

did not come within the provisions of R.S.M. 1902, c. 31, or any other enabling Act.

Wilson, and *A. Howden*, for plaintiff. *Howell*, K.C., and *H. E. Henderson*, for defendants.

Province of British Columbia.

IN ADMIRALTY.

Martin, Lo. J.]

[April 13.

VERMONT STEAMSHIP CO. v. THE ABBY PALMER.

Admiralty law—Bail—Cash deposit—Retention of pending appeal to increase salvage award—Arrest of property to answer extravagant claims.

Motion by defendant for payment out of court of security. This was a salvage action and to obtain release of his ship defendant had paid into court \$25,000.00. Plaintiff recovered judgment for \$4,200.00 and costs, and was appealing to the Exchequer Court with a view to having the salvage award increased.

Held, that as defendant was a foreign resident the excess over the amount of the judgment would not be paid out to him pending appeal, but that as the ship had been arrested to answer an extravagant claim (a practice of which the Judge disapproved) only \$6,000.00 would be retained in court pending the appeal.

W. J. Taylor, K.C., for the motion. *J. H. Lawson, Jr.*, contra.

Full Court.]

IN RE COAL MINES REGULATION ACT.

[April 18.

Coal Mines Regulation Act—Employment of Chinamen—Rule prohibiting—Constitutionality of—B.N.A. Act, s. 91, sub-s. 25, and s. 92, sub-s. 10, 13—Naturalization and aliens—R.S.B.C. 1897, c. 138, s. 82, r. 34, and B.C. Stat. 1903, c. 17, s. 2.

Rule 34 of section 82 of the Coal Mines Regulation Act as enacted by the Legislature in 1903, and which prohibits Chinamen from employment below ground and also in certain other positions in and around coal mines is in that respect ultra vires.

So *held* (on a question referred by the Lieutenant-Governor in Council the full court for an opinion as to the constitutionality of the rule) per HUNTER, C.J., and IRVING, J., MARTIN, J., dissenting.

Union Colliery Co. v. Bryden (1899) A.C. 580, applied and distinguished from *Cunningham v. Tomey Homma* (1903) A.C., 151.