BRITISH COLUMBIA ADMIRALTY DISTRICT

EVANS, COLEMAN & EVANS, LTD., ET AL ..... } PLAINTIFF; 1924 May 13.

AND

THE *ROMAN PRINCE*

Practice—Amendment of judgment after entered—Error—Formal judgment not representing judge's judgment.

In the course of the trial herein, leave was granted to plaintiff to add the E.C.W. Co. as co-plaintiff, with its consent. When judgment was handed down, the brief note of the judge only gave a short style of cause, as is usual, and in settling the formal decree the name of the added party was omitted. Plaintiff now moves to rectify this slip and error, by amending the judgment accordingly, which was opposed, it being contended that by failing to formally amend and by taking out and entering the formal judgment, and proceeding to assess the damages, plaintiff had abandoned the benefit of this order.

Held, that abandonment being a question of intention, in view of all circumstances of this case the court would not be justified in concluding that plaintiff had elected to abandon the order obtained and accepted after strong opposition; that, moreover, as the judgment now stands, it is not the judgment intended to be delivered, the style of cause in the judgment should be amended to show its true state.

MOTION to amend a formal judgment after it had been entered by the Registrar.

May 13, 1924.

Motion heard before the Honourable Mr. Justice Martin at Vancouver.

E. P. Davis & Co. for motion.

Griffin, Montgomery & Smith contra.

The points of law involved and the facts are stated in the reasons for judgment.

MARTIN L.J.A., May 13, 1924, delivered judgment.

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This is a motion to amend the judgment herein after it has been duly entered by adding the name of the Evans Coleman Wharf Company, Limited to the style of cause as a party plaintiff. The fact is that during the course of the trial a motion was made by plaintiff to amend the proceedings by adding the wharf company as a plaintiff with its consent, and after a lengthy argument the amendment was allowed on the 13th July last, as clearly appears by my notes and by the registrar's record. No terms were imposed upon the plaintiff other than it was to pay such costs as I might decide in my discretion would be just in the circumstances, as to which many authorities were cited; the plaintiff accepted this position and I reserved judgment after argument thereupon and the case proceeded and was decided by me upon the proper assumption that the wharf company was a party plaintiff. In the brief note of my judgment which I handed down on the 27th November, 1923, in advance of my reasons for judgment, I used, as ordinarily and informally in such case, an abbreviated style of cause omitting the added plaintiff, and later when the formal order was drawn up by some strange oversight or misapprehension of the said amending order of the 13th of July last, the name of the added plaintiff was omitted. It is now sought to rectify this slip and error by amending the judgment so that it shall contain the names of both plaintiffs. In opposition to the motion it is objected that by failing to formally amend the proceedings pursuant to the order which it is conceded was made, and by taking out and entering the formal judgment, with only the original plaintiff named therein, and by proceeding thereunder to assess the damages before the registrar the plaintiff has evidenced its election to abandon the said amending order and therefore the present motion should not be granted. In answer to this objection, the plaintiff's counsel says that he had no intention whatever of abandoning the order which he accepted at the trial and that the error he fell into was occasioned by an erroneous note in his brief made at the trial that the whole question of amendment was reserved and not only the costs thereof; that he was confirmed in his error by misapprehending my said advance note of judgment; and that the proceedings before the registrar

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were simply to ascertain the amount of the damages and had no reference to the liability of any party therefor, which was a question for the court and could not be referred, and hence no prejudice to the defendant has been occasioned by the said slip or error.

In all the unusual circumstances I would not be justified, I think, in coming to the conclusion that there has been an election by plaintiff to abandon the order it obtained and accepted after strong opposition; abandonment is always a question of intention and after the reasonable explanation given by counsel for the omission of the name in the judgment and the prior failure to actually make the amendment ordered at the trial, I see no good reason for refusing to amend the style of cause in the judgment to show its true state, because as it now stands it does not represent the judgment I intended to deliver in that one of the parties to it has been excluded from the proceedings after I ordered that it should be included, hence in a very important particular, viz., as to the parties before it, the judgment of the court is misrepresented upon its own records. Such being the position of the matter there can be no question about my jurisdiction to make the judgment conform to the true position of affairs in which it was pronounced, which I consequently order to be done, and leave is also given, as prayed, to make such other amendments in the prior proceedings as may be necessary.

The costs of and occasioned by this motion shall be costs to the defendant and set off against those due to the plaintiffs.

In connection with my observations during the argument as to the wide and absolute nature of the powers given by our Admiralty Rules 29-32 over the interests of "parties," I deem it desirable to refer to my judgment of the 8th inst., in this court, in *Wrangell* v. *The Steel Scientist*, wherein the decision of the Privy Council in *Dominion Trust Co.* v. *New York Life Insce. Co.* (1), is considered, and it fortifies me in the view I have taken of the effect of the sweeping language employed in the rules under which I made the amendment.

Judgment accordingly.

(1) [1918] 3 W.W.R. 850; [1919] A.C. 254.