

Elarca S. A. of Monrovia, Liberia & Another  
v.  
Oilborne Shipping Co. Inc. of Liberia \*

COURT OF APPEAL.

COLIN-THOME, J., RODRIGO, J. AND TAMBIAH, J.

C.A. APPLICATIONS 1401—1462/78—H.C. COLOMBO (ADMIRALTY JURISDICTION)

—ACTION-IN-REM NO. 18 OF 1977.

FEBRUARY 20, 1979.

*Admiralty Courts—Jurisdiction vested in High Court—Notice of appeal from judgment of High Court rejected—Application to revise such order—Does right of appeal lie—History of Admiralty Court jurisdiction in Sri Lanka—Ceylon Courts of Admiralty Ordinance (Cap. 9)—Vice Admiralty Rules—Courts Ordinance (Cap. 6)—Administration of Justice Law, No. 44 of 1973, sections 3, 11, 23, 317 (1)—Civil Courts Procedure (Special Provisions) Law, No. 19 of 1977—Civil Procedure Code, as amended by Law No. 20 of 1977, section 754 (1).*

The petitioners who were added defendants in an action in rem filed in the High Court of Colombo in its Admiralty jurisdiction filed this application in revision in the Court of Appeal to set aside the order of the learned trial judge rejecting notices of appeal filed by them and for an order directing that such notices of appeal be accepted. The question that was argued before the Court of Appeal was whether an appeal lay from the judgment of the High Court in the exercise of its Admiralty jurisdiction.

It was submitted on behalf of the plaintiff-respondent, *inter alia*, that the Administration of Justice Law, No. 44 of 1973, when it came into operation, repealed the Ceylon Courts of Admiralty Ordinance (Cap. 9) which provided for the Supreme Court to be a Colonial Court of Admiralty, and for the District Court to have a limited Admiralty jurisdiction if appointed for this purpose by the Governor. This Ordinance also provided for an appeal to the Judicial Committee of the Privy Council. Section 23 of Law No. 44 of 1973 conferred such Admiralty jurisdiction on the High Courts established by such Law. It was submitted that although this Law provided for appeals in criminal and civil cases it made no provision for appeals in Admiralty cases. It was submitted therefore that a right of appeal *not being given expressly by the statute* it cannot be implied and it was the intention of this Law No. 44 of 1973 to make the judgment of the High Court in the exercise of its Admiralty jurisdiction final and conclusive and one from which no appeal lay.

Reliance was placed on behalf of the defendants-petitioners on section 317 (1) of Law No. 44 1973 which conferred a right of appeal from "any judgment pronounced by any original Court in any civil action, proceeding or matter" and it was submitted that these words were sufficient to constitute "express provision" within the meaning of the law, conferring a right of appeal; reliance was also placed on section 11 which gave a wide appellate jurisdiction to the Supreme Court. Chapter IV of the Administration of Justice Law which contained section 317 was repealed by the Civil Courts Procedure (Special Provisions) Law, No. 19 of 1977, and this Law came into operation on 29th November, 1977, while the judgment in this action in rem was dated 4th September, 1978. Section 754 (1) of the Civil Procedure Code which was brought into operation by Law No. 20 of 1977 which also came into operation on the same date as Law No. 19 of 1977 re-enacted the provisions of the repealed section 317 (1) of the Administration of Justice Law. The question that arose for determination therefore was whether section 754 (1) gave such a right of appeal from the judgment of the High Court in its Admiralty Jurisdiction in this case.

\* Affirmed by S.C.—see (1978-79) 1 Sri L. R. 55.

**Held**

There is no right of appeal from the judgment of the High Court in the exercise of its Admiralty jurisdiction under section 754 (1) of the Civil Procedure Code. Admiralty proceedings do not fall within the scheme envisaged by the Civil Procedure Code and the judgment from which an appeal may be preferred in terms of section 754 (1) is the judgment which is pronounced by a trial judge at the end of a trial of an action under section 184 (1) of the Civil Procedure Code.

