

F. H. Court.] DOMINION COAL CO. v. KINGSWELL STEAMSHIP CO. [Jan. 11.
Irregularity in service of summons—Waived by appearance—Appearance under protest—Waiver.

Defendant company's steamer was attached at the suit of plaintiff to respond such judgment as plaintiff might obtain in an action against the defendant for breach of the conditions of a charter party. Defendant appeared under protest and without prejudice to the right to object to the jurisdiction of the Court, and subsequently moved before GRAHAM, E. J., to set aside the summons and attachment on the ground that the service was irregular.

Held, affirming with costs the judgment dismissing the application that the defective service of a summons regularly issued and in proper form, is cured by the appearance of the defendant.

Held, also, that such a thing as appearance under protest is unknown to the practice of the Court, but that even if defendant's right to object to the legality of the service could be protected by protest the protest in this case was limited in terms to the jurisdiction.

Per GRAHAM, E. J., (in the judgment appealed from.)

Held, that if defendant company under protest had put in special bail under the statute and moved to set aside the attachment they could have done so, but when they obtained the release of the vessel by giving security, without notifying the other side that they reserved the right to move to set aside the process, they waived the right to do so.

C. P. Fullerton, for appellant. H. Mellish, for respondent.

Full Court.] COMMERCIAL BANK v. SCOTT. [Jan. 11.
Collections Act—Order made by Judge at Chambers for payment of money—Attachment to enforce order—Laches—Costs.

The Nova Scotia Collections Act, Acts of 1894, c. 4, s. 1, provides that "no person shall be arrested or imprisoned upon or in respect of any judgment of the Supreme Court . . . ordering or adjudging the payment of any money, unless as in this Act hereinafter provided." And s. 2 of the Act reads: "For the purposes of this Act the word judgment shall include any order directing payment of money, costs, charges, or expenses." An order having been made by a Judge at Chambers, directing defendant to pay over money in his hands to the receiver.

Held, that the order was one which could not be made, and was therefore, one which could not be enforced by attachment or imprisonment for disobedience thereto.

Defendant's counsel drew a distinction between an order made as the result of an action between the parties where it is adjudged or ordered that the defendant pay a certain amount of money, and the case of an order for payment of a particular sum of money found or admitted to be in the hands of the party against whom the order is made in the course of the litigation.

Held, that the distinction was well founded, and that the Collections Act did not cover such a case as the latter, but was intended to apply only to the case of a judgment debtor ordered to pay money in satisfaction of the judgment against him.