BETWEEN:

THE MINISTER OF NATIONAL REVENUE ..... PLAINTIFF;

AND

CANADIAN JAVELIN LIMITED ..... DEFENDANT;

AND

WABUSH MINES ..... GARNISHEE.

Ottawa
1964
Nov. 10
1965
Mar. 4

Income tax—Execution—Garnishment (Saisie-Arrêt) in Quebec—Validity of service on joint venturers—Income Tax Act, ss. 119, 120—Quebec Code of Civil Procedure, Arts. 81a, 139, 142, 678—Exchequer Court Act, ss. 54, 56—Exchequer Court Rule 281.

Following registration by the Minister of National Revenue under s. 119 of the *Income Tax Act* of a certificate having the effect of a judgment for debt against Canadian Javelin Ltd, a Newfoundland corporation, a writ of garnishment (*saisie-arrêt*) issued out of the Exchequer Court was served at the Montreal office of a group of companies registered in the name "Wabush Mines" under the *Partnership Declaration Act*, R.S.Q. 1941, c. 277, to carry on the business of iron development in Quebec and Newfoundland as a joint venture. Certain sums were payable by one or more of these companies to Canadian Javelin Ltd under a contract and lease with respect to the acquisition of shares in a railway company serving the iron ore property and the right to mine the ore. On return of the writ of garnishment application was made by the defendant and garnishee for determination of certain matters.

Held: (1) The issue of a writ of garnishment (*saisie-arrêt*) for the enforcement in Quebec of a judgment of the Exchequer Court for debt is authorized by s. 54 of the *Exchequer Court Act*.

(2) Service of the writ at the garnishee's Montreal office is valid under Arts. 81a and 142 of the Quebec *Code of Civil Procedure* if the garnishee is not a partnership, and under Art. 139 if it is a partnership, and it is therefore the mode of service stipulated by s. 56 of the *Exchequer Court Act* provided that the property seized is situated in Quebec—a question not open for decision on this proceeding.

(3) While the writ served may have violated the requirement of Art. 678 of the Quebec *Code of Civil Procedure* in failing specifically to require the defendant to show cause why the seizure should not be declared valid an amendment should be permitted under Exchequer Court R. 281 to remedy the defect.

(4) It is not a valid objection that a method of garnishing debts owing to a delinquent taxpayer is laid down by s. 120 of the *Income Tax Act*.

INTERLOCUTORY APPLICATION.

Vincent W. Kooiman for plaintiff.

Lawrence A. Poitras for defendant.

J. W. Brown for garnishee.

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THURLOW J.:—Upon the return of a Writ of Garnishment (Saisie-Arrêt) issued by the Minister of National Revenue to enforce payment of an amount certified, pursuant to s. 119(1) of the *Income Tax Act*[1], to be payable by Canadian Javelin Limited and not paid, application was made for determination of a number of objections, some raised on behalf of the above-named Wabush Mines and others on behalf of Canadian Javelin Limited. Some of these objections are of a preliminary nature as challenging the availability of such a procedure in this Court or the manner in which it has been carried out and these may, I think, be dealt with conveniently at this stage. However, in so far as the objections have to do with the debt or debts, if any, to which the seizure may apply it is my view that they must be raised in the appropriate manner at a subsequent stage of the proceedings and accordingly I do not propose to deal with them at this time.

By s. 119(2) of the *Income Tax Act* a certificate under s. 119(1) when registered in this Court "has the same force and effect, and all proceedings may be taken thereon, as if the certificate where a judgment" of the Court for a debt of the amount specified therein plus interest.

Section 54 of the *Exchequer Court Act*[2] provides that:

> 54. In addition to any writs of execution that are prescribed by general rules or orders, the Court may issue writs of execution against the person or the goods, lands or other property of any party, of the same tenor and effect as those that may be issued out of any of the superior courts of the province in which any judgment or order is to be executed; and where, by the law of the province, an order of a judge is required for the issue of any writ of execution, a judge of the court may make a similar order, as regards like executions to issue out of the court.