**History of Admiralty Jurisdiction in Sri Lanka discussed.**

Per **TAMBIAH, J.**

"I am fortified in the view I have taken in that the legislature has now stepped in and supplied the omission and has passed the Judicature Act, No. 2 of 1978, which was certified on 2nd November, 1978. Section 13 (1) enacts that Admiralty jurisdiction is hereby vested in the High Court and shall ordinarily be exercised by a Judge of the High Court sitting in the judicial zone of Colombo; section 13 (3) (a) declares that any person who is dissatisfied with any final judgment given in the exercise of Admiralty jurisdiction may prefer an appeal to the Court of Appeal against such judgment for an error in fact or in law. The Act however is not in operation even as at date."

**Cases referred to**

- (1) *Application re Appeal in P.C. Hambantota 4342*, (1920) 22 N.L.R. 137.
- (2) *Motor Trawler Meegamuwa v. Thilagaratnam*, (1972) 75 N.L.R. 448.
- (3) *Tennekoon v. Duraisamy*, (1958) 59 N.L.R. 481; (1958) A.C. 354; (1958) 2 All E.R. 479; (1958) 2 W.L.R. 994.
- (4) *In re Wijesinghe*, (1913) 16 N.L.R. 312.
- (5) *Tillekewardene v. Obeysekera*, (1931) 33 N.L.R. 193.
- (6) *Shanmugam v. Commissioner for Registration of Indian & Pakistani Residents*, (1962) 64 N.L.R. 29; (1962) A.C. 515; (1962) All E.R. 609; (1962) 3 W.L.R. 200.

APPLICATIONS to revise an order of the High Court, Colombo.

*V. S. A. Pullenayagam*, with *M. I. Mohamed* and *Mrs. S. Gnanakaran*, for the added defendants-petitioners.

*S. J. Kadirgamar, Q.C.*, with *H. L. de Silva* and *C. Chakradaran*, for the plaintiff-respondent.

*Cur. adv. vult.*

March 30, 1979.

**TAMBIAH, J.**

It is necessary to state as briefly as possible the facts which led to the present application for the revision of an order dated 19.10.78, of the High Court of Colombo, in the exercise of its Admiralty Jurisdiction.

The 1st added defendant-petitioner (hereinafter called *Elarca*), a Company duly incorporated in Liberia, is the owner of the defendant vessel "*Trefalcon Logic*". The said vessel was mortgaged by *Elarca* to the 2nd added defendant-petitioner (hereinafter called *Trefalcon*) on the 1st preferred ship mortgage on January 20, 1975, for a sum of Rs. 2,500,000 U.S. dollars. The said 1st preferred ship mortgage was duly assigned on 14th July, 1975, by *Trefalcon* to the plaintiff-respondent (hereinafter called *Oilborne*).

Oilborne commenced an Action-in-rem, No. 18 of 1977, in the High Court of Colombo (Admiralty Jurisdiction) to enforce the assignment of the said 1st preferred ship mortgage and the said vessel was arrested on a warrant issued by the said Court on 17th November, 1977.

On 6th December, 1977, one Leonard Gruber, purporting to act on behalf of Elarca and Trefalcon, through Messrs Abrahams & De Alwis, attorneys-at-law, entered appearances for the said vessel and also for Elarca and Trefalcon. On March 2, 1978, the said Leonard Gruber, purporting to act on behalf of Oilborne, filed letters of authority addressed to Mr. M. Kanagasunderam, attorney-at-law, and moved Court to withdraw the action instituted by Oilborne.

In pursuance of an order by Court for the parties to file pleadings, Elarca filed answer on 8th March, 1978, and prayed, *inter alia*, for a dismissal of Oilborne's action, for a release of the said vessel and for grant of possession thereof, for loss of earnings and damages.

Trefalcon in its answer dated 8th March, 1978, stated, *inter alia*, that Oilborne had on 7.11.77 assigned the Mortgage Bond to it and that since that date, Trefalcon is the mortgagee under the 1st preferred ship mortgage; the prayer was for judgment in a sum of Rs. 2,500,000 U.S. dollars with interest and costs and for an order directing the appraisal and sale of the vessel and for damages.

