

*Judgment of the Lords of the Judicial Committee of  
the Privy Council on the Appeal of Wilson and  
others v. our Sovereign Lady the Queen, from the  
Vice-Admiralty Court of Sierra Leone; delivered  
11th December, 1866.*

Present:

SIR JAMES W. COLVILLE.

SIR EDWARD VAUGHAN WILLIAMS.

LORD JUSTICE CAIRNS.

HON. SIR R. T. KINDERSLEY.

THEIR Lordships in this case have heard a number of questions argued at much greater length than either their importance or difficulty would have justified; but they have done so out of tenderness to the Appellants, lest any point deserving of notice should be left without argument.

With regard to one of the Appellants, Mr. Cole, it was attempted to obtain his right to appeal, on the ground that, although he had been absolved from penalties in the Court below, he had not been awarded the costs of the proceeding against him.

Their Lordships are of opinion that, with regard to the Appellant Cole, the Appeal is strictly and simply one for costs, under circumstances in which their Lordships have at all times laid down as a rule, that an Appeal for Costs would not be entertained.

With regard to the Wilsons, the question which they have raised is this,—that although the property which they claim to belong to them was returned, no damages were awarded to them for the seizure and detention of their property.

That question, again, has given rise to a number of other questions, which we have to dispose of.

In the first place, it was contended, on behalf of the Crown, that the Wilsons were limited in their argument by the nature of the Appeal asserted on

the face of the proceedings below ; the proceedings below stating that the Appeal asserted was merely an Appeal on the ground of costs.

It was argued also, on behalf of the Crown, that if that were not so, at all events, the citation which proceeded from this tribunal was a citation which indicated an Appeal on the subject of costs, and of costs alone.

Their Lordships, however, think that the Appeal having been asserted in the Court below, and proper security, according to the ordinance, having been given, it would not be right to limit the Appeal to the precise matter of appeal which appears to have been stated on the minutes of the proceedings below ; but that those who had asserted the Appeal, and had given security, are entitled to be heard upon every question which could properly be alleged before their Lordships, by way of appeal. And with regard to the citation, their Lordships are of opinion that the citation does nothing more than recite the decree which had been made in the Colony, and that it in no way limits any right of appeal, which, otherwise, the Appellant would have been entitled to.

The objection was next argued on behalf of the Respondents, that the Judge of the Vice-Admiralty Court of Sierra Leone having made the statement on the record, that there had been probable cause and sufficient ground for the seizure, the statute of the 16 and 17 of the Queen, cap. ciii. sect. 312, rendered that statement of the Judge a bar to any claim for damages, either in these or other proceedings.

Their Lordships, however, are of opinion that, assuming that statute to apply to the Colony of Sierra Leone (a point upon which their Lordships do not offer any opinion), the section contemplates an endorsement upon the record in some proceeding in which the verdict of a jury has been rendered, for the purpose of being used in other proceedings, and not, as in this case, in the proceeding itself.

It was then contended, on behalf of the Crown, that there could not have been in the Vice-Admiralty Court any jurisdiction to award damages to the Wilsons in this case.

Their Lordships, in the view they take of the

remainder of the case, do not think it necessary to do more than to take notice that this question has been argued before them, and to say that damages appear in other cases to have been awarded by a court similarly situated to the Vice-Admiralty Court of Sierra Leone, and their Lordships therefore do not entertain any opinion that there would have been a want of jurisdiction to award damages if it had been proper to do so.

The remaining question in the case, and the one which has occupied the greatest length of time in discussion, is the question of fact whether there was or was not probable cause to warrant the collector in seizing these goods.

Now, after looking at the minutes of the proceedings, their Lordships have considerable doubt whether the right to damages on the ground of the non-existence of probable cause was contended for on behalf of the Wilsons in the Court below; but here, again, they give the Appellants the benefit of the doubt, and assume that the point was made in their favour in that Court. But their Lordships propose to adhere to the rule which was laid down at this Board in the case of *Xenos v. Aldersley* (the *Evangelismos*), in the 12th volume of Moore's Reports, 359, with reference to the criterion to be applied in considering whether there has or has not been probable cause for seizure. It is true that was the case of the seizure of a ship upon an allegation of a damage sustained by a collision; but the principle which is there laid down is, in their Lordships' opinion, applicable to the case now before them. Their Lordships there said:—"We think there is no reason for distinguishing this case, or giving damages. Undoubtedly there may be cases in which there is either *mala fides* or that *crassa negligentia* which implies malice, which would justify a Court of Admiralty giving damages, as in an action brought at common law damages may be obtained. In the Court of Admiralty the proceedings are, however, more convenient, because in the action in which the main question is disposed of, damages may be awarded. The real question in that case following the principles laid down with regard to actions of this description, comes to this—is there, or is there not, reason to say that the action was so unwarrantably brought

or brought with so little colour or so little foundation, that it rather implies malice on the part of the Plaintiff, or that gross negligence which is equivalent to it?"

Now, applying this rule, and simply dealing with the evidence which is given by two of the witnesses of the Appellants themselves, the witness William Pappah, at page 31, and the witness Cauray Fingray, at page 32, their Lordships are of opinion that the evidence given by those witnesses discloses a state of facts which not only affords probable cause for the collector seizing the goods in this case, but which would in their Lordships' opinion have made it a dereliction of duty on the part of the collector if he had refrained from seizing the goods, until explanations were offered such as have been deemed satisfactory by the Court in this case.

Their Lordships, therefore, upon this simple ground, will recommend to Her Majesty to dismiss the present appeal, and to dismiss it with costs.