

by the order. The receiver not having paid the money into court, the plaintiff's solicitor, on Nov. 12, 1895, wrote to him requesting him to do so; and the receiver answered on the same day saying that, according to any orders or reports that had been made, he had not ascertained any date within which the money should have been paid into court; that he was waiting a specific order for that purpose, and as soon as such order was made, or at any time, he was prepared to pay into court the money he had received. On Nov. 27, 1895, notice of motion was served by the plaintiff for an order to commit the receiver to gaol for his contempt in not paying into court the sum found due, and on Dec. 10, 1895, no one appearing to oppose the motion, an order was made by Boyd, C., requiring the receiver within ten days to pay the amount into court, and that in default of his doing so a writ of attachment should issue, etc., etc. On Jan. 13, 1896, notice of motion was given by the receiver, by the special leave of Boyd, C., for an order setting aside the last mentioned order, on the ground of the understanding above mentioned between the receiver and the plaintiff's solicitor, and an explanation of the failure of the former to oppose the motion to commit. The understanding was denied by the plaintiff's solicitor. The receiver also swore that the plaintiff and defendant were both indebted to him in large amounts, and he claimed a lien on the money in his hands for costs, and a right of set-off. Upon this motion an order was made by Falconbridge, J., on March 3, 1896, extending the time for payment into court by the receiver until April 30 then next, and directing that in default thereof the motion should be dismissed with costs.

*Held*, upon appeal, that no sufficient case had been made out for interfering with the orders of BOYD, C., and FALCONBRIDGE, J. There was a great delay in moving, but it was to be assumed in favour of the receiver that a sufficient order to extend the time for doing so was made, and that Rule 1454 of January, 1896, amending Con. Rule 536, as to rescission of *ex parte* orders, applied, though it did not come into force until after the order of BOYD, C., was made. Neither in the affidavits filed nor in the notice of motion to rescind the first order were any objections taken to the regularity of the proceedings, and the case was not in which the Court should be astute to discover them, or permit them to be raised for the first time on the argument of the appeal: *Treherne v. Dale*, 27 Ch. D. 366.

That an attachment lies against a receiver as an officer of the Court for his default in compliance with the order to pay into Court the money found to be in his hands sufficiently appears from *In re Wray*, 36 Ch. D. 138, *In re Gent*, 40 Ch. D. 190, and *In re Freston*, 11 Q.B.D. 553, and other cases applied and followed in *Pritchard v. Pritchard*, 18 O.R. 173. The powers of the Court are not invoked nor its process issued for the purpose of recovering or enforcing payment of a civil debt or claim *inter partes*, but for punishing its officer, who has disobeyed its order; and ss. 6 and 11 of R.S.O., 1887, c. 67, are inapplicable. It cannot be said that an understanding between the receiver and the solicitor of one of the parties ought to be accepted as an excuse for non-compliance with the order, more especially when the authority to waive the order is not admitted or is denied by the parties or either of them. And while there may be cases such as *In re Gent*, 40 Ch. D. 190, where the