

MACMAHON, J., held that when a person is absent for seven years without being heard from by those with whom he would naturally communicate were he alive, the presumption is raised that he is dead. Regard, however, must always be had to the circumstances under which the person absented himself, and as to whether he would probably communicate his whereabouts to his relatives. Roderick had committed a criminal offence and left Canada under a cloud, and that would render it improbable that he would let his whereabouts be known. And slight evidence will rebut the presumption of death after the seven years have elapsed. There was uncontradicted evidence that Roderick was in Chicago in 1897, and the seven years presumption has been effectually rebutted. See *Providential Assurance Co. v. Edmond*, 12 App. Cas. at pp. 512-3; *Watson v. England*, 14 Sim. 23; *Bowden v. Henderson*, 2 Sm. & G. 360.

Action dismissed with costs.

JUNE 5TH, 1903.

DIVISIONAL COURT.

MATTHEWS v. CITY OF HAMILTON.

*Nuisance—Municipal Corporation—Sewer—Discharge of Hot Water into Bay—Effect upon Ice—Vessel Moored in Bay—Injury to—Damages—Right of Owner of Vessel to Maintain Action.*

Appeal by defendants from judgment of County Court of Wentworth, awarding plaintiffs \$200 damages and costs, for injuries caused to a certain steamer, "Acacia," the property of plaintiffs, by reason of alleged negligence of defendants.

F. MacKelcan, K.C., for defendants.

E. H. Ambrose, Hamilton, for plaintiff.

THE COURT (STREET, J., BRITTON, J.) held that defendants have the right to discharge water from their sewers into Burlington bay, provided they do not interfere with the rights of persons lawfully using the waters of the bay. The plaintiffs were lawfully using these waters in mooring their steamboat at the wharf during the winter months. The evidence establishes damage to plaintiffs caused by the discharge from defendants' sewer into the bay of hot water, by the effect of which the ice forming about plaintiffs' vessel was affected, and the safety of the vessel's mooring was interfered with. The discharge of the hot water into the bay was, under the circumstances, a public nuisance, and the plaintiffs, having received