

In the matter of Part Cargo ex Steamship " Antilla " and other	}	<i>Petitioners</i>
Steamships - - - - -		
Peder Melin & Co. - - - - -		

v.

H.M. Procurator-General - - - - -	-	<i>Respondent.</i>
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FROM

THE HIGH COURT OF JUSTICE, PROBATE, DIVORCE AND ADMIRALTY.
DIVISION (IN PRIZE).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL ON PETITION TO ADMIT APPEAL, DELIVERED THE
15TH OCTOBER, 1918.

Present at the Hearing :

LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
LORD JUSTICE PICKFORD.
SIR ARTHUR CHANNELL.

[*Delivered by* LORD SUMNER.]

In this case the late President condemned certain cargo on board of a number of vessels, of which the " Antilla " is the first. The appellants Peder Melin and Co. were claimants to a portion of the goods and they now appeal, or desire to appeal, to His Majesty in Council against the condemnation and also against an order, which was made by the learned President on the same occasion, dismissing them from the proceedings as claimants upon the ground that they had not complied with an order previously made against them for discovery. The form in which the learned President's order was finally drawn up stated, first, that the claimants, the now appellants, had refused to obey the order of the Court for discovery of documents, and that thereupon the claim of the said claimants was struck out, and then it recited that the President had further considered the evidence, and having heard Counsel for the Crown condemned the cargo in question.

The contention of the appellants is that under section 5 of the Naval Prize Act of 1864 an appeal lies to His Majesty in Council from that order as of right, as being a final decree, but, inasmuch as the President upon a separate application declined to make any order with regard to security for appeal and otherwise, the appellants ask that their Lordships should supply that deficiency. It is plain that the question whether this appeal is competent or not, in any shape or form, and on any ground, depends upon the answer to a question, which arises *in limine*, namely, whether or not there is here a final decree against the appellants, from which they can claim under section 5 to appeal as of right, because the President who made the order or decree, whichever it be, refused to grant any leave to appeal.

Their Lordships accordingly have taken this preliminary question now in order to save expense. There are two ways of looking at this question on behalf of the appellants. One is that the order that was made, and the proceedings which took place, ought to be regarded as one, so that, although the appellants' mouths were closed at the beginning, and they were dismissed from the proceedings because they did not give discovery, in substance their rights were finally determined at the end, and they were then entirely barred from any possibility of asserting their claim to the goods. It is said, if that be so, this may be regarded as a final decree, although in form it began by dismissing them, and then proceeded to dispose of the case technically in their absence. The other way of putting it is that the order, which in the more limited sense was made against them, that their claim be struck out, was itself a final decree within the meaning of section 5, because it finally disposed of their chance of being heard, and, therefore, of their chance of success.

Now, what the Board has to do is purely to construe a section in an Act of Parliament and to do so according to its language, neither liberally nor illiberally, but according to what it says, and the question of the rights of neutrals and public policy, which has been alluded to, really does not arise.

What, then, does the section mean? To begin with there is a clear distinction drawn between decrees and particularly final decrees, and other cases; that is to say, mere orders, or decrees which are not final, and unless this is a decree, and a final decree, then upon the construction of the section the appeal fails. Now, first, the finality is clearly something which is a property of the decree when made, and if it is not final when made, there is nothing in the section which enables it to be made final for the purposes of the Statute by the subsequent conduct of the party in disobeying it. Secondly, it is something which, being a final decree, determines the issue in the cause and adjudicates upon the rights of the claimants to the goods, which are the subject of the cause.

To interpret this section in such a way that the claimants could turn that which was in itself a mere order of procedure into a final decree by disregarding it would be construing it so as to defeat

the section and not to enforce it. As to the other point, it may be admitted that the matter is one very susceptible of argument, but their Lordships think that the true view of what passed is that there were two steps taken by the Court. This does not depend on the fact that the two steps were taken at a short interval or at a long interval of time, but on the nature of the steps taken. There was, first of all, the step taken by the Court of punitively striking out the claim, so that the claimants could no longer be heard, and then the subsequent step of considering the cause and adjudicating it upon the merits, and although it be the case that the effect of the adjudication, which was ultimately arrived at, was to bar the further chance of the claimants obtaining the goods, apart from the bar imposed by the fact that the appellants were silenced by being struck out of the case, their Lordships think upon the true view that they cannot be heard to question on appeal a final decree for condemnation, which, however it may affect their interests, was made after they had been validly dismissed from the proceedings and were no longer before the Court.

The result, therefore, is that their Lordships will humbly advise His Majesty that upon the preliminary point the appellants fail and that any appeal would be incompetent. The Petition will be dismissed with costs.

In the Privy Council.

IN THE MATTER OF PART CARGO EX STEAMSHIP
“ANTILLA” AND OTHER STEAMSHIPS.

PEDER MELIN & CO.

v.

H.M. PROCURATOR-GENERAL.

DELIVERED BY LORD SUMNER.

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