

BRITISH COLUMBIA ADMIRALTY DISTRICT

1955  
May 18  
May 27

BETWEEN:

DONALD H. BAIN LIMITED ..... PLAINTIFF;

AND

THE SHIP *MARTIN BAKKE* ..... DEFENDANT.

*Shipping—Practice—No jurisdiction to extend time for service of writ.*

*Held:* That the Court has no jurisdiction to order an extension of time to effect service of a writ beyond time provided by the rules.

APPLICATION for order extending time to serve a writ.

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

*W. D. C. Tuck* for the plaintiff.

SIDNEY SMITH D.J.A. now (May 27, 1955) delivered the following judgment:

The plaintiff applies for an extension of time for serving its writ. The action concerns damage to cargo discharged from the defendant, a Norwegian ship, on June 22, 1953. The writ which is *in rem* was issued on May 28, 1954. The Bill of Lading required action to be brought within one year.

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Have I any power to renew the writ? Admiralty Rule No. 17 says:

The writ of summons, whether *in rem* or *in personam*, may be served by the plaintiff or his agent within *twelve months* from the date thereof, and shall, after service, be filed with an affidavit of such service. (Italics are in the Rule).

The Rules are silent as to any extension of time for service. Rule 215 says that in cases not provided for by the Admiralty Court Rules the Exchequer Court Rules shall govern. But the Exchequer Court Rules also are silent on the subject of extending time for service of writs. One must go to section 35 of the Exchequer Court Act which states that the practice of the Court shall

unless it is otherwise provided for by this Act, or by general rules made in pursuance of this Act, be regulated by the practice and procedure in similar suits, actions and matters in her Majesty's High Court of Justice in England on the 1st day of January, 1928.

In England admiralty jurisdiction is exercised by a branch of the High Court and the same rules govern extension of time for service of writs as govern ordinary civil actions. The appropriate rule is Order viii rule 1. Under it the Judge, if satisfied that reasonable efforts have been made to serve the defendant, may order that the writ be renewed for six months, and so from time to time during the currency of the renewed writ. The time may be extended in England even after the year for obtaining an extension has already expired. *Re Jones* (1), a case dealing with an ordinary civil action which was cited in *The Espanoleto* (2). In the latter case Hill J. allowed renewal of a writ *in rem* even after a statute of limitations had run. This ruling, however, turned on section 8 of the Maritime Conventions Act, 1911, which in express terms allowed an extension of time where there had been no reasonable opportunity within the time limit of arresting the defendant vessel. This section is now substantially copied in section 655 of the Canada Shipping Act, R.S.C. 1952, but the decision does not help me because the extension clause applies only to claims arising out of collisions which is not the present case. There is no general section containing any such saving clause.

Is the plaintiff entitled to have the English practice applied? This cannot be so if the Admiralty Rules furnish

(1) (1877) 25 W.R. 303.

(2) [1920] P. 223.

any guide. I think here they do. Rule 17 distinctly says within what time a writ may be served and in the absence of any qualification that seems to me comprehensive. But there is an even stronger indication of this. Forms 5 and 6 which are authorized by Rule 5, and are forms of writs *in rem* and *in personam* respectively, both include an endorsement as follows:

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This writ may be served within 12 months from the date there inclusive of the day of such date and *not afterwards*. (My italics).

These forms must be considered statutory; and in view of this express language I do not see how I can invoke any inconsistent English rules. It is significant to contrast the language used in the general form of Writ of Summons used in the Supreme Court of British Columbia (R.S.C. App. A, Form 1) to wit:

N.B. This writ is to be served within *twelve calendar months* from the date thereof, or, if renewed, within *twelve calendar months* from the date of the last renewal, including the day of such date, and not afterwards. (My italics).

I must hold that I have no power to extend the time in the absence of any Canadian authority to the contrary. Counsel could refer me to none.

I should probably have to reach the same conclusion on the further ground that the Writ of Summons was improperly issued in the first place in that this is a writ *in rem* issued against a ship which was not "within the district or division" of this Registry when the writ was issued. This would appear to contravene section 20(1)(a) of the Admiralty Act R.S.C. 1952, Ch. 1. It is true Hill J. held in *The Espanoleto* (*supra*) that a writ *in rem* can be issued even though the *res* was not within the jurisdiction of the arrest; but that ruling is rendered inapplicable here by our legislation which has no parallel in England.

I regret the less my decision because the plaintiff is not without its remedy. The plaintiff commenced in the Supreme Court a personal action against the owners of the defendant ship, service was effected in Norway, appearance entered and pleadings exchanged, so that the issues involved are on a fair way to trial.

I might add, without deciding, that even if I had power in this matter I would have to consider whether it should be exercised in view of the fact that the ship was again in this

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jurisdiction six months after the discharge of the damaged cargo and no attempt was made to arrest her here, or elsewhere. It is true that solicitors at that time had not been instructed by the plaintiff but it would seem the plaintiff, seeking the special remedies of Admiralty, should be active in its own interests.

The application is dismissed.

*Judgment accordingly.*