

1897  
 Nov. 16.

THE QUEEN ON THE INFORMATION OF }  
 THE ATTORNEY-GENERAL FOR THE } PLAINTIFF;  
 DOMINION OF CANADA ..... }

AND

LAWRENCE KILROE.....DEFENDANT.

*Practice—Information of intrusion—Possession and mesne profits—Joinder of claims—Judgment—Costs.*

Rule 21 of the General Rules of Practice on the Revenue Side of the Court of Exchequer in England made on the 22nd June, 1860, providing that the mode of procedure to remove persons intruding upon the Queen's possession of lands or premises shall be separate and distinct from that to recover profits or damages for intrusion, governed the practice of the Exchequer Court of Canada in such matters until May 1st, 1895, when a general order was passed by that court permitting the joinder of such claims.

Rule 36 of the English rules above mentioned providing that in cases of judgment by default either for non-appearance or for want of pleading to informations of intrusion no costs are to be allowed to the Crown, is still in force in the Exchequer Court of Canada.

**MOTION** for judgment by default of pleading to an information of intrusion upon the lands of the Crown.

The information was dated on the 25th May, 1893. To the claim for possession in the information was joined a claim for issues and profits and costs.

November 16th, 1897.

*W. E. Hodgins*, for the plaintiff, moves for judgment by default against the defendant and establishes by affidavit the fact of the service of the information, the further fact that there had been no plea filed to the information, and asks for judgment against the defendant, both for possession and for the issues and profits, and with costs.

*Per Curiam.*—Under Rule 21 of the General Rules of Practice on the Revenue Side of the Court of Ex-

chequer in England (1), which remained in force in the Exchequer Court of Canada until the 1st of May, 1895, when a Rule was made by this court, allowing proceedings to recover profits or damages for intrusion to be joined to proceedings to remove persons intruding upon the Queen's possession of lands and premises,—the Crown could not join in an information of intrusion a claim for possession and a claim for profits or damages. The information in this case having been exhibited in this court before the 1st of May, 1895, it must be governed by the old Rule on the Revenue Side of the Court of Exchequer in England, and accordingly the order for judgment will be for possession only.

Costs will also have to be refused, as Rule 36 of the above-mentioned General Rules of Practice on the Revenue Side of the Court of Exchequer in England which is still in force in the Exchequer Court of Canada, provides that "In case of judgment by default in intrusion, for the removal of persons intruding, either for non-appearance, or for want of pleading, no costs are to be allowed" There will be judgment for possession only, and without costs.

1897  
 THE  
 QUEEN  
 v.  
 KILROE  
 Judgment.

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(1) 6 H. & N. v.