It would appear therefore that Leonard Gruber made his appearance in Court in a three fold capacity; purporting to speak for Oilborne he moved for the dismissal of the action with costs; purporting to speak for Elarca, he wanted the claim on the mortgage rejected and possession of the vessel; purporting to speak for Trefalcon, he wanted judgment with costs on the mortgage and the vessel appraised and sold.

On 2nd June, 1978, Oilborne filed motion and moved, *inter alia*, that the answers of Elarca and Trefalcon be struck out in as much as Leonard Gruber did not in law and in fact represent Elarca or Trefalcon.

After a lengthy trial, judgment was entered on 4th September, 1978, in favour of Oilborne as prayed for with costs, and the counter claims of Elarca and Trefalcon were dismissed with costs. The learned trial Judge arrived at the finding that Trefalcon was not entitled to participate in the proceedings and that Leonard Gruber was not entitled to appear for Trefalcon

and made order striking out the answer of Trefalcon. The learned trial Judge also arrived at the finding that Leonard Gruber had no right to represent Elarca and made order striking out the answer of Elarca.

On 21st September, 1978, Elarca and Trefalcon, through their attorneys-at-law, filed separate notices of appeal, against the judgment of the learned trial Judge, in the High Court of Colombo (Admiralty Jurisdiction). The notices of appeal were accepted by the High Court Judge and he made order to forward the record to the Court of Appeal in due course. On 4th October, 1978, Oilborne filed a motion to have the said notices of appeal rejected on the grounds, *inter alia*, that there is no provision in law for appealing against the judgment and order delivered by the High Court in the exercise of its Admiralty Jurisdiction; that the notices of appeal are in fact and in law not the acts and deeds of Elarca and Trefalcon and that Leonard Gruber had no authority in law and in fact to instruct or authorise any attorneys-at-law to act for and in any other manner participate in these proceedings, for and on behalf of Elarca and Trefalcon. After inquiry, the learned High Court Judge, by his order dated 19th October, 1978, rejected the notices of appeal on the ground that there is no provision for an appeal from the decision of the High Court, acting in its Admiralty Jurisdiction, and that, in addition the notices of appeal filed are unauthorised and not the acts and deeds of Elarca and Trefalcon in view of the finding of the learned trial Judge that Leonard Gruber had no status to act for them. The learned trial Judge stated that his earlier order accepting the notices of appeal was made *per incuriam*.

The present application before us, is by way of revision, to have the order of the learned trial Judge, rejecting the notices of appeal, set aside and to make order directing the High Court to accept the notices of appeal that have been filed.

Learned counsel for Elarca and Trefalcon submitted to us that however frivolous and vexatious the appeal is, the learned High Court Judge has no right to reject the notices of appeal, on the ground that no appeal lay; it is for the Court of Appeal to decide whether an appeal lies to it or not. He relied on the case of *Application re Appeal in P.C., Hambantota 4342 (1)*.

Both learned counsel, for Elarca and Trefalcon, as well as for Oilborne, addressed us at length on the question whether an appeal lay or not from the judgment of the High Court in the exercise of its Admiralty Jurisdiction. It therefore seems to me that it is unnecessary to decide the question whether the High

Court of Colombo (Admiralty Jurisdiction) has or has not, the right to reject the notices of appeal that were filed. I therefore proceed to determine the question, whether an appeal lay from the judgment of the High Court in the exercise of its Admiralty Jurisdiction.

