed part of the laws of Jamaica by virtue of The Judicature (Supreme Court) Act and the Judicature (Civil Procedure Code) Law (the code) now repealed. The code having been repealed, section 686 can no longer supply a medium through which the English practice and procedure can be applied in this jurisdiction, and therefore there is no statutory force enabling the formulation of rule 49, she argued.

[9] Section 5 of the Chancery Act 1841, provided for the issuing of a writ of distringas out of the Court of Chancery, but this section was repealed in 1892 and prior to that date, in 1883, order 46 of the Rules of the Supreme Court (RSC) provided for a notice in lieu of distringas, she submitted. In the United Kingdom, she argued, the writ of distringas, being replaced by a notice in lieu of distringas, had statutory force as this new provision became effective in 1883 by the English Judicature (Supreme Court) Act which limited the local court incorporating Chancery Court practice up to 1880. Prior to

the enactment of the code in 1889 neither the writ of distringas nor the notice in lieu thereof would have formed a part of the laws of Jamaica, she argued. But then she also argued that while the writ of distringas was no longer applicable in the United Kingdom, the writ of distringas continued to be applicable in Jamaica.

[10] In the United Kingdom, the Charging Orders Act, providing for the issuance of a stop notice, was passed in the interim. In Jamaica, the Companies Act of 1965, which makes reference to the notice in lieu of distringas, took its origin from the United Kingdom's 1948 Companies Act, and has since been replaced by the Companies Act of 2004, she submitted. As a consequence, the writ of distringas would have been repealed by virtue of section 116 of the 2004 Companies Act and therefore would have been extinguished from this jurisdiction, she submitted. Therefore, the statutory basis by which the Jamaican court could issue a writ of distringas no longer exists and the provisions of the CPR are incapable of conferring the right to issue a stop notice, counsel further argued.

[11] A writ of distringas is different from a stop notice, consequently, the jurisdiction, if any, which a judge of the Supreme Court may have, would be to issue a writ of distringas and not a stop notice, she contended, and in any event, a notice in lieu of distringas, or a stop notice, is not supported by statutory force.

[12] Mr Vassell QC submitted that the appellant's contention that the stop notice procedure is a matter of substantive law and not one of practice and procedure is inaccurate. The history of the stop notice, he argued, shows that it was always a matter

of practice and procedure, it having had its origin in the writ of distringas. The writ was first issued in the Court of Exchequer until 1841 when the jurisdiction of that court was transferred to the Court of Chancery, he argued. Referring to section 5 of the Chancery Court Act, he submitted that the section amounts to statutory practice to issue writs of distringas, or in the alternative, it confers on the Court of Chancery the jurisdiction to issue writs of distringas, which jurisdiction was transferred by the Judicature Act to the High Court of the United Kingdom in 1873 and to Jamaica in 1880 by the Judicature (Supreme Court) Act. Subsequent rules of court which made provision for the issuance of stop notices would have been applicable to Jamaica by virtue of section 686 of the Code, he submitted.

[13] Specific mention of a writ of distringas in article 28 of the 1965 Companies Act speaks to the statutory recognition of the validity of the stop notice procedure, he submitted. It was his contention that a stop notice is not an order of the court but simply a notice, which is executed by the registrar as required by form 21A of the CPR, for convenience or administrative control.

Analysis

[14] In 1841 the jurisdiction to issue a writ of distringas was transferred from the Court of Exchequer to the Court of Chancery. The writ carried similar effect to that which was formerly issued out of the Court of Exchequer. Section 5 Victori*AE* made provision for the issuance of the writ, reads:

> "V. And be it enacted, That in the Place and Stead of the Writ of Distringas, as the same has been heretofore issued from the said

> Court of Exchequer, a Writ of Distringas in the Form set out in the First Schedule to this Act shall, on and after the said Fifteenth Day of October One thousand eight hundred and forty-one, be issuable from the Court of Chancery, and shall be sealed at the Subpoena Office, and that the Force and Effect of such Writ, and the Practice under or relating to the same, shall be such as is now in force in the said Court of Exchequer: Provided nevertheless, that such Writ, and the Practice under or relating to the same, and the Fees and Allowances in respect thereof, shall be subject to such Orders and Regulations as may, under the Provisions of this Act, or of any other Act now in force, or under the general Authority of the Court of Chancery, be made with reference to the Proceedings and Practice of the said Court of Chancery."

