

**Tanaka v. Russell**

**Between  
Tanaka et al., and  
Russell**

[1902] B.C.J. No. 7

9 B.C.R. 24

British Columbia Supreme Court

**Irving J.  
(In Chambers)**

February 11, 1902.

**Counsel:**

Davis, K.C., for the summons.

Gilmour, contra.

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**1 IRVING J.:**-- In this case the plaintiff caused the defendant to be arrested on a writ of capias; it is alleged that the capias was improperly granted on insufficient material and was irregular and void.

**2** It appears, however, that after the arrest was made, the defendant's solicitor gave an undertaking in writing to give special bail to the plaintiffs if the plaintiffs would permit him to depart at once. This offer was accepted and the defendant left the jurisdiction.

**3** It seems to me immaterial, in considering the present application, whether the writ was a nullity or not because the defendant's undertaking would be binding, even if no writ of capias had been issued at all. It is a very common practice for people to give an undertaking to enter an appearance without being served with a writ and in the Admiralty jurisdiction where nearly all proceedings are commenced by arresting the ship, it is every day practice for the proctor or solicitor acting for the ship, to notify the proctor or solicitor acting for the plaintiff that he will give bail in order to prevent the arrest of the ship, and the undertaking so given must be carried out.

**4** The application must be refused with costs.

Summons dismissed.