It is necessary in order to determine this question, to trace out the history of the legislation relating to the establishment of Ceylon Courts of Admiralty. The Vice-Admiralty Court was set up by the Charter of 1801. The Charter of 1833 vested Admiralty Jurisdiction in the Supreme Court. By section 4 it was enacted that the Supreme Court shall have exclusive jurisdiction over all matters, civil and criminal, and the rights of the Courts of the Vice-Admiralty and Piracy Commission were secured. By the Colonial Courts of Admiralty Act, 1890, the legislature of a British Colony was given the power to create Colonial Courts of Admiralty and such Courts were to have jurisdiction similar to that of the High Court in England and also to confer on subordinate courts, a limited admiralty jurisdiction (section 3). This Act, by section 17, abolished existing Vice-Admiralty Courts in the British possessions. In pursuance of this power, our legislature enacted the Courts of Admiralty Ordinance, No. 2 of 1891, which declared the Supreme Court as a Colonial Court of Admiralty (section 2). Power was given to the Governor, if he deemed it expedient, to appoint any District Court to have Admiralty Jurisdiction (s. 3), and the District Court has received a limited admiralty jurisdiction (s. 4). An appeal to the Ceylon Court of Admiralty, i.e., the Supreme Court, from the judgment or order of the District Court was given (s. 21). By section 6 of the Colonial Courts of Admiralty Act, 1890, an appeal was given from the judgment of the Court of Admiralty, i.e., the Supreme Court, to the Judicial Committee of the Privy Council.

The rules governing procedure in prize matters are governed by Prize Court Rules of 1939. The Rules applicable in Admiralty matters are the rules which were framed under section 23 of the Ceylon (Courts of Admiralty) Ordinance (Subsidiary Legislation, Vol. 1. Ch. 9). The procedure to be adopted in appeals is laid down in Rules 150 to 155 of the Vice-Admiralty Rules.

It is also relevant to trace out the history of appeals to the Privy Council from judgments of the Supreme Court. By section 52 of the Charter of Justice of 1833, the parties to any civil suit or action pending in the Supreme Court had a right of appeal to the Privy Council from any final judgment, decree or

sentence, or against any rule or order made in such civil suit or action, and having the effect of a final or definite sentence. The Courts Ordinance, No. 1 of 1889, revoked the Charter of 1833 but section 41 retained the provisions of the Charter governing appeals to the Privy Council. The Civil Procedure Code of 1889 (Ch. LXIII, sections 779 to 789) also contained provisions for appeals to the Privy Council by parties to a civil suit or action against any final judgment, decree or sentence or order and prescribed the procedure to be followed in bringing a judgment in review before the Collective Court prior to obtaining leave to appeal to the Privy Council. Section 41 of the Courts Ordinance and sections 779-791 of the Civil Procedure Code were repealed by the Appeals (Privy Council) Ordinance, No. 31 of 1909.

The Courts Ordinance, No. 1 of 1889, declared in section 4, "The Courts for the ordinary administration of justice, civil and criminal, within this colony shall continue as heretofore to be as follows: (1) The Supreme Court, (2) District Courts, (3) Courts of Requests, (4) Police Courts". The proviso to section 3 declared "nothing herein contained shall be held to affect the jurisdiction vested in, and exercised by, any court or courts under or by virtue of the provisions of any statute of the United Kingdom or of any enactment or enactments now in force, except in so far as any such provisions shall be by this Ordinance expressly repealed or modified; or the jurisdiction of any Court which may be holden within Ceylon, under or in pursuance of any statute in that case made and provided for the trial of offences committed on the seas, or within the jurisdiction of the Admiralty, or under any Commission issued or to be issued by the Lord High Admiral of England or the Commissioners for executing his office; or the jurisdiction of Rural Courts, or of any Municipal Magistrate, or of any special officer or tribunal legally constituted for any special purpose or to try any special case or class of cases". It would seem therefore that the proviso was dealing with what were not considered to be ordinary types of jurisdiction.

From a consideration of the legislative history of the Ceylon Courts of Admiralty and of appeals to the Privy Council from judgments of the Supreme Court and of the provisions of section 3 of the Courts Ordinance which set out the judicial structure, it seems to me that the Admiralty Courts were exercising a special jurisdiction and admiralty proceedings had a special procedure of its own; though in the year 1889, the Courts Ordinance and the Civil Procedure Code made provisions for appeals to the Privy Council from the judgments of the Supreme Court, a right of

appeal from the judgment of the Supreme Court in the exercise of its Admiralty Jurisdiction was expressly granted by section 6 of the Colonial Courts of Admiralty Act of 1890.

