

BRITISH COLUMBIA ADMIRALTY DISTRICT

1958
 Oct. 7
 Oct. 23

BETWEEN:

IRONCO PRODUCTS LIMITED PLAINTIFF;

AND

A/S MOTOR TRAMP DEFENDANT.

Shipping—Practice—Admiralty Rule 200—Motion to set aside order renewing writ and extending time for service dismissed.

Held: That Admiralty Rule 200 justifies an extension of time for serving a writ.

2. That the Court where it has power should disregard technical objections tending to prevent litigation of reasonable claims.

MOTION to set aside an order renewing a writ and extending time for service of same.

The motion was heard before the Honourable Mr. Justice Sidney Smith, District Judge in Admiralty for the British Columbia Admiralty District, at Vancouver.

J. R. Cunningham for the motion.

Douglas McK. Brown contra.

The facts and questions of law raised are stated in the reasons for judgment.

SIDNEY SMITH D.J.A. now (October 23, 1958) delivered the following judgment:

In this action, which is *in personam*, I made an *ex parte* order on August 11 last renewing the writ and extending the time for its service in Denmark, and of notice thereof to September 30, 1958. The notice was duly served and the defendant moved to set aside my order. The main ground for this motion was that I could not make such an order, under my own ruling in *Donald H. Bain Ltd. v. The Ship Martin Bakke*¹.

I do not doubt that my decision in that case was right on the facts, but on further consideration I think I should modify the generality of what I said there on the power to

¹(1955) Ex. C.R. 241.

extend. On looking up my notes of that case, I find that Admiralty Rule 200, which gives a Judge general power to enlarge time, even after its prescribed expiration, was not cited.

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As I pointed out in that case, there is a difference between the language in that of a Supreme Court writ and of a writ in this Court, the latter not referring to a possible extension of time for service. But on the whole I do not think that this is material here, since Rule 200 expressly gives power to enlarge a time fixed by "forms". In England extension is governed by R.S.C. Order 64, rule 7, which is the same as the corresponding Supreme Court rule in this province. In *Re Jones*¹ it was held that this rule justified extension of time for serving a writ in a common law action after expiry of the time; and that decision was applied in Admiralty in *The Espanolets*².

Sidney Smith
 D.J.A.

As pointed out in the latter case, although the power of extension given is unlimited, Judges have held that no extension should be given where a limitation on the action had run in the meantime, unless a special statute gave express power to extend after the period. In the *Martin Bakke* case, a limitation had run, which I think justified my refusal to extend there, to say nothing of other material considerations arising from the action being one *in rem*. So far as my reasoning was based on the absence of power to extend, it must be modified in view of Rule 200.

It is not suggested here that any statute of limitations has run, but affidavits have been filed to show that I should have exercised my discretion against extension because the plaintiff's solicitors had not shown due diligence in serving the writ, and it was said the delay was not adequately explained. I think possibly greater diligence could have been shown, but that there was a *bona fide* misunderstanding between the solicitors as to the authority of those negotiating for the "ship" interests, and that there was

¹ (1877) 25 W.R. 303.

² (1920) P. 223.

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reasonable excuse for the delay in service. I am decidedly of opinion that the Court, where it has power, should lean against technical objections tending to prevent the litigation of reasonable claims.

Sidney Smith
D.J.A.

I therefore hold that my former order should stand. However as my language in the *Martin Bakke* case gave grounds for the motion, its dismissal will be without costs.

Order accordingly.
