

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

1897
 May 3.

AND

NICHOLAS K. CONNOLLY, }
 MICHAEL CONNOLLY AND JOHN } DEFENDANTS.
 CONNOR..... }

Practice—Judgment by default—Reference to registrar.

Upon a motion for judgment in default of pleading to an information by the Crown it appeared that the information while showing that the Crown was entitled to judgment, did not show clearly the amount for which judgment should be entered, and a reference was made to the registrar to ascertain, upon proof, the amount of the claim.

MOTION for judgment in default of pleading in an action of assumpsit.

April 17th, 1897.

E. L. Newcombe, Q.C. (D.M.J.) for the motion.

THE JUDGE OF THE EXCHEQUER COURT now (May 3rd, 1897) delivered judgment.

This is a motion for judgment against the defendants Nicholas K. Connolly and Michael Connolly only, for the sum of \$21,649.52 with interest thereon since the 13th day of July, 1896, the defendant John Connor having by arrangement between the parties been given further time to file and serve his statement in defence.

The motion is made in pursuance of the 80th rule of this court, which provides that if the defendant makes default in delivering a defence or demurrer, the Attorney-General or plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the information, or statement of claim, the court shall consider the Attorney-General or plain-

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tiff to be entitled to. The practice of the High Court of Justice in England as well as of the High Court of Justice in Ontario is to give judgment upon the facts as stated in the information or statement of claim, though there has been some difference of opinion as to whether or not the court might receive evidence, or was bound to give judgment upon the information or statement of claim alone. A different practice has, it appears, been followed in the High Court of Justice in Ireland on a like rule. *Crisford v. Dodd* (1). It has been my practice since I have sat in this court to require an affidavit of the amount due, or a copy of some entry of the transaction, as kept in the books of the Government, to be filed. That practice is, I think, a safe one, and the costs of the affidavit or copy of the entry in the books of the Government does not add greatly to the expense of the proceedings. There may, however, be cases in which the information or statement of claim would show so clearly, not only that the plaintiff was entitled to judgment, but the amount for which he was so entitled, that no affidavit or other evidence would be necessary. But the present, I think, is not a case of that kind. The information as a whole shows, I think, that while the Crown is entitled to judgment, some further inquiry is necessary in order to establish the amount for which judgment should be given.

It seems to me that in this case either one or the other of two courses may be conveniently adopted: First, that there be judgment for the plaintiff against the defendants Nicholas K. Connolly and Michael Connolly, with costs, and a reference to the registrar to ascertain the amount for which judgment should be entered; or, secondly, that there be judgment for the plaintiff against the defendants Nicholas K. Connolly

(1) 15 L. R. Ir. 83.

and Michael Connolly, with costs, the amount of the judgment to be determined at the same time as the trial of the issues between the plaintiff and the defendant John Connor. If the plaintiff prefers to take judgment against Nicholas K. Connolly and Michael Connolly, with a reference to the registrar, I see no objection to the amount being determined by filing an affidavit of the amount due from the defendants to the plaintiff.

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