

1900
 Dec. 10. THE QUEEN ON THE INFORMATION
 OF THE ATTORNEY-GENERAL FOR } PLAINTIFF;
 THE DOMINION OF CANADA..... }

AND

N. K. CONNOLLY, MICHAEL } DEFENDANTS.
 CONNOLLY AND JOHN CONNOR }

Garnishee process, Crown seeking same—English Order 45, Rule 1—Practice.

Order 45 of the English Rules respecting garnishee process is not applicable to a proceeding by Information by the Crown. The Crown's remedy is by Writ of Extent.

THIS was an application, in Chambers, by the Crown, for a summons to show cause why a garnishee order should not be made against the Hobbs Hardware Company of London, Ontario, alleged to be indebted to the defendant John Connor, a judgment-debtor of the Crown, in the sum of \$1,000 and upwards.

December, 10th, 1900.

Glyn Osler, in support of the application, cited *The Exchequer Court Act* sec. 21. This invokes the provisions of English Order 45. Under the practice established by that Order, garnishee process may be issued to attach a debt due to the Crown.

The Crown is a 'person' within the meaning of the English order referred to.

It cannot be said that Rule 46 of the Exchequer Court Rules cuts out the operation of the English rules invoked by Rule 2 of November 13th, 1891 (1); for Rule 46 only provides for a writ of immediate extent against the Crown's debtor. It leaves untouched the remedy sought here.

(1) Audette's Exch. Prac., p. 222.

THE JUDGE OF THE EXCHEQUER COURT:—The proceedings in this suit were begun by information, and so far as no special provision as to the practice is made by the rules of this court, it is governed by the practice on the Revenue side of the Queen's Bench Division of the High Court of Justice in England.

By English Order 68, subject to certain exceptions not affecting this application, it is provided that nothing in the rules, of which that Order is one, shall apply to proceedings on the Revenue side of the Queen's Bench Division. By clause 2 of Order 68 certain specified Orders are made applicable to proceedings on the Revenue side of the Queen's Bench Division, but Order 45 which provides for garnishee process is not enumerated amongst them.

Even if Order 45 of the English Rules were applicable, a further difficulty would arise as to whether the Crown was included in the expression 'person' used in the Order.

The Crown is not without an appropriate remedy by Writ of Extent.

The application will be refused.

Application refused.

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 Reasons
 for
 Judgment.
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