The Court of Appeal Act, No. 44 of 1971, which came into operation on 26th October, 1971, abolished the right of appeal to Her Majesty in Council, from any judgment or order of the Supreme Court or from any other Court or Tribunal in Ceylon. Section 8 which sets out the jurisdiction of the Appellate Court made no provision for appeals from the Colonial Court of Admiralty.

In the case of *Motor Trawler "Meegamuwa" v. Thilagaratnam (2)*, the defendant sought leave to appeal to the Court of Appeal from a judgment dated 23rd November, 1971, delivered by the Colonial Court of Admiralty of Ceylon. It was held that section 8 (1) of the Court of Appeal Act, No. 44 of 1971, enabled a person aggrieved, to apply for leave to appeal, from any judgment of the Supreme Court given in the exercise of its appellate jurisdiction; the judgment sought to be appealed from was given by the Colonial Court of Admiralty in the exercise of its original and not appellate jurisdiction. The application was refused.

The Administration of Justice Law, No. 44 of 1973, came into operation on 14th November, 1973. Section 3 repealed the Ceylon Courts of Admiralty Ordinance; by section 23 (1) admiralty jurisdiction was conferred on the High Court; the admiralty jurisdiction of the High Court is to be exercised in accordance with the Vice-Admiralty Rules which were kept alive by section 3 (2). Section 54 defined Admiralty Jurisdiction—"Admiralty jurisdiction' means, until otherwise provided for by written law, the admiralty jurisdiction for the time being of the High Court of England".

The appellate jurisdiction of the Supreme Court was set out in section 11 of the Administration of Justice Law, No. 44 of 1973,—“The Supreme Court shall be the only superior court of record and shall have, subject to the provisions of this law, jurisdiction for the correction of all errors in fact or in law committed by any subordinate court,.....”. “Subordinate Court” in section 54 has been defined to mean any High Court, District Court or Magistrate’s Court. The right of appeal in criminal cases was given by section 316 and in civil cases by section 317, and is in the following terms—

“Section 317 (1) : Any person who shall be dissatisfied with any judgment pronounced by any original court in any civil action, proceeding or matter to which he is a party

may prefer an appeal to the Supreme Court against such judgment for any error in law or in fact”.

Section 356 defines an original court—“Original Court’ means a High Court, District Court or Magistrate’s Court”.

Learned counsel for the 1st and 2nd added defendants-petitioners submitted that section 11 of the Administration of Justice Law, No. 44 of 1973, gave a wide appellate jurisdiction to the Supreme Court to correct all errors in fact or in law, committed by any subordinate Court; in terms of section 54, the High Court is a subordinate Court; there is a right of appeal available from the judgment of the High Court in the exercise of its admiralty jurisdiction under section 317 (1); he laid stress on the words “any judgment”, “any original Court”, and “any civil action, proceeding or matter”; relying on the definition of “original Court” and the decision in the case reported in (2), he contended that the High Court in the exercise of its admiralty jurisdiction is an original Court; reliance was placed by him on a passage in the Privy Council judgment in the case of *Tennekoon v. Duraisamy* (3) at 492,—“It was argued before the Supreme Court and their Lordships that a civil suit or action means a proceeding in which one party sues for or claims something from another. No doubt the words are properly applicable to such cases and they are the cases to which the words are most frequently applied”—it was never the intention of the Administration of Justice Law, No. 44 of 1973, he submitted, when it conferred admiralty jurisdiction on the High Court that its judgment was to be considered sacrosanct and free from review by the Supreme Court.

Learned counsel for the plaintiff-respondent on the other hand submitted that the Court of Appeal Act, No. 44 of 1971, by section 18 abolished all appeals to Her Majesty in Council; the Administration of Justice Law, No. 44 of 1973, by section 3 repealed the Ceylon Courts of Admiralty Ordinance and by section 23 conferred Admiralty Jurisdiction on the High Court; by section 316 and 317, Law No. 44 of 1973, provided for appeals in criminal cases and civil cases but made no provision for appeals in admiralty cases; he relied on the observations made by Perera, J. in the case of *In re Wijesinghe* (4) and by Garvin, J. in *Tillekewardene v. Obeysekera* (5) at 196, that a right of appeal must be expressly given by Statute and cannot be implied; it was the intention of the Administration of Justice Law, No. 44 of 1973, to make the judgment of the High Court in the exercise of its admiralty jurisdiction final and conclusive from which no appeal lay.



