
BRITISH COLUMBIA ADMIRALTY DISTRICT.

1904
Jan. 22.

THE VERMONT STEAMSHIP COMPANY.

AGAINST

THE SHIP "ABBY PALMER."

Practice—Service of process—Time.

In the service of its process, as well as in its sittings and in the public hours of its registry, the court will be guided by the civic time in use in the town where the court sits, unless it is made to appear that such time is in fact incorrect.

AT the trial of this salvage case, on the 22nd January, 1904, before Martin, L.J., assisted by Commander John F. Parry, R.N., H. M. S. *Egèria*, and Commander Sandeman, R.N., H. M. S. *Grafton*, as nautical assessors for the plaintiffs,

E. V. Bodwell, K.C. (with him *J. H. Lawson*) proposed to read evidence of certain witnesses taken *de bene esse*; and he read an affidavit proving that they were *ex jurisdictione*.

W. J. Taylor, K.C., for the ship objected as there was no notice of this application.

E. V. Bodwell, K.C.: The order for it, dated November 30th, 1903, stands and has never been objected to. By that order evidence taken under it may be used at the trial on an affidavit of the solicitor stating his belief that the witnesses are absent from the province.

W. J. Taylor, K.C.: But even supposing the order has been made regularly it has not been properly served. It provides that the plaintiff's witnesses should be examined at 12 o'clock, noon, but the defendants had no notice of this till after that hour; at that time no appearance had been entered for the defendants.

E. V. Bodwell, K.C.: Notice of application was served before order on the master of the *Abby Palmer* and upon Messrs. Eberts & Taylor. The appointment was duly obtained and was served on defendants' master and Messrs. Eberts & Taylor before 12, though I was not aware of the service having been effected, and so on attending at 12 I took an adjournment till 2.30 as a matter of precaution, and though we could not serve the master personally we did serve the solicitors as they now appear to be, though I admit no solicitor was then on the record and did not appear on the examination.

W. J. Taylor, K.C.: The service upon Eberts & Taylor before appearance is an absolute nullity, and they are not now and never were the solicitors upon the record. As regards service on our captain, that was too late. I read affidavit of our master, Johnson, and of Captain Cox to prove this.

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 Argument
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 THE  
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 Co.  
 v.  
 THE SHIP  
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 Reasons  
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 Judgment.  
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*E. V. Bodwell, K.C.* urged that this issue of fact as to the service be now disposed of, and asked that the various witnesses on each side be examined on the point. He offered for examination in support of his contention one Charles McDougall, who was examined and cross-examined, as were likewise, on behalf of the defendants, their master (Johnson) and Captain Cox.

After hearing these witnesses,

*Per Curiam:* On the evidence it is found as a fact that the service was effected before twelve o'clock. McDougall is positive that he heard the City Hall clock strike the hour after he served Johnson, and though Johnson (whose evidence is not of a satisfactory nature) and Cox say that by their watches this was not done till a few minutes after twelve, yet neither of them states that his watch agrees with the civic time, and therefore there is no real contradiction of McDougall's statement. In such case, as between the time kept by private individuals and that kept by the civic corporation, I shall in the absence of evidence to the contrary presume the latter to be correct; for it is that which generally regulates public and private affairs within the corporate limits; and is and has long been in practice accepted by this court as correct in the holding of its sittings, and in keeping open its registry. If on any particular day the civic time were shown as a fact to be incorrect, that would be another matter, but there is no such suggestion as regards the day in question. Therefore let the evidence be read.

*Objection overruled*

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