[15] In 1873, in the United Kingdom the Court of Chancery was transferred to the High Court by virtue of the Judicature Act. In 1880, in this jurisdiction, the Judicature (Supreme Court) Act was enacted. By section 4 of this enactment, provision was made for the consolidation of the Supreme Court of Judicature, the High Court of Chancery, the Incumbered Estates' Court, the Court of Ordinary, the Court for D ivorce and Matrimonial Causes, the Chief Court of Bankruptcy and the Circuit Courts, to become the Supreme Court. Section 28 of the Act makes express provision for the manner in which the court's jurisdiction should be exercised. It states:

> "28. Such jurisdiction shall be exercised so far as regards procedure and practice, in [sic] manner provided by this Act, and the Civil Procedure Rules and the law regulating criminal procedure, and by such rules and orders of court as may be made under this Act; and where no special provision is contained in this Act, or in such Rules or law, or in such rules or orders of court, with reference thereto, it shall be exercised as nearly as may be in the same manner as it might have been exercised by the respective Courts from which it is transferred or by any such Courts or Judges, or by the Governor as Chancellor or Ordinary."

[16] Section 48(a) grants to a litigant the right to relief in equity. It reads:

> "48. With respect to the concurrent administration of law and equity in civil cases and matters in the Supreme Court the following provisions shall apply-
>
> (a) If a plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against a deed, instrument or contract, or against a right, title or claim asserted by a defendant or respondent in such cause or matter, or to relief founded upon a legal right which before the passing of this Act could only have been given by a Court of Equity, the Court and every Judge thereof shall give him such and the same relief as ought to have been given by the Court of Chancery before the passing of this Act."

[17] In 1979, in the United Kingdom, the Charging Orders Act was passed. Section 5 (1) of that Act provides:

> "In this section-
>
> 'stop order ...
>
> 'stop notice' means a notice requiring any person or body on whom it is duly served to refrain from taking, in respect of any of the securities specified in the notice , any of those steps without first notifying the person by whom or on whose behalf the notice was served; and...."

[18] The power to frame rules to regulate the practice and procedure in the Supreme Court is derived from The Judicature (Rules of Court) Act. Section 4 (2)(a) and (i) of the Act states:

> "(2) Rules of court may make provision for all or any of the following matters --

(a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Court of Appeal and the Supreme Court respectively in all causes and matters whatsoever in or with respect to which those Courts respectively have for the time being jurisdiction (including the procedure and practice to be followed in the offices of the Supreme Court), and any matters incidental to or relating to any such procedure or practice...

...

(i) for regulating or making provision with respect to any other matters which were or might have been regulated or with respect to which provision was or might have been made by rules of the Supreme Court or which under this Act or any other enactment may be regulated or provided for by rules of court."

[19] Rule 49 of the CPR makes provision for the issuing of a stop notice. For the purposes of this appeal, it will only be necessary to refer to rules 49.1 (2), 49.2, 49.3 and 49.4. These rules read as follows:

"49.1 (2) In this part –

'stock' includes shares, securities and dividends arising therefrom.

'stop notice' means a notice requiring any person or body on whom it is served to refrain from taking, in respect of any of the stock specified in the notice, any of the specified steps without first notifying the person by whom, or on whose behalf, the notice was served;

'stop order' means an order of the court prohibiting the taking, in respect of any of the stock or funds in court specified in the order, any of the specified steps; ...

(a)... (c)."

