

Rule 545 provides that "a judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by attachment, or by committal."

Reference to English Order XLII., r. 7; *Harvey v. Harvey* (1884), 26 Ch. D. 644, 654; *Mander v. Falcke*, [1891] 3 Ch. 488; *In re Evans*, [1893] 1 Ch. 252; *D. v. A. & Co.*, [1900] 1 Ch. 484.

This was a case falling within Rule 545. Under the practice before the Judicature Act, the appropriate remedy was by attachment. It would not be illegal now, in a case like the present, to order commitment; but it is better practice to observe the old distinction between attachment and committal—attachment was the only proper remedy for disobedience of a judgment or order of the Court in refusing to do that which was ordered to be done.

This being a motion to commit, and not for leave to issue a writ of attachment, the question whether a writ may issue without re-serving the defendant arises.

In *Piper v. Piper*, [1876] W.N. 202, an application was made for a writ of attachment against a defendant in contempt, who did not appear. The notice of motion was for an order to commit. It was contended that the Court might order a writ of attachment on the notice of motion. The Vice-Chancellor held, on the principle that the greater includes the less, that he had power to order a writ to issue, and he ordered it accordingly. Following that case and having regard to the fact that the defendant in this case had been personally served with a copy of the judgment and with the notice of motion, the learned Judge ordered a writ of attachment to issue (form 120, *Holmsted's Judicature Act*, 4th ed.)

Not alone because a writ of attachment was issued under the old practice in a case like the present, should the order for the issue of a writ be now made, but also because it is a more appropriate remedy, carrying with it, as it does, the right of the plaintiff to a writ of sequestration: Rule 547. See also *Oswald's Contempt of Court*, 3rd ed., pp. 24, 30, 263; *Seton's Forms of Judgments*, 7th ed., vol. 1, p. 457.

The plaintiff is entitled to the costs of the motion if asked for.