

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Harvey and others v. The Owners of the Euxine (ship "Euxine") from the Vice-Admiralty Court at Malta: delivered 16th November, 1871.

Present :

SIR JAMES W. COLVILE.
THE JUDGE OF THE HIGH
COURT OF ADMIRALTY.
SIR JOSEPH NAPIER.
SIR MONTAGUE SMITH.

THIS is an appeal from the Vice-Admiralty Court at Malta, raising questions of practice in the Admiralty Courts. Their Lordships have no doubt at all as to the advice which it will be their duty to tender to Her Majesty upon this matter.

It appears that a suit was instituted in the Vice-Admiralty Court at Malta by an English ship, the "Clymping," against a French ship, the "Euxine," for a collision at sea somewhere near Alexandria. The suit was instituted in that court by a proctor who appeared in the usual form, and stated the nature of the suit and his title to appear in the usual manner. It has been contended that he was duly called upon to produce a proxy, and that having been so duly called upon he did not comply with the order, but produced an imperfect document, which cannot be taken in law as being a proxy, and therefore that the Judge of the court below was justified in taking the course that he did take, namely, of dismissing the suit altogether.

With regard to the practice of the court as to proxies, it is very clearly laid down by that experienced judge, Dr. Lushington, in the case of the "Whilmine." He says: "Now, looking to the ancient practice of the court, it is perfectly

“ clear that the rules with regard to appearances
 “ in the Court of Admiralty were originally the
 “ same as are now adopted in the Ecclesiastical
 “ courts. In the more modern practice of this
 “ court these rules, it is true, have been relaxed
 “ for the convenience of the practitioners, and for
 “ a period of probably not less than 200 years
 “ proctors, have been permitted to appear on
 “ behalf of parties suing without being called
 “ upon to exhibit any proxy, as is the indispen-
 “ sable custom in the Ecclesiastical Courts. The
 “ first question, then, which I must consider in
 “ the present instance is this: what is the duty
 “ and what the responsibility attaching upon a
 “ proctor who so appears without exhibiting a
 “ proxy? Upon general principle, I apprehend
 “ that the court is entitled to expect from such
 “ proctor when he does appear that he be duly
 “ authorised by some person having an interest
 “ in the cause in issue, or that he should have a
 “ justifiable and strong ground for believing that
 “ the individual for whom he appears has such an
 “ interest. I apprehend further, that at any
 “ period of the cause, and at any time before the
 “ case is dismissed out of court, the court has a
 “ right to call upon that proctor to state, not
 “ generally but specifically by name, the whole of
 “ the parties for whom he is authorised to appear.
 “ The authority of the court to make this demand
 “ upon the proctor is, I conceive, inherent in the
 “ jurisdiction of this court, in common with all
 “ other courts, and is absolutely essential to the
 “ due administration of justice for the purpose of
 “ preventing unauthorised litigation. If it were
 “ otherwise what would be the consequence in
 “ regard to the proceedings in this Court? The
 “ consequences would be that proctors might ap-
 “ pear for individuals who either were not in
 “ existence, or for persons who gave no authority,
 “ or who, assuming the names of others, might
 “ take the chance of a decree being made in their
 “ favour, without at any time being obnoxious to
 “ the consequences of an unsuccessful litigation.”

Now it is quite clear from the passage of the
 judgment which I have read, first, that the usual
 practice is for proctors in the Court of Admiralty to

proceed without the exhibition of any proxy, and, secondly, that when they are called upon for their proxy they satisfy the law by stating the names of the parties for whom they are authorised to appear. Read by the light of this judgment, there appears to be no difficulty in construing the rules and regulations of the Vice-Admiralty Court, which were made at a subsequent period, one of which rules is: "Although proxies are not usually exhibited in maritime suits, yet they may sometimes be required, in order to prevent proctors from proceeding in causes on instructions from parties not being themselves entitled to intervene, or not having a legal *personæ standi* to prosecute a cause."

In this case there is no question whatever that the appellants before the court, being the owners of the cargo on board the brig, and the master and crew who appear, as is usual, as to their personal effects, are the parties who are really interested and entitled to prosecute the cause in this case. The objection which has been taken, has been truly said to be one of the most technical description. The proxy is said not to have been duly signed and sealed, and it is said that there is no evidence of the handwriting of the witnesses who appear to have subscribed the instrument. The answer to that is that if there had been a strict order of the court (and none was made on this occasion) that they should produce their proxy, there would have been a *prima facie* compliance with that order by the production of those instruments, and those who sought to impugn their authenticity should have taken further steps in the matter.

It is also to be observed that great confusion appears in the pleadings of the court below, and in the protest, because this is an objection which should have been taken separately and at once, and should not have been mixed up with other matters, as it appears to have been in this protest. Even if the argument of the Counsel for the respondents could be sustained to its utmost extent, the duty of the Judge would have been no more than this, to have stayed proceedings until the doubt which they alleged with respect to the

authenticity of the document could have been properly solved.

Upon all grounds therefore,—upon the ground first of all that there were no circumstances of suspicion in the case which warranted the departure from the usual admitted practice and called for the production of a special proxy,—upon the ground that if there were such circumstances they were *primâ facie* fully complied with by the instruments which are before the court on this occasion, that the objection ought to have been taken at the earliest period, and not mixed up with the other proceedings, and that the utmost the court could have done in any case would have been to stay proceedings until further information could have been obtained,—their Lordships have no hesitation whatever in saying that it will be their duty humbly to advise Her Majesty to reverse the sentence of the Court below. Their Lordships think that looking to the confusion which prevailed in these pleadings, the fault of which does not lie entirely upon one party but must be shared by both, no order should be made as to the costs of the appeal.

The costs in the Court below will be costs in the cause.