

(1889) 12 CAL CK 0003
In the Calcutta High Court
The Ship "Fannie Skolfield"

Date of Decision : 16-12-1889

Acts Referred:

Citation : (1890) ILR (Cal) 337

Hon'ble Judges : Wilson, J

Bench : Single Bench

Judgement

Wilson, J.—This is an application, under Rule 5 of the Additional Rules for Vice-Admiralty Courts abroad, issued by the Privy Council, in addition to the Rules of 1832, under 2 and 3 Will. IV, c. 51. The applicant, the promo-vent, asks to have expunged a paragraph, of the answer which objects to the jurisdiction of the Court, on the ground that the defendant, having appeared, absolutely and not under protest, is precluded from questioning the jurisdiction of the Court, and that the promovent is, under the practice of the Court as a Court of Vice-Admiralty, entitled to have the paragraph expunged. Whether he is right in this contention depends upon what system of procedure governs the matter. If the procedure embodied in the Vice-Admiralty rules issued under 2 and 3 Will, IV, c. 51, applies, the promovent's contention seems to be right, otherwise not.

2. It is necessary, therefore, to examine the several enactments and rules affecting the question. The Act 2 and 3 Will. IV, c. 51, empowered the King in Council to make rules to govern the practice of Vice-Admiralty Courts abroad. The rules relied upon in support of the present application were issued under that Act, and no doubt became binding upon those who then exercised the Vice-Admiralty jurisdiction now vested in this Court, And I believe the usual practice in the days of the Supreme Court was to exercise the Vice-Admiralty jurisdiction conferred by the commissions from time to time issued, rather than the Admiralty jurisdiction given by the Supreme Court Charter, just as this Court has followed a similar course.

3. The Acts 24 and 25 Vict, c. 104, under which the High Courts were founded, after providing for the transfer of the old jurisdiction, enacted: Section 11.- That, amongst other things, Orders in Council applicable to the Supreme Court or its

Judges should apply to the High Court and its Judges, so far as might be consistent with the Act and the Letters Patent to be issued, and subject to the legislative powers of the Governor-General in Council. The first Charter gave to the High Court the jurisdiction, Admiralty and Vice-Admiralty, hitherto belonging to the Supreme Court or any Judge thereof. The second Charter, Section 32, continued this jurisdiction; and, in Section 37, enacted that the Court should have power by rule to regulate its procedure in Civil cases, including cases in its Admiralty and Vice-Admiralty jurisdiction, with a proviso that the Court should be guided, as far as possible, by the Code of Civil Procedure, then Act VIII of 1859, an act which did not apply proprio vigore to the High Court. Under this clause the Court, on the 4th April 1866, issued rules, of which several apply to Admiralty matters. Those material to the present case are two:

62.-The procedure in Civil cases which shall be brought before the Court in the exercise of its Admiralty, Vice-Admiralty, or Martimonial jurisdiction shall be regulated, so far as the circumstances of the case will admit, by Act VIII of 1859 and Act XXIII of 1861."

" 63. 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 VIII 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 in pursuance of the 2nd Will. IV, c. 51, and touching the practice to be observed in the several Courts of Vice-Admiralty in the Colonies, except so far as such rules may be inconsistent with the 24 and 25 Vict., c 104 or of the said Letters Patent.

4. The effect of those rules seems to me to have been to put an end to the operation in this Court of the Privy Council rules, except in the cases in which they were expressly kept alive, that is to say, suits in rem in which there is no appearance, and other matters to which the Procedure Code cannot be applied. The Code of 1859 has been superseded by others which do apply in most matters proprio vigore to the High Court.

5. The matters now brought before me, the effect of appearance, the mode of objecting to the jurisdiction, the mode of questioning the validity in law of a pleading, are all governed by a settled practice under the Procedure Code. The result is that, in my opinion, the defendant is not precluded by his appearance from questioning the jurisdiction of the Court, but may do so in his pleading; and that this application is not in accordance with the practice of the Court.

6. The case of the Champion ILR Cal. 66, before the Court of Appeal is not a direct authority upon the point now before me, for there were circumstances in that case which do not exist in this. But, so far as it goes, I think it supports the view I take. I have further made inquiries, and I find the practice actually followed hitherto has been in accordance with this view.

7. It is said that in the present case the defendant in appearing has followed the forms of the Privy Council Rules. If any mistake of form has been made, it cannot alter the substance of things or affect the procedure of the Court.

8. This application must be dismissed with costs.