

*Held*, that Ordinance No. 5 of 1894, coming into force prior to the expiration of one year from the date of plaintiff's writ of execution, such writ remained in force for two years from its date without renewal.

*Robson*, for applicant.

*Secord*, Q.C., for defendant.

RICHARDSON, J.]

[June 13.

PAUL v. FOWLER.

*Exemptions from seizure—"Homestead"—Chapter 45 of Revised Ordinances of the North-West Territories.*

Upon application to confirm a sale by the Sheriff under writs of execution of certain parcels of land of the judgment debtor, it was contended on behalf of the latter that a certain parcel of 160 acres was exempt from seizure as a homestead under sec. 1 (9) of cap. 45 of the Revised Ordinances. It was admitted that the judgment debtor did not reside or have any buildings on the parcel in question, and consequently,

*Held*, that the parcel in question was not exempt from seizure as a homestead.

*Robson*, for applicant.

*Johnstone*, for judgment debtor.

RICHARDSON, J.]

[June 13.

MORRISON v. MORRISON.

*Practice—Service of writ of summons—Indorsement thereon of day of month and week of service thereof—Judicature Ordinance, secs. 556, 537 & 80 & Eng. Margl. Rule 62—Irregular default judgment—Setting same aside.*

Plaintiff signed final judgment on default of appearance and issued execution thereon. The writ of summons was not indorsed with the day of the month and the week of service thereof, and the affidavit of service was silent as to any such indorsement having been made.

Upon application on behalf of defendant to set aside the judgment so entered and all subsequent proceedings,

*Held*, that as the Judicature Ordinance contains no special provisions relating to the service of original writs of summons, while under Marginal Rule 62 such provisions existed in England at the date of the coming into force of the Judicature Ordinance, by sec. 556 of the Judicature Ordinance, English Marginal Rule 62 is incorporated with the said Ordinance: That as no form of affidavit of service is contained in the appendix to the Judicature Ordinance the form prescribed by the English practice is to be used. That the original writ of summons having no indorsement as required by English Marginal Rule 62, plaintiff had no right to sign judgment under sec. 80. That the judgment so signed was an irregularity and abuse of the Court power, and one which the defendant was entitled *ex debito justitiæ* to have set aside: *Hughes v. Justin*, 9 R., 215; *Anlaby v. Praetorius*, 20 Q.B.D., 764.

Judgment and subsequent proceedings set aside with costs.

*Robson*, for applicant.

*Secord*, Q.C., for plaintiff.