

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Royal Mail Steam Packet Company v. Braham, from the Supreme Court of Judicature; Jamaica, delivered ~~1877~~ 16th March, 1877.

Present :

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE only question in this appeal is, whether the service of a Writ of Summons, issued by the Supreme Court of Jamaica against the Royal Mail Steam Packet Company, which was made on the superintendent of its business in Jamaica, is good service upon the Company, under the Colonial Act regulating the procedure of the Court. It is a point of considerable practical importance.

The Appellant Company was incorporated by Letters Patent of the Queen for the purpose of providing steam vessels, and of employing them upon such stations as might, from time to time, be contracted for by the proper authorities, for the transmission of mails to and from Great Britain, the West Indies, North and South America, and such other foreign parts as the public service might require. By the terms of the Letters Patent the meetings of the members of the company were to take place in London or Middlesex, and the Directors had power to appoint agents, officers, and servants of the Company "as well in the United Kingdom as abroad."

The principal offices of the Company are in the City of London, and its domicile may be regarded as being in England.

Its business consists in carrying mails, passengers, and goods, in its steam vessels. One of the stations of the Company is Kingston in the Island of Jamaica, where the business of receiving and forwarding mails, passengers, and goods, between Jamaica and places out of that island, is carried on by a Superintendent of the Company appointed by the Directors.

At the time of the issuing of the Writ, Mr. Cooper, formerly a Captain in the Royal Navy, was such Superintendent, and the service of the Writ was made upon him.

A Judge's order allowing such service had been previously obtained. An application made by the Company to rescind it, and to set aside the service of the Writ, was, by another order, dismissed. The present Appeal is against these orders.

The action was brought to recover damages for the loss of goods alleged to have been delivered by the Respondent to the Company in Jamaica to be carried for hire to Southampton in England. The contract, therefore, must be regarded, for the present purpose, as made in Jamaica.

The question turns upon the construction of the 19th section of "The Supreme Court Procedure Law No. 41 of 1872." This section is one of three relating to the service of writs "in any action against a person residing out of Jamaica," viz., the 18th, 19th, and 20th.

The 18th and 19th sections provide for substituted service on an agent of the Defendant; the 18th enacting that "where the Defendant has in Jamaica an agent authorised to bring actions for the Defendant," service upon such agent shall be equivalent to service upon the Defendant.

The 19th section provides for the case where the Defendant has no such agent as is mentioned in section 18, and is as follows:—

"Section 19. In any action against a person residing out of Jamaica, it shall be lawful for the Court or a Judge, upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, or in respect of a breach of contract made within the jurisdiction, and that such person carries on in Jamaica any plantation, cattlepen, trade, or

business, and that he has no known agent in Jamaica on whom service can be effected under the last preceding section, and that the action is one which, in the opinion of the Court or Judge, may properly proceed, under this section, to order that service of the writ and of all subsequent proceedings in the action, may be made on any servant or agent in Jamaica engaged in carrying on for such person such plantation, cattle-pen, trade, or business, and in such manner and at such place (if the Court or Judge think fit to fix any place) as to such Court or Judge seems fit. The Court or Judge may direct such advertisements (if any) to be made in any newspaper as the Court or Judge may think fit concerning such order, or such service, or any subsequent proceedings in the action. Service under this section shall be equivalent in all respects to service upon the Defendant, and the provisions of section 17 shall apply to the service of a writ of summons under this section. It shall not be compulsory upon a Plaintiff to proceed under this section in any case, but he may, if he think fit, proceed instead under section 20 of this law."

Section 20, thus referred to, prescribes the manner of personal service upon a person residing out of Jamaica.

It was contended for the Appellants that the enactment in the 19th section applied only to natural persons; but their Lordships see no reason thus to limit its operation. "Person," when used in a legal sense, is an apt word to describe a Corporation as well as a natural person. Nothing in the context, nor in the object of the enactment in question, indicates an intention to limit its application to the latter. The purpose was to enable those who entered into contracts in Jamaica with persons residing out of the island, but carrying on business by means of agents there, to sue them on such contracts in the Supreme Court of the Colony.

It is obvious that this power is as necessary and convenient in the case of Corporations as in that of natural persons.

It was argued that the words "residing out of Jamaica" indicated an intention to confine the provision to the latter; but the word "residing" is no more inapplicable to a Corporation than "domicile," which is frequently used with regard to the supposed local habitation of corporate bodies.

