

The plaintiffs applied for a commission to take the evidence of one Smith and of two of the plaintiffs who reside in Vancouver, and of another who resides in Seattle—at Vancouver.

The application was resisted as far as the evidence of the plaintiffs is concerned by the defendants, on the ground that they could properly instruct counsel in Vancouver to cross-examine the plaintiffs and that for the proper cross-examination of the plaintiffs, both the defendants Wilson and Schabel, ought to be present.

Coyne, for plaintiff.

W. G. Thurston, K.C., for defendant.

MR. HOLMESTED (30th October, 1913):—Having regard to the nature of the case and the fact that it must inevitably turn on the measure of credibility which the Court may give to the evidence of the plaintiffs and defendants respectively, it seems to me of first importance and in the interest of justice that all parties should be present and give their evidence in open Court, although as the learned Master-in-Chambers has observed, it is almost of right that a commission should issue, yet it is not absolutely so. That there is a discretion to grant or refuse it is undeniable, and this appears to me to be a case in which justice will be best served by refusing it, as far as the plaintiffs' evidence is concerned.

With regard to Smith, the commission may issue as proposed to take his evidence.

J. Grayson Smith, for the plaintiffs, appellants.

W. G. Thurston, K.C., for the defendants, respondents.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B. (11th November, 1913):—After much consideration and with some doubt I am of the opinion that under all the circumstances of the case the learned Registrar's order ought to be affirmed.

Appeal dismissed, costs of appeal to defendants in any event.