To this learned counsel for the 1st and 2nd added defendants-petitioners countered that the right of appeal arises directly from the language used in section 317 (1)—“ Any judgment pronounced by any original court in any civil action, proceeding or matter”. He relied on the observation made by Lord Radcliff in the Privy Council case of *Shanmugam v. Commissioner for Registration of Indian & Pakistani Residents* (6) at 337,—“ To be ‘ express provision ’ with regard to something it is not necessary that that thing should specially mentioned ; it is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom ”.

Chapter IV of the Administration of Justice Law, No. 44 of 1973, which contains section 317 was repealed by the Civil Courts Procedure (Special Provisions) Law, No. 19 of 1977, which by section 3 declared that the provisions of Chapter IV shall cease to regulate the right of, and procedure in, appeals to the Supreme Court. Law No. 19 of 1977 came into operation on 29th November, 1977. The repealed section 317 (1) of the Administration of Justice Law, No. 44 of 1973, was re-enacted in section 754 (1) of the Civil Procedure Code (Amendment) Law, No. 20 of 1977, which also came into operation on 29th November, 1977.

“ Section 754 (1) : Any person who shall be dissatisfied with any judgment pronounced by any original Court in any civil action, proceeding or matter to which he is a party may prefer an appeal to the Supreme Court against such judgment for any error in fact or in law ”.

The judgment in action in rem No. 18 of 1977 is dated the 4th September, 1978. The question we now have to decide is whether there is a right of appeal from the judgment of the High Court (Admiralty Jurisdiction) under section 754 (1) of the Civil Procedure Code (Amendment) Law, No. 20 of 1977. The question has to be determined according to the law in its existing form ; a discussion as to whether section 317 (1) of the Administration of Justice Law, No. 44 of 1973, granted a right of appeal from the judgment of the High Court (Admiralty Jurisdiction) therefore becomes purely academic.

“ Judgment ” has been defined to mean any judgment or order having the effect of a final judgment made by any Civil Court (s. 754 (5).) “ Civil Court ” means a Court in which civil actions may be brought (s. 5).

The Civil Procedure Code regulates the procedure to be adopted by a person who wants to submit his dispute to a civil court for adjudication. Every action, whether of regular or summary procedure, commences with the filing of pleadings (s. 39 & s. 373). Every action whether the proceedings be regular or summary is an action between plaintiffs and defendants or petitioners and respondents by name (s. 40 (b) & (c) ; s. 374 (b) & (c) ). A party need not in every case appear in person ; he can act by his recognised agent or proctor (s. 24). The appointment of a Proctor must be in writing and filed in Court (s. 27). Plaint having been filed, the next step in a civil proceeding is for the issue of summons on the defendant requiring him to appear and answer on a day specified (s. 55). Services of summons shall be made on the defendant in person and if personal service is impossible, there is provision for substituted service (s. 60). The next stage is the filing of answer by the defendant and of replication, if any, by the plaintiff (Chapters IX & X). The Court then fixes a date for trial and gives notice of such date to the parties (s. 80). Chapter XIX regulates the procedure to be followed at the trial of the action. After both parties have closed their cases, the judgment is pronounced in open Court either at once or on a day of which notice must be given to the parties or their proctors at the termination of the trial (s. 184 (1) ). The judgment is followed by a formal decree (s. 188) and the decree holder then proceeds to execution under Chapter XXII of the Code. The judgment, therefore, from which, a dissatisfied person may prefer an appeal in terms of section 754 (1), is the judgment which is pronounced by the trial Judge at the end of trial of an action under section 184 (1), which action commenced with the filing of pleadings and went through the process of pre-trial and trial proceedings set out in the Civil Procedure Code.

