
1955

Mar. 21

Mar. 28

BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN:

PACIFIC LIME CO. LTD. .....PLAINTIFF;

AND

VANCOUVER TUG BOAT CO. LTD. ....DEFENDANT.

Shipping—Practice—Amendment of writ and statement of claim to correct misnomer of plaintiff allowed—No costs to either party.

1955

PACIFIC LIME CO. LTD. v. VANCOUVER TUG BOAT CO. LTD.

In a writ and statement of claim plaintiff was described as Pacific Coast Lime Company Limited whereas its correct name is Pacific Lime Company Limited there being no Pacific Coast Lime Company Limited. Plaintiff now moves to amend both documents by striking out the word "Coast".

Held: That the amendment should be allowed the running of the Statute of Limitations not being a circumstance that should prevent the correction of a misnomer of parties.

MOTION to amend a writ and statement of claim.

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

G. F. McMaster for the motion.

J. I. Bird contra.

SIDNEY SMITH, D.J.A. now (March 28, 1955) delivered the following judgment:

The plaintiff, whose right name is Pacific Lime Company Limited, by a solicitor's slip issued a writ and delivered a statement of claim showing its name as Pacific Coast Lime Company Limited. It now applies to amend both documents by striking out the word Coast. There is no actual company having the name used. The defendant opposes the change, because the action is governed by the *Water Carriage of Goods Act,* under which an action must be brought within one year. The writ was issued within the year, but the period has now expired and the defendant contends that no amendment can now be allowed. Apart from limitations the writ is amendable under Admiralty Rule 9 and the Statement of Claim under Rule 73.

At conclusion of argument I had little doubt how the matter should go; but out of deference to the argument and authorities presented, thought it well to reserve for further consideration. The defendant cited a number of cases, several of which showed that, after the statutory period had run, amendment should not be allowed if such amendment would, for the first time, permit an action to be maintained that would otherwise be unmaintainable. But none of these authorities cover an amendment like the present and I think *W. Hill & Son* v. *Tannerhill* (1), in the English Court of

(1) [1944] K.B. 472.

1955

PACIFIC LIME CO. LTD. v. VANCOUVER TUG BOAT CO. LTD.

Sidney Smith D.J.A.

Appeal is ample authority for allowing this amendment. There, as here, the plaintiff's name was wrongly given and a statute of limitations had run.

This is really a case of misnomer, and in another appeal case *Alexander Mountain & Co.* v. *Rumere Ltd.* (1), the Court approved an illuminating article which shows that the defendant here could have derived no advantage from the plaintiff's name being wrongly given, even if the plaintiff had taken no step to correct it. This article also shows that no distinction can be drawn between a corporate plaintiff and an individual as regards misnomer. I find the question came before our own Courts in *Russell* v. *Diplock-Wright Lumber Company* (2), a case very like this. There the Court of Appeal held that the running of the statute was not a circumstance that should stand in the way of merely a correction of a misnomer of parties. I therefore allow the amendment.

Now as to costs: No doubt the plaintiff ought to pay for its mistakes if they increase the other side's expense. But here the defendant only appeared to raise objections which I have held to be unfounded. This of course counsel had every right to do for it is not competent for him to throw away any point his client may have. On the other hand no expense would have been caused to defendant had it simply acquiesced in the application. I therefore give no costs to either party.

Order accordingly.