accruing due from the garnishees—the railway company and the bank—to the defendant. The date fixed by the order for the attendance of the garnishees before the Judge was the 28th December. On that day, the local manager of the bank made affidavit that the bank was not, at the time of the service of the attaching order or on the 28th December, indebted to the defendant, but that the defendant was indebted to the bank in the sum of $2,453.79 advanced on promissory notes due on the 4th January, 1917, the payment of which was secured by the assignment, "but the proceeds have not yet been paid to the bank." The bank manager was cross-examined on his affidavit, and deposed in effect that if the bank received the amount that he supposed to be coming to the defendant from the railway company the defendant would have a balance of $1,302; and he said that the defendant had intrusted him (the manager) with cheques for payments which would dispose of that balance. The defendant's instructions to the manager had been that these cheques were for sums due in respect of services rendered to Harty by the payees in connection with his contracts with the railway company.

On the 2nd February, 1917, the Local Judge found that at the date of the service of the attaching order the railway company were not indebted to the defendant in any amount, and that the bank were indebted to him in the sum of $13.60, to which sum the plaintiffs were entitled under the attaching order.

The evidence made it clear that neither on the day of the service of the attaching order, nor on the day of the hearing of the motion for payment, did the bank owe any money to the defendant, and that when, at a later date, the bank received from the railway company a sum in excess of the defendant's indebtedness, the bank had directions from the defendant (given, however, after the service of the attaching order) to pay the excess to persons to whom the defendant professed to owe it for services in connection with the cutting and delivery of the piling.

In these circumstances, the order of the Local Judge was right. The attaching order must have been made upon some misapprehension of the facts; and, when the true state of facts afterwards appeared, that order ought to have been rescinded. See Rule 590 and Boyd v. Haynes (1869), 5 P.R. 15; Halsbury's Laws of England, vol. 14, p. 92; O'Driscoll v. Manchester Insurance Committee, [1915] 3 K.B. 499; Gilroy v. Conn (1912), 3 O.W.N. 732; Webb v. Stenton (1883), 11 Q.R.D. 518; Fellows v. Thornton (1884), 14 Q.B.D. 335; Chatterton v. Watney (1881), 16 Ch. D. 378; In re Combined Weighing and Advertising Machine Co. (1889), 43 Ch. D. 99; Norton v. Yates, [1906] 1 K.B. 112.