49.2 Any person who claims to be beneficially entitled to an interest in stock may apply for a stop notice.

49.3 (1) Anyone who wants the registry to issue a stop notice ('**the applicant**') may obtain one by filing a notice in form 21A.

(2) The applicant must also file an affidavit which -

(a) identifies the stock;
(b) identifies the applicant's interest in it; and
(c) gives an address for service for the applicant.

(3) The registry must then issue a stop notice.

49.4 (1) The applicant must serve a copy of –

(a) the stop notice; and
(b) his affidavit,
on the company and any keeper of the register on whom he would have had to serve a charging order relating to the stock in accordance with rule 48.6.

(2) After that, so long as the stop notice is in force, neither the company or [sic] the keeper of the register may register any transfer of the stock or take any step mentioned in the stop notice until 14 days after sending a notification of the proposed registration or other step to the applicant."

[20] Section 686 of the code, provided for importing into this jurisdiction the practice and procedure in England, in the absence of express provision in law or rules of court. It reads:

> "Where no other provision is expressly made by Law or by Rules of Court the procedure and practice for the time being of the Supreme Court of Judicature in England shall, so far as applicable be followed, and the forms prescribed shall, with such variations as circumstances may require, be used."

[21] The first issue to be addressed is whether as a matter of practice and procedure a stop notice is the successor to the writ of distringas and the notice in lieu of distringas and remains as such over the years.

[22] Initially, the power to issue a writ of distringas was derived from the Court of Exchequer as a matter of practice. On 5 October 1841, the jurisdiction of the Court of Exchequer, as a court of equity, was transferred to the Court of Chancery by 5 Victoriæ. In addition to transferring jurisdiction to the Court of Chancery, section 5 of 5 Victoriæ also specifically conferred jurisdiction on the Court of Chancery to issue the writ of distringas.

[23] At this juncture, it is necessary to make reference to Miss Lindsay's submission that the writ of distringas and notice in lieu of distringas were not a part of this jurisdiction before the enactment of the code, as the writ had been replaced by the notice in lieu of distringas in 1883, by which time the importation of the Chancery practice in this jurisdiction was limited. In 1841 and prior to that date, Jamaica was a colony of England and the laws, practice and procedure of that country were applicable in this jurisdiction. Prior to 1841, jurisdiction to issue the writ would be founded in the Court of Exchequer. Subsequently, the Court of Chancery, on its establishment in 1841, accorded to its jurisdiction the right to issue a writ of distringas. In 1880, the jurisdiction to issue the writ of distringas would have been transferred automatically to the Supreme Court of Jamaica, under the Judicature (Supreme Court) Act.

[24] In 1892 the Statute Law Revision Act repealed section 5 of the Chancery Act which empowered the court to issue a writ of distringas. By 1892, the power to issue the writ would have already been assigned to the Supreme Court of Jamaica. As a consequence, the repeal would not have operated adversely against this jurisdiction issuing it. Since the 1892 enactment would not have curtailed the power of the local court to issue the writ of distringas and subsequently, the notice in lieu of distringas which had been introduced in 1883, the issue of these processes would obviously be a matter of practice.

[25] The code arrived on the statutory landscape in 1889. By this enactment, the legislative intent was to extend the existing power of the court and by way of section 686 to prescribe that where no provision is made by any law or rules, the court is entitled to follow the English practice and procedure. Accordingly, in keeping with section 686, the practice and procedure in England were adopted here in obedience to the dictates of the code. The notice in lieu of distringas would, by then, have taken the place of the writ. In 1925 the Judicature (Consolidation) Act, consolidated all the enactments relating to the Supreme Court of Judicature of England. Section 99 of that Act made provision for the establishment of rules of court to regulate practice and procedure in the English Supreme Court. In keeping with this provision, over the years, the RSC were made under that Act. By order 46 rule 4 of the RSC where a party claims an interest in stocks standing in the books of a company he may file an affidavit with a notice; an office copy of the affidavit and a duplicate of the notice are then served on the company. Subsequently, on the enactment of the Charging Orders Act 1979, rules

under the RSC with respect to stop notices were made. By order 73 rule 16, a stop notice effectively prevents dealings in securities without giving notice to the party who has served the notice. At the time of the passing of the Charging Orders Act, the reference to the stop notice in that enactment was not a new feature in the procedural scheme which prevailed then. More will be said later about the stop notice so far as it relates to the Charging Orders Act.