The learned Counsel for the Appellants strongly relied on a decision of the Court of Common Pleas (*Ingate and another, v. Lloyd Austriaco*, 4 C.B., N.S., 704), which held that the 19th section of "The English Common Law Procedure Act,

1852," enabling a person "residing out of the jurisdiction of the Courts, and not being a British subject," to be personally served, does not apply to foreign Corporations carrying on their business abroad.

Whatever may be the authority of this case upon the construction of the English Procedure Act, it ought not, in their Lordships' view, to govern their decision in construing the 19th section of the Jamaica Procedure Law. It is to be observed that the 19th section of the English Act is analogous to, but by no means identical with, the 20th section of the Jamaica Procedure Law, and relates to personal and not to substituted service.

The 18th and 19th sections of the Colonial law, providing for substituted service on the agent of the Defendant, are not found in the English Act. Their provisions are very analogous to those contained in the 9th section of the Irish Common Law Procedure Act (13 and 14 Vict., cap. 18). This section of the Irish Act was considered by the English Court of Exchequer Chamber in the case of *Sheehy v. The Professional Life Assurance Company* (3 C. B. N. S., 597). In that case an English Corporation, carrying on the business of life assurance, and having its domicile in England, was the Defendant; and the Judges forming the Court were of opinion that substituted service on an agent in Dublin, employed by the Company to obtain life assurances there, was good.

Their Lordships think that this decision strongly supports the view they are disposed to take of the proper construction of the Jamaica Procedure Law.

The case of *Newby v. Colt's Patent Fire Arms Company* (L.R. 7, Q.B., 293) was also relied on by the Counsel for the Respondent. That was the case of an American Corporation having its head office and principal business in America, but also carrying on business in England. The ratio decidendi appears to have been that the Corporation had a domicile in both countries, and the service on the manager and head officer in England was held to be good, not as substituted, but as normal service. That case, therefore, is not strictly relevant to the present.

The Respondents' Counsel contended that "person" in the section in question must be inter-

preted to include a Corporation by virtue of an Interpretation Act passed in the Colony, having for its object to shorten the language used in the Acts of the Legislature (18th Vict., c. 31). They referred to the following words in section 6: "And words importing the masculine gender shall be deemed and taken to include females; and the singular shall be taken to include the plural, and the plural the singular; and to include bodies politic, corporate, and collegiate, aggregate or sole, ecclesiastical and lay; as well as individuals, unless the contrary is expressly provided." It was contended that the word "person" must be implied before the words "to include bodies politic," and it was suggested that the omission of it was due to accident or oversight. Whether this suggestion is correct or not, it would seem that person or some equivalent word must be implied and read into the enactment to make sense of it. ~~But be this as it may, it is not necessary, in their Lordships' view, to resort to this clause to support the construction they are disposed to put on the word "person" in the Procedure Law.~~

It was further objected for the Appellants that the Company does not carry on any trade or business in Jamaica within the meaning of section 19 of the Procedure Law. No doubt the Company's superintendent in the Island deposes in terms in his affidavit that the Appellants do not carry on any business in Jamaica; but this is clearly an inaccurate statement. The true facts appear to be fairly stated in the Appellants' case, in the following passage:—

"The Appellants do not carry passengers or goods from one part to another of the Island of Jamaica; they do not carry on any trade or business in Jamaica, otherwise than by the receiving and carriage of the mails, and of passengers and goods between Kingston in Jamaica and other places out of Jamaica."

Now what is thus stated to be transacted in Jamaica is precisely the business, and the only kind of business, which the Appellants under their Charter can properly carry on anywhere. It is in all its branches carried on in Jamaica by the Superintendent of the Company, who is necessarily entrusted with the power of local management, and of making contracts for the conveyance of passengers and goods. The assertion in Mr. Cooper's

affidavit "that he is simply a Superintendent to carry out the orders and directions of the Corporation's office in London," can be true only in a limited sense. He is, of course, subject to the orders and control of the Directors of the Company, as subordinate agents in all such cases must be, but his being so does not tend in the least degree to negative the fact that the Company is carrying on its business by means of his agency, in Jamaica, and their Lordships have no difficulty in affirming that it is so carrying it on.

The case on this point is analogous to that which existed in the action of *Sheehy v. The Professional Life Assurance Company*, already referred to, where the English Assurance Company was held to carry on business in Dublin by employing an agent there to obtain insurances for them.

For these reasons their Lordships think the Orders appealed from are correct; and they will humbly advise Her Majesty to affirm them, and to dismiss this Appeal with costs.