

RECENT ENGLISH PRACTICE CASES.

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MACDONALD V. THE TACQUALE GOLD MINES COMPANY.

Ont. r. 370—Imp. O. 45, r. 2, (1875).

Garnishee order—Debt due to judgment debtor and another jointly.

The debt, legal or equitable, owing by a garnishee to a judgment debtor, which can be attached to answer the judgment debt, must be a debt due to such judgment debtor alone, and where it is only due to him jointly with another person it cannot be so attached.

[L. R. 13 Q. B. D. 535.]

BOWEN, L. J., was there any debt (including by that word "debt" both a legal and equitable one) owing or accruing from the defendant company to the judgment debtor which was capable of being attached by a garnishee order? Can it be said that a debt due to two persons jointly is a debt due to one of them? Before the Judicature Act such a question would, as it seems to me, have been unarguable. Where money is due on a covenant made with two persons jointly by which it is to be paid to such two jointly, no one of those two has any right to that money without the other of them. What difference in this respect can the Judicature Acts have made, for they do not give any right which did not previously exist but only another mode of procedure. It is clear that there was no debt due to the judgment debtor . . . when this order to attach was sought for, but only a sum due to him jointly with another, and therefore not a sum capable of being attached.

THE LONDON LAND COMPANY V. HARRIS.

Ont. r. 392—Imp. O. 49, r. 1, (1883).

Transfer of action—Counterclaim for specific performance.

In an action by purchaser of land against vendor for return of deposit, the defendant counter-claimed specific performance.

Held, that the action ought to be transferred to the Chancery Division.

[L. R. 13 Q. B. D. 540.]

POLLOCK, B.—It is admitted by the counsel for the plaintiffs, that by the practice of the Court of Chancery the judgment of the Court in favour of a party claiming specific performance can only amount to this, viz.: that all conditions have been fulfilled, and all things have been done and happened necessary to entitle him to specific performance, subject however to an inquiry into the title. That inquiry this Division has no machinery for making. This renders applicable the cases cited, in which it was

held that where the Division in which the proceedings arose has no sufficient machinery for administering the necessary relief, there is good ground for making the transfer.

[NOTE.—*Quare*, whether section 63, Ontario Judicature Act, 1881, which makes all masters in Chancery official referees, read in connection with section 47 does not render this decision inapplicable to our practice.]

CROPPER V. SMITH.

Ont. r. 474—Imp. r. 320, (1883).

Amendment—Patent action—Defendant's particulars of objection.

[L. R. 26 Ch. D. 700.]

This was an action brought against S. and H. to restrain alleged infringements of a certain patent. In their particulars of objection as delivered, S. and H. denied infringement, and S. objected to the validity of the patent on the ground of want of novelty. The Court of Appeal held, reversing the Court below, that the patent was invalid for want of novelty, and S. having succeeded on this objection was entitled to judgment. But they held that as H. had not delivered objections to the validity of the patent, but only denied infringement, evidence that it was invalid for want of novelty could not be read on his behalf; and, moreover, that as H. had never asked for leave to amend his particulars of objection, but had to the last argued the case on the ground that no such amendment was necessary since the denial of infringement included an objection by implication that the patent was invalid (which was over-ruled), leave to amend ought not to be now given, but his appeal must be dismissed.

[NOTE.—It may perhaps be a question whether the clause at the end of our Rule 474, which is not found in the English rule, would not prevent this decision being followed under similar circumstances in our Courts.]

ROBERTS V. OPPENHEIM.

Ont. r. 221, 229—Imp. r. 356, 357, (1883).

Production of documents—Documents referred to in pleadings—Privilege.

Where a party claims privilege against the production of documents on the ground that they support his own title and do not relate to that of his opponent, his affidavit must be taken as conclusive, unless the Court can see from the nature of the case or of the documents that the party has misunderstood the effect of the documents.

Attorney General v. Emerson, L. R. 10 Q. B. D. 191, distinguished.