

Province of British Columbia.

SUPREME COURT.

Full Court.]

BIRD v. VIETH.

[S:pt. 6.

*Practice—Evidence—Exclusion of witnesses—Parties to action.*

Appeal by defendants from a judgment of DRAKE, J., pronounced in favour of the plaintiffs. During the trial the defendants (appellants) were excluded, at the instance of the plaintiffs, with other witnesses, no special reason being given for the request, and the case is reported as to this point.

*Held*, that the mere fact that a party intends to give evidence does not entitle the other party to call for his exclusion as in the case of an ordinary witness.

If a party has been wrongfully excluded it is not necessary for him to shew that he was substantially prejudiced thereby in order to get a new trial.

*Quere*, in case of harmless exclusion. New trial allowed.

*Duff*, for appellants. *Cassidy* (*A. D. Crease* with him), for respondents.

Province of Quebec.

EXCHEQUER COURT.

QUEBEC ADMIRALTY DISTRICT.

Routhier, Loc. J.]

HINE v. STEAM TUG "J. SCULLY."

[July 28.

*Towage—Salvage—Sufficiency of tender—Costs.*

The steam-tug J. S., of 111 tons burthen, bound from New York, U.S. to St. Johns, P.Q., was prosecuting her voyage off Cape Chatte, in the Lower St. Lawrence, when a slight accident happened to her boiler in consequence of which her fires had to be extinguished in order for the boiler to cool to allow the engineer to make the necessary repairs. At the time she was in the ordinary channel of navigation, and the weather was fine and the sea calm. The accident happened at 8 p.m. Three hours afterwards, and before repairs could be made, the steamship F., of 2,407 tons burthen, bound from Maryport, England, to Quebec, approached the tug, and at the request of her captain took the tug in tow. The towage covered a distance of some 230 miles, and continued for a period of thirty hours, during which neither ship was in a position of danger, nor were the crew of the F. at any time in peril by reason of the services rendered to the disabled tug.