[26] It is important to pause here to address Miss Lindsay's contention that a stop notice is dissimilar to a writ of distringas and a notice in lieu of distringas in form and substance. With this submission, we are constrained to disagree. Although the writ of distringas, the notice in lieu of distringas and the stop notice are somewhat different in form, all these processes are essentially the same in substance. They all are temporary notices which preeminently serve the same purpose. The objective of these processes is, in essence, to facilitate a party who claims a beneficial interest in stocks or securities by the giving notice of his interest in them.

[27] The stop notice is clearly the successor to the writ of distringas and the notice in lieu of distringas, and by reason of the code, the relevant enactments and rules of court of the United Kingdom would have been applicable in this jurisdiction where no provision is made in any local rules or enactment.

[28] The power to issue a writ of distringas, and upon repeal, the notice in lieu of distringas and a stop notice has been a matter of practice. This practice continued up until the advent of the CPR in 2002, at which time, it would have been contemplated

that the power to issue the process was nothing more than the long standing practice which had not become obsolete with the abolition of the Code but had remained in existence.

[29] It follows that the Rules Committee would have been at liberty to frame rule 49. In this jurisdiction, the issuance of a stop notice would not have been affected by the repeal of section 686 of the code and as rightly found by the learned judge, the rules in relation to the notice would have been applicable to Jamaica under section 686 of the code and upon the repeal of the code, the practice would have continued under rule 49 of the CPR.

[30] If contrary to the foregoing, as contended for by Miss Lindsay, a statutory foundation is required to have empowered the committee to have framed rule 49 of the CPR, is a source enabling the framing of rule 49 in existence? The resolution to this issue is grounded on whether the code, having been repealed, no other avenue through which a stop notice could have been validly issued is available for the framing of the impugned rule.

[31] The practice and procedure of the Supreme Court are primarily governed by the mode prescribed by which the Judicature (Supreme Court) Act and the rules of the Supreme Court. The Court of Chancery has been an integral part of the Supreme Court since 1880. The Court of Chancery exercises jurisdiction both in law and equity. One of the useful purposes, in the exercise of its jurisdiction, is the facilitation of proceedings

in equity if the justice of the case so required. A remedy sought on equitable grounds is available under the Judicature (Supreme Court) Act through the Chancery jurisdiction.

[32] As previously stated in paragraph [15], section 28 of that Act makes provision for the exercise of the court's jurisdiction "in the same manner as it might have been exercised by the respective Courts from which it is transferred". It also makes it clear that the court is endowed with the jurisdiction to assume all the powers of the Court of Chancery, the Court of Chancery being one of the courts which had been transferred to the Supreme Court.

[33] Further, equitable relief can be obtained under section 48 of the Act. Section 48(a) expressly provides for the grant of equitable relief which could only be given by the court of equity under the Court of Chancery and a stop notice is a matter in which relief in equity can be sought.

[34] It is apt to make mention here of Miss Lindsay's challenge that the provisions of the CPR are incapable of conferring the power to issue stop notices as the Supreme Court is no longer seized of jurisdiction to issue the notice, which was created by the Charging Orders Act 1979 of the United Kingdom, there being no similar provision, by statute, in this jurisdiction. We are constrained to disagree with this contention. Counsel relied on **Beverley Levy v Ken Sales and Marketing Limited** PAC No 87 of 2006, delivered on 24 January 2008, to show that a rule of court cannot be created without support from an enactment. It is without doubt that rules cannot be created in the absence of statutory force. However, as Mr Vassell submitted, the Charging Orders

Act did not create a jurisdiction in respect of stop notices which had prior existed before. It expanded the scope of securities over which charging orders, stop orders and stop notices could be made. It also implemented a rationalization of the County Courts. It extended the scope of securities to which the jurisdiction was applicable and revamped the power to make rules relating to stop notices and stop orders. We fully agree with this submission.

