(1881) 03 CAL CK 0004

Calcutta High Court

Case No: None

The owners of the ship "Brenhilda"		APPELLANT
	Vs	
The British India Steam Navigation Company		RESPONDENT

Date of Decision: March 15, 1881

Citation: (1881) ILR (Cal) 547

Hon'ble Judges: R.P. Collier, J; R. Couch, J; M.E. Smith, J; B. Peacock, J

Bench: Full Bench

Judgement

B. Peacock, J.

This is a motion on the part of the British India Steam Navigation Company, the owners of the ship Ava to relax and dissolve the inhibition and citation issued in a certain pretended appeal of the abovenamed appellants, and to dismiss or to quash the said appeal for want of competency, or to grant the respondents leave to file an act of protest on petition against the admission of the said pretended appeal.

2. The suit came before the High Court in the exercise of its Original Jurisdiction. It was brought by the owners of the steamship Ava, against the Brenhilda, for a collision which took place in the Bay of Bengal. The High Court, in its Original Jurisdiction, held, that there was negligence on both sides, and consequently that half the damages which resulted to the owners of the ship Ava were to be paid by each of the parties. The damages were assessed at 50.000l, which would leave 25.000l to be borne by the owners of the Ava themselves, and 25,000l, to be paid by the owners of the ship Brenhilda. The parties appealed to the High Court in the exercise of its Appellate Jurisdiction, and that Court affirmed the decision of the first Court so far as it was held that there was negligence on the part of each of the ships; but they thought it right to amend the decree by declaring that, instead of the owners of the Brenhilda paying the full sum of 25,000l, being one-half of the

damages sustained by the owners of the Ava, they should be allowed to deduct half of the damages which they had sustained by the injury to their ship and that it should be referred to the Registrar of the Court to assess those damages. That decision was pronounced on the 23rd of July 1880. The parties went before the Registrar for the purpose of assessing the amount, and it appears by the report of the Registrar that the damages were assessed at 3.000l with the consent of both parties. On the 2nd of September 1880, a notice of appeal was given, which was recorded as follows:---"Pursuant to rule 35 of the Rules and Regulations made and ordained by His late Majesty King William the Fourth in Council, in pursuance of the second William the Fourth, Clause 51, Mr. Phillips, Advocate for the impugnant, appears and declares his intention of appealing to the Privy Council against both the decrees made in this cause." The rule referred to is in these words:---"All appeals from the-'' decrees of the Vice-Admiralty Courts are to be asserted by the party in the suit within fifteen days after the date of the decree, which is to be done by the Proctor declaring the same in Court, and a minute thereof is to be entered in the assignation book, and the party must also give bail within fifteen days from the assertion of the appeal in the sum of 100l sterling, to answer the costs of such appeal." The judgment was delivered on the 23rd of July 1880, and consequently the notice on the 2nd of September was not an assertion within fifteen days from the date of the decree. It has been urged that the decree was not drawn up in writing and signed by the Court until some considerable time afterwards, and that the parties could not appeal without annexing a copy of the decree to their petition of appeal. But the rule of annexing a copy of the decree to the petition of appeal refers to appeals which are preferred under the Code of Civil Procedure, Act VIII of 1859; it does not apply to appeals preferred or asserted under the 35th section of the rules of William the Fourth. The words " after the date of the decree," according to their Lordships'' view of the rule, do not mean after the date when the decree is drawn up in writing, but after the date on which the decree or sentence is pronounced by the Vice-Admiralty or Admiralty Court, as the case may be. The words which are constantly used in Acts which refer to decrees in the Admiralty Court are "the pronouncing of the sentence or decree." Their Lordships, therefore, think that the '' date of the decree did not mean the date on which the decree was reduced to writing and signed by the Court, but the date on which the High Court delivered their judgment and expressed what the decree was. If the parties intended to appeal, they ought, in accordance with the rule, to have asserted their appeal within fifteen days from the date of the decree, by declaring in Court that they intended to appeal; and that they did not do. It is important in Admiralty proceedings that notice of app al should be given within a short period. When a ship is sued, it is usually arrested, and unless it is released upon bail, it is detained by an officer of the Court. It is, therefore, important,'' if a party intends to appeal from the decision of the Admiralty Court, that notice should be given within a certain limited time, and that time with regard to Vice-Admiralty oases, is fifteen days from the date of pronouncing the decree.

3. The collision took place in the Bay of Bengal, and therefore it may be a question whether the High Court was exercising Vice-Admiralty or Admiralty Jurisdiction; hut that is not material, for if the case was tried in the Admiralty Jurisdiction, the appeal ought to have been asserted, according to the old rules of the Admiralty Court, within fifteen days. The parties have stated in their petition that they asserted the appeal in accordance with the 35th rule of William the Fourth. The assertion was too late, and consequently the appellants had no right to appeal. Further, they appeared before the Registrar for the purpose of carrying out the order of the High Court in assessing the damages which they had sustained by the injury which had been done to the Brenhilda, and acted without protest. It is said that they were obliged to go before the Registrar; but they might have appealed and got an inhibition; or, if not, they might have appeared before the Registrar under protest. The owners of the Brenhilda took out the summons to compel the owners of the Ava to appear before the Registrar for the purpose of acting under the decree of the High Court in assessing the amount of damage sustained by the owners of the Brenhilda. That of itself, according to the decision to which we have been referred, would be a sufficient ground for preventing the parties from appealing. Their Lordships, therefore, think that the owners of the Brenhilda have not put themselves into a position to appeal, as a matter of right, against the decision of the High Court. The question before their Lordships is not whether they should recommend Her Majesty to grant an appeal as a special matter of favour. That they could do only if a petition were presented to Her Majesty, and referred to the Judicial Committee to report their opinion thereon.

4. Under these circumstances, their Lordships think that the motion ought to be granted, and that the petition of appeal ought to be set aside. It is unnecessary to do more than set aside the petition of appeal; upon that being done, the relaxation of the inhibition will issue as a matter of course. Their Lordships, therefore, will humbly report to Her Majesty that the petition of appeal ought to be dismissed. The appellants must pay the costs o(this motioti and of the appeal.