It would seem from a perusal of the Vice-Admiralty Rules, that admiralty proceedings do not fall within the scheme envisaged by the Civil Procedure Code. "Court" has been defined to mean any Vice-Admiralty Court" now existing which shall hereafter be established in any Possession (Rule 1, Vice-Admiralty Rules.) Action shall be of two kinds, actions in rem and actions in personam (Rule 2). The Form of the title of an action in rem, as set out in Appendix No. 1 indicates that the action is between a named person as plaintiff and a named ship or vessel as defendant. The title of action in personam (Appendix No. 2) shows that the contest is between the plaintiff and defendant by name. An admiralty action whether in rem or in personam is commenced by a writ of summons (Rule 5). Accord-

ing to the form of writ of summons in rem set out in Appendix No. 4, the writ is directed not to any defendant by name but to the owners and all others interested in the ship. The writ of summons to be used in actions in personam is directed to a defendant by name (Appendix No. 5). In an action in rem the manner of service of the writ of summons is set out in Rule 10—e.g., if the property to be arrested is a ship, freight or cargo on board, by affixing the writ on the main mast or the single mast or to some conspicuous part of the ship. In an action in personam, service is effected by showing it to the defendant and leaving a copy of the writ with him (Rule 12). Even before the service of the writ of summons, the plaintiff may apply for the arrest of the property against which the action has been brought. The arrest is effected by having the warrant served in the same manner as the service of a writ of summons (Rules 29 to 35). The Rules also provide for the prevention of the arrest of property by filing a notice for Caveat Warrant and undertaking to give bail in such action in a sum not exceeding an amount stated in the notice or to pay such sum into Court (Rule 159) and for obtaining the release of the property under arrest (Rules 47 to 53). Rule 55 states that any action shall be heard without pleadings unless the Judge shall otherwise order.

The Vice-Admiralty Rules are comprehensive and embrace such matters, *inter alia*, as form, content and amendment of pleading (Rules 56 to 61) ; discovery by means of interrogatories, (Rules 62 & 63) or by means of the discovery of documents (Rules 64 to 67) ; admission of documents or facts (Rules 68 & 69) ; the filing of motions in the course of proceedings (Rules 74 to 78) ; how evidence is to be taken (Rules 82 to 86) ; the administering of oaths (Rules 87 & 86) ; the form of affidavits and their reception as evidence (Rules 94 & 95) ; examination of witnesses before trial (Rules 96 to 102) ; the hearing and trial of the action (Rules 108 to 117) ; the ordering and taxation of costs (Rules 126 to 132) ; the appraisalment and sale of the property under arrest (Rules 138 to 147) and execution of decree (Rule 174). It would seem that none of the provisions of the Civil Procedure Code are made applicable to admiralty proceedings in the High Court (Admiralty Jurisdiction). In an admiralty case in the District Court, however, section 9 and section 11 of the Ceylon Courts of Admiralty Ordinance declare that the case is heard and determined in like manner as a civil case and that decrees of the District Court in an admiralty case are to have the same effect as the decrees of a District Court in its ordinary civil jurisdiction.

I am of the view that there is no right of appeal from the judgment of the High Court in the exercise of its Admiralty Jurisdiction under section 754 (1) of the Civil Procedure Code. I am fortified in the view I have taken, in that, the legislature has now stepped in and supplied the omission and has passed the Judicature Act, No. 2 of 1978, which was certified on 2nd November, 1978. Section 13 (1) enacts that admiralty jurisdiction is hereby vested in the High Court and shall ordinarily be exercised by a Judge of the High Court sitting in the judicial zone of Colombo ; section 13 (3) (a) declares that any person who is dissatisfied with any final judgment given in the exercise of admiralty jurisdiction may prefer as appeal to the Court of Appeal against such judgment for an error in fact or in law. The Act however is not in operation even as at date.

The application is rejected. The plaintiff-respondent will be entitled to costs.

**COLIN-THOME, J.**—I agree.

**RODRIGO, J.**—I agree.

*Application rejected.*

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