

*Judgment of the Lords of the Judicial Committee of the Privy Council on a Motion for the Admission of an Appeal in the case of the "Florence Nightingale," from the High Court of Admiralty of England; delivered 16th July, 1862.*

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Present:

LORD CHELMSFORD.

LORD KINGSDOWN.

SIR JOHN TAYLOR COLERIDGE.

IT is desirable to adhere with some strictness to the rules which have been established for limiting the time of appealing upon the various matters brought before this Board, but their Lordships are always ready to grant an indulgent relaxation of them where justice appears to them to demand it, and they are not restrained either by statutory authority or by peremptory practice. If the time of appealing in cases from the Court of Admiralty is fixed by the statutes of the 24th Hen. VIII, c. 12, and the 25th Hen. VIII, c. 19, of course their Lordships have no discretion in the matter. But upon referring to those Statutes, they appear to be confined to causes cognizable in the Ecclesiastical Courts, or at all events not to extend to any causes in which an appeal did not at the time lie to the Pope. The 24th Hen. VIII relates to causes testamentary, causes of matrimony and divorces, rights of tithes, oblations, and obventions, and limits the final Appeal in these cases to fifteen days. The 3rd section of the 25th Hen. VIII, c. 19, prohibits Appeals to Rome in any causes or matters in any of the Courts within this realm, or within any of the King's dominions, of whatever nature, condition, or quality soever they be, and enacts that all manner of Appeals, of what nature or condition they be of,

or what cause or matter soever they concern, shall be made and had by the parties aggrieved, or having cause of appeal, after such manner, form, and condition as is limited for Appeals to be had and prosecuted within this realm, in causes of matrimony, tithes, oblations, and obventions by the preceding statute. It seems clear that, although the words of this section are very general, they must be confined by the context to Appeals which, in the words of the statute, "had been provoked or made, out of the realm, to the Bishop of Rome."

It is the more necessary that this matter should be understood, because a general impression seems to have prevailed that Appeals from the Admiralty Courts are governed by these statutes of Hen. VIII. This appears to have been the opinion of Lord Stowell, for in the case of the "Sally" (2 Rob. 229), that eminent Judge says:—

"With respect to time, it has never been the practice of this Court to construe the limitation of time for Appeals" (from the Vice-Admiralty Courts of the Colonies) "with the same strictness as would be applied to Appeals from the Courts of this country. It has been held that the statute of Hen. VIII does not apply to cases in the Plantations, but that it is left to the discretion of the Court to entertain an Appeal."

This language obviously implies that Lord Stowell thought that the statutes applied to Appeals from the Admiralty Court of this country. A careful examination of them has led their Lordships' minds to a different conclusion, and they are satisfied that the limitation of the time for appealing in these cases does not depend upon legislative enactment, but upon long-established practice, most probably derived, as to the prescribed limit of fifteen days, from the statutes themselves. That it is a mere rule of practice not incapable of bending to circumstances, appears, amongst other instances, from the case of the *Illeanoon* Pirates (6 Moore, 471), where leave was given to appeal against an interlocutory Decree of the Court of Admiralty, the Appeal not having been interposed in due time. Other cases might be adduced where, if a similar indulgence was not granted, no doubt appears to have been entertained that it was in the power of their Lordships to grant it if a proper case had

been made out. The case of the "Ulster" mentioned in the course of the argument is no authority either way. In that case the Appeal had been lodged within fifteen, but more than ten days from the date of the sentence. It was insisted that the rule of the civil law limiting the time of appealing to ten days was the one which applied to Admiralty cases, and all that was decided was that the Appeal having been interposed within fifteen, but more than ten days from the date of the Decree, it was not thereby invalid.

Their Lordships, therefore, entertain no doubt that they are not precluded either by the statutes referred to, or by any inflexible rule of practice from granting the indulgence prayed; and the only question to be determined is, whether a proper case has been made out for the exercise of their discretion. The grounds of the application are shortly these:—Cross-actions were brought by the owners of the "Mæander" and of the "Florence Nightingale" respectively, in respect of a collision between the two vessels. The Judge of the Admiralty pronounced a Decree that the "Mæander" was alone to blame, but that the act which caused the collision was that of the pilot who had charge of her; and he dismissed the owners in the cause brought against them, leaving each party to pay his own costs, but condemning the owners of the "Mæander" in the costs of the cross-action.

The owners of the "Mæander" were satisfied to abide by the Decree in all respects, and they supposed that the owners of the "Florence Nightingale" would also have acquiesced; but, contrary to their expectation, the owners of the "Florence Nightingale" lodged an Appeal, of which the owners of the "Mæander" were not informed until after the fifteen days from the time of the Decree had expired. If they had known of the Appeal of the opposite party, they would undoubtedly have presented their cross-Appeal. And it appears to their Lordships that acting, as the owners of the "Mæander" did, under a not unreasonable belief that the matter would rest with the Judgment of the Court of Admiralty, no laches can be justly imputed to them, and that the leave to appeal for which they petition ought to be granted.

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