

The Western Metropolis

The Western Metropolis

SooperKanoon Citation : sooperkanoon.com/82021

Court : US Supreme Court

Decided On : 1870

Appeal No. : 79 U.S. 389

Appellant : The Western Metropolis

Judgement :

The Western Metropolis - 79 U.S. 389 (1870)

U.S. Supreme Court The Western Metropolis, 79 U.S. 12 Wall. 389 389 (1870)

The Western Metropolis

79 U.S. (12 Wall.) 389

ON MOTION

SYLLABUS

Where it appeared by affidavits filed by the appellant, who was claimant below in a collision case, that it was probable that two witnesses for the libellant received, before testifying, a promise from him for the payment of a sum of money in the event that the case should be decided in his favor, and that the appellant ascertained the fact after the appeal, the court ordered a commission, under the 12th rule, to take the testimony of such witnesses relative to said agreement.

John Low, Jr., had libeled the steamer *Western Metropolis* in the District Court at New York for damages sustained by a collision between that steamer and the schooner *Triumph*, owned by the libellant.

The district and circuit courts decreed in his favor, and the owner of the steamer appealed to this Court.

Mr. Hubley Ashton, counsel of the appellant, now filed an affidavit of that party stating that since the taking and perfecting of the appeal, he had learned that two of the witnesses for the schooner in the district court, the master and the mate of that vessel, had received from the libellant, John Low, Jr., before giving their testimony, an agreement for the payment of a sum of money on the contingency and in the event that the case should be decided in favor of the libellant and he should receive the damages claimed.

On this affidavit, a motion was made on behalf of the appellant that a commission be issued under the 12th rule of this Court, [[Footnote 1](#)] to take the testimony of the master and mate of the *Triumph* as to the alleged agreement.

The application, it was contended, was brought by the affidavit of the appellant within the rule laid down in the case of *The Mabey*. [[Footnote 2](#)]

On the hearing of the motion, Mr. E. C. Benedict for the

Page 79 U. S. 390

appellee, filed counteraffidavits of Low and the witnesses, denying that the agreement referred to was given for the purpose of influencing the testimony of the witnesses, but merely for the purpose of securing their attendance and compensating them for the time and money expended in attending to give their evidence.

At a subsequent day, THE CHIEF JUSTICE announced the order of the Court

Granting the motion.

[[Footnote 1](#)]

This rule declares that

"In all cases where further proof is ordered by the court, the depositions which shall be taken shall be by a commission, to be issued from this Court, or from any circuit court of the United States."

[[Footnote 2](#)]

[77 U. S. 10](#) Wall. 419.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com