

*6 The Palermo



Positive/Neutral Judicial Consideration

Court

Court of Appeal

Judgment Date

3 December 1883

Report Citation

(1883) 9 P.D. 6



Court of Appeal

Butt, J.

1883 Dec. 3

Practice—Discovery—Depositions made before Receiver of Wreck.

Depositions of the master and crew of a British ship, the *R.*, in regard to a collision had been taken by the Receiver of Wreck and the Board of Trade refused to give copies of such depositions to the owners of the *P.* in an action arising out of the collision between these vessels. Copies had however been obtained for the purpose of the action by the solicitors to the owners of the *R.*, whose master and crew had made the depositions. On motion by the owners of the *P.* for leave to inspect and take copies of the copies of the depositions in the possession of the solicitors of the owners of the *R.* :—

Held, that these copies were privileged.

THIS was a motion by the defendants, in an action of damage brought by the owners of the *Rivoli* against the owners of the *Palermo*, that they should be allowed to inspect and take copies of the copies of certain depositions made by the master and crew of the British steamship *Rivoli* (the property of the plaintiffs in this action) relating to the circumstances of the collision the *7 subject of the action. These depositions had been taken under the Merchant Shipping Act, 1854, s. 432.

The Board of Trade had refused to supply copies of these depositions to the defendants on the ground that none had been made by the master and crew of their steamer, the *Palermo*, a foreign vessel, and one therefore, under 39 & 40 Vict. c. 80, s. 32, the crew of which was not bound to make depositions. The owners of the *Palermo* therefore sought discovery of the copies which had been disclosed in the plaintiff's answers to the interrogatories, and which were stated to be in the possession of the solicitors, for the purpose of advising the owners, and for the purposes of this action and for their own use therein.

Nov. 27. *Stubbs*, in support of the motion. These copies are not privileged. The rule is that to make a document privileged it must come into existence for the purpose of the action, and these depositions were not made for this object. [He referred to *Bustros v. White*.¹]

Phillimore, contra. These copies were obtained by and made at the instance of the plaintiffs' solicitors for the purpose of the action, and are therefore privileged. [He referred to *The Southwark Water Co. v. Quick*²; *Nordon v. Defries*.³]

BUTT, J.

In this case I shall not order discovery of these documents. In the first place I am not at all sure that the Board of Trade would not be right in refusing to supply copies of such documents as these depositions. I do not know their exact nature, but I know that there are some statements taken by officers of the Board of Trade for statistical purposes, and I think it undesirable that masters should be examined for these purposes, and then that what they have disclosed should be shewn to any one who desires to see it. I am not therefore disposed to go out of my way for the purpose of giving publicity to these documents. Secondly, I think that the doctrine of disclosure has gone quite far enough. Here discovery is sought of copies of certain depositions, and these were obtained for the purposes *8 of this action, and as the phrase is, "to form part of the brief." Therefore I think that they are privileged, and I shall not inquire for what purpose the original depositions were taken, since it is the copies of which discovery is sought, and which were obtained for the purposes I have stated. The costs must be costs in the cause.

Dec. 3. The defendants appealed, and the appeal was heard before Brett, M.R., and Baggallay and Bowen, L.JJ., who without calling on counsel for the respondents, and after hearing *Hall, Q.C.*, for the appellants, affirmed the judgment of Butt, J., without delivering a judgment at length.

Representation

Solicitors for plaintiffs: T. Cooper & Co.

Solicitors for defendants: Stokes, Saunders & Stokes .

Appeal dismissed. (E. S. R.)

Footnotes

- 1 *1 Q. B. D. 423 .*
- 2 *3 Q. B. D. 315 .*
- 3 *8 Q. B. D. 508 .*

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