Procedure by writ of garnishment (saisie-arrêt) of the kind issued in this case is a method of attaching and realizing upon debts owing to a judgment debtor which is provided for in the Province of Quebec by Articles 677 et seq. of the Quebec Code of Civil Procedure. Whether s. 54 of the *Exchequer Court Act* makes that procedure available in a case such as this, where the certificate having the effect of a judgment is not one that is necessarily to be executed in the Province of Quebec, is a matter on which I have had some doubt. Read by itself the section appears at first sight to be aimed at providing a procedure for enforcing a judg-

[1] R.S.C. 1952, c. 148. [2] R.S.C. 1952, c. 98.

ment requiring the doing of some act that is to be done within a particular province rather than at providing additional forms of execution for the recovery of money. However, having regard to the provision that the writs of execution referred to in the section are "in addition to" those provided for by general rules and orders and having regard as well to what seems to me to be an overall object of sections 54 to 57 inclusive to make available for the enforcement of the judgments of this Court within each province all the forms of execution in use in that province in the enforcement of the judgments of its superior courts I can see no sufficient reason for restricting the scope of s. 54 to writs of execution to enforce judgments which are concerned only with some act required to be carried out in a particular province. It follows that s. 54 applies to authorize the use of procedure by writ of garnishment (saisie-arrêt) to enforce in the Province of Quebec payment of a judgment of this Court for debt and, in consequence of s. 119(2) of the *Income Tax Act*, to enforce payment of the amount shown to be due by a certificate under s. 119(1) when registered in this Court pursuant to s. 119(2).

The next question is that of the validity of the service of the writ of garnishment (saisie-arrêt) on the above-named Wabush Mines. This appears to me to be closely allied to the question (which, however, was not raised) of how parties may be joined in such a proceeding. By s. 56 of the *Exchequer Court Act* it is provided that:

> 56. All writs of execution against real or personal property, as well those prescribed by general rules and orders as those hereinbefore authorized, shall, unless otherwise provided by general rule or order, be executed, as regards the property liable to execution and the mode of seizure and sale, as nearly as possible in the same manner as similar writs, issued out of the superior courts of the province in which the property to be seized is situated, are, by the law of the province, required to be executed; and such writs shall bind property in the same manner as such similar writs, and the rights of purchasers thereunder are the same as those of purchasers under such similar writs.

In my opinion the effect of this provision, as applied to a case such as this, is that in the absence of any general rule or order providing otherwise, and I know of none, as regards the property to be seized and the mode of seizure, the writ of execution shall be executed in the same manner, as nearly as possible, as a similar writ issued out of a superior court of the province in which the property is situated is,

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by the law of that province, required to be executed. It will be observed that the mode of seizure which is to be followed is that of the province in which the property is situated and where the situs of the property is disputed this will necessarily entail at some stage an inquiry into and a determination of the situs of the property in order to determine whether the mode of seizure which has been followed has been proper. Obviously a mode of seizure which is peculiar to a particular province will not be appropriate unless the property is situated in that province.

At this point several provisions of the Code of Civil Procedure of the Province of Quebec become relevant but before citing them it will be convenient to refer to the nature of the entity named in the present case as the garnishee.

Wabush Mines is the name given to a joint venture in which Wabush Iron Co. Limited, an Ohio corporation, and four Canadian corporations, two of which have their head offices and principal places of business in the Province of Ontario and the other two of which have their head offices and principal places of business in the Province of Quebec, are engaged as parties. The venture was formed for the purpose of completing the commercial development of and eventually operating extensive iron ore deposits at Wabush Lake, Labrador, in the Province of Newfoundland. It is registered under the provisions of the *Partnership Declaration Act*[1] of the Province of Quebec on a declaration, executed by the five corporations, which certifies that they have carried on and intend to carry on the business of iron ore development and production at the City of Montreal and elsewhere in the Provinces of Quebec and Newfoundland in cooperation as parties to a joint venture under the name and style of Wabush Mines and that the said joint venture has subsisted since the first day of November, 1961.

