

"any order of the Court or fiat of a Judge thereof, for judgment or for any execution. In obtaining this judgment, Your Committee notice the following violations of the then existing law. By the tenth Section of the Act of the 34th of Geo. 3rd, regulating the practice of the Court of King's Bench, and under which Act the process in the said cause was issued, it is expressly enacted, '*That in all actions or suits where the Defendant or Defendants reside without the limits of the Home District, or District where the Court shall be holden, eight days shall be allowed after such demand of plea, as the ordinary time within which they shall be required to file their plea, &c.*' but notwithstanding the said Act, the said Henry John Boulton, who perfectly knew the residence of the Petitioner to be within the District of Niagara, and not in the Home District, proceeded to sign not only interlocutory but final judgment within four days after demand of plea, and that put up or filed in a District where he well knew the Petitioner did not reside.

"This prejudicial violation of the rules prescribed by the Statutes of the Province, made for the protection of Defendants, is attempted to be justified by a prevailing practice under the following rule of Court :

<p>"<i>Scott, C. J.</i> "<i>Powell, J.</i> "<i>Campbell, J.</i> "<i>Mihelmas,</i> "<i>54th Geo. III.</i></p>	}	<p>"It is ordered, that from and after the first day of Hilary Term next, in all cases where the Defendant has not appeared in person or by his Attorney, judgment by default shall not be signed, without an affidavit being first made and filed of a demand of plea having been served upon the Defendant, or by being left at his usual place of abode, if the same be in the District where the action is brought, and if the Defendant's place of abode be not in such District, that then the demand of plea shall be entered in the office, accompanied with an affidavit, stating that the Defendant's place of abode within such District, is not known to the Dependent, and that judgment by default in such cases, shall not be signed till four days after such service or entry respectively."</p>
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"This rule if so construed, as to warrant the practice contended for, carries injustice upon the face of it; if a Defendant lives in 'the Town of York,' within the precincts of the Home District, the demand of plea must be served upon him, or left at his usual place of abode; but if he lives in remoter settlements in the very Eastern and Western extremities of the Province, the eight days given by the Statute are arbitrarily reduced to four, and the notice, instead of being left at his abode, is filed in an office to which from his remoteness, he cannot have access, and of the proceedings in which, from the inevitable difficulties of communication, he cannot be reasonably apprized.

"The affidavit required by this rule of Court to consummate its object, is also of a most extraordinary nature. '*If the Defendant's place of abode BE NOT IN SUCH DISTRICT, then the demand of plea shall be entered in the office, accompanied with an affidavit stating that the Defendant's place of abode, WITHIN SUCH DISTRICT, is not known to the Dependent.*'"

"In the cause now the subject of complaint, the summons was served upon the Petitioner in the Niagara District, where he had resided for a number of years, and Mr. Boulton admits that the place of his abode was known to him, and to the Clerk, under whose oath he was enabled to sign his judgment. It is implied that the Dependent believes the place of abode to be in the Home District, but not known to him."

"It would require strong language to give a suitable reprobation of a rule of Court which is equally subversive of the rules of good conscience and statutory law.

"The Committee desire to remark, that from the evidence, it appears that Mr. Boulton acted upon the rule in many other cases in which he had no personal interest, and the profession generally did the same.

* Now Toronto.

† Robert Randall's.