

This was an issue in which the plaintiff affirmed and the defendant denied that the ship "Houghton," seized or taken on or about the 19th April, 1910, by the Sheriff of Essex, under an execution issued in *May v. Houghton*, was improperly brought by the defendant, or with his connivance by others, into the bailiwick of the Sheriff of Essex, or came within his bailiwick under such circumstances that the ship was not exigible in execution, and that the seizure was an abuse of the process of the Court, and the ship should be released.

A. H. Clarke, K.C., for the plaintiff.
E. S. Wigle, K.C., for the defendant.

CLUTE, J. (after stating the facts):—All the circumstances together lead me to the conclusion, without the least doubt, that the vessel was cut away for the purpose of having her drift to the opposite shore. . . . Advantage was taken of the wind and current to place her in a position where she might be seized. I find as a fact that that was done for the purpose of enabling seizure to be made. I am unable to say from the evidence that it was done by the direction of the defendant. I think it was done by his friends whom he had on the look-out, and who were acting for and on his behalf, after possibly being expressly told so to do. I think it is not going too far to say that it was expected that it would occur. . . .

Upon the whole evidence, I find as a fact that the vessel was cut loose either by the orders of the defendant or with his connivance. . . .

Taking the fact, then, to be that the vessel was cut loose and brought from the American side to Canadian waters for the express purpose of enabling the sheriff to make a seizure, was the boat liable to seizure? . . .

[Reference to *Sm. L.C.*, 11th ed., vol. 1, p. 117, and cases cited; *De Gondouin v. Lewis*, 10 A. & E. 117; *Co. Litt.* 148b.]

In my opinion, it would be against public policy to permit a seizure under circumstances such as are disclosed in this case. It would, I think, create international trouble if property was permitted to be brought wrongfully by an execution creditor from a foreign country within the bailiwick of a Sheriff for the purpose of seizure, no matter whether or not the execution creditor was implicated in the removal.

In the present case, upon my findings, there was a trespass committed, if not a crime, and, as the defendant seeks to take advantage of the wrongful act, he ought not to be permitted to