[35] The stop notice carries the same force and effect as a notice in lieu of distringas. The writ of distringas and subsequently the notice in lieu of distringas are processes born out of equity. A stop notice is also a process having its genesis in equity. As a consequence, a stop notice being founded in equity, the Judicature (Supreme Court) Act, in making specific provision for equitable relief, would undoubtedly supply a base to support the framing of a rule with respect to stop notices. Therefore, that Act must be regarded as the foundation giving recognition to the statute by virtue of which rules could be framed for the issuance of a stop notice. It follows therefore, that the committee, being empowered to frame rules for regulating the practice and procedure of the court, the creation of rule 49 was proper, the committee's competence to do so, having been buttressed by the power derived from the Act.

[36] Counsel's submission that the court's jurisdiction to issue a writ of distringas was extinguished by section 116 of the Companies Act is unmeritorious. That section forbids the entry of notice of any trust on companies' registers by the registrar. It does not abolish the right to issue a notice in lieu of distringas, which is effectively a stop notice. The section clearly shows that a notice regarding an equitable interest cannot be

entered on a company's register. It does not mean that the company cannot pay due regard to it upon receipt of it.

[37] It was a further challenge by Miss Lindsay that the registrar, not being a judge, is not empowered to issue a stop notice. It is true, as contended for by Miss Lindsay, that the issuing of a stop notice is not one of the matters which the registrar is empowered to do in the exercise of the powers under the Judicature (Supreme Court) Additional Powers of Registrar Act. The statutory prescriptions of that Act permit the registrar to make certain orders. The stop notice is not an order. Where a registrar proceeds under the Judicature (Supreme Court) Additional Powers of Registrar Act, he or she carries out a judicial function, while, the execution of the notice under rule 49, is clearly done in the performance of an administrative role. In this case, the challenge relates to the issuing of a stop notice, not a stop order in which the consequences would be different.

[38] The stop notice and, notably, all other notices filed in the Supreme Court are issued out of the registry as a matter of course. Further, the stop notice cannot be classified as an order falling within the purview of the Judicature (Supreme Court) Additional Powers of Registrar Act. It operates as a mere temporary warning. It is not a statutory caveat which interferes with the property rights of a citizen, as contended for by Miss Lindsay. There are no statutory prescriptions expressing a stop notice to be a caveat. Interestingly, even in the case of land, where there is statutory provision for the issuing of a caveat, the case of **Half Moon Bay Ltd v Crown Eagle Hotels Ltd** [2002] UKPC 24 clearly shows that a caveat does not constitute an interest in property.

[39] The fact that form 21A requires that a stop notice be signed by the registrar is of no consequence. The notice merely precludes the stocks being dealt with for a period of 14 days. In all the circumstances, it could not be said that it would have been impermissible for rule 49.3 to direct the issuing of a stop notice out of the court's registry and that the registrar would not be clothed with the authority to append her signature to it.

[40] Even if the repeal of section 686 of the code would have prevented the issuing of the writ of distringas, and subsequently the notice in lieu of distringas and the stop notice, this would not have prevented the Committee, in framing the rule, from praying in aid the Act. The Act being capable of giving force to the framing of rules to regulate matters for the practice and procedure in the court, including rules in relation to the issuing of stop notices, the validity of rule 49 remains unassailable.

[41] In these premises, we are disposed to conclude that the practice and procedure of issuing stop notices have always been firmly embedded in the Chancery jurisdiction of the Supreme Court.

[42] We would dismiss the appeal and award costs to the respondent to be agreed or taxed.