

BRITISH COLUMBIA ADMIRALTY DISTRICT

1918

Dec. 16.

Argument.

THE PACIFIC GREAT EASTERN } PLAINTIFF;
RAILWAY COMPANY..... }

VS.

THE CLINTON..... DEFENDANT.

Shipping and seamen—Ship wrongfully seized by crew—Redelivery to owner—Security.

Held: That where a ship has been wrongfully seized by her crew the Court will order the marshal to deliver possession to it to the owner upon giving security.

MOTION for writ of possession to restore possession of the *Clinton*, to its owners the plaintiff.

December 16th, 1918.

Motion heard before the Honourable Mr. Justice Martin, L. J. A., at Vancouver.

E. C. Mayers, for plaintiff: This is a cause of possession. The plaintiff's tug "*Clinton*," which has been wrongfully taken possession of by her crew on a dispute concerning wages, was arrested by the marshal on December 13th instant, and I now move that she be released from arrest and that a writ of possession do issue to restore possession to her owner, the plaintiff company, upon giving such security as the Court may order. I rely on the authority of the Quebec case of *The Haidee* (1), which supports such an application,

(1) [1860] 2 Stuart 25, at p. 30.

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not only as between owners, but "at the instance of the real owner against a mere wrong-doer," though I have not found any record of any similar application since that date. No one appears to oppose the motion, but I am authorized to state that it has been consented to by the opposing solicitors that this motion be turned into one for judgment.

MARTIN, L. J. A. (December 16th, 1918) delivered judgment.

The case cited is a sufficient authority for the application, and the remedy sought is an appropriate one to meet the unusual circumstances. See also Williams & Bruce's Adm. Prac., 3rd Ed., 827, 289, 291 (m), 611, 619; Roscoe's Adm. Prac., 3rd Ed., 64, 561, 567, 270. The plaintiff owner is entitled to possession, and a writ of possession directed to the marshal, will issue as prayed, commanding him to deliver possession to it upon giving security, which may be spoken to later.

Order accordingly.
