

RECENT ENGLISH PRACTICE CASES.

does not deliver a pleading within a proper time, the defendant has a right to ask for judgment.

FRASER V. COOPER, HALL & CO.
WADDELL V. FRASER.

Imp. O. 22, r. 6—Ont. r. 105.

Counter-claim against non-party—Appearance thereto.

A person not a party to an action, when made a defendant to a counter-claim, is not entitled to enter an appearance gratis, *i. e.* until such service upon him as is mentioned in the above rule.

[L. R. 23 Ch. D. 685.]

Per BACON, V. C.—Counter-claims, though they are to be treated for some purposes as independent actions, are the creatures only of the statute. They did not exist in any form or kind until this Act was passed. The Judicature Act has introduced an entirely new practice, and in ascertaining that practice, the rules must be construed according to the words used.

WEBB V. STENTON.

Imp. O. 45, r. 2—Ont. r. 370.

Attachment of debts—Income from trust fund—“Debt owing or accruing.”

A judgment debtor was entitled for his life to the income arising from a fund vested in trustees, payable half-yearly in February and August. Upon application by the judgment creditor in November for a garnishee order, attaching the debtor's share of the income in the hands of the trustees, it appeared that the last half-yearly payment had been made, and that there was no money, the proceeds of the trust property, in the hands of the trustees.

Held, that although any debt, legal or equitable, may be attached under the above rule, there was here no debt, “owing or accruing” at the time when the order was applied for which could be attached under it.

Semble, that the proper course for the judgment creditor to pursue was to apply for the appointment of a receiver, under the practice of the Chancery Division.

In re Cowan's Estate, L. R. 14 Ch. D. 638, considered.

[C. A., L. R. 11 Q. B. D. 578.]

Per BRETT, M. R.—It seems to me, upon the plain reading of O. 45, r. 2 (Ont. r. 370), that no order can be made unless some person at the time the order is made is indebted to the judgment debtor. If there be a person so indebted, then the order will be that all debts owing or accruing from such person to the judgment debtor shall be attached. If there is a debt due payable *in presenti*, of course an order may be

made to attach that debt. If there is not a debt payable *in presenti*, but there is a debt in existence, *debitum in presenti*, but payable *in futuro*, it seems to me that such an order could be made with regard to that debt, although it be the only debt, and there is no debt payable *in presenti*, because such third person is indebted to the judgment debtor, and that would satisfy the words of the rule. . . . It seems to me that the meaning of “accruing debts,” in O. 45, r. 2 (Ont. r. 370) is *debitum in presenti, solvendum in futuro*, that it goes no further, and that it does not comprise anything which may be a debt, however probable and however soon it may be a debt. That is the construction which I put upon this rule.

Per LINDLEY, L. J.—I am of the same opinion. The question is one of very considerable importance, especially as our decision is likely, we are told, to disturb the practice, in Chambers at least, of the Chancery Division, if not of the Common Law Division.

Per FRY, L. J.—I agree in the conclusion which has been arrived at by the other members of the Court. . . . I will make one more observation only. It appears to me that in arriving at this conclusion we are not laying down any rule which will produce a defect in the administration of justice. I think the power of the judgment creditor to obtain a receiver under the practice of the Chancery Division is adequate to meet all that may be required, and will prevent any denial of justice.

THE MERSEY STEAMSHIP CO. V. SHUTTLEWORTH & CO.

Imp. O. 19, r. 3; O. 40, r. 11—Ont. rr. 127, 322.
Claim, admission of—Counter-claim—Payment into court.

In an action for a liquidated demand the defendants pleaded admitting the claim, but setting up a counter-claim for unliquidated damages to a greater extent.

The Court refused an application under Imp. O. 40, r. 11 (Ont. r. 322) for an order to sign judgment for the plaintiffs upon the claim, and for payment of the amount thereof by the defendants into Court to abide the result of the action.

Per COTTON, L. J.—The orders and the rules under the Judicature Acts ought to be construed with reference to one another, and we must not