

and enforcement of an order under the Overholding Tenants Act for delivery of possession by the tenant of the premises No. 220 Bleecker street, Toronto.

D. O. Cameron, for the tenant.

F. J. Roche, for the landlord.

ANGLIN, J.—It was objected by the tenant that the provisions of sec. 4 of the statute, requiring that to the notice in writing of the time and place fixed by the Judge for determining the landlord's right to an order for possession, to be served upon the tenant, "shall be annexed a copy of the Judge's appointment and of the affidavit on which the appointment was obtained and of the papers attached thereto," were not complied with. The notice was given on 6th June. The copy of the appointment was served on the same day, but apparently not annexed to the notice. The copy of the affidavit was not served at all prior to the return of the appointment on 10th June. On that day this objection to the proceedings was taken before the Judge of the County Court. Instead of issuing a new appointment and directing service of a fresh notice, etc., under sec. 4, the Judge adjourned the hearing of the case until 17th June, and directed that a copy of the affidavit be meantime served. This service was effected on 13th June. On 17th June, after some evidence had been taken, the matter was further adjourned to 24th June, when, after argument, an order in favour of the landlord was pronounced. The tenant was represented on 17th and 24th June by counsel, who cross-examined the landlord's witnesses and adduced evidence in answer.

If failure to serve a copy of the affidavit as required by sec. 4 were merely an irregularity, it was waived: *Smith v. Smith*, 17 N. S. Repts. 42. The County Court Judge is here exercising a statutory jurisdiction as *persona designata*. Section 5 gives him power to order a writ of possession to issue "if at the time and place so appointed the tenant, having been duly notified as above provided, fails to appear." In the absence of the tenant upon the return of the appointment, a strict compliance with the requirements of sec. 4 as to notice, etc., is essential as a condition precedent to the exercise of the power given by sec. 5. But, if the tenant appears at such time and place, the Judge shall, in a summary manner, hear the parties, etc. The contrast between this provision for the case where the tenant attends and that made for the case of his non-appearance, indicates that it is only in the latter event that a strict compliance with the provision of sec. 4 is a pre-requisite of jurisdiction. Where the