of July, and this summons was taken out on the 29th of December. In the meantime Georgina Reiffenstein had appeared to the writ, and claimed the property, and had asked time to plead, and the defendant had been represented on the trial of the claims of Mrs. Reiffenstein, and he must be barred by such delay and waiver: *Manning's* Exch. Prac. 114.

The motion should have been to set aside the *fiat* of the judge on which the extent issued. So long as the *fiat* stood, the writ must stand: *Rex* v. *Rippon*, 3 Price 38.

As to the grounds taken in the summons he contended:—

1. That even if evidence by affidavit be insufficient, that is no ground to set aside the *extent*. By the practice an affidavit is sufficient to find the debt: *West* on Extents 22; and *Reg.* v. *Ryle*, 9 M. & W. 227, is a direct authority in its favor.

2. The affidavit of danger was sufficient in the opinion of the judge who granted the *fiat*, and that is all that is necessary, and this *fiat* is not moved against. But the affidavit is sufficient according to the practice: *Man.* Ex. Prac. 11, 262.

3. If the date is not properly stated, the defendant may plead to that effect. But it is sufficient to say that there was a debt at the time of the investigation.

4. The reason for the rule on which this objection is founded does not apply where the Crown is concerned, and in any case it is no reason for setting aside the proceedings.

J. H. Cameron, Q C (*O'Brien* with him), supported the summons.

As to the preliminary objections: The case in *Price* proves nothing, as apparently there was not even a copy of the writ before the court. The objections go to the ground-work of the writ, and the motion is therefore not too late. It is not necessary to move against the *fiat* as that stands, and if this writ is set aside a new extent can issue on the same *fiat*.

As to the grounds in the summons:—

1. The alleged practice is objectionable and should not be followed, and the cases authorising it should be reviewed by the full court, and both in *Manning* and *West* the practice is remarked upon as one which "no lapse of time can legalise."

2. Not only must insolvency be shewn, but also the facts which establish it must be set out: *West* on Extents 51; *Man.* Exch. Prac. 12.

3. The mistake of the day appears on the face of the writ, and there is a manifest false statement on record; and this may be of great importance to third parties whose rights may be interfered with by such error. The inquisition only shews that the defendant had lands when he was *not* a debtor to the Crown.

4. The prosecution for the felony should be concluded before the civil action is gone on with, and the same rule should apply in Crown as in other cases.

It was also urged that if there was any doubt on the points taken it would be proper to let the matter stand till Term, especially as all the defendant's property was under seizure.

Galt, J.—I shall speak of each point as it appears on the summons. The grounds are:—

1st. That the inquisition to find debts was taken on affidavit without any witness being examined *viva voce*.

A similar objection was taken in the case of *The Queen* v. *Ryle*, 9 M. & W. 227, and expressly over ruled by the Court of Exchequer.

2nd. That the writ issued without any affidavit of insolvency or other affidavit sufficient to shew grounds according to the practice. Mr. West, in his Treatise on the Law of Extents, page 47, states: "The need for the immediate extent is shewn to the court by the affidavit that the debtor is insolvent, which is called an affidavit of danger; and the court (or single Baron) shews the exercise of its (or his) discretion as to the expediency of issuing the immediate extent by granting the *fiat*." The *fiat* in this case was granted by the learned Chief Justice of the Common Pleas, on an affidavit which satisfied him that this was a case in which an immediate extent should issue, and I should certainly never think of interfering with the exercise of his discretion, but would, if I entertained any doubt, postpone the case for the consideration of the court. I must say, however, that had the application been made to me I would, without hesitation, have given the *fiat*. As far as I can understand the law as laid down in Mr. West's Treatise, all that is necessary is to satisfy the court or judge that there is danger that the debt will be lost if immediate remedy be not granted; and whether the danger arises from insolvency, (which is the usual ground) or from any other cause which satisfies the court that such danger really exists, is immaterial. I do not specify the particular reasons assigned in the affidavit in this case, but they would have been quite sufficient to have induced me to grant the *fiat*.

3rd. That the writ of extent misstates the day that the defendant became a debtor of record. The inquisition to find debts not having been returned and filed until 21st July, whereas the writ states him to have been a debtor of record on the 20th of July. The inquisition was dated on 17th July, 1869, and appears to have been taken on the 20th. There is a memorandum endorsed on the copy before me to the effect that it was filed on 21st. There is no formal statement of any kind as to when it was received and filed. I cannot see in what manner the defendant can be prejudiced by this mistake (if it is a mistake, for no authority was cited by the learned counsel), and if, in truth, any of the property extended was acquired by him between the finding of the inquisition on the 20th and the filing of it on the 21st he might shew it, I presume, so as, *quoad* that property, to claim that it was not found by the inquisition or liable to the *extent*. In the absence of any such allegation I see no reason for setting aside the extent.

4th. That the affidavits on which the said writ issued charged that a felony was committed, so that no writ could issue to find debts, or debts be found or enforced which were the subject of the felony, until the prosecution of the defendant to conviction for the felony. This objection appears to me to be founded on a misapprehension of the law as applied to private persons; the reason of the rule which prevails between private persons, that until the ends of justice have been satisfied by the prosecution of a person charged with felony