

Martin, J.]

[Oct. 19]

NEW VANCOUVER COAL CO. V. ESQUIMALT & NANAIMO RAILWAY CO.

Practice—Interlocutory injunction—Undertaking as to damages.

Motion for an order for an injunction restraining the defendants, their servants, workmen and agents from proceeding under the arbitration proceedings of the Coal Mines Acts, R.S.B.C., c. 137, for the purpose of acquiring the right of way through the property of the plaintiffs in Nanaimo District, and for an injunction restraining the defendants, their servants, &c., from trespassing on the said property of the plaintiffs, under colour of the said Act or otherwise. On October 3rd an interlocutory injunction was granted until the hearing, but as counsel for the defendants asked that the plaintiffs should give an undertaking as to damages, and counsel for the plaintiffs submitting that it was not the practice of the Court to require such undertaking in cases where the interlocutory injunction had been obtained on notice, but only when ex parte, and further, that in any event the Court should exercise its discretion and dispense with the undertaking in the present case, the point was reserved for further argument.

Held, that an undertaking as to damages ought to be given by a plaintiff who obtains an interlocutory order for an injunction, not only when the order is made ex parte, but even when it is made upon hearing both sides.

Helmcken, Q.C., for plaintiffs. *Luxton*, for defendants.

EXCHEQUER COURT.

ADMIRALTY DISTRICT.

McColl, C.J.]

COOK v. MANAUENSE.

[Oct. 14.]

Maritime lien—Arrest—Practice.

The plaintiff alleged breach of a contract for his passage from Liverpool, England, to St. Michael, and thence by steam launch and house boat to the Yukon gold fields. The contract was also that he should be supplied with provisions during the open season of 1898, if he remained in touch with the steamer and the steamer's boats, should be carried back to Victoria at the end of the season. The breach complained of was the failure to carry the plaintiff from St. Michael to Dawson. The contract was made with Captain Edwards, the master and owner of the ship, which was subject to a mortgage. The plaintiff claimed the condemnation and sale of the ship, and the application of the proceeds to the payment of the damages claimed, and costs. The action was brought against the ship itself. The plaintiff's counsel insisted that the contract was for such a special use of the ship as that, upon any breach, from that moment, a lien upon the ship was by law created for the damages sustained of the same nature, and enforceable in the same way as a maritime lien.

Held, that the lien claimed does not exist by the law of England: *The Pical Superiore*, 5 P.C.; *The Heinrich Bjorn*, 10 P.D.; *The Ella*, 13 P.D.; *The Queen v. Judge of City of London Court* (1892), 1 Q.B.; *The Geta* (1893) A.C., and *The Theta* (1894), P.D., and that the jurisdiction in Admiralty is exercised here upon the principles of the English law. Action dismissed with costs.

Russell, for plaintiff. *Bradburn*, for defendant.