

Practice.

Boyd, C.] [Dec. 14, 1887.

STRANGE v. RADFORD.

Mortgage suit—Property in Manitoba—Sale or Foreclosure.

In a mortgage suit in the usual form for sale, for delivery of possession, and relief under the covenant in the mortgage, where the defendant resided in Ontario, but the mortgaged premises were in Manitoba.

Held, that the mortgagor could be foreclosed, because such a decree acts upon the person and not upon the land directly, but that any extension of this doctrine, such as putting the machinery of the court in motion to effect a sale of land in another province, would be a mischievous novelty. If the defendant refused to execute the conveyance on sale, title would not pass to the purchaser by a vesting order. To carry out a sale it is essential that the court should have territorial jurisdiction over the land.

It is not the course of the court to pronounce inoperative judgments. The plaintiff may have a foreclosure, or, he may, for a sale, go to the courts in Manitoba.

T. Langton, for the plaintiff.

C. P. Divisional Court.] [Dec. 23, 1887.

WELLBANK v. CONGER.

Judgment—"The court"—Trial judge—Divisional Court—High Court of Justice—Rules 315, 321.

The court may, upon motion, enter judgment upon the verdict given at the trial, where the trial judge has not done so.

Quare, whether such motion should be to the Divisional Court?

"The court," in rules 315, 321, means the High Court of Justice; whether as distinguished from its divisions or not.

It was directed that an order for judgment should be drawn up in the High Court before the three judges who composed the Divisional Court of the Common Pleas Division, as judges of the High Court.

Ritchie, Q.C., for the plaintiff.

W. H. P. Clement for the defendant.

Boyd, C.] [Jan. 12, 1888.

ARMSTRONG v. DOUGLAS, *et al.**Assignment of debt—Garnishment after assignment—R. S. O. c. 115, s. 7—Res judicata—Demurrer.*

A recovered a judgment against B, and B assigned to him an alleged debt due B by D. A then, in the suit of A v. B, took garnishee proceedings against D. The attaching order and garnishee summons were made by one County Judge returnable before another, and were subsequently discharged with costs. A then, as assignee of B, brought this action, and D, among other defences, set up the garnishee proceedings as *res judicata*.

To this defence plaintiff demurred, the principal ground of demurrer being that no jurisdiction was shown in the inferior or County Court.

Held, that even if jurisdiction was assumed, it did not appear that the disposition of the garnishee proceedings in defendant's favour was on the merits.

The assignment of the debt from the intended garnishee to the judgment debtor having been perfected to the judgment creditor, there was no longer a third party in the transaction, the debtor was directly liable to the assignee of the original creditor, as provided by R. S. O. c. 116, s. 7, the debt thus assigned was no longer within the purview of the debt attachment or garnishment clauses. A debt *bona fide* assigned by the judgment debtor before attachment cannot be garnished.

Demurrer allowed, and leave to amend given.

G. C. Campbell, for the demurrer.

H. J. Scott, Q.C., contra.

Miscellaneous.

SHEET ALMANAC, 1888.—By some mistake some changes in the "Canadian Judiciary," which should have been noted in our sheet almanac for this year, were not inserted George Wheelock Burbidge, Q.C., formerly Deputy Minister of Justice, should appear as Judge of the Exchequer Court, under the Act of 50-51 Vict.; and Mr. L. A. Audette, as Registrar.

Mr. Augustus Power, Q.C., is acting Deputy Minister of Justice in room of Mr. Burbidge.