the other hand, it has been urged that the proceeding is so manifestly without foundation, because there is not a sufficient compliance with the requirements of the 7th sub-section of section 3 (Act 1864), that any court must be held to have such an inherent jurisdiction as to require the law and practice of the court to be substantially complied with.

The judge of an inferior court cannot grant a new trial on the merits unless the statute gives him the power to do so: 1 Mosely on Inf. Courts, 283, but it has been held that if a judgment had been obtained by a fraudulent surprise, the judge may grant a new trial, *Bayley* v. *Bourne*, 1 Str. 392; so it has been held that the judge of an inferior court may grant a new trial for matters of irregularity, as where proceedings have been contrary to the practice and rules of the court; *Ib.*; and *vide Jewell* v. *Hill*, 1 Str. 499.

I find it laid down in Archbold's Bankruptcy Practice, 10 Ed. 378, for certain irregularities the court will annul the fiat, as for a misdescription of a place of residence of the petitioning creditor, but this was done by the Court of Review in Bankruptcy (see same Vol., p. 376). There is no Court of Review for Insolvency proceedings here, (as there used to be under the Bankrupt Act,) excepting in the way of an appeal from the decision of the judge, so that unless the judge has the power to set aside proceedings for irregularity it cannot be done at all, no matter how irregular they may be.

The strict wording of the 12th sub-section of the 3rd section gives no more right to the defendant than to this petitioner to move the judge, nor power to the judge to set aside proceedings for irregularity; the sole ground upon which defendant can petition to have the proceedings set aside is on the ground that his estate has not become subject to compulsory liquidation, which involves merely in strictness an enquiry upon the merits.

I apprehend, however, that the power to control and enforce the practice of the court must exist somewhere, and must be primarily in the judge, subject to an appeal: that is what I must, therefore, hold at present, until I am better advised, and that the 7th section of the amended Act of 1865, with reference to the "*contesting of proceedings*," applies to the different modes by which proceedings in Insolvency might be contested, as they are in England, by actions of trespass and trover, and the like, notwithstanding proceedings of adjudication in the Court of Bankruptcy there—and which, but for that 7th section, might be instituted here for the same purpose. Here, that section makes all such proceedings conclusive for all purposes after a certain time, which, to my mind, argues in favor of, instead of against the application of this petitioner, and of all such applications by those who may be interested in the proceedings or in the defendants' estate.

In England a creditor may pray to annul a fiat, even although privy to the very act on which he grounds his objection to the fiat, (see Arch. Prac. in Bank. 394,) or any party not a creditor who can shew he sustains a grievance from the fiat, as a trustee under a deed which the fiat will overreach (idem 395); even a stranger summoned to give evidence before the commissioner, can petition to annul the fiat, and the plaintiff in an action to which an attorney (the bankrupt) had been attached for not putting in bail in pursuance of his underta ing, had a sufficient interest to annul the fiat (idem 395); an adjudication must be supported by all the legal requisites (see *ex parte Brown*, 1 D. M. & G. 456; 1 Doria & Macrae, Bankruptcy, 322,) so that on the whole I think the petitioner here, who swears he is, and whose petition sets forth how he is a creditor, has in this court a sufficient interest to give him a *locus standi* upon an application of this nature, notwithstanding the decisions of the judges at Common Law in the cases cited, and of *Wilson* v. *Wilson*, 2 Practice Rep. 374.

Then it was further objected that the informality and insufficiency complained of should have been clearly set out in the petition, or affidavit, or summons. This no doubt would be a sufficient objection in an ordinary court of law, with an established set of rules or practice; but in the absence of all such, and with a summons referring to a petition and papers filed and served, specially setting forth that plaintiff's affirmation was informal and insufficient in law in several respects, I think it is all that any court or rules of practice could reasonably require.

The first of these objections is that the plaintiff, a Quaker, did not affirm as required by law. The 1st section of the C. S. of U. C., cap. 32, is a permissive enactment for the *relief and benefit of particular sects*, and after having first made the declaration presented as to their membership of the particular society, provides that they "may make the affirmation or declaration in the form therein following," that is to say: "I, A. B., do solemnly, sincerely and truly declare and affirm," &c. Both declarations are requisite, and the making of the one and dispensing with the other does not so comply with the statute as to give the affirmation of such privileged persons as the plaintiff the same force and effect as an oath taken in the usual form. In Upper Canada the creditor, under the 7th sub-section of the 3rd section, must, by "*affidavit*" of himself or any other individual, show, to the satisfaction of the judge, that he is a creditor of the defendants, &c. There were three ways in which he might have acted: either by swearing to the necessary affidavit himself, or getting some one else to act as his agent and make the affidavit, or to have complied strictly with the 1st section of the Con. Stat. of U. C., cap. 32, whereby "*the affirmation or declaration would have the same force and effect, to all intents and purposes, in all courts of law and equity, and all other places, as an oath taken in the usual form.*" He did neither; and in the absence of either I think the attachment, and all proceedings under it, irregular, and must be set aside.

As to the objection that the plaintiff's affirmation was made before Mr. McLean, the plaintiff's attorney prosecuting the attachment, the case of *Ex parte Coldwell*, 3 DeG. & S., 664, cited in 1 Doria & McRae, 322, shews that it is invalid and unsustainable, because the mere circumstance of the affidavit filed in support of the petition for adjudication being sworn before a Master Extraordinary in Chancery in England,