Under a contract and a lease made between Canadian Javelin Limited, a Canadian company having its head office at St. John's, Newfoundland, and Wabush Iron Co. Limited the latter acquired the right to certain shares in a railway company serving the property on which the ore deposits are found and the right to mine the ore and in turn undertook

[1] R.S.Q. 1941, c. 277.

to pay to Canadian Javelin Limited as consideration therefor substantial sums of money, most of which sums have not yet accrued due. By virtue of assignments made by Wabush Iron Co. Limited each of the four Canadian corporations which are parties to the joint venture became entitled to certain undivided interests in the rights accruing to Wabush Iron Co. Limited under the contract and lease and undertook to pay a proportionate part of the consideration payable by Wabush Iron Co. Limited therefor and to indemnify the latter to that extent in respect of its obligations to Canadian Javelin Limited. It is admitted that the obligations of the joint venturers to each other and to Canadian Javelin Limited are several only and not joint.

The joint venturers have employed another Ohio corporation to manage the venture and they maintain an office in Montreal and have a substantial investment in docking and harbour facilities at Seven Islands in the Province of Quebec. The office at Montreal is primarily a construction office for the supervision of the Seven Islands project and deals with engineering, purchasing, accounting and industrial relations matters incidental to that project. About 100 persons are employed at the office some of whom are employees of the joint venturers and others are employees of the managing corporation. The writ of garnishment (saisie-arrêt) named Canadian Javelin Limited as defendant and Wabush Mines as garnishee and it was served on the latter "en parlant et laissant" a copy of the writ with "une personne raisonnable employée et en charge au principal bureau d'affaires" at the address of the Montreal office.

Counsel for the Minister sought to justify this method of proceeding under Articles 81a and 679 of the Quebec Code of Civil Procedure. By Article 81a, as enacted by Statutes of Quebec 1960, c. 99, s. 6[1], it is provided that:

81a. Any group of persons associated for the pursuit in common of objects or advantages of an industrial, commercial or professional nature in this province, which does not possess therein a collective civil personality legally recognized and is not a partnership within the meaning of the Civil Code, may be summoned, for the purposes of any recourse provided by the laws of the province, before the courts of the latter, by serving the action or other proceeding introductive of suit on one of the officers of the

[1] See *International Ladies Garment Workers Union et al v. Rothman* [1941] S.C.R. 388.

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group in question, at his ordinary or recognized office, or by summoning such group collectively under the name by which it designates itself or is commonly designated or known.

Summoning by either of the methods specified in the preceding paragraph shall avail against all the members of the group summoned and the judgments rendered in the cause shall be executory against all the moveable and immoveable property of such group.

The first paragraph of Article 679 is as follows:

Art. 679. The rules concerning the service of ordinary writs of summons apply to seizures by garnishment.

Reference may also be made to Articles 127, 128 and 142 by which it is provided that:

Art. 127. Service is effected by leaving with the defendant a copy of the writ of summons, and of the declaration, if there is one.

. . .

Art. 128. Service must be made either upon the defendant in person, or at his domicile or at the place of his ordinary residence, speaking to a reasonable person belonging to the family.

In the absence of a regular domicile or ordinary residence, service may be made upon the defendant at his office or place of business, if he has one.

Art. 142. Service upon a body corporate is made upon a reasonable person in charge of its head office, of a business office in the Province, or of the office of its agent in the district where the cause of action has arisen.

Assuming that Wabush Mines is not a partnership I am of the opinion that the service of the writ of garnishment (saisie-arrêt) effected at the office of the joint ventures in Montreal was valid service on the five member corporations under Articles 81a and 142 of the Code. How far the garnishment may have operated to effect a seizure of the debts owing to Canadian Javelin Limited under the contract and lease is a separate question which depends on the effect of such procedure under the law of the Province of Quebec and, in view of s. 56 of the *Exchequer Court Act*, on the situs of such debts, and this is a question which in my opinion cannot be determined until some subsequent stage of the proceedings.

Assuming that Wabush Mines is a commercial partnership the service of the writ of garnishment (saisie-arrêt) effected at the Montreal office is I think also valid service under Article 139 and again the question whether any debt has been effectively seized by the garnishment is one for determination at a subsequent stage of the proceedings.

