

JANUARY 18TH, 1915.

## \*POUCHER v. WILKINS.

*Execution—Right of Renewal, when Judgment more than 20 Years Old—Limitations Act, 10 Edw. VII. ch. 34, sec. 49—Application of — “Civil Proceeding” — “Action” — Presumption of Satisfaction in Absence of Payment or Acknowledgment—Con. Rule 872 of 1897—Execution Act, 9 Edw. VII. ch. 7, sec. 10—Execution Kept Alive by Renewals.*

Appeal by the plaintiff from an order dated the 20th November, 1914, made by a Junior Judge of the County Court of the County of York (DENTON), vacating and setting aside the writ of execution issued on the plaintiff's judgment.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

W. N. Ferguson, K.C., for the appellant.

M. H. Ludwig, K.C., for the defendant, respondent.

The judgment of the Court was delivered by MEREDITH, C.J.O.:—The plaintiff's judgment was recovered on the 7th March, 1891, and the execution was issued within 6 years after that date, and has been kept alive by renewals ever since; the last renewal having been made on the 15th October, 1913; and it is still in the hands of the Sheriff to whom it was directed, for execution.

The ground upon which the learned Judge proceeded was that, in the absence of payment or acknowledgment, there is no right to issue execution upon a judgment more than 20 years old, and he evidently treated the renewal of an execution that had been issued within that period as the issue of an execution on the day on which it was renewed.

Upon the argument before us, counsel for the respondent relied upon sec. 49 of the Limitations Act in force when the execution was renewed (10 Edw. VII. ch. 34) to support the order of the learned Judge, contending that the renewal of the execution was a civil proceeding within the meaning of sec. 2 of that Act; and that sec. 49 was, therefore, to be read as applying to such a proceeding; and, in the absence of part payment or acknowledgment, barring the right to take it after the expiration of 20 years from the date on which the judgment was recovered.

\*To be reported in the Ontario Law Reports.