

In Re: the Ship champion.

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Court : Kolkata

Decided On : Apr-11-1889

Reported in : (1890)ILR17Cal66

Judge : Pigot and ;Trevelyan, JJ.

Appellant : In Re: the Ship "champion."

Judgement :

Pigot and Trevelyan, JJ.

1. In this case the decree from which it is sought to institute an appeal was signed on the 4th April 1889, the memorandum of appeal against that decree was presented to the Registrar on the 6th April 1889, and was rejected; and 'this is an application made to us, sitting in the Appellate Jurisdiction from the Ordinary Original Side, for an order directing the Registrar to admit the appeal.

2. The application is made by the promovents, in whose favour a decree for 1,500 was made in the Court below; and there is no question that the formalities prescribed by Rule 35 of the Rules and Regulations, made under an order of Council of June 1832, with respect to the bringing of appeals, were not in this case followed; and it is argued that the appeal under those circumstances cannot be admitted, a much longer period than fifteen days' having passed since the time at which the decree was pronounced in open Court. It is contended on behalf of the parties seeking to appeal that the matter is to be decided on the practice of this

Court in its ordinary appellate jurisdiction; and that the usual time should be allowed to the appellant from the date on which he was able to obtain a copy of the decree in the case.

3. The first question then is, in appeals under Clause 15 of the Letters Patent from a single Judge sitting in the Ordinary Original Jurisdiction to the Appellate Bench, does this Rule 35 apply

4. Now there is no doubt that Rule 35 applies in the case of appeals from this Court to the Privy Council. The case of *The Brejihilda* I.L.R. 7 Cal. 547 : S.C. L.R. 8 I.A. 159 shows that.

5. And there is doubt that according to the practice of this Court, so far as it can be ascertained from the records, in appeals -which have been brought from the decisions of a single Judge sitting on the original side to the other side of this Court, the practice has been not to apply Rule 35, as it is now contended it should be applied.

6. Four Cases have been obtained from the record, namely, *The Moorhill v. The Natmoo* Appeal No. 36 of 1875 (unreported); *The Mickelino v. The Dacca* Appeal No. 50 of 1875 (unreported); *The Brenhilda v. The B.I.S.N. Company, Limited* Appeal No. 7 of 1880.-This case went up to the Privy Council, and is reported in I.L.R. 7 Cal. 547, and L.R. 8 I.A. 159, and *The Mary Stuart v. The Nevada* Appeal No. 24 of 1883 (unreported).

7. And in all four cases the practice under the Civil Procedure Code was followed: and in the *Brenhilda* case Appeal No. 36 of 1875 (unreported), the length of time which elapsed between the date of the decree and the filing of the memorandum of appeal was more than a month, the decree is dated the 6th January 1880, and the memorandum of appeal was filed on the 19th February 1880. The practice of the Court, therefore, so far as these few cases furnish us with a guide, is certainly against the contention of the impugnants.

8. The terms of Rule 35 show that the appeals contemplated as dealt with by it were appeals to England, which, when the rule was framed, lay to the High Court

of Admiralty.

9. When the rule was framed the Supreme Court was the tribunal here having Admiralty and Vice-Admiralty jurisdiction: and there was not within that Court the practice as to appeals from one branch of this Court to the Full Court or a Divisional Bench of it, such as exists in this Court under the Letters Patent.

10. Next, we must look to the effect of the Letters Patent of 1865 as bearing on this question. In Article 37 of those Letters Patent it is provided that the Court shall, from time to time, make rules for the purpose of regulating all proceedings in (amongst others) its Admiralty and Vice-Admiralty jurisdiction; and it is provided that the Court shall be guided in making such rules and orders, as far as possible, by the provisions of the Code of Civil Procedure, which at that time was Act VIII of 1859: Rule 63 of the rules of this Court is as follows: 'In cases in the exercise of Admiralty or Vice-Admiralty jurisdiction, in which a ship or a ship and cargo, have been or are to be proceeded against or arrested, or in which goods only have been or are to be proceeded against or arrested, either for the purpose of proceeding against the goods or the freight due thereon, or in which property shall have been or shall be arrested, and no party shall have appeared or shall appear at the return of the warrant, and in all other cases in the exercise of Admiralty or Vice-Admiralty jurisdiction, in which the rules contained in Act III of 1859 are not applicable, the practice and procedure shall be regulated as nearly as possible by the rules and regulations made and ordained by order of his late Majesty King William the Fourth in Council.'

11. Now the jurisdiction, on which this appeal is sought to be brought, is one which is the creature of the Act of Parliament establishing the High Court, and of the Acts passed under the Charter, and the fact that it is so created would lead to the conclusion that the practice in the exercise of that jurisdiction would be that of Civil Procedure Code. We speak here of the appeal from the decision of one Judge to two Judges, which is the direct creature of the High Court Act and the Charter.

12. Having regard to these two facts, (one being the practice of the Court, and the other the proceeding so far as possible under the Charter), the rules of the Civil Procedure Code ought to be applied in the Admiralty jurisdiction within this Court,

and we think the contention we are examining cannot be sustained.

13. Two other points were raised for the Impugnants, one was that there is no appeal save to her Majesty in Council from any decision of this Court setting in the Admiralty or Vice-Admiralty jurisdiction; and, involved in that, is of course the contention that there is no appeal from the decision of a single Judge save to Her Majesty in Council.

14. The applications have been so frequent from a single Judge pronouncing a decree of this Court to a Bench of this Court, that we intimated it would be needless to argue that point before us. If it must be raised, it must be before another tribunal.

15. It was also argued that the promovent is precluded by his own conduct from pursuing this appeal on the ground that the appeal is perempted owing to the promovents' conduct as set out in the affidavit of Mr. Watkins, dated 25th March 1889, in paras. 6, 7, and 8. The contention being that, inasmuch as under the circumstances in the affidavit related, the promovent was led to mention to the learned Judge, and, by so mentioning, to further so far as he could the signing of the decree or order the apportionment of the money amongst the salvors. We are unable to adopt that argument: so far as he acted, he did so against the decree, that is, in the very act of appealing from it and for the purpose of doing so; and it must not be forgotten that under the decree from which he appeals he takes what he has as yet got, and he protests not that he has not got the 1,500 but that he has not got more.

16. We do not consider either of these contentions good ones, so we think the application must be granted, and therefore we direct the appeal to be admitted.

17. As to the costs of this application, we think the costs of both sides ought to be costs in the appeal.