It follows that the service cannot be held to be invalid and that the objection thereto raised on behalf of Wabush Mines must be overruled.

I turn now to the first of two objections raised on behalf of Canadian Javelin Limited. This was based on Article 678 which provides:

Seizure by garnishment is made by means of a writ, issuing from the court which rendered the judgment, and clothed with the formalities of writs of summons.

It mentions the date and amount of the judgment, orders the garnishees not to dispossess themselves of the moveable property belonging to the debtor which is in their possession, or of such moneys or other things as they owe him or will have to pay him, until the court has pronounced upon the matter, and to appear on a day and at an hour fixed to declare under oath what property they have in their possession belonging to the debtor, and what sums of money or other things they owe him or will have to pay him; it also summons the debtor to appear on the day fixed and show cause why the seizure should not be declared valid.

In seizing salaries and wages, the writ must also state the defendant's place of residence, and the nature and place of his occupation.

The writ of garnishment (saisie-arrêt), after reciting the amount certified to be due, read as follows:

WE COMMAND YOU and each of you, the said garnishee (Tiers Saisi) and defendant, to appear before this Court at the Supreme and Exchequer Court Building, in the City of Ottawa, in the Province of Ontario, on the twenty-seventh day of the month of October next, at 11 o'clock in the forenoon, for the said garnishee (Tiers Saisi) to declare upon oath the sum or sums of money, rents, revenues and moveable effects that he has or shall or may have in his hands due or belonging to the said defendant and show the reasons if you have any why the present attachment should not be declared good and valid, and you, the said garnishee (Tiers Saisi) are enjoined not to dispossess yourself of the sums of money or any other assets you may possess belonging to the defendant to the amount of the sum and the interest remaining due as aforesaid, otherwise than as required by law, and of the said revenues, rents and moveable effects until the Court has determined.

In default by the said garnishee (Tiers Saisi) and defendant to appear and by the said garnishee to make the declaration and to comply with the injunctions above mentioned the said garnishee (Tiers Saisi) may be adjudged by default to pay the debt, interest and costs remaining due as aforesaid and also the costs of the present instance to which costs the defendant will be condemned each time that an effective attachment does not suffice to discharge all that he owes.

The point taken was that grammatically read this writ did not call upon Canadian Javelin Limited to show cause why the seizure should not be declared valid and that accordingly the writ did not comply with the requirements of Article 678. In my opinion the writ is not happily worded

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to call upon Canadian Javelin Limited to show cause and it may be that as a matter of strict grammatical construction the contention of counsel is correct but I do not think it follows that the writ must therefore be set aside. I am inclined to think that this objection has been waived by counsel raising his second point and thus electing to show cause despite any defect in the form of the summons to his client but, in any event, I see no reason to think that Canadian Javelin Limited has suffered prejudice by reason of any such defect in the writ and in my opinion the case is a proper one for amendment under Rule 281 of the Rules of this Court. The writ will therefore be amended so as to comply with Article 678 and such amendment will have relation back to the date of the issue of the writ.

The other point taken by counsel for Canadian Javelin Limited was that since s. 120 of the *Income Tax Act* provides a method of garnishment of debts owing to a delinquent taxpayer procedure by garnishment (saisie-arrêt) upon the registration of a certificate under s. 119 was not open to the Minister. In my opinion there is no substance to this point and the objection therefore fails.

This brings me to the remaining point advanced by counsel for Wabush Mines, that is to say, that the situs of the obligations to Canadian Javelin Limited under the contract and lease is not in the Province of Quebec and that accordingly no order for payment to the Minister should be made and in any case no such order should be made without adequate safeguards to ensure that the parties will not be required to pay the amounts again to Canadian Javelin Limited or its assignees in some other jurisdiction. This is in effect an argument as to what property, if any, has been seized by the writ and, as I have already indicated, is one to be made at a subsequent stage of the proceedings.

The costs of the application will be costs in the proceedings on the writ and will follow the result of such proceedings.