

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of George  
and another v. our Sovereign Lady the Queen, from  
the Vice-Admiralty Court of Sierra Leone; deli-  
vered on the 10th December, 1866.*

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Present :

SIR WILLIAM ERLE.

SIR JAMES W. COLVILE.

SIR EDWARD VAUGHAN WILLIAMS.

LORD JUSTICE CAIRNS.

SIR RICHARD T. KINDERSLEY.

THIS is an Appeal from a Decree of the Vice-Admiralty Court of Sierra Leone, made in a proceeding *in rem*, in respect of the seizure of some property, viz. a canoe, and two barrels of rum, and also in a proceeding in respect of penalties alleged to have been incurred for breaches of the Revenue laws. In the proceeding *in rem*, the Judgment was that the property seized was forfeited, and in the same decree the Court adjudged that the penalties had been incurred, and condemned Mr. George in the payment of those penalties. But although both those matters are disposed of in one and the same decree, their Lordships are of opinion that it is in effect two separate and distinct decrees, in two separate and distinct suits; in one, the liability of the party to penalties being the matter in dispute; in the other, the liability of the goods to be seized and condemned.

Now, in respect of the suit for the penalties, the Judge of the Court below, proceeding upon a regulation relating to claims to goods supposed to be forfeited, (as to which the party is not allowed to have his claim admitted unless he has given security for costs,) considered that that regulation extended to a proceeding in which the question was the liability to penalties, and upon that ground condemned Mr. George. But inasmuch as it is

contrary to the first principles of justice that a party should be liable to be condemned without having an opportunity of being heard (that being the effect of holding that it may be made a condition precedent that he shall not be heard until he has given security, which at times may be impossible); their Lordships at once recognize the validity of that as a ground of complaint against this decree.

If there had been an express enactment that a party should not be permitted to be heard until he had given security for costs, we should, of course, be bound to give effect to it; but no such clause in any Act of Parliament has been pointed out to us; their Lordships are therefore of opinion that upon that ground, so much of the decree as imposes penalties on Mr. George, and condemns him in the sum of £300, should be reversed. He had a right to be heard—his right was refused; in that respect the proceeding was contrary to law, and he had a good ground of Appeal.

The other portion of the decree is the Judgment relating to the goods. It is a decree in a proceeding *in rem*, in respect of goods, which is in its nature different from a decree in a suit for penalties due under the Revenue laws. The latter decree would be against a particular wrongdoer; but the proceeding *in rem* is a suit, in a manner, against all persons interested, and a Judgment obtained in such a suit is, if valid in itself, a Judgment against all the world.

Now, when goods are seized for a breach of the Revenue law, the party interested in disputing the validity of the seizure has, according to the regulations made in that respect, a right to come in and have the validity of that seizure tried in the proper Court. But his right to come in and have the validity of that seizure tried is limited by the rules and regulations of the Vice-Admiralty Courts abroad, by one of which it is made law, that "the claim and affidavit are to be prepared and given in as directed in derelict cases. But in compliance with the Act 6 Geo. IV. cap. 114, sec. 62, security must be given on behalf of the claimant, in a sum not exceeding £60 sterling, to answer the costs, before any claim can be received."

The Judge in the Court below held that the

claim of the present Appellant could not be received, because he could not give security for costs; and therefore, not having received his claim, the Court proceeded to give Judgment of condemnation against the goods.

The case has been argued before us with considerable ability upon all the points.

It has been contended that this regulation had ceased to be operative, because, as was supposed, the statute from which it emanated had been abolished. It is a regulation made by virtue of a statute, and, being in conformity with the powers conferred by that statute, it has the same authority as the statute itself; and if the statute had been repealed, the regulation would have ceased to have any operation.

But their Lordships are of opinion that the Appellant has failed to establish this proposition. The statute under which this regulation was made appears to us to be in force and operation; the regulation therefore was one which still bound the learned Judge, and it was his duty to act upon it.

It appears that at the proper time the claimant in the Court below (*i.e.* Mr. George, who desired to be a claimant) came forward by his proctor, and claimed to have a place as a suitor in Court, wherein he might dispute the validity of the seizure, and stop the proceedings for a condemnation; but, under the regulations above cited, it was objected that the claim could not be admitted unless security for costs was given. The question whether such security should be given was then gone into, and in the result the claim was not admitted, because security for costs could not be given.

Now we are all of opinion that at that stage of the proceedings the Judge in the Court below was warranted by the regulation in coming to the conclusion he did. The claim, then, was not admitted; and the claim not being admitted, the interference of Mr. George, as claimant in the Court below, was from that time, so far as related to the proceeding *in rem*, at an end; and the decree passed which has been mentioned. The effect of the refusal to admit his claim was to exclude him from being a party to the suit so far as related to the proceeding *in rem*.

It is upon that ground our decision of this appeal is to proceed. The only party to the proceeding appearing personally before the Court was, in point of law, not appearing before the Court at all, because there was a condition precedent to his appearance being effective, viz. that he should give security for costs, which he had not complied with. Although he was present in Court in one sense, by his proctor, yet in point of law he was not there at all; he was stopped from being there upon what we think was a good ground; and if that was a lawful stoppage, it was a ground for a decree against the party.

Mr. George, having been so stopped from being heard in the Court below, had a perfect right to appeal upon that ground; and he has appeared before us, and contended that it was not a good ground; but so far as that is concerned, we are of opinion that the judgment of the Court below was right, and that this contention on the part of Mr. George has failed.

As to the subsequent proceedings in the Court below, there has been considerable argument before us. It is said that the proceedings after Mr. George had been so excluded were either irregular, defective, or otherwise void; and much of the argument of Mr. Rainy has been upon the point as to the condemnation being within fourteen days of the return of the monition, the irregularity in the form of the monition, and other defects in point of form.

As to those objections, we dispose of them upon the ground that the suitor in the Court below could not be heard to argue or obtain judgment upon any of those grounds. We think Mr. George having been properly excluded in the proceedings in the Court below, has no right in respect of this appeal to take up any matter which could not be heard on his behalf against the judgment in the Court below.

We therefore do not entertain any of those objections, and must not be understood to have given any opinion upon their validity or non-validity. The Appeal is a matter between the parties, the Appellant and the Respondent; and our judgment is limited to the rights vested in the Appellant, and the rights vested in the Appellant are limited in the manner already described.



Another point has been pressed upon us—the hardship of the case upon the Appellant; but it is obvious that that could have no influence upon our decision.

In the enactment of the revenue laws for the prevention of smuggling, the Legislature may very well have intended that in a proceeding *in rem*, in which every one who has any interest is summoned to come forward and make his claim, the right of every person so to come forward should be subject to some degree of restriction. It may be very reasonable that there should be security for costs, because it might be, that, unless there was a power to require such security, the revenue could not be collected. But, whatever the reason may be, we must take the law as it stands, and we are clearly of opinion that the law as it stands authorized the Judge in the Court below to pronounce the judgment he did; that Mr. George, unless he gave security for the costs, ought to be excluded; and our judgment is that his claim not being admitted in the Court below, the objections made to the subsequent proceedings cannot be maintained on this appeal.

The result is that their Lordships will recommend to Her Majesty to dismiss the Appeal so far as regards the condemnation, that is, the judgment *in rem*, without prejudice, however, to any question in any other proceeding affecting the validity of such condemnation, as to which their Lordships, for the reasons already given, pronounce no opinion. And their Lordships will humbly advise Her Majesty to reverse that part of the decree which condemns Mr. George in the penalty of £300, with the costs of this Appeal